

candidate's personal funds."¹ As permitted by the Act and its implementing regulations, Matt Rosendale for Montana began actively raising funds to retire 2018 Primary Debt subsequent to the 2018 Primary.

As Mr. Rosendale's authorized candidate committee, Matt Rosendale for Montana is required to file disclosure reports with the Senate Office of Public Records and the Commission. On July 13, 2018, Matt Rosendale for Montana timely filed the required FEC Form 3 July Quarterly Report of Receipts and Disbursements ("Q2 Report"). The Q2 Report is a full and complete reporting of all receipts and expenditures, including contributions received and specifically designated to retire 2018 Primary Debt, from May 17, 2018 – June 30, 2018.²

II. LEGAL DISCUSSION AND ANALYSIS

A. The Respondents may legally accept contributions designated to retire 2018 Primary Debt.

The Act, as well as the FEC's supplementary regulations and guidance, permit federal candidates' authorized campaign committees to carry forward debt from prior elections and continue to receive contributions to retire that debt. To assist these committees with retiring its debt, the law permits contributors to designate their contributions for specific elections even when an election has already occurred. In these instances, a candidate's authorized committee may accept such contributions only to the extent the committee has sufficient net debts outstanding from that election.³ FEC regulations provide a detailed analysis for determining the amount of net debts outstanding.⁴

When Mr. Rosendale advanced to the general election, Matt Rosendale for Montana had accumulated \$245,542.16 in 2018 Primary Debt (*i.e.*, net debts outstanding). This amount was calculated by the committee's Treasurer in strict accordance with 11 C.F.R. § 110.1(b)(3). Accordingly, the Respondents determined that Matt Rosendale for Montana could accept up to \$245,542.16 in contributions specifically designated to retire 2018 Primary Debt.

¹ *Raising contributions to retire debts.* Available at: <https://www.fec.gov/help-candidates-and-committees/handling-loans-debts-and-advances/retiring-debts-candidate/>

² The Report is maintained in the FEC's publicly available database and available at: <http://docquery.fec.gov/pdf/762/201807180200563762/201807180200563762.pdf>

³ See 11 C.F.R. § 110.1(b)(3)(i).

⁴ See 11 C.F.R. § 110.1(b)(3)(ii).

The Respondents also confirmed that, at the time the Q2 Report was filed, the amount of contributions received by Matt Rosendale for Montana for the purpose of retiring 2018 Primary Debt did not exceed \$245,542.16 (*i.e.*, the amount of net debts outstanding).

B. The Respondents lawfully accepted and disclosed all contributions received for retiring 2018 Primary Debt.

i. The Respondents properly redesignated contributions received during the reporting period covered by the Q2 Report.

As discussed above, the law permits an authorized candidate committee to accept contributions designated toward an election after that election has occurred when (i) the committee has net debts outstanding attributable to that election and (ii) the aggregate contributions received do not exceed the value of the net debts outstanding. The Commission's regulations enumerate several instances in which a contribution received may be designated for this prior election:

- i. The contributor may provide written designation of the appropriate election period with the contribution;⁵
- ii. The treasurer of the recipient committee may request a written redesignation to the appropriate election if a different election period is provided or an election period is not enumerated for the contribution;⁶ or
- iii. The treasurer may presumptively redesignate the contribution and request written confirmation of the contributor's approval of that redesignation within sixty days of receiving and depositing the contribution.⁷

Therefore, as long as the contributions comply with the law's prohibitions and limitations, the law provides Matt Rosendale for Montana multiple, specific options to accept contributions for the purpose of retiring its debt.⁸ The Commission's debt retirement regulations treat contributions to retire election debt as received for that election, and the contribution is aggregated with all other contributions received from that contributor for that election by the committee for purposes of the law's prohibitions and limitations.⁹ To be clear, the law does not create a distinct "primary debt" or "debt retirement" election period for reporting purposes, and the Commission's forms do not anticipate such a distinction.

⁵ 11 C.F.R. § 110.01(4).

⁶ 11 C.F.R. § 110.01(5)(i).

⁷ 11 C.F.R. § 110.01(5)(ii).

⁸ 11 C.F.R. § 110.01(3)(iii).

⁹ *Id.*

While perhaps a customary sight in the “memo text” of a report, the Commission’s regulations do not require the recipient committee to note a “debt retirement” election period as the Complainant would suggest. If such a “memo text” notation is mandatory, then the Commission would presumably stipulate that obligation in the Act’s implementing regulations or the Commission’s prepared guidance.¹⁰ To the best of the Respondents’ knowledge, it has not.

The Commission should note that, during the period covered by the Q2 Report, Matt Rosendale for Montana received contributions contemporaneously designated for retiring 2018 Primary Debt from the following individuals and political committees:

Stacy Siebel
Thomas Siebel
Scott Banister
Gleni Karvela
George Macricostas
David Sokol
Dean Buntrock
Heywood Fralin
Lawrence Finch
Charles Tate
Alamo PAC
Common Values PAC
Great America Committee
Bluegrass Committee
Making Business Excel PAC
Tenn PAC
Fund for a Conservative Future
Rely on Your Beliefs Fund
NRA Political Victory Fund

In addition, during the period covered by the Q2 Report, the Respondents properly requested and received written authorization from Steven Arntzen to redesignate his contribution to retire 2018 Primary Debt.

Since each of the contributions listed above was received via a single instrument (*e.g.*, a personal check or credit card transaction), the Respondents properly reported each of them as a single contribution received and then designated the contribution by separate,

¹⁰ *Federal Election Commission Campaign Guide, Congressional Candidates and Committees*, FEC, 26 (2014), Available at: <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

itemized reporting entries according to the relevant election periods (as designated by the contributor). It should also be noted that the committee's Treasurer continuously tracked the amount of aggregate contributions received for retiring 2018 Primary Debt, and the aggregate amount did not exceed \$245,542.16.

Finally, the Respondents have voluntarily filed an amended Q2 Report to provide additional clarity as to the permissibility of the contributions at issue. Although this amendment is not required by law, the Respondents hope the additional clarity will permit the Commission to promptly resolve this matter without wasting any more resources.

- ii. **The contributions identified by the Complainant as "facially excessive" were properly reported because these contributions were not, in fact, "facially excessive" under the Act.**

Contributions are "facially excessive" when the contributions exceed the contribution limits set forth under the Act.¹¹ This definition includes all contributions that *cannot* be accepted under the provisions applicable to net debts outstanding. Commission regulations specify the depository and disclosure requirements applicable to these "facially excessive" contributions and require that the report disclosing those contributions include a statement noting that the legality of such contributions is in question.¹²

The Complainant alleges that several itemized contributions in the Q2 Report are "facially excessive." Upon further review, the Respondents have confirmed that all but one these contributions are not "facially excessive." As previously discussed, when Mr. Rosendale advanced to the general election, Matt Rosendale for Montana had accumulated \$245,542.16 in 2018 Primary Debt. An analysis of the following contributions revealed the likelihood, therefore, that they could be accepted under the net debts outstanding provisions because they could be presumptively redesignated under the Act:

Earl Kendrick
Randy Kendrick
James Haslam
Natalie Haslam
Dennis Menholt
Linda Menholt
Harvey Golub
Holloway Frost
Kathaleen Wall

¹¹ 11 C.F.R. § 103.3(b).

¹² 11 C.F.R. § 103.5.

Kenneth Garschina
Philip Purcell
Jason Ellsworth
Leslie Edelman

The Respondents complied with all redesignation rules applicable to these contributions. Specifically, the Respondents confirmed that receipt of these contributions would not exceed Matt Rosendale for Montana's net debts outstanding, and the Respondents have requested written redesignation of these contributions within the sixty-day time frame enumerated by FEC regulations. All further action related to these contributions will be addressed and disclosed on Matt Rosendale for Montana's next regular disclosure filing in accordance with law.¹³ These contributions were not, therefore, excessive, so these contributions do not meet the threshold requirement of being "facially excessive" to require additional text questioning the legality of these contributions. As noted, however, the Respondents have voluntarily filed an amended Q2 Report to provide additional clarity regarding these contributions and redesignation attempts.

iii. The Respondents have refunded an excessive contribution from Stephen Langles.

The Respondents received aggregate contributions from Stephen Langlas in an amount that exceeded the applicable contribution limit by \$100. The Respondents have already issued a partial refund to this contributor, and this refund will be properly disclosed on Matt Rosendale for Montana's next regular disclosure filing in accordance with the law.

III. CONCLUSION

For the foregoing reasons, the Commission should find no reason to believe that a violation has occurred and promptly dismiss this complaint.

Sincerely,



Chris K. Gober
Counsel to Matt Rosendale, Matt Rosendale for Montana,
and Cabell Hobbs, in his official capacity as Assistant Treasurer

¹³ *Redesignating and Reattributing Contributions*, FEC, Available at: <https://www.fec.gov/help-candidates-and-committees/filing-reports/redesignating-and-reattributing-contributions/>.

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