



RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2018 OCT -4 PM 2:10  
CELA

Brett G. Kappel

Akerman LLP  
The Victor Building  
750 9th Street, N.W., Suite 750  
Washington, DC 20001

D: 202 824 1712  
T: 202 393 6222  
F: 202 393 5959

October 4, 2018

**VIA E-MAIL AND HAND DELIVERY**

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

**Re: MUR 7437/Randy Bryce, Randy Bryce for Congress and John Tate III, as  
Treasurer**

Dear Mr. Jordan:

This response, including attached exhibits, is submitted on behalf of Randy Bryce, Randy Bryce for Congress and John Tate III, in his official capacity as Treasurer, in the above-referenced matter. We write in response to the complaint filed in this matter by Cathy Myers. Ms. Myers was Mr. Bryce's opponent in the primary to select the Wisconsin Democratic Party's nominee to run in the 2018 general election to represent the First Congressional District of Wisconsin in the House of Representatives. The complaint in this matter was filed on July 23, 2018 – three weeks before the primary election was held on August 14, 2018. Mr. Bryce defeated Ms. Myers in that election. For the reasons set forth below, we respectfully request that the Commission exercise its prosecutorial discretion and dismiss the complaint against all respondents.

Ms. Myers's complaint alleges that Randy Bryce and Randy Bryce for Congress violated the Federal Election Campaign Act ("FECA" or "the Act") and Federal Election Commission ("FEC" or "the Commission") regulations prohibiting converting campaign funds to personal use.<sup>1</sup> Specifically, Ms. Myers alleges that Randy Bryce and Randy Bryce for Congress violated the Act and FEC regulations by paying legal fees to a law firm to satisfy a personal judgment against Mr. Bryce that had been issued by the Milwaukee County Circuit Court on October 18 24, 2004 – thirteen years before Mr. Bryce became a candidate for federal office.<sup>2</sup>

<sup>1</sup> 52 U.S.C. § 30114(b); 11 C.F.R. § 113.2.

<sup>2</sup> Complaint at ¶¶ 7-8, 12-15.

Jeff S. Jordan  
October 4, 2018  
Page 2

---

### Statement of Facts

The pertinent facts in this matter are far different than the deliberate scheme alleged by Ms. Myers in her complaint. Randy Bryce became a candidate for federal office in late June 2017. The Milwaukee-based law firm of Halling & Cayo ("the law firm") began advising Randy Bryce for Congress on Wisconsin election law shortly thereafter. Mr. Bryce was not aware of the existence of the 2004 Milwaukee County Circuit Court judgment against him until mid-November 2017, when a reporter for the Milwaukee Journal Sentinel contacted Randy Bryce for Congress to inquire about it after Mr. Bryce's former girlfriend, Rhonda Slechta, had brought it to the attention of the newspaper. After Randy Bryce for Congress informed Mr. Bryce about the reporter's inquiry, Mr. Bryce asked the law firm if they could confirm the existence of the judgment and assist him personally in resolving it. The law firm confirmed that a judgment had, in fact, been entered against Mr. Bryce back in 2004 and determined that, with interest, the judgment then amounted to \$4,245.73. On November 22, 2017, the law firm sent Ms. Slechta a check in that amount to satisfy the judgment. Milwaukee County Circuit Court records confirm that the judgment against Mr. Bryce was satisfied on December 8, 2017.

On January 30, 2018, Randy Bryce for Congress paid the law firm \$7,703.73 in the mistaken belief that the legal fees incurred by Mr. Bryce to resolve the outstanding judgment were campaign legal expenses rather than Mr. Bryce's own personal expenses. In early April 2018, while preparing the April 15<sup>th</sup> Quarterly Report for Randy Bryce for Congress, the campaign's accounting firm determined that the law firm had been paid in error. Randy Bryce and Randy Bryce for Congress immediately took steps to correct the mistaken payment. Randy Bryce for Congress contacted the law firm and explained the error. The law firm agreed to place the campaign funds it had received into a separate escrow account and to treat the funds as a retainer against which the law firm would charge fees for legal services provided to Randy Bryce for Congress going forward. The law firm has continued to provide legal services to Randy Bryce for Congress and has deducted legal fees for those services from the escrow account. The January 30, 2018 payment to the law firm was then reported correctly on the April 15<sup>th</sup> Quarterly Report for Randy Bryce for Congress as a payment for legal services.

Randy Bryce also immediately took steps to use personal funds to pay the law firm for the legal services it had provided to him to resolve the 2004 judgment. Mr. Bryce is an ironworker and a man of very modest financial resources. He left his job in order to run for Congress and is not taking a salary from Randy Bryce for Congress. In order to pay his legal fees, Mr. Bryce obtained a personal loan from his friend and campaign manager, David Keith. On April 9, 2018, Mr. Keith sent a check in the amount of \$7,703.73 to the law firm from his personal checking account. *See Exhibit A attached.* The following day, the law firm sent Mr. Bryce an invoice confirming that the firm had received the payment and indicating that Mr. Bryce's personal legal expenses had been paid in full. *See Exhibit B attached.*

Jeff S. Jordan  
 October 4, 2018  
 Page 3

---

## Legal Arguments

The Act and Commission regulations prohibit a campaign committee from using campaign funds to fulfill any obligation of any person that would exist irrespective of the existence of a candidate's election campaign.<sup>3</sup> Unfortunately, it is not uncommon for campaign committees to mistakenly use campaign funds to pay the personal expenses of candidates or campaign employees during the course of a campaign.<sup>4</sup> In such cases, however, where a campaign committee mistakenly pays a personal obligation of a candidate or campaign employee, but then promptly takes steps to correct the mistaken payment once it is discovered, the Commission has repeatedly exercised its prosecutorial discretion and dismissed the complaint.<sup>5</sup>

This is especially true in cases such as this one where the campaign's own internal financial controls resulted in the discovery of the mistaken payment and the campaign immediately took steps to rectify the mistake before a complaint was filed.<sup>6</sup> Randy Bryce for Congress discovered that the campaign had mistakenly paid the personal legal fees of the candidate while it was reviewing the campaign's expenditures for the purpose of preparing the quarterly report for the quarter in which the expenditure was made. Upon discovering the error, Randy Bryce and Randy Bryce for Congress immediately took remedial action to correct the mistake. Any potential violation of the Act and Commission regulations was rectified more than three months before Mr. Bryce's primary opponent filed the complaint in this matter shortly before the primary election was held. In light of these circumstances, Randy Bryce and Randy Bryce for Congress respectfully request that the Commission exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) and dismiss the allegation that the respondents violated the prohibition on the personal use of campaign funds.<sup>7</sup>

In addition, it should be noted that Mr. Keith's personal loan to Mr. Bryce should not be construed to be a contribution to Randy Bryce for Congress. The Act defines the term "contribution" broadly to include, among other things, any loan by any person for the purpose of influencing a federal election.<sup>8</sup> Commission regulations also specify that the payment of a personal expense of a federal candidate by any person other than the candidate or the campaign is a contribution "unless the payment would have been made irrespective of the candidacy."<sup>9</sup> This does not mean, however, that any personal loan to an individual while they are a candidate for federal office constitutes a contribution to that individual's campaign. Indeed, the Commission has unanimously and specifically rejected the argument that a personal loan to a

---

<sup>3</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>4</sup> See, e.g., MUR 6140 (Robert E. Andrews, et al.) (five federal campaign committees violated the predecessor to 52 U.S.C. § 30114(b)(2) by using campaign funds to pay for the personal clothing of candidates).

<sup>5</sup> See, e.g., MUR 6609 (Friends of Connie Mack, Inc.); see also MUR 6140 (Robert E. Andrews, et al.).

<sup>6</sup> MUR 6609 (Friends of Connie Mack).

<sup>7</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>8</sup> 52 U.S.C. § 30101(8)(a)(i)

<sup>9</sup> 11 C.F.R. § 113.1(g)(6).

Jeff S. Jordan  
October 4, 2018  
Page 4

---

candidate to pay legal fees unrelated to the campaign constitutes such a contribution.<sup>10</sup> In MUR 5141, all six Commissioners then in office held that a personal loan by a lobbyist to a federal candidate to pay legal fees the candidate incurred during divorce proceedings was not a “contribution” under 52 U.S.C. § 30101(8)(A)(i) or 11 C.F.R. § 113.1(g)(6) where the loan instrument was endorsed upon receipt to the law firm representing the candidate in the divorce matter, the candidate had made no personal contributions to the campaign committee in that election cycle, and there was no indication that the loan freed up other funds of the candidate for campaign purposes.<sup>11</sup>

The situation here is remarkably similar. Mr. Keith paid the law firm representing Mr. Bryce in the resolution of the 2004 Milwaukee County Circuit Court judgment directly using a check drawn on his personal checking account, Mr. Bryce has not contributed any personal funds to Randy Bryce for Congress and the personal loan did not free up any other funds of the candidate to be used for campaign purposes. Accordingly, there is no reason to believe that Mr. Keith’s personal loan to Mr. Bryce constitutes a contribution under the Act or Commission regulations.

The complaint in this matter was filed by the candidate’s opponent in the waning days of her failed primary campaign alleging potential violations of the Act and Commission regulations that the campaign itself had discovered and rectified months before the complaint was filed. “[T]he Commission has broad discretion to . . . dismiss matters that do not merit the additional expenditure of Commission resources.”<sup>12</sup> It should do so here.

Sincerely,



Brett G. Kappel

Counsel for Randy Bryce, Randy Bryce for Congress, and John Tate III, as Treasurer


---

<sup>10</sup> MUR 5141 (Moran for Congress)(personal loan to a federal candidate to pay legal fees incurred by the candidate in a domestic relations matter was not a contribution under the predecessor to 52 U.S.C. § 30101(8)(A)(i) and 11 C.F.R. § 113.1(g)(6)).

<sup>11</sup> Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas and Darryl R. Wold, Statement of Reasons in MUR 5141 (Moran for Congress)(April 17, 2002)

<sup>12</sup> Federal Election Commission, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545-46 (March 16, 2007).

## **EXHIBIT A**

<b>WELLS FARGO BANK</b>		1001
WISCONSIN AVENUE 733 W WISCONSIN AVE MILWAUKEE, WI 53233		37-65/1119
DATE <u>4/9/2018</u>		
PAY TO THE ORDER OF	<u>Haying and Cayo, S.C.</u>	\$ <u>7,703.73</u>
<u>Seven Thousand <del>and</del> Seven Hundred and Three and 73/100</u>		DOLLARS
DAVID M KEITH		
WEST ORANGE NJ 07062-2980		
		

ENDORSE HERE:

X

Date: \_\_\_\_\_

By: \_\_\_\_\_


Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE  
FOR FINANCIAL INSTITUTION USAGE ONLY

 <p>The following security features (and others not listed) exceed industry standards:</p>	
<p><b>Security Features</b></p> <p><b>Security Screen</b></p>	<p><b>Document Appearance if altered:</b></p> <ul style="list-style-type: none"> <li>• Absence of modification of "Original Document" stamp on back of check</li> </ul>
<p><b>Chemical Sensitivity</b></p>	<ul style="list-style-type: none"> <li>• Colored stains or spots appear with chemical alteration</li> </ul>
<p><b>Perforation</b></p>	<ul style="list-style-type: none"> <li>• Absence of perforation icon</li> </ul>
<p><small>Blacklock design is a certification mark of Check Payment Systems Association</small></p>	

## **EXHIBIT B**





320 EAST BUFFALO ST., SUITE 700  
 MILWAUKEE, WISCONSIN 53202  
 TELEPHONE 414 271 3400  
 FACSIMILE 414 271 3841  
[www.hallingcayo.com](http://www.hallingcayo.com)

Randall Bryce

Caledonia WI 53402

Attn: Randall Bryce

Rhonda Nessler vs. Randall Bryce  
 Milwaukee County Case No. 2004SC031013

Page: 1  
 04/10/2018  
**Account No:** 99329-019626S  
**Invoice No:** 112614

Previous Balance	\$7,703.73
------------------	------------

**PAYMENTS RECEIVED THROUGH 04/10/2018**

04/10/2018 Payment Received - Thank You. Check # 1001	-7,703.73
---	-----------

<b>BALANCE DUE AS OF 04/10/2018</b>	<b><u>\$0.00</u></b>
-------------------------------------	----------------------

**Interest is calculated on amounts which have been unpaid for more than 30 days at the rate of 12% per annum.**

**PLEASE VISIT OUR WEBSITE TO MAKE ONLINE PAYMENTS.** Go to [www.hallingcayo.com](http://www.hallingcayo.com) and click the orange Payment option at the bottom right of the page. We accept Visa, MasterCard, American Express and Discover.