



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Graham M. Wilson, Esq.  
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700 Thirteenth St., N.W.  
Suite 600  
Washington, D.C. 20005-3960

JUN 27 2019

RE: MUR 7492  
Friends of Ben McAdams,  
Patrice Arent, as Treasurer  
Representative Ben McAdams

Dear Mr. Wilson:

On September 6, 2018, the Federal Election Commission notified your clients, Friends of Ben McAdams and Patrice Arent in her official capacity as treasurer, (the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and on February 6, 2019 notified your client, Representative Ben McAdams of that same complaint. A copy of the complaint was forwarded to your clients on those dates.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on June 19, 2019, voted to find no reason to believe that Representative Ben McAdams violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R. §104.3(b) by failing to report disbursements or in-kind contributions and to dismiss the allegations that Representative Ben McAdams violated 52 U.S.C. §§ 30116(f) and 30122 by knowingly accepting excessive contributions in the name of another. Furthermore on that date, the Commission voted to dismiss the allegations that the Committee violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R. §104.3(b) by failing to report disbursements or in-kind contributions and 52 U.S.C. §§ 30116(f) and 30122 by knowingly accepting excessive 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.

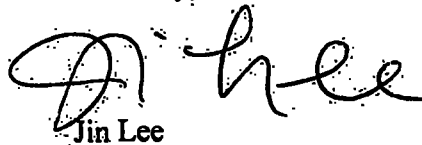
Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

10024444-4111-08

Mr. Graham M. Wilson, 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

1003444-21110

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,

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









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

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.<sup>24</sup> 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,<sup>25</sup> 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

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

<sup>24</sup> 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).

<sup>25</sup> 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).

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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).<sup>26</sup>

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.<sup>27</sup>  
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;<sup>28</sup>  
13 second, their parents also made maximum contributions; and third, the children had little or no  
14 history of making political contributions.<sup>29</sup>

<sup>26</sup> 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).

<sup>27</sup> ; 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.

<sup>28</sup> 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).

<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> Committees and candidates are barred  
9   from knowingly accepting contributions in the name of another.<sup>33</sup>

10          The U.S. Supreme Court has held that prohibiting contributions by minors is  
11   unconstitutional.<sup>34</sup> 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

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<sup>30</sup>       *Id.* at 2.

<sup>31</sup>       *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.

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

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

<sup>34</sup>       *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 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.<sup>41</sup> 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.<sup>42</sup> 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.

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<sup>41</sup> 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).

<sup>42</sup> Committee Resp. at 3.