



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUN 27 2019

RE: MUR 7492
John Cumming
Kristi Cumming

Dear Mr. Johnson:

On September 6, 2018, the Federal Election Commission notified your clients, John Cumming, Kristi Cumming, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on June 19, 2019, voted to dismiss the allegations that John Cumming and Kristi Cumming violated 52 U.S.C. §§ 30116(a) and 30122 by making excessive contributions in the name of another, and ; violated 52 U.S.C. § 30122 by knowingly permitting their names to be used to make contributions in the name of another. Accordingly, on June 19, 2019, the Commission closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

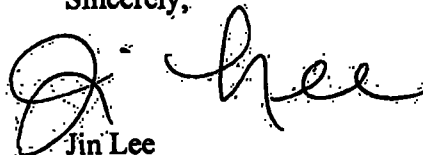
Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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Mr. Brett Johnson, Esq.
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If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Representative Ben McAdams MUR: 7492
4 Friends of Ben McAdams and Patrice Arent
5 in her official capacity as treasurer
6 John Cumming
7 Kristi Cumming
8
9
10
11

12 **I. INTRODUCTION**

13 This matter was generated by a complaint filed with the Federal Election Commission by
14 Scott D. Miller, Chair, Salt Lake County Republican Party. See 52 U.S.C. § 30109(a)(1). The
15 Complaint alleges that Representative Ben McAdams and his authorized committee, Friends of
16 Ben McAdams and Patrice Arent in her official capacity as treasurer (the "Committee"), accepted
17 unreported, excessive, and prohibited contributions in violation of the Federal Election
18 Campaign Act of 1971, as amended (the "Act") during the 2018 general election. First, the
19 Complaint alleges that McAdams and the Committee accepted unreported in-kind contributions
20 by failing to make disbursements related to a bus used for campaign travel. Second, the
21 Complaint alleges that John and Kristi Cumming, who had already made maximum contributions
22 to the Committee, may have made contributions in the names of their three minor children:

23
24 McAdams and the Committee ("McAdams Respondents") deny the allegations, asserting
25 that they paid fair market value to McAdams for Mayor, McAdams's former mayoral committee,

4 See Compl. at 1, 4 (Aug. 8, 2018).

1 to rent the bus, and the Committee reported those payments on its disclosure reports.² The
2 McAdams Respondents also deny that they knowingly received contributions made in the name
3 of another from the Cummings.³ The Cummings contend that the children's contributions to the
4 Committee were lawful because the children independently chose to make contributions from
5 their own bank accounts after a fundraiser at their home.⁴

6 Although the Commission cannot conclusively say that the Committee paid the usual and
7 normal charge to rent the bus, the Committee reported its payments for the bus which was nearly
8 35 years old and of low market value. Under these circumstances, the Commission dismisses the
9 allegations that the Committee failed to report disbursements or in-kind contributions in violation
10 of 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R. § 104.3(b). The Commission also finds no reason
11 to believe that Representative McAdams himself violated those same reporting provisions.

12 Finally, the facts in the current record do not support a reasonable inference that John and
13 Kristi Cumming made excessive contributions in the names of their children. Accordingly, the
14 Commission dismisses the allegations that John and Kristi Cumming made excessive
15 contributions in the name of another, in violation of 52 U.S.C. §§ 30116(a) and 30122, and that
16 ; knowingly permitted their names to be used to make such
17 contributions in violation of 52 U.S.C. § 30122. The Commission also dismisses the allegations
18 that McAdams and the Committee knowingly accepted such contributions in violation of 52
19 U.S.C. §§ 30116(f) and 30122.

20

² Committee Resp. at 1-3 (Oct. 17, 2018).

³ *Id.* at 3-4.

⁴ Cumming Resp. at 1-2 (Sept. 20, 2018).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. There are Insufficient Facts to Conclude that the Committee Failed to Report**
3 **Disbursements or Accepted Unreported In-kind Contributions in Connection**
4 **with the Ben Bus**

5
6 Ben McAdams was a 2018 candidate for the U.S. House of Representatives in Utah's
7 Fourth Congressional District.⁵ Friends of Ben McAdams is his principal campaign committee,⁶
8 and Patrice Arent is the Committee's treasurer.⁷

9 The Complaint alleges that McAdams and the Committee may have received unreported
10 in-kind contributions in connection with a bus the Committee used (the "Ben Bus") because the
11 Complainant could find no bus-related payments on the Committee's disclosure reports.⁸ In
12 response, the Committee states that the Ben Bus is a 1984 Bluebird Bus that was originally
13 purchased by McAdams's Mayoral Committee on August 29, 2012 for \$2,680.⁹ The Committee
14 asserts that it started using the Ben Bus in June 2018, paid a \$200 monthly rental fee, and
15 properly reported its payments.¹⁰ In support, the Committee provides copies of monthly checks
16 paid to McAdams's Mayoral campaign (totaling \$1,000 over a five-month period, June through

⁵ McAdams won the 2018 general election. See Utah Election Preliminary Results, <https://electionresults.utah.gov/elections/uscongress/4>.

⁶ Ben McAdams, FEC Form 2, Amended *Statement of Candidacy* (Nov. 20, 2017).

⁷ Friends of Ben McAdams, FEC Form 1, *Statement of Organization* (Oct. 20, 2017).

⁸ See Compl. at 3-4.

⁹ Committee Resp. at 2 (citing Ben McAdams for Mayor, Financial Disclosure Report, 24 (Sept. 17, 2012), https://slco.org/clerk/financialDisclosurePDF/2012Disclosures/August_SeptemberMcAdams_B_12_Sept_Interima_CntyMyer_Redacted.pdf).

¹⁰ *Id.* at 1-2 (citing Friends of Ben McAdams, 2018 July and October Quarterly Reports).

1 October 2018).¹¹ Further, the Committee states that it paid for gas, maintenance, and decoration
2 for the bus, but did not state whether it disclosed these payments.¹²

3 A “contribution” includes “any gift . . . of money or anything of value made by any
4 person for the purpose of influencing any election for Federal office.”¹³ Goods or services
5 provided at less than the usual and normal charge result in in-kind contributions.¹⁴ Usual and
6 normal charge refers to the price of goods in the market from which they would have been
7 purchased at the time they were provided.¹⁵

8 Political committees must file reports of receipts and disbursements in accordance with
9 the provisions of 52 U.S.C. § 30104.¹⁶ Such reports must include the total amount of
10 contributions received, as well as the name and address of each person or political committee
11 who made a contribution in excess of \$200 during the reporting period, together with the date
12 and amount of such contribution.¹⁷ The reports must also include the total amount of all
13 disbursements, including the name and address of each person to whom an expenditure in an

¹¹ *Id.* Ex. A. According to the Committee, the first two disbursements of \$100 each in June 2018 were not itemized because they did not cross the \$200 itemization threshold. 11 C.F.R. § 104.3(b)(4)(i).

¹² Committee Resp. at 2. We found two itemized disbursements by the Committee that appear to be related to the bus: a \$9,982.00 disbursement to Love Communications for “Bus Wrap” on July 13, 2018, (2018 October Quarterly Report, at 1100, Line 17); and a \$78.86 disbursement to Pilot Gas for “Bus Fuel” on November 6, 2018 (Amended 2018 30-Day Post General Election Report, at 749, Line 17).

¹³ 52 U.S.C. § 30101(8)(A)(i).

¹⁴ 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

¹⁵ 11 C.F.R. § 100.52(d)(2), 100.111(e)(2).

¹⁶ 52 U.S.C. § 30104(a), (b); 11 C.F.R. §§ 104.1 and 104.3.

¹⁷ 52 U.S.C. § 30104(b)(2)(A), (b)(3)(A)-(B).

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1 aggregate amount or value in excess of \$200 is made, along with the date, amount, and purpose
2 of each expenditure.¹⁸

3 A campaign traveler or political committee on whose behalf the travel is conducted, that
4 is using a privately-owned means of transportation other than an aircraft, such as an automobile,
5 “must pay the service provider within thirty (30) calendar days after the date of receipt of the
6 invoice for such travel, but not later than sixty (60) calendar days after the date the travel began,
7 at the normal and usual fare or rental charge for a comparable commercial conveyance of
8 sufficient size to accommodate all campaign travelers.”¹⁹ The Commission has stated that it is
9 permissible for a federal campaign committee to pay fair market value for use of resources from
10 a previous non-federal committee of a candidate.²⁰

11 The facts do not indicate that the Committee accepted and failed to report in-kind
12 contributions for the rental of the Ben Bus. Given the age of the bus, the \$200 monthly rental fee
13 may be a normal and usual rental charge.²¹ And as the Committee contends, the Committee’s
14 disclosure reports reflect that the Committee made payments for the rental of the Ben Bus. The
15 2018 October Quarterly Report, Schedule B, shows three itemized disbursements of \$200 each
16 for bus rental to the Mayoral Committee, corresponding to the checks.²² Finally, the 2018 Pre-

¹⁸ *Id.* § 30104(b)(4), (5), (6)(A); 11 C.F.R § 104.3(b)(2), (b)(4).

¹⁹ 11 C.F.R. § 100.93(d).

²⁰ *See* Transfer of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) (“the rule should not read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value”).

²¹ *Id.*

²² *Id.*, Ex. B.

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1 General Report reflects the final \$200 disbursement for bus rental, dated October 10, 2018, to
2 Ben McAdams for Mayor.²³

3 In some previous matters involving allegations that respondents paid less than the usual
4 and normal charge to rent a vehicle, respondents provided information on rental rates for
5 comparable vehicles in the same market.²⁴ Here, the Committee did not submit such
6 information, but provided some documentation for the bus's purchase value, which was disclosed
7 as \$2,680 on McAdams's mayoral campaign disclosure report in 2012,²⁵ to demonstrate that the
8 \$200 monthly rate is a normal and usual rate for the vehicle. We have information that the
9 Committee spent about \$10,000 to wrap the bus and buy gas, and it seems likely that the
10 Committee's other expenses related to the bus were modest. Accordingly, the Commission
11 dismisses the allegations that the Committee violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R.
12 § 104.3(b) by failing to report disbursements or in-kind contributions.

13 Finally, the Complainant did not articulate any basis for finding Representative McAdams
14 personally liable for any reporting violation, and we are not aware of any. Accordingly, the

²³ Friends of Ben McAdams, 2018 Pre-General Report, at 416, Line 17 (filed Oct. 25, 2018).

²⁴ See, e.g., Factual and Legal Analysis at 4, 6, MURs 6295/6307 (Sue Lowden for U.S. Senate) (respondents provided local newspaper survey of rental companies showing range of rental cost for vehicle of same make and model; Commission dismissed allegations given the age, value, and condition of the rental vehicle). See also MUR 6863 (Alison for Kentucky) (parties provided information regarding market value for leasing a motor coach; Commission split on recommendations to find reason to believe that committee accepted prohibited in-kind contributions by paying below market rate for the vehicle).

²⁵ We could not find public information as to the normal and usual price to rent a 1984 Bluebird bus, but we did find some information that a 1984 Bluebird bus could be purchased for \$2,000 in 2015, <http://tinyhousefor.us/alternative-dwellings/couple-buys-a-used-1984-bluebird-bus-for-2k-makes-it-into-a-home/> (last visited on May 6, 2019).

1 Commission finds no reason to believe that Representative McAdams violated 52 U.S.C.
2 § 30104(b)(2), (4) and 11 C.F.R. § 104.3(b).²⁶

3 **B. The Commission Dismisses the Allegations that John and Kristi Cumming**
4 **Made Excessive Contributions in Their Children's Names**

5
6 The Complaint alleges that the contributions made to the Committee by
7 who was either 16 or 17 at the time, and , who were both 14, may
8 have been contributions made in their names by their parents, John and Kristi Cumming.²⁷
9 Although the Complaint acknowledges that the contributions may have been lawful, the
10 Complaint relies upon circumstantial evidence to argue that John and Kristi Cumming made
11 contributions in their children's names. First, the children all made maximum contributions of
12 \$2,700 on or around the same day, April 28, 2018, the day of the Utah Democratic Convention;²⁸
13 second, their parents also made maximum contributions; and third, the children had little or no
14 history of making political contributions.²⁹

²⁶ See Factual & Legal Analysis at 9, MURs 7001, 7002, 7003 and 7009 (Ted Cruz for Senate, *et al.*) (finding no reason to believe that a candidate violated reporting requirements because Complainant did not articulate any factual or legal basis for finding the candidate personally liable). See Factual & Legal Analysis at 3, MUR 6066 (Hartley-Nagle for Congress, *et al.*) (same).

²⁷ would not be considered a minor unless he was 17 or less when he made the contribution. See 11 C.F.R. § 110.19 (defining minor as an individual who is 17 years old or younger). Although the Complaint alleges that was 16 or 17 when he made his contribution, and the Cummings' response says that he is 18, it is not clear he was 18 when he made the contribution. The Cummings' response, however, applies the law regarding minors' contributions, so we will assume that was 17 at the time of the contribution.

²⁸ Cumming Resp. at 1. John and Kristi Cumming each made \$2,700 contributions to McAdams Convention (Primary Convention) (Dec. 13, 2017), and to McAdams's general election campaign (Apr. 30, 2018). made two \$2,700 contributions to the McAdams congressional campaign on April 30, 2018; each made a \$2,700 contribution on April 28, 2018, to McAdams's convention campaign, and a second \$2,700 contribution on April 30, 2018, to the McAdams general election campaign. See Friends of Ben McAdams, 2017 Year-End Report, at 31, Line 11a (filed Aug. 24, 2018); 2018 July Quarterly Report, at 81, 82, 83, Line 11a (filed Jul. 13, 2018).

²⁹ Cumming Resp. at 4-5.

1 The Cummings' Response states that on April 25, 2018, they hosted a fundraiser for
2 McAdams in their home, and the children independently decided to make contributions to the
3 Committee.³⁰ The Response states that each child's contribution was knowing and voluntary,
4 noting that each child was old enough to decide to make a political contribution, and that they
5 each used funds from bank accounts in their own names, although their mother is a custodian of
6 the accounts.³¹

7 Under the Act, no person may make a contribution in the name of another or knowingly
8 permit his name to be used to effect such a contribution.³² Committees and candidates are barred
9 from knowingly accepting contributions in the name of another.³³

10 The U.S. Supreme Court has held that prohibiting contributions by minors is
11 unconstitutional.³⁴ Under Commission regulations, individuals under the age of 18 may make a
12 contribution if: (a) "[t]he decision to contribute is made knowingly and voluntarily by the Minor;
13 (b) the funds . . . are owned and controlled by the Minor, such as income earned by the Minor,
14 the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor
15 from a financial account opened and maintained in the Minor's name; and (c) the contribution is

³⁰ *Id.* at 2.

³¹ *Id.* at 5. Respondents acknowledge that Kristi Cumming, the children's mother, is a custodian of the accounts, but also contend that the children's contributions were from "personal accounts that have been long established and well-funded," and that John and Kristi did not ask the children to make contributions on their behalf or promise to reimburse them for those contributions. *Id.* at 3.

³² 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(i)-(ii).

³³ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

³⁴ *McConnell v. FEC*, 540 U.S. 93, 231-32 (2003) (invalidating prohibition on political donations by minors), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010).

1 not made from the proceeds of a gift, the purpose of which was to provide funds to be
2 contributed, or is not in any other way controlled by another individual.”³⁵

3 In determining whether a contribution from a minor was “knowing and voluntary” under
4 11 C.F.R. § 110.19(a), the Commission has stated that it would consider, among other factors,
5 the age of the minor at the time the contribution was made;³⁶ whether the value of the minor’s
6 contribution, if attributed to an adult member of the minor’s immediate family, would cause that
7 family member to exceed the contribution limitations under the Act and Commission
8 regulations;³⁷ whether the minor has a history of making routine decisions about personal
9 finances, such as how to earn, spend, and invest their money;³⁸ and the minor’s history of
10 donating funds and the source of the funds contributed.³⁹

11 Under the circumstances, the Commission dismisses these allegations. First, the children
12 are significantly older than in cases in which the Commission has found that the minors’
13 contributions were impermissible.⁴⁰ Second, the fact that the Cummings made maximum
14 contributions to the Committee around the same time does not necessarily establish that the

³⁵ 11 C.F.R. § 110.19.

³⁶ See Contributions and Donations by Minors, 70 Fed. Reg. 5565-01 (Feb. 3, 2005) (citing to MURs 4252 (William and Virginia Baxter), 4254 (Birgit and Loren Hershey) and 4255 (Christopher P. and Martha F. Hitchcock).

³⁷ *Id.* at 5567, citing to MUR 4255.

³⁸ 70 Fed. Reg. 5567.

³⁹ *Id.*

⁴⁰ In past matters, the Commission has made reason to believe findings regarding excessive contributions and/or contributions in the name of another where purported donors were very young children. See *e.g.*, MUR 5335R (Geoff Davis for Congress Committee) (contributions in the name of children ages four and five from funds belonging to parent); MUR 4255 (Christopher P. and Martha F. Hitchcock) (contributions in the name of children aged one and three from account owned and controlled by parents); MUR 4484 (Stewart Bainum, Jr.) (contributions in the name of infant son from funds owned and controlled by parents); MUR 3268 (Congressman St. Germain Reelection Committee) (contributions in the names of children ages four and eight from funds belonging to parent).

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1 Cummings' children served as conduits for their parents' contributions. The facts show that all
2 of the contributions occurred within five days of a McAdams fundraiser in the Cummings' home,
3 which could be a reasonable explanation of their timing. Third, the Cummings indicate that the
4 children used funds from bank accounts in each child's name, and not proceeds from a gift made
5 for the purpose of making a political contribution. Given the amounts at issue, an investigation
6 does not appear to be an efficient use of Commission resources.⁴¹ Under these circumstances,
7 the Commission dismisses the allegations that John and Kristi Cumming made excessive
8 contributions in the name of another in violation of 52 U.S.C. §§ 30116(a) and 30122 and that
9 ; knowingly permitted their names to be used to make
10 contributions in the name of another in violation of 52 U.S.C. § 30122.

11 With respect to the Committee's liability for accepting prohibited contributions under
12 section 30122, the Committee contends that the Complaint fails to provide information
13 suggesting that the Committee had any knowledge or reason to believe that any of the
14 contributions in question were improper.⁴² And because the Commission is aware of no such
15 information, the Commission dismisses the allegations that Representative McAdams and
16 Friends of Ben McAdams knowingly accepted excessive contributions in the name of another in
17 violation of 52 U.S.C. §§ 30116(f) and 30122.

⁴¹ See e.g., MUR 4836 (Don Stenberg for Senate Committee) (Commission dismissed allegations that committee may have received \$9,400 in reimbursed contributions from a company's owner, the owner's relatives, including a twelve year old child, and company employees, where responses stated contributions were made voluntarily and from the contributors' own funds).

⁴² Committee Resp. at 3.