

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7437**

4 DATE COMPLAINT FILED: July 23, 2018

5 DATE OF NOTIFICATION: July 27, 2018

6 LAST RESPONSE RECEIVED: Oct. 4, 2018

7 DATE ACTIVATED: Oct. 9, 2018

8 EXPIRATION OF SOL: Jan. 30, 2023 / Apr. 9, 2023

9 ELECTION CYCLE: 2018

10 **COMPLAINANT:**

11 Cathy Myers

12 **RESPONDENTS:**

13 Randy Bryce for Congress and John Tate, III, in his
14 official capacity as treasurer

15 Randy Bryce

16 **RELEVANT STATUTES
17 AND REGULATIONS:**

18 52 U.S.C. § 30114(b)

19 52 U.S.C. § 30116(a)

20 52 U.S.C. § 30116(f)

21 11 C.F.R. § 113.1(g)

22 **INTERNAL REPORTS CHECKED:**

23 Disclosure reports

24 **FEDERAL AGENCIES CHECKED:**

25 None

26 **I. INTRODUCTION**

27
28 The Complaint alleges that Randy Bryce and Randy Bryce for Congress and John Tate,
29 III, in his official capacity as treasurer (the "Committee"), violated the Federal Election
30 Campaign Act of 1971, as amended (the "Act") by using \$7,703.73 in campaign funds to pay a
31 personal judgment entered against Bryce in 2004 and associated legal fees. Respondents admit
32 that the Committee made the disbursement as described but state that they soon identified the
33 payment as improper and cured it with funds from a personal loan from a friend.

34 As discussed below, the available information indicates that Respondents used campaign
35 funds to pay Bryce's personal debt. Further, the loan Bryce obtained was from David Keith, the
36 Committee's campaign manager, and under the specific circumstances of this matter, appears to

1 be an excessive contribution. Accordingly, we recommend that the Commission find reason to
2 believe that Bryce and the Committee violated 52 U.S.C. § 30114(b)(1) by converting campaign
3 funds to personal use, that Bryce and the Committee violated 52 U.S.C. § 30116(f) by accepting
4 an excessive contribution from Keith, and that the Committee violated 52 U.S.C. § 30104(b) by
5 failing to report the excessive contribution.

6 **II. FACTS**

7 On June 19, 2017, Randy Bryce filed a statement of candidacy for the 2018 election for
8 Wisconsin's First Congressional District seat; the Committee is his authorized campaign
9 committee.¹ In November 2017, a reporter contacted the Committee about a 2004 civil judgment
10 against Bryce associated with an unpaid personal debt to his former girlfriend.² Respondents
11 assert that Bryce was previously unaware of the judgment.³ Respondents state that Bryce then
12 contacted the law firm of Halling & Cayo ("Law Firm"), which had been providing legal
13 services to the Committee, and asked them to confirm the judgment and help him to resolve it.⁴
14 The Law Firm confirmed the existence of the judgment, determined that Bryce owed \$4,245.73
15 to cover the original judgment plus interest, and paid Bryce's former girlfriend that amount on
16 November 22, 2017.⁵

17 On January 30, 2018, the Committee paid the Law Firm \$7,703.73 to cover both the
18 November 22 payment and the firm's services related to confirming and satisfying the

¹ See Statement of Candidacy (June 19, 2017); Randy Bryce for Congress Amended Statement of Organization (Oct. 16, 2018). Bryce later won the primary, but lost in the general election.

² Compl. at 2 (July 24, 2018); Resp. at 2 (Oct. 4, 2018).

³ Resp. at 2.

⁴ *Id.*

⁵ *Id.*

1 judgment.⁶ Respondents assert that in preparing the Committee's 2018 April Quarterly Report,
2 the Committee's accountants determined that the payment was improper, and the Committee
3 immediately took steps to cure the error.⁷ Respondents state that Bryce and the Committee
4 contacted the Law Firm to explain the error, and the Law Firm agreed to place the funds it
5 received from the Committee into an escrow account and treat them as a retainer to be applied to
6 campaign-related services.⁸ Respondents represent that the Law Firm has continued to provide
7 legal services to the Committee and has billed those services against the escrow funds.⁹ The
8 Committee then disclosed the payment on its 2018 April Quarterly Report as a disbursement for
9 "Legal Services."¹⁰

10 Respondents say that Bryce then "took steps to use personal funds" to pay the Law Firm,
11 and obtained a loan from David Keith, who the Response describes as Bryce's "friend and
12 campaign manager."¹¹ On April 9, 2018, Keith sent the Law Firm a check for \$7,703.73 from
13 his personal checking account, and the law firm responded with an invoice confirming that they
14 had accepted the check from Keith as payment in full for the services related to resolving the
15 judgment.¹²

⁶ *Id.*

⁷ Compl. at 2.

⁸ *Id.* The Response asserts that the Committee initially believed, incorrectly, that these were campaign-related expenses.

⁹ *Id.*

¹⁰ See Compl. Ex. 2, Randy Bryce for Congress 2018 April Quarterly Report at 2996 (Apr. 13, 2018).

¹¹ Resp. at 2.

¹² *Id.*, Exs. A-B.

1 **III. LEGAL ANALYSIS**

2 **A. There is Reason to Believe that Bryce and the Committee Converted**
3 **Campaign Funds to Personal Use**

4 The Act provides that campaign funds “shall not be converted by any person to personal
5 use,” and defines personal use as using funds “to fulfill any commitment, obligation, or expense
6 of a person that would exist irrespective of the candidate’s election campaign or individual’s
7 duties as holder of Federal office.”¹³ Examples of personal use, as outlined in the statute, include
8 utility payments, non-campaign related automobile expenses, vacations or other non-campaign
9 related trips, household food items, and tuition payments.¹⁴

10 The Commission’s implementing regulation enumerates types of disbursements that are
11 *per se* personal use.¹⁵ These include household food items or supplies, tuition payments other
12 than those associated with training campaign staff, utility payments for any part of any personal
13 residence of the candidate, salary payments to a member of the candidate’s family unless the
14 family member is providing *bona fide* services and the payments are not in excess of the fair
15 market value, and vacations.¹⁶ For all other disbursements, the regulation provides that the
16 Commission shall determine on a case-by-case basis whether a given disbursement is personal
17 use by applying the “irrespective test” formulated in the statute.¹⁷ Legal expenses are examples
18 of disbursements that are personal use if the expenses would exist irrespective of the candidate's
19 campaign or federal officeholder duties.¹⁸

¹³ 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see also* 11 C.F.R. § 113.2.

¹⁴ 52 U.S.C. § 30114(b)(2).

¹⁵ 11 C.F.R. § 113.1(g)(1)(i).

¹⁶ *Id.* § 113.1(g)(1)(i)(A), (D), (E)(1), (F), (H), (J).

¹⁷ *Id.* § 113.1(g)(1)(ii).

¹⁸ *Id.* § 113.1(g)(1)(ii)(A).

1 Here, the available information indicates that the judgment against Bryce was entered 13
2 years before he became a candidate and arose from a purely personal debt to a former girlfriend.
3 Thus, the judgment clearly existed irrespective of the campaign. The fact that Respondents may
4 have become aware of the judgment through a campaign-related press inquiry, or that they may
5 have had campaign-related reasons to satisfy the judgment, do not convert these personal legal
6 expenses into campaign expenses.¹⁹ The initial expenditure by the Committee, therefore,
7 constituted a prohibited personal use of campaign funds.

8 Respondents do not dispute that the legal expenses related to the judgment were personal,
9 not campaign-related. Respondents request, however, that the Commission exercise its
10 prosecutorial discretion and dismiss the allegations, citing their efforts to cure the apparent
11 personal use soon after it was discovered.²⁰ In support of this request, Respondents cite MUR
12 6609 (Friends of Connie Mack) and MUR 6140 (Robert E. Andrews, *et al.*) as examples where
13 the Commission dismissed personal use allegations because the information indicated that
14 respondents took prompt action to cure the alleged violations. Those matters, however, involved
15 lower amounts in violation —\$700 and \$145-\$1,089, respectively — than the \$7,703.73 the
16 Committee paid to settle Bryce's personal judgment.²¹ In other previous personal use matters,

¹⁹ See Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7868 (Feb. 9, 1995) (stating that “legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder’s status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related.”). The Commission’s approach has been articulated as an “allegations standard” whereby the Commission analyzes the nature of the underlying legal issue or allegation, but does not consider the possible impact on the campaign or the candidate’s possible campaign-related motivation to resolve the issue. See *Fed. Election Comm’n v. Craig for U.S. Senate*, 816 F.3d 829, 836-37 (D.C. Cir. 2016).

²⁰ Resp. at 3.

²¹ MUR 6609 involved just over \$700 in expenses for clothing. MUR 6140 involved clothing purchases by five different committees, each ranging from \$145-\$1,089.

1 the Commission has dismissed allegations where the apparent amount in violation was less than
2 \$3,000.²²

3 Under these circumstances, we recommend that the Commission find reason to believe
4 that Bryce and the Committee violated 52 U.S.C. § 30114(b)(1).

5 **B. There is Reason to Believe that Bryce and the Committee Accepted an**
6 **Excessive Contribution from Bryce's Campaign Manager and Failed to Report**
7 **Such Contribution**

8 The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of
9 money or anything of value made by any person for the purpose of influencing any election for
10 Federal office.”²³ Under the Act, an individual may not make a contribution to a candidate with
11 respect to any election in excess of the legal limit, which was \$2,700 per election during the
12 2018 election cycle.²⁴ Candidates and their authorized campaign committees are prohibited from
13 knowingly accepting excessive contributions.²⁵ A candidate committee must report the identity
14 of any person who makes a contribution to the committee during the reporting period, whose
15 contribution or contributions have an aggregate amount or value in excess of \$200 within the
16 election cycle.²⁶ The Commission's regulations provide that a third party's payment of a
17 candidate's personal expense shall be a contribution “unless the payment would have been made
18 irrespective of the candidacy.”²⁷ The Commission has explained that a finding of reason to

²² See MUR 7127 (Sean Brady for U.S. Senate), MUR 6609 (Friends of Connie Mack), MUR 6140 (Robert E. Andrews, *et al.*), and MUR 5848 (Friends of Harry Reid) (dismissing personal use allegations as *de minimis* for ascertainable amounts in violation between \$111-\$3,000).

²³ 52 U.S.C. § 30101(8).

²⁴ See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

²⁵ See 52 U.S.C. § 30116(f).

²⁶ 52 U.S.C. § 30104(b)(3).

²⁷ 11 C.F.R. § 113.1(g)(6); see also Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) (“If a third party pays for the candidate's personal expenses, but

1 believe that a candidate's personal transaction resulted in a contribution to his or her campaign
2 requires specific information demonstrating a nexus between the transactions and the
3 campaign.²⁸ The Commission has also stated that “[t]he basis for this determination is the
4 context of the transaction's surrounding factual circumstances.”²⁹

5 In the context of a personal loan, the Commission has determined that no contribution
6 results where the available information indicates that the loan would have been made
7 “irrespective of” the candidacy.³⁰ Where a third party other than a bank has loaned money to a
8 candidate for personal expenses arising during an effort to seek election, the Commission has
9 considered the loan to be a contribution in circumstances where the loan was either prompted by
10 the candidacy or benefitted the candidacy.³¹

11 Citing MUR 5141 (Moran for Congress), Respondents contend that the Commission has
12 applied this standard to reject the premise that a personal loan to a candidate to pay legal fees
13 unrelated to the candidate's campaign results in a campaign contribution. As in this matter,

would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.”).

²⁸ See Factual & Legal Analysis at 6, MUR 7025 (Friends of Mike Lee), *see also* Statement of Reasons at 2, n.2, Comm’rs McDonald, Mason, Sandstrom, Smith, & Thomas, MUR 4944 (“Clinton SOR”) (recognizing that “there are a number of issues arising from a candidate's personal situation ... that may become campaign issues, but the Commission will not necessarily therefore deem expenses arising from such controversies to be campaign expenses.”).

²⁹ Statement of Reasons at 3, Comm’rs Mason, Sandstrom, McDonald, Smith, Thomas, & Wold, MUR 5141 (Moran for Congress) (“Moran SOR”).

³⁰ See, e.g., Moran SOR at 4; Clinton SOR at 3. The other factors noted in the analysis were: (1) whether receipt of funds freed up other funds of the candidate for campaign purposes; and (2) whether the candidate would have more time to spend on the campaign instead of pursuing their usual employment. Neither appears to be the case here, since the available information indicates that Bryce has not donated any personal funds to his campaign, and he left his job as an ironworker to run for office before receiving this loan.

³¹ See Moran SOR at 4, n.4; Clinton SOR at 4 (citing AO 1978-40 (Kogovsek) (wherein the Commission determined that \$3,900 in loans from third party individuals used for a candidate's living expenses were reportable contributions)). The Commission has explained that it treats bank loans and loans from third parties who are not commercial lenders differently because bank loans made in the ordinary course of business “do not raise the concerns that underlie the campaign finance regulatory regime.” Clinton SOR at 4-5.

1 Moran had made no personal contributions to the campaign committee, and there was no
2 indication that the loan freed up other funds of the candidate for campaign purposes.³² Although
3 both MUR 5141 and this matter address loans used to pay personal legal fees, there are several
4 key factual differences.

5 First, the loan in MUR 5141 was made well in advance — over a year — of any election.
6 The loan in this matter was made only four months before the 2018 Wisconsin primary and only
7 six days before the Committee's April Quarterly Report was due.

8 Second, in MUR 5141, the only nexus between the loan and the campaign was that
9 Moran was a House candidate at the time he received the loan. Here, because the loan was
10 extended to Bryce as part of Respondents' effort to cure an apparent campaign finance violation,
11 the loan appears to have a clear nexus to Bryce's candidacy.

12 Third, in MUR 5141, the respondents provided information that the person who loaned
13 Moran the money had been a close friend for 25 years, and that person stated that he loaned
14 Moran the money "for reasons completely unrelated to [his] candidacy."³³ In this matter, the
15 source of the loan is Bryce's campaign manager. Although the Response contends that Bryce's
16 campaign manager was a "friend," the Response provides no information that Bryce and Keith's
17 friendship pre-dated Bryce's campaign. Absent information suggesting that Bryce and Keith had
18 a personal friendship prior to the campaign, which might suggest a non-campaign-related reason
19 why Keith would lend him the money, or that the loan terms were such that it would have been a

³² Resp. at 4.

³³ See Terry Lierman Response at 1-3, MUR 5141 (Moran for Congress). The loan was for expenses related to Moran's divorce.

1 reasonable financial decision for Keith to extend Bryce the loan under any circumstances,³⁴ the
2 available information indicates that Keith would not have loaned Bryce the money but for
3 Bryce's candidacy.

4 Accordingly, the facts support a reasonable inference that the loan constituted a
5 contribution from Keith, and because Keith contributed \$1,700 during the 2018 cycle to the
6 Committee, the contribution relating to the loan was excessive by \$4,003.73.³⁵ We therefore
7 recommend that the Commission find reason to believe that Bryce and the Committee violated
8 52 U.S.C. § 30116(f) by accepting an excessive contribution from Keith.³⁶ Additionally, we
9 recommend that the Commission find reason to believe that the Committee violated 52 U.S.C.
10 § 30104(b)(3) by failing to report receipt of the contribution.

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³⁴ The Response in this matter is silent as to whether Bryce executed a promissory note or other instrument to guarantee payment or whether the loan is to be paid back with interest. By contrast, the available information in Moran indicated that the loan was secured by a promissory note carrying an 8% annual interest rate.

³⁵ Adding the loan amount (\$7,703.73) to the \$1,700 contribution Keith made and subtracting the total amount Keith could legally contribute to the Committee during the 2018 cycle (\$5,400) leaves a remainder of \$4,003.73.

³⁶ Although the available information suggests that Keith likely made an excessive contribution to the Committee, given the small amount at issue, we make no recommendation with respect to Keith.

MUR 7437 (Randy Bryce for Congress)
First General Counsel's Report
Page 10 of 11

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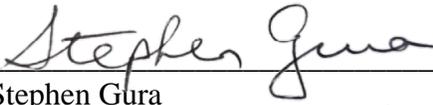
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1 **V. RECOMMENDATIONS**

- 2 1. Find reason to believe that Randy Bryce and Randy Bryce for Congress and John
- 3 Tate, III, in his official capacity as treasurer violated 52 U.S.C. § 30114(b)(1);
- 4 2. Find reason to believe that Randy Bryce and Randy Bryce for Congress and John
- 5 Tate, III, in his official capacity as treasurer violated 52 U.S.C. § 30116(f);
- 6 3. Find reason to believe that Randy Bryce for Congress and John Tate, III, in his
- 7 official capacity as treasurer violated 52 U.S.C. § 30104(b)(3);
- 8 4. Approve the attached Factual and Legal Analysis;
- 9 5. Authorize pre-probable cause conciliation with Randy Bryce and Randy Bryce for
- 10 Congress and John Tate, III, in his official capacity as treasurer;
- 11 6. Approve the attached proposed conciliation agreement; and
- 12 7. Approve the appropriate letters.

13 Lisa J. Stevenson
14 Acting General Counsel

15
16
17 2.13.19
18 Date

19 
20 _____
21 Stephen Gura
22 Deputy Associate General Counsel for Enforcement

23 
24 _____
25 Jin Lee
26 Acting Assistant General Counsel

27 
28 _____
29 Ray L. Wolcott
30 Attorney

- 31
32 Attachments:
33 1. Factual and Legal Analysis
34

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

1
2
3 RESPONDENTS: Randy Bryce for Congress and John Tate, III, MUR 7437
4 in his official capacity as treasurer
5 Randy Bryce

I. INTRODUCTION

7 The Complaint alleges that Randy Bryce and Randy Bryce for Congress and John Tate,
8 III, in his official capacity as treasurer (the “Committee”), violated the Federal Election
9 Campaign Act of 1971, as amended (the “Act”) by using \$7,703.73 in campaign funds to pay a
10 personal judgment entered against Bryce in 2004 and associated legal fees. Respondents admit
11 that the Committee made the disbursement as described but state that they soon identified the
12 payment as improper and cured it with funds from a personal loan from a friend.

13 As discussed below, the available information indicates that Respondents used campaign
14 funds to pay Bryce’s personal debt. Further, the loan Bryce obtained was from David Keith, the
15 Committee’s campaign manager, and under the specific circumstances of this matter, appears to
16 be an excessive contribution. Accordingly, the Commission finds reason to believe that Bryce
17 and the Committee violated 52 U.S.C. § 30114(b)(1) by converting campaign funds to personal
18 use, that Bryce and the Committee violated 52 U.S.C. § 30116(f) by accepting an excessive
19 contribution from Keith, and that the Committee violated 52 U.S.C. § 30104(b) by failing to
20 report the excessive contribution.

II. FACTS

22 On June 19, 2017, Randy Bryce filed a statement of candidacy for the 2018 election for
23 Wisconsin’s First Congressional District seat; the Committee is his authorized campaign

1 committee.¹ In November 2017, a reporter contacted the Committee about a 2004 civil judgment
2 against Bryce associated with an unpaid personal debt to his former girlfriend.² Respondents
3 assert that Bryce was previously unaware of the judgment.³ Respondents state that Bryce then
4 contacted the law firm of Halling & Cayo (“Law Firm”), which had been providing legal
5 services to the Committee, and asked them to confirm the judgment and help him to resolve it.⁴
6 The Law Firm confirmed the existence of the judgment, determined that Bryce owed \$4,245.73
7 to cover the original judgment plus interest, and paid Bryce’s former girlfriend that amount on
8 November 22, 2017.⁵

9 On January 30, 2018, the Committee paid the Law Firm \$7,703.73 to cover both the
10 November 22 payment and the firm’s services related to confirming and satisfying the
11 judgment.⁶ Respondents assert that in preparing the Committee’s 2018 April Quarterly Report,
12 the Committee’s accountants determined that the payment was improper, and the Committee
13 immediately took steps to cure the error.⁷ Respondents state that Bryce and the Committee
14 contacted the Law Firm to explain the error, and the Law Firm agreed to place the funds it
15 received from the Committee into an escrow account and treat them as a retainer to be applied to
16 campaign-related services.⁸ Respondents represent that the Law Firm has continued to provide

¹ See Statement of Candidacy (June 19, 2017); Randy Bryce for Congress Amended Statement of Organization (Oct. 16, 2018). Bryce later won the primary, but lost in the general election.

² Compl. at 2 (July 24, 2018); Resp. at 2 (Oct. 4, 2018).

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⁴ *Id.*

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⁸ *Id.* The Response asserts that the Committee initially believed, incorrectly, that these were campaign-related expenses.

Factual and Legal Analysis for MUR 7437
Randy Bryce for Congress, *et al.*
Page 3 of 9

1 legal services to the Committee and has billed those services against the escrow funds.⁹ The
2 Committee then disclosed the payment on its 2018 April Quarterly Report as a disbursement for
3 “Legal Services.”¹⁰

4 Respondents say that Bryce then “took steps to use personal funds” to pay the Law Firm,
5 and obtained a loan from David Keith, who the Response describes as Bryce’s “friend and
6 campaign manager.”¹¹ On April 9, 2018, Keith sent the Law Firm a check for \$7,703.73 from
7 his personal checking account, and the law firm responded with an invoice confirming that they
8 had accepted the check from Keith as payment in full for the services related to resolving the
9 judgment.¹²

10 **III. LEGAL ANALYSIS**

11 **A. There is Reason to Believe that Bryce and the Committee Converted Campaign** 12 **Funds to Personal Use**

13 The Act provides that campaign funds “shall not be converted by any person to personal
14 use,” and defines personal use as using funds “to fulfill any commitment, obligation, or expense
15 of a person that would exist irrespective of the candidate’s election campaign or individual’s
16 duties as holder of Federal office.”¹³ Examples of personal use, as outlined in the statute, include
17 utility payments, non-campaign related automobile expenses, vacations or other non-campaign
18 related trips, household food items, and tuition payments.¹⁴

⁹ *Id.*

¹⁰ See Compl. Ex. 2, Randy Bryce for Congress 2018 April Quarterly Report at 2996 (Apr. 13, 2018).

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¹³ 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); see also 11 C.F.R. § 113.2.

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1 The Commission’s implementing regulation enumerates types of disbursements that are
2 *per se* personal use.¹⁵ These include household food items or supplies, tuition payments other
3 than those associated with training campaign staff, utility payments for any part of any personal
4 residence of the candidate, salary payments to a member of the candidate’s family unless the
5 family member is providing *bona fide* services and the payments are not in excess of the fair
6 market value, and vacations.¹⁶ For all other disbursements, the regulation provides that the
7 Commission shall determine on a case-by-case basis whether a given disbursement is personal
8 use by applying the “irrespective test” formulated in the statute.¹⁷ Legal expenses are examples
9 of disbursements that are personal use if the expenses would exist irrespective of the candidate’s
10 campaign or federal officeholder duties.¹⁸

11 Here, the available information indicates that the judgment against Bryce was entered 13
12 years before he became a candidate and arose from a purely personal debt to a former girlfriend.
13 Thus, the judgment clearly existed irrespective of the campaign. The fact that Respondents may
14 have become aware of the judgment through a campaign-related press inquiry, or that they may
15 have had campaign-related reasons to satisfy the judgment, do not convert these personal legal
16 expenses into campaign expenses.¹⁹ The initial expenditure by the Committee, therefore,
17 constituted a prohibited personal use of campaign funds.

¹⁵ 11 C.F.R. § 113.1(g)(1)(i).

¹⁶ *Id.* § 113.1(g)(1)(i)(A), (D), (E)(1), (F), (H), (J).

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¹⁸ *Id.* § 113.1(g)(1)(ii)(A).

¹⁹ *See* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7868 (Feb. 9, 1995) (stating that “legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder’s status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related.”). The Commission’s approach has been articulated as an “allegations standard” whereby the Commission analyzes the nature of the underlying legal issue or

Factual and Legal Analysis for MUR 7437
Randy Bryce for Congress, *et al.*
Page 5 of 9

1 Respondents do not dispute that the legal expenses related to the judgment were personal,
2 not campaign-related. Respondents request, however, that the Commission exercise its
3 prosecutorial discretion and dismiss the allegations, citing their efforts to cure the apparent
4 personal use soon after it was discovered.²⁰ In support of this request, Respondents cite MUR
5 6609 (Friends of Connie Mack) and MUR 6140 (Robert E. Andrews, *et al.*) as examples where
6 the Commission dismissed personal use allegations because the information indicated that
7 respondents took prompt action to cure the alleged violations. Those matters, however, involved
8 lower amounts in violation —\$700 and \$145-\$1,089, respectively — than the \$7,703.73 the
9 Committee paid to settle Bryce’s personal judgment.²¹ In other previous personal use matters,
10 the Commission has dismissed allegations where the apparent amount in violation was less than
11 \$3,000.²²

12 Under these circumstances, the Commission finds reason to believe that Bryce and the
13 Committee violated 52 U.S.C. § 30114(b)(1).

14 **B. There is Reason to Believe that Bryce and the Committee Accepted an Excessive**
15 **Contribution from Bryce’s Campaign Manager and Failed to Report Such**
16 **Contribution.**

17 The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of
18 money or anything of value made by any person for the purpose of influencing any election for

allegation, but does not consider the possible impact on the campaign or the candidate’s possible campaign-related motivation to resolve the issue. *See Fed. Election Comm’n v. Craig for U.S. Senate*, 816 F.3d 829, 836-37 (D.C. Cir. 2016).

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Factual and Legal Analysis for MUR 7437
Randy Bryce for Congress, *et al.*
Page 6 of 9

1 Federal office.”²³ Under the Act, an individual may not make a contribution to a candidate with
2 respect to any election in excess of the legal limit, which was \$2,700 per election during the
3 2018 election cycle.²⁴ Candidates and their authorized campaign committees are prohibited from
4 knowingly accepting excessive contributions.²⁵ A candidate committee must report the identity
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10 believe that a candidate's personal transaction resulted in a contribution to his or her campaign
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12 campaign.²⁸ The Commission has also stated that “[t]he basis for this determination is the
13 context of the transaction's surrounding factual circumstances.”²⁹

²³ 52 U.S.C. § 30101(8).

²⁴ *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

²⁵ *See* 52 U.S.C. § 30116(f).

²⁶ 52 U.S.C. § 30104(b)(3).

²⁷ 11 C.F.R. § 113.1(g)(6); *see also* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) (“If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.”).

²⁸ *See* Factual & Legal Analysis at 6, MUR 7025 (Friends of Mike Lee), *see also* Statement of Reasons at 2, n.2, Comm’rs McDonald, Mason, Sandstrom, Smith, & Thomas, MUR 4944 (“Clinton SOR”) (recognizing that “there are a number of issues arising from a candidate's personal situation ... that may become campaign issues, but the Commission will not necessarily therefore deem expenses arising from such controversies to be campaign expenses.”).

²⁹ Statement of Reasons at 3, Comm’rs Mason, Sandstrom, McDonald, Smith, Thomas, & Wold, MUR 5141 (Moran for Congress) (“Moran SOR”).

1 In the context of a personal loan, the Commission has determined that no contribution
2 results where the available information indicates that the loan would have been made
3 “irrespective of” the candidacy.³⁰ Where a third party other than a bank has loaned money to a
4 candidate for personal expenses arising during an effort to seek election, the Commission has
5 considered the loan to be a contribution in circumstances where the loan was either prompted by
6 the candidacy or benefitted the candidacy.³¹

7 Citing MUR 5141 (Moran for Congress), Respondents contend that the Commission has
8 applied this standard to reject the premise that a personal loan to a candidate to pay legal fees
9 unrelated to the candidate’s campaign results in a campaign contribution. As in this matter,
10 Moran had made no personal contributions to the campaign committee, and there was no
11 indication that the loan freed up other funds of the candidate for campaign purposes.³² Although
12 both MUR 5141 and this matter address loans used to pay personal legal fees, there are several
13 key factual differences.

14 First, the loan in MUR 5141 was made well in advance — over a year — of any election.
15 The loan in this matter was made only four months before the 2018 Wisconsin primary and only
16 six days before the Committee’s April Quarterly Report was due.

³⁰ *See, e.g.*, Moran SOR at 4; Clinton SOR at 3. The other factors noted in the analysis were: (1) whether receipt of funds freed up other funds of the candidate for campaign purposes; and (2) whether the candidate would have more time to spend on the campaign instead of pursuing their usual employment. Neither appears to be the case here, since the available information indicates that Bryce has not donated any personal funds to his campaign, and he left his job as an ironworker to run for office before receiving this loan.

³¹ *See* Moran SOR at 4, n.4; Clinton SOR at 4 (citing AO 1978-40 (Kogovsek) (wherein the Commission determined that \$3,900 in loans from third party individuals used for a candidate’s living expenses were reportable contributions)). The Commission has explained that it treats bank loans and loans from third parties who are not commercial lenders differently because bank loans made in the ordinary course of business “do not raise the concerns that underlie the campaign finance regulatory regime.” Clinton SOR at 4-5.

³² Resp. at 4.

1 Second, in MUR 5141, the only nexus between the loan and the campaign was that
2 Moran was a House candidate at the time he received the loan. Here, because the loan was
3 extended to Bryce as part of Respondents' effort to cure an apparent campaign finance violation,
4 the loan appears to have a clear nexus to Bryce's candidacy.

5 Third, in MUR 5141, the respondents provided information that the person who loaned
6 Moran the money had been a close friend for 25 years, and that person stated that he loaned
7 Moran the money "for reasons completely unrelated to [his] candidacy."³³ In this matter, the
8 source of the loan is Bryce's campaign manager. Although the Response contends that Bryce's
9 campaign manager was a "friend," the Response provides no information that Bryce and Keith's
10 friendship pre-dated Bryce's campaign. Absent information suggesting that Bryce and Keith had
11 a personal friendship prior to the campaign, which might suggest a non-campaign-related reason
12 why Keith would lend him the money, or that the loan terms were such that it would have been a
13 reasonable financial decision for Keith to extend Bryce the loan under any circumstances,³⁴ the
14 available information indicates that Keith would not have loaned Bryce the money but for
15 Bryce's candidacy.

16 Accordingly, the facts support a reasonable inference that the loan constituted a
17 contribution from Keith, and because Keith contributed \$1,700 during the 2018 cycle to the
18 Committee, the contribution relating to the loan was excessive by \$4,003.73.³⁵ Therefore, the

³³ See Terry Lierman Response at 1-3, MUR 5141 (Moran for Congress). The loan was for expenses related to Moran's divorce.

³⁴ The Response in this matter is silent as to whether Bryce executed a promissory note or other instrument to guarantee payment or whether the loan is to be paid back with interest. By contrast, the available information in Moran indicated that the loan was secured by a promissory note carrying an 8% annual interest rate.

³⁵ Adding the loan amount (\$7,703.73) to the \$1,700 contribution Keith made and subtracting the total amount Keith could legally contribute to the Committee during the 2018 cycle (\$5,400) leaves a remainder of \$4,003.73.

Factual and Legal Analysis for MUR 7437

Randy Bryce for Congress, *et al.*

Page 9 of 9

- 1 Commission finds reason to believe that Bryce and the Committee violated 52 U.S.C. § 30116(f)
- 2 by accepting an excessive contribution from Keith. Additionally, the Commission finds reason
- 3 to believe that the Committee violated 52 U.S.C. § 30104(b)(3) by failing to report receipt of the
- 4 contribution.