

1 the political contributions of its executives.² As part of the resolution of MUR 7248, CTCA
2 notified recipient committees, including Heller for Senate, that they had received certain illegal
3 contributions that they are required to disgorge to the U.S. Treasury.³

4 In response, the Committee acknowledges that it received the CTCA-funded
5 contributions described in the Complaint, but states that it did not learn that those contributions
6 were prohibited corporate contributions until five years later, at the conclusion of MUR 7248.⁴
7 The Committee asserts that it is not required to disgorge the prohibited contributions because
8 they were received during a previous election cycle, were expended during that election cycle,
9 and are no longer specifically available to disgorge.⁵

10 We recommend that the Commission find reason to believe that Heller for Senate and
11 Chrissie Hastie in her official capacity as treasurer violated 52 U.S.C. §§ 30118 and 30122,
12 authorize conciliation prior to a finding of probable cause to believe, and approve the attached
13 conciliation agreement

14 .

² MUR 7248 Amended Certification (May 15, 2017).

³ MUR 7248 Conciliation Agreement ¶ VI.3 (July 28, 2017) (requiring CTCA to “seek disgorgement of all such funds from all recipient candidates and committees to the U.S. Treasury”). In August 2017, CTCA notified 38 recipient committees of the illegal contributions and requested that they disgorge specified amounts. *See* Letter from Timothy E. Flanigan, Chief Legal Officer and Chief Ethics and Compliance Officer, CTCA, to Hon. Dean Heller (Aug. 18, 2017) (“CTCA Letter to Heller”). In response to the CTCA letter, 17 committees disgorged the specified amounts. After this matter was activated, on March 5, 2019, we sent letters to 16 other active committees that, like Heller for Senate, did not disgorge the prohibited contributions in MUR 7248, asking them to notify us of the steps they have taken to comply with their obligations to disgorge the CTCA funds. Following receipt of all responses to those reminder letters, we will make the appropriate recommendations as to those committees. *See* MUR 7406 (Heller for Senate Committee) Informational Memorandum (Feb. 21, 2019).

⁴ MUR 7406 Resp. at 1-2 (Aug. 20, 2018).

⁵ *Id.*

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 In accordance with the terms outlined in the conciliation agreement between the
3 Commission and CTCA in MUR 7248, by letter dated August 18, 2017, CTCA notified the
4 Committee of the Commission's findings in MUR 7248 that CTCA had made prohibited
5 corporate contributions through a corporate bonus program in which it reimbursed its executives
6 who made individual contributions to various federal political committees with corporate funds.⁶
7 The letter further notified the Committee that it was the recipient of \$27,500 in such prohibited
8 corporate contributions and stated:

9 The FEC has requested that we inform you that any funds
10 that were contributed by the individuals associated with this
11 conduct be disgorged to the U.S. Treasury. The check
12 should be made payable to the U.S. Treasury with the
13 notation "MUR 7248" on the check face. The check should
14 be mailed to Mark Shonkwiler, Enforcement Division,
15 Federal Election Commission, 999 E Street, NW,
16 Washington, DC 20463.⁷

17
18 The Committee did not disgorge the contributions.

19 In response to the MUR 7406 Complaint, the Committee acknowledges receipt of
20 CTCA's original notification letter, as well as receipt of the prohibited contributions at issue.⁸
21 The Committee contends that it is not required to disgorge such funds because it received the

⁶ CTCA Letter to Heller.

⁷ *Id.*; see also MUR 7406 Compl. at 2. CTCA waived any rights it may have had to a refund of the illegal contributions discussed in the conciliation agreement. See MUR 7248 Conciliation Agreement ¶ VI.3; *Fireman v. United States*, 44 Fed. Cl. 528 (1999).

⁸ MUR 7406 Resp. at 1-2.

1 contributions in 2012, the contributions appeared legal at that time, and it did not learn that they
2 were illegal corporate contributions until 2017.⁹

3 The Act provides that no person shall make a contribution in the name of another person
4 or knowingly permit his or her name to be used to make such a contribution, and no committee
5 shall knowingly accept a contribution made by one person in the name of another person.¹⁰ The
6 Act further prohibits corporations from contributing to candidates, and candidates and authorized
7 committees are prohibited from knowingly accepting or receiving such contributions.¹¹ The
8 Commission's regulations further provide that if a political committee's treasurer determined that
9 at the time a contribution was received and deposited, it did not appear to be made by a
10 corporation or in the name of another, "but later discovers that it is illegal based on new evidence
11 not available to the political committee at the time of receipt and deposit, the treasurer shall
12 refund the contribution to the contributor within thirty days of the date on which the illegality is
13 discovered."¹² The regulation at section 103.3(b)(2) further specifies that, "[i]f the political
14 committee does not have sufficient funds to refund the contribution at the time the illegality is

⁹ *Id.* The \$27,500 in total contributions, which CTCA impermissibly reimbursed with corporate funds, is comprised of the following individual contributions made to the Committee: 10/20/12 John Conway \$2,500; 10/20/12 Steven Kroll \$2,500; 10/20/12 Christopher Lis \$2,500; 10/20/12 John McNeil \$2,500; 10/20/12 Phillip Picchiatti \$2,500; 10/20/12 Edgar Staren \$2,500; 10/20/12 Peter Yesawich \$2,500; 10/20/12 John Steiner \$2,500; 10/24/12 Stephen Mackin \$2,500; 10/26/12 Eric Magnussen \$2,500; 10/26/12 Anne Meisner \$2,500. *See* MUR 7248 (Pre-MUR 581) (CTCA) Production of Documents (June 12, 2016).

¹⁰ 52 U.S.C. § 30122.

¹¹ 52 U.S.C. § 30118.

¹² 11 C.F.R. § 103.3(b)(2). *See also* Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 768-769 (Jan. 9, 1987) (explaining that section 103.3(b)(2) applies to contributions whose legality is not in question when received and deposited but which are later discover to be illegal such as, for example, corporate contributions made in the name of employees and further explaining that the rule requires "the amount of the contribution to be refunded to the contributor within thirty days after the discovery of the illegality") ("103.3(b)(2) E&J").

1 discovered, the political committee shall make the refund from the next funds it receives.”¹³ As
2 an alternative to refunding the contribution to the contributor, the political committee may
3 disgorge to the U.S. Treasury an amount equal to the amount of the illegal contribution.¹⁴

4 In this matter, there is no allegation that the Committee knowingly accepted illegal
5 contributions at the time it accepted the contributions from CTCA executives in 2012. However,
6 the Committee was put on notice in August 2017 that \$27,500 in contributions were in fact
7 illegal contributions from CTCA and should be disgorged to the U.S. Treasury. The Committee
8 was therefore required to disgorge¹⁵ the \$27,500 in illegal contributions within thirty days of its
9 discovery of the illegality, that is, within thirty days of the August 2017 notification, or be
10 considered to have knowingly accepted illegal contributions as of 2017.¹⁶

11 The Committee argues that the regulation at section 103.3 does not require any refund or
12 disgorgement once a committee has held those contribution funds on deposit for more than thirty
13 days after receipt.¹⁷ The Committee also alleges that it no longer has the specific CTCA funds to
14 disgorge, noting that it used a “first in, first out” accounting method, and thus, no longer had any
15 funds traceable to CTCA’s 2012 corporate contributions in the name of another to disgorge.¹⁸

16 The Committee’s argument and regulatory interpretation concerning its refund
17 requirements are misplaced. The explicit language of section 103.3(b) requires, for contributions

¹³ 11 C.F.R. § 103.3(b)(2).

¹⁴ See Advisory Op. 1996-05 (Jay Kim for Congress) at 2-3; see n.7 *supra*.

¹⁵ The Committee could not refund to CTCA because CTCA waived any rights it may have had to a refund. See n.7 *supra*.

¹⁶ See n.23 *infra*.

¹⁷ MUR 7406 Resp. at 3.

¹⁸ *Id.* at 3-5.

1 “later” discovered to be illegal, a refund within thirty days “of the date on which the illegality is
2 discovered.” The Commission has not previously read “later,” in the context of a later
3 discovered illegal contribution, to be limited to a thirty day period after deposit of the
4 contributions and the Committee does not present a compelling reason for doing so now.¹⁹
5 Moreover, the regulations do not require that a committee make a required refund (or
6 disgorgement) using the same funds that comprised the illegal contribution; neither do the
7 regulations excuse the obligation to refund (or disgorge) if the funds were spent before the
8 illegality was discovered. The Commission has explained that section 103.3 requires that “the
9 amount of the contribution” be refunded to the contributor within thirty days after the discovery
10 of the illegality, not that the same dollars that comprised the illegal contribution be refunded.²⁰
11 Indeed, even if a committee has no funds at the time it discovers the illegality, the regulations are
12 clear that the committee must make the refund from the next funds it receives, which, by
13 definition, are not funds traceable to the initial contribution later discovered to have been
14 illegal.²¹ A review of the Committee’s disclosure reports shows that it had, at the time it was put
15 on notice in August 2017, and currently has, more than sufficient funds to disgorge the \$27,500
16 in prohibited corporate contributions.²²

¹⁹ See, e.g., Conciliation Agreement, MUR 4547 (Clinton/Gore '96) ¶ IV.13 (noting that contributor’s guilty plea, entered three years after the committee had accepted contributions, “put [respondent committee] on notice regarding the illegality of the . . . contributions” made in the name of another three years prior).

²⁰ See 103.3(b)(2) E& J. 52 Fed. Reg. at 768-769.

²¹ See 11 C.F.R. § 103.3(b)(2).

²² Heller for Senate 2017 October Quarterly Report at 2 (Oct. 18, 2017) (disclosing \$4.1 million cash on hand); 2018 Year-End Report at 2 (Jan. 31, 2019) (disclosing \$184,400 cash on hand).

1 Accordingly, in view of CTCA informing the Committee of its receipt of impermissible
2 contributions and the Committee's failure to disgorge the contributions, we recommend that the
3 Commission find reason to believe that Heller for Senate and Chrissie Hastie in her official
4 capacity as treasurer violated 52 U.S.C. §§ 30118 and 30122 by knowingly accepting corporate
5 contributions made in the name of another.²³

²³ *See, e.g.*, MUR 4547 (Clinton/Gore '96) (finding probable cause to believe that the recipient committee violated 2 U.S.C. §§ 441a(f) and 441f (since recodified at 52 U.S.C. §§ 30116(f) and 30122) for knowingly accepting excessive contributions and contributions in the name of another that the committee failed to refund after notification of their illegality); MUR 4484 (Bainum) General Counsel's Rpt. at 7-8 (Feb. 7, 1997) and Certification ¶¶ 2-5 (Feb. 14, 1997) (finding reason to believe that recipient committees violated 2 U.S.C. § 441f (and in the case of one committee also 2 U.S.C. § 441a(f)) for the same reasons); *cf.* MUR 5744 (Hynes for Senate) F&LA (Hynes for Senate) at 3; Certification at ¶ 2 (May 5, 2006) (finding reason to believe that recipient committee violated 11 C.F.R. § 103.3(b)(2) for failing to refund contributions after notification of their illegality).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

IV. RECOMMENDATIONS

- 1. Find reason to believe that Heller for Senate and Chrissie Hastie in her official capacity as treasurer violated 52 U.S.C. §§ 30118 and 30122.
- 2. Approve the attached Factual and Legal Analysis.
- 3. Enter into conciliation with Heller for Senate and Chrissie Hastie in her official capacity as treasurer prior to a finding of probable cause to believe.
- 4. Approve the attached Conciliation Agreement.
- 5. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

April 8, 2019
Date

Charles Kitcher
Charles Kitcher
Acting Associate General Counsel
for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

Attachments:
1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Heller for Senate and
Chrissie Hastie in her official capacity as treasurer

MUR 7406**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission pursuant to 52 U.S.C. § 30109(a)(1) alleging that Heller for Senate and Chrissie Hastie in her official capacity as treasurer (the “Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to disgorge improper campaign contributions within 30 days of discovering that they came from a prohibited source.¹

Based on the allegations of the complaint, the response, and the available information, the Commission finds reason to believe that Heller for Senate and Chrissie Hastie in her official capacity as treasurer violated 52 U.S.C. §§ 30118 and 30122.

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that the Committee failed to disgorge to the U.S. Treasury \$27,500 in prohibited contributions it received from the Cancer Treatment Centers of America Global, Inc. (“CTCA”) in connection with a previous enforcement matter, MUR 7248.² In that matter, the Commission found, *inter alia*, reason to believe CTCA violated 52 U.S.C. §§ 30118 and 30122 by making prohibited corporate contributions in the name of another person when it reimbursed with corporate funds the political contributions of its executives.³ As part of the

¹ MUR 7406 Compl. at 2 (June 5, 2018).

² *Id.*

³ MUR 7248 Amended Certification (May 15, 2017).

1 resolution of MUR 7248, CTCA notified recipient committees, including Heller for Senate, that
2 they had received certain illegal contributions that they are required to disgorge to the U.S.
3 Treasury.⁴

4 In response, the Committee acknowledges that it received the CTCA-funded
5 contributions described in the Complaint, but states that it did not learn that those contributions
6 were prohibited corporate contributions until five years later, at the conclusion of MUR 7248.⁵
7 The Committee asserts that it is not required to disgorge the prohibited contributions because
8 they were received during a previous election cycle, were expended during that election cycle,
9 and are no longer specifically available to disgorge.⁶

10 In accordance with the terms outlined in the conciliation agreement between the
11 Commission and CTCA in MUR 7248, by letter dated August 18, 2017, CTCA notified the
12 Committee of the Commission's findings in MUR 7248 that CTCA had made prohibited
13 corporate contributions through a corporate bonus program in which it reimbursed its executives
14 who made individual contributions to various federal political committees with corporate funds.⁷
15 The letter further notified the Committee that it was the recipient of \$27,500 in such prohibited

⁴ MUR 7248 Conciliation Agreement ¶ VI.3 (July 28, 2017) (requiring CTCA to “seek disgorgement of all such funds from all recipient candidates and committees to the U.S. Treasury”). In August 2017, CTCA notified recipient committees of the illegal contributions and requested that they disgorge specified amounts. *See* Letter from Timothy E. Flanigan, Chief Legal Officer and Chief Ethics and Compliance Officer, CTCA, to Hon. Dean Heller (Aug. 18, 2017) (“CTCA Letter to Heller”).

⁵ MUR 7406 Resp. at 1-2 (Aug. 20, 2018).

⁶ *Id.*

⁷ CTCA Letter to Heller.

1 corporate contributions and stated:

2 The FEC has requested that we inform you that any funds that
3 were contributed by the individuals associated with this conduct
4 be disgorged to the U.S. Treasury. The check should be made
5 payable to the U.S. Treasury with the notation “MUR 7248” on
6 the check face. The check should be mailed to Mark Shonkwiler,
7 Enforcement Division, Federal Election Commission, 999 E
8 Street, NW, Washington, DC 20463.⁸

9
10 The Committee did not disgorge the contributions.

11 In response to the MUR 7406 Complaint, the Committee acknowledges receipt of
12 CTCA’s original notification letter, as well as receipt of the prohibited contributions at issue.⁹

13 The Committee contends that it is not required to disgorge such funds because it received the
14 contributions in 2012, the contributions appeared legal at that time, and it did not learn that they
15 were illegal corporate contributions until 2017.¹⁰

16 The Act provides that no person shall make a contribution in the name of another person
17 or knowingly permit his or her name to be used to make such a contribution, and no committee
18 shall knowingly accept a contribution made by one person in the name of another person.¹¹ The
19 Act further prohibits corporations from contributing to candidates, and candidates and authorized

⁸ *Id.*; see also MUR 7406 Compl. at 2. CTCA waived any rights it may have had to a refund of the illegal contributions discussed in the conciliation agreement. See MUR 7248 Conciliation Agreement ¶ VI.3; *Fireman v. United States*, 44 Fed. Cl. 528 (1999).

⁹ MUR 7406 Resp. at 1-2.

¹⁰ *Id.* The \$27,500 in total contributions, which CTCA impermissibly reimbursed with corporate funds, is comprised of the following individual contributions made to the Committee: 10/20/12 John Conway \$2,500; 10/20/12 Steven Kroll \$2,500; 10/20/12 Christopher Lis \$2,500; 10/20/12 John McNeil \$2,500; 10/20/12 Phillip Picchietti \$2,500; 10/20/12 Edgar Staren \$2,500; 10/20/12 Peter Yesawich \$2,500; 10/23/12 John Steiner \$2,500; 10/24/12 Stephen Mackin \$2,500; 10/26/12 Eric Magnussen \$2,500; 10/26/12; Anne Meisner \$2,500.

¹¹ 52 U.S.C. § 30122.

1 committees are prohibited from knowingly accepting or receiving such contributions.¹² The
2 Commission’s regulations further provide that if a political committee’s treasurer determined that
3 at the time a contribution was received and deposited, it did not appear to be made by a
4 corporation or in the name of another, “but later discovers that it is illegal based on new evidence
5 not available to the political committee at the time of receipt and deposit, the treasurer shall
6 refund the contribution to the contributor within thirty days of the date on which the illegality is
7 discovered.”¹³ The regulation at section 103.3(b)(2) further specifies that, “[i]f the political
8 committee does not have sufficient funds to refund the contribution at the time the illegality is
9 discovered, the political committee shall make the refund from the next funds it receives.”¹⁴ As
10 an alternative to refunding the contribution to the contributor, the political committee may
11 disgorge to the U.S. Treasury an amount equal to the amount of the illegal contribution.¹⁵

12 In this matter, there is no allegation that the Committee knowingly accepted illegal
13 contributions at the time it accepted the contributions from CTCA executives in 2012. However,
14 the Committee was put on notice in August 2017 that \$27,500 in contributions were in fact
15 illegal contributions from CTCA and should be disgorged to the U.S. Treasury. The Committee

¹² 52 U.S.C. § 30118.

¹³ 11 C.F.R. § 103.3(b)(2). *See also* Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 768-769 (Jan. 9, 1987) (explaining that section 103.3(b)(2) applies to contributions whose legality is not in question when received and deposited but which are later discover to be illegal such as, for example, corporate contributions made in the name of employees and further explaining that the rule requires “the amount of the contribution to be refunded to the contributor within thirty days after the discovery of the illegality”) (“103.3(b)(2) E&J”).

¹⁴ 11 C.F.R. § 103.3(b)(2).

¹⁵ *See* Advisory Op. 1996-05 (Jay Kim for Congress) at 2-3; *see* n.8 *supra*.

1 was therefore required to disgorge¹⁶ the \$27,500 in illegal contributions within thirty days of its
2 discovery of the illegality, that is, within thirty days of the August 2017 notification, or be
3 considered to have knowingly accepted illegal contributions as of 2017.¹⁷

4 The Committee argues that the regulation at section 103.3 does not require any refund or
5 disgorgement once a committee has held those contribution funds on deposit for more than thirty
6 days after receipt.¹⁸ The Committee also alleges that it no longer has the specific CTCA funds to
7 disgorge, noting that it used a “first in, first out” accounting method, and thus, no longer had any
8 funds traceable to CTCA’s 2012 corporate contributions in the name of another to disgorge.¹⁹

9 The Committee’s argument and regulatory interpretation concerning its refund
10 requirements are misplaced. The explicit language of section 103.3(b) requires, for contributions
11 “later” discovered to be illegal, a refund within thirty days “of the date on which the illegality is
12 discovered.” The Commission has not previously read “later,” in the context of a later
13 discovered illegal contribution, to be limited to a thirty day period after deposit of the
14 contributions and the Committee does not present a compelling reason for doing so now.²⁰
15 Moreover, the regulations do not require that a committee make a required refund (or
16 disgorgement) using the same funds that comprised the illegal contribution; neither do the
17 regulations excuse the obligation to refund (or disgorge) if the funds were spent before the

¹⁶ The Committee could not refund to CTCA because CTCA waived any rights it may have had to a refund.
See n.8 supra.

¹⁷ *See n.24 infra.*

¹⁸ MUR 7406 Resp. at 3.

¹⁹ *Id.* at 3-5.

²⁰ *See, e.g.,* Conciliation Agreement, MUR 4547 (Clinton/Gore '96) ¶ IV.13 (noting that contributor’s guilty plea, entered three years after the committee had accepted contributions, “put [respondent committee] on notice regarding the illegality of the . . . contributions” made in the name of another three years prior).

1 illegality was discovered. The Commission has explained that section 103.3 requires that “the
2 amount of the contribution” be refunded to the contributor within thirty days after the discovery
3 of the illegality, not that the same dollars that comprised the illegal contribution be refunded.²¹
4 Indeed, even if a committee has no funds at the time it discovers the illegality, the regulations are
5 clear that the committee must make the refund from the next funds it receives, which, by
6 definition, are not funds traceable to the initial contribution later discovered to have been
7 illegal.²² A review of the Committee’s disclosure reports shows that it had, at the time it was put
8 on notice in August 2017, and currently has, more than sufficient funds to disgorge the \$27,500
9 in prohibited corporate contributions.²³ CTCA informed the Committee of its receipt of
10 impermissible contributions and the Committee failed to disgorge the contributions.

11 Therefore, there is reason to believe that Heller for Senate and Chrissie Hastie in her
12 official capacity as treasurer violated 52 U.S.C. §§ 30118 and 30122 by knowingly accepting
13 corporate contributions made in the name of another.²⁴

²¹ See 103.3(b)(2) E&J. 52 Fed. Reg. at 768-769.

²² See 11 C.F.R. § 103.3(b)(2).

²³ Heller for Senate 2017 October Quarterly Report at 2 (Oct. 18, 2017) (disclosing \$4.1 million cash on hand); 2018 Year-End Report at 2 (Jan. 31, 2019) (disclosing \$184,400 cash on hand).

²⁴ See, e.g., MUR 4547 (Clinton/Gore ’96) (finding probable cause to believe that the recipient committee violated 2 U.S.C. §§ 441a(f) and 441f (since recodified at 52 U.S.C. §§ 30116(f) and 30122) for knowingly accepting excessive contributions and contributions in the name of another that the committee failed to refund after notification of their illegality); MUR 4484 (Bainum) General Counsel’s Rpt. at 7-8 (Feb. 7, 1997) and Certification ¶¶ 2-5 (Feb. 14, 1997) (finding reason to believe that recipient committees violated 2 U.S.C. § 441f (and in the case of one committee also 2 U.S.C. § 441a(f)) for the same reasons); cf. MUR 5744 (Hynes for Senate) F&LA (Hynes for Senate) at 3; Certification at ¶ 2 (May 5, 2006) (finding reason to believe that recipient committee violated 11 C.F.R. § 103.3(b)(2) for failing to refund contributions after notification of their illegality).