FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 25, 2021

VIA EMAIL ONLY
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P.O. Box 341016
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RE: MUR 7406
Heller for Senate

Dear Messrs. Gober and McCurry:

On June 11, 2018, the Federal Election Commission (the "Commission") notified your clients, Heller for Senate and Chrissie Hastie in her official capacity as treasurer (the "Committee"), of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission on May 6, 2021, found reason to believe that the Committee violated 52 U.S.C. §§ 30118 and 30122, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law. Enclosed is a conciliation agreement for your consideration

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as your clients are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Christine Gallagher, the attorney assigned to this matter, at (202) 694-1505 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/respondent.guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.[1]

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,

Shana M. Broussard
Chair

Enclosures

Factual and Legal Analysis

[1] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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

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

2 *Id*.

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

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

In response, the Committee acknowledges that it received the CTCA-funded contributions described in the Complaint, but states that it did not learn that those contributions were prohibited corporate contributions until five years later, at the conclusion of MUR 7248.[5] The Committee asserts that it is not required to disgorge the prohibited contributions because they were received during a previous election cycle, were expended during that election cycle, and are no longer specifically available to disgorge.[6]

In accordance with the terms outlined in the conciliation agreement between the Commission and CTCA in MUR 7248, by letter dated August 18, 2017, CTCA notified the Committee of the Commission's findings in MUR 7248 that CTCA had made prohibited corporate contributions through a corporate bonus program in which it reimbursed its executives who made individual contributions to various federal political committees with corporate funds.[7] 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.

corporate contributions and stated:

> The FEC has requested that we inform you that any funds that were contributed by the individuals associated with this conduct be disgorged to the U.S. Treasury. The check should be made payable to the U.S. Treasury with the notation "MUR 7248" on the check face. The check should be mailed to Mark Shonkwiler, Enforcement Division, Federal Election Commission, 999 E Street, NW, Washington, DC 20463.[8]

The Committee did not disgorge the contributions.

In response to the MUR 7406 Complaint, the Committee acknowledges receipt of CTCA's original notification letter, as well as receipt of the prohibited contributions at issue.[9] The Committee contends that it is not required to disgorge such funds because it received the contributions in 2012, the contributions appeared legal at that time, and it did not learn that they were illegal corporate contributions until 2017.[10]

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

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[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.

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

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

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[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*.

was therefore required to disgorge[16] the $27,500 in illegal contributions within thirty days of its discovery of the illegality, that is, within thirty days of the August 2017 notification, or be considered to have knowingly accepted illegal contributions as of 2017.[17]

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

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

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[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).

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

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

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[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).