



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 19, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nevada State Democratic Party
Attn: Judith Whitmer, Chair
2310 Paseo Del Prado
Suite A120
Las Vegas, NV 89102

RE: MUR 7406
Heller for Senate

Dear Ms. Whitmer:

This is in reference to the complaint filed by the Nevada State Democratic Party with the Federal Election Commission on June 5, 2018, concerning Heller for Senate and Chrissie Hastie in her official capacity as treasurer (the "Committee"). The Commission found that there was reason to believe the Committee violated 52 U.S.C. §§ 30118 and 30122, provisions of the Federal Election Campaign Act of 1971, as amended. On October 6, 2021, the Commission accepted a conciliation agreement signed by the respondent, and closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the conciliation agreement and the Factual and Legal Analysis which more fully explain the Commission's findings in this matter are enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Christine C. Gallagher".

Christine C. Gallagher
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7406
Heller for Senate and)	
Chrissie Hastie in her official capacity as treasurer)	
)	

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FEDERAL ELECTION COMMISSION

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Nevada State Democratic Party by Alana Mounce, its Executive Director. The Federal Election Commission ("Commission") found reason to believe that Heller for Senate and Chrissie Hastie in her official capacity as treasurer ("Committee" or "Respondent"), violated 52 U.S.C. §§ 30118 and 30122.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Heller for Senate is a political committee within the meaning of 52 U.S.C. § 30101(4).

2. Chrissie Hastie is the treasurer of Heller for Senate.

3. 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. *See* 52 U.S.C. § 30122.

4. It is unlawful for corporations to contribute to candidates, and candidates and authorized committees are prohibited from knowingly accepting or receiving such contributions. *See* 52 U.S.C. § 30118.

5. The Commission's regulations provide that if a political committee treasurer in exercising his or her responsibilities under 11 C.F.R. § 103.3(b) 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. 11 C.F.R. § 103.3(b)(2). If 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. *Id.* In the alternative, the political committee may disgorge an amount equal to the amount of the illegal contributions, where the contributor unlawfully made the contributions. Advisory Opinion 1996-05 (Jay Kim for Congress).

6. In a previous enforcement matter, MUR 7248, the Commission found, *inter alia*, reason to believe the Cancer Treatment Centers of America Global, Inc. ("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. As part of the terms of the conciliation agreement in MUR 7248, CTCA waived any

rights it may have had to a refund of the illegal contributions discussed in the conciliation agreement and CTCA was required to “seek disgorgement of all such funds from all recipient candidates and committees to the U.S. Treasury.” *See* MUR 7248 Conciliation Agreement ¶ VI.3 (July 28, 2017). By letter dated August 18, 2017, as part of the resolution of MUR 7248, CTCA notified the Committee that it was a recipient of some of CTCA’s illegal contributions, and instructed the Committee to disgorge \$27,500, the amount of such contributions, to the U.S. Treasury.

7. The Committee received illegal contributions, and should have disgorged \$27,500 to the U.S. Treasury within thirty (30) days of its receipt of CTCA’s August 18, 2017 letter, but the Committee failed to do so.

V. Respondent knowingly accepted \$27,500 in corporate contributions made in the names of others from the Cancer Treatment Centers of America Global, Inc. in violation of 52 U.S.C. §§ 30118 and 30122 by failing to disgorge the illegal contributions within thirty (30) days of receiving notice of the illegal nature of the contributions.

VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand Dollars (\$10,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will disgorge \$27,500 to the U.S. Treasury.

3. Respondent will cease and desist from violating 52 U.S.C.

§§ 30118 and 30122.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any

MUR 7406 (Heller for Senate)
 Conciliation Agreement
 Page 4 of 4

requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
 Acting General Counsel

BY: Charles Kitcher
 Charles Kitcher
 Acting Associate General Counsel
 for Enforcement

10/19/21
 Date

FOR THE RESPONDENT:

[Signature]
 Name: CHRISTIE HASTIE
 Position: TREASURER

11/31/21
 Date

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.

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

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

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 disgorge¹⁶ 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

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).