

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

August 25, 2021

Via Electronic Mail

Email: bkappel@harmoncurran.com

Brett G. Kappel, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1725 DeSales Street, N.W., Suite 500
Washington, D.C. 20036

RE: MUR 7437

Dear Mr. Kappel:

On July 27, 2018, the Federal Election Commission (the "Commission") notified your clients, Randy Bryce and Randy Bryce for Congress and John Tate, III, in his 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 copies 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 Randy Bryce and Randy Bryce for Congress and John Tate, III, in his official capacity as treasurer violated 52 U.S.C. § 30114(b)(1) by converting campaign funds to personal use. The Commission was equally divided on whether to find reason to believe that Randy Bryce and the Committee violated 52 U.S.C. § 30116(f) by accepting a prohibited contribution and that the Committee violated 52 U.S.C. § 30104(b) by failing to report an excessive contribution. The Factual and Legal Analysis, which was approved on July 27, 2021 and formed the basis for the Commission's finding, 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.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you 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 Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302, 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.

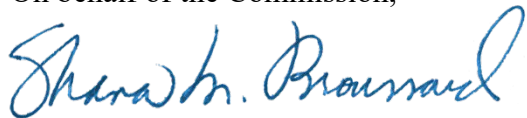
Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

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.

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.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Attachments

Factual and Legal Analysis

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

6 **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. Accordingly, the Commission finds reason to believe that
15 Bryce and the Committee violated 52 U.S.C. § 30114(b)(1) by converting campaign funds to
16 personal use.

17 **II. FACTS**

18 On June 19, 2017, Randy Bryce filed a statement of candidacy for the 2018 election for
19 Wisconsin’s First Congressional District seat; the Committee is his authorized campaign
20 committee.¹ In November 2017, a reporter contacted the Committee about a 2004 civil judgment
21 against Bryce associated with an unpaid personal debt to his former girlfriend.² Respondents
22 assert that Bryce was previously unaware of the judgment.³ Respondents state that Bryce then

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.

1 contacted the law firm of Halling & Cayo (“Law Firm”), which had been providing legal
2 services to the Committee, and asked them to confirm the judgment and help him to resolve it.⁴
3 The Law Firm confirmed the existence of the judgment, determined that Bryce owed \$4,245.73
4 to cover the original judgment plus interest, and paid Bryce’s former girlfriend that amount on
5 November 22, 2017.⁵

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

⁴ *Id.*

⁵ *Id.*

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).

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.”¹¹ 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.¹²

10 The Commission’s implementing regulation enumerates types of disbursements that are
11 *per se* personal use.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

¹¹ 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.

¹² 52 U.S.C. § 30114(b)(2).

¹³ 11 C.F.R. § 113.1(g)(1)(i).

¹⁴ *Id.* § 113.1(g)(1)(i)(A), (D), (E)(1), (F), (H), (J).

¹⁵ *Id.* § 113.1(g)(1)(ii).

¹⁶ *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.¹⁷ 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.¹⁸ 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.¹⁹ In other previous personal use matters,

¹⁷ 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).

¹⁸ Resp. at 3.

¹⁹ 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.

Factual and Legal Analysis for MUR 7437

Randy Bryce for Congress, *et al.*

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1 the Commission has dismissed allegations where the apparent amount in violation was less than
2 \$3,000.²⁰

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

²⁰ 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).