

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7605
DATE RECEIVED: 05/06/2019
DATE OF SUPPL. COMPL.: 08/05/2020
DATES OF NOTIFICATION: 05/08/2019;
08/05/2020
DATE RESPONSES RECEIVED: 06/06/2019;
07/11/2019; 09/14/2020
DATE ACTIVATED: 09/17/2019

EXPIRATION OF SOL: 08/29/2022
ELECTION CYCLE: 2018

SOURCE: Complaint Generated

COMPLAINANT: Larry Price

RESPONDENTS: Chad E. Price

Judson Hill for Congress and Chris D. Clayton
in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30122
52 U.S.C. § 30116(a)
52 U.S.C. § 30116(f)
11 C.F.R. § 110.4(b)(1)(i)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports
FEC Contributor Database

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint and the supplemental complaint allege that Chad Price made a \$2,700 contribution in the name of his mentally disabled adult sister, Jessica Price, to Judson Hill for Congress and Chris D. Clayton in his official capacity as treasurer (the "Hill Committee") in

1 connection with a 2017 special election.¹ Chad Price, who already had made his own maximum
2 legal contribution to the Hill Committee, responds that, as his sister's legal guardian, he believed
3 that he had the authority to act on her behalf in making an additional contribution in her name.
4 Chad Price asserts that he was advised by a representative of the Hill Committee that it was legal
5 for him to make a federal contribution, as legal guardian, on behalf of Jessica Price.² The Hill
6 Committee, which has terminated, states that it was unaware that Jessica Price did not make the
7 reported contribution herself.

8 Based on the available information, we recommend that the Commission exercise its
9 prosecutorial discretion and dismiss the allegations that Chad Price violated 52 U.S.C.
10 §§ 30116(a) and 30122 and issue a letter of caution. We further recommend that the
11 Commission exercise its prosecutorial discretion and dismiss the allegations that the Hill
12 Committee violated 52 U.S.C. §§ 30116(f) and 30122 and issue a letter of caution.

13 II. FACTUAL BACKGROUND

14 Complainant is the father of Jessica Price ("Jessica"), and he states that Jessica, who was
15 36 at the time of the Complaint's filing, was born with a rare developmental disability that limits
16 her mental age to that of a 3-4 year old.³ Chad Price ("Chad") is Jessica's brother and her legal
17 guardian, with full control over funds designated for her care.⁴ Complainant asserts, and Chad

¹ The First General Counsel's Report was circulated on January 14, 2020, but withdrawn on October 24, 2020 to address the supplemental complaint.

² As noted below, Price did not make this assertion when he responded *pro se* to the original complaint, but made this assertion when he responded to supplemental complaint through counsel.

³ Complaint at 2, MUR 7605 (Chad E. Price) (May 6, 2018).

⁴ Response, MUR 7605 (Chad E. Price) (June 7, 2019). The documents attached to the response indicate that Chad Price was named as the legal guardian in 2013. *Id.* The Complaint and the Response document a long-running intra-family dispute.

1 does not dispute, that Jessica is dependent on others, cannot read or write, and is not able to
 2 make independent decisions about matters such as making federal political contributions.⁵

3 Judson Hill was an unsuccessful 2017 special election candidate for the 6th
 4 Congressional District of Georgia.⁶ Judson Hill's principal campaign committee was Judson
 5 Hill for Congress.⁷ On March 29, 2017, Chad made a \$2,700 contribution to Hill's special
 6 election campaign in his own name.⁸ More than four months after the special election, Chad
 7 caused a \$2,700 special election contribution to be made in the name of Jessica, and he informed
 8 the Hill Committee that Jessica was an employee of his company, Mako Medical.⁹ The
 9 Commission approved the Committee's termination on September 20, 2017.¹⁰

10 In addition to the \$2,700 federal contribution, the Complaint alleges that Chad made
 11 political contributions in his sister's name to candidates in three different state races: (1) \$5,200
 12 to Nelson Dollar (NC House of Representatives); (2) \$1,000 to Stephen Baldwin (WV State
 13 Senate); and (3) \$6,600 to Geoffrey Duncan (GA Lieutenant Governor).¹¹ Such contributions

⁵ Compl. at 2.

⁶ See April 18, 2017 Special Election Results, Georgia Sec. of State, <https://results.enr.clarityelections.com/GA/67317/Web02-state/#/>. Hill did not garner sufficient votes in the special election to be placed on the runoff election ballot. See https://ballotpedia.org/Judson_Hill (last accessed on December 5, 2019).

⁷ See Statement of Organization, Judson Hill for Congress (Jan. 5, 2017).

⁸ See 2017 Special Election Report, Judson Hill for Congress (Mar. 31, 2017).

⁹ See 2017 Termination Report, Judson Hill for Congress (Sept. 5, 2017). ("2017 Termination Report"), located at <https://docquery.fec.gov/pdf/201709059072958201/201709059072958201.pdf>. According to the Termination Report, the Committee had net debts to retire in the amount of \$16,019.40. *Id.*

¹⁰ See Termination Approval Letter, Judson Hill for Congress (Sept. 20, 2017) located at <https://docquery.fec.gov/pdf/954/201709200300092954/201709200300092954.pdf>.

¹¹ See Compl., Attachs.

were in addition to approximately \$47,800 in state contributions that Chad made in his own name and in the name of his company, Mako Medical, in 2017-2018.¹²

Chad's *pro se* response to the original complaint asserts that he asked Baldwin, one of the state candidates, if he could make a contribution on behalf of Jessica as her guardian, and Baldwin told him that it was "ok since [he had] unrestricted and non-limited guardianship."¹³ He states that he relied on Baldwin's advice when he made additional contributions on Jessica's behalf as her legal guardian.¹⁴ Chad also maintains that he conducted online research and could not find "anything that prevented it."¹⁵ In addition, he contends that he asked the West Virginia Secretary of State if a minor could make a contribution and was advised that a minor could make a state contribution to a campaign within the campaign limits.¹⁶ Chad's response to the original complaint does not mention any communication with the Hill Committee. Chad's response adds that "if it was not permissible for him to make contributions in his sister's name, he will ask the campaigns to refund these donations."¹⁷ He acknowledges that the information on the Committee's disclosure report indicating that Jessica Price is employed by his company, Mako Medical, is inaccurate and should be corrected.¹⁸ It is undisputed that the funds used to make the

¹² *Id.* The information provided by Complainant indicates that Chad, between 2017 and 2018, made \$47,800 in contributions to state races in Georgia, North Carolina, Oklahoma, South Carolina, and West Virginia. *Id.* Respondent, during the same time period, also made lobbyist contributions through his corporation, Mako Medical, in the amount of \$46,000. *Id.* In addition, the Commission's records indicate that Respondent has made several federal contributions since 2013.

¹³ Resp., Attach. Chad does not indicate when he had this conversation with Baldwin.

¹⁴ *Id.* at 1.

¹⁵ *Id.*

¹⁶ *Id.* Chad had a later email exchange with West Virginia Secretary of State, which appears have been in response to another complaint his father made regarding state contributions Chad made on behalf of Jessica. *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

1 contribution were controlled by her guardian, Chad, although it is not clear whether those funds
2 belonged to Jessica.¹⁹

3 The supplemental complaint does not make any new or different allegations, but instead
4 requests that the Commission consider a newspaper article regarding the pattern of Chad's state
5 and federal contribution history, including those contributions made on behalf of Jessica as her
6 legal guardian.²⁰ The article suggests that Chad made the contributions on behalf of Jessica in
7 order to obscure the source of the funds.²¹

8 Chad responds to the supplemental complaint through counsel. Chad's supplemental
9 response asserts that the attached newspaper article is a "coordinated smear campaign seeking to
10 discredit a company based on a disagreement with the founder's political beliefs."²² In addition,
11 Chad newly asserts that, prior to making the contribution in Jessica's name, he contacted
12 multiple recipient state and federal campaigns, including the Hill Committee, to ensure that the
13 contributions were "compliant with the provisions of the Act."²³ According to Chad, he was
14 assured by an unnamed individual from the Hill Committee that his contribution on behalf of
15 Jessica as her court-appointed guardian was legally permissible under state and federal law.²⁴
16 This new assertion differs from the previous assertion that Chad relied on advice provided by a

¹⁹ See *Id.*, Attachs.

²⁰ See Suppl. Compl., MUR 7610 (Aug. 5, 2020).

²¹ *Id.* at 2. The attached newspaper article details Price's state and federal contributions, some of which were made in the name of Jessica Price, and which allegedly demonstrate an attempt to be less than transparent about the source of the contributions. See *Id.*, Attach.

²² Suppl. Resp. at 2, MUR 7605 (Chad Price) (Sept. 14, 2020).

²³ *Id.*

²⁴ *Id.* at 3.

1 state candidate and the West Virginia Secretary of State when making the federal contribution on
 2 behalf of Jessica.

3 Chad's supplemental response also makes several arguments in support of the
 4 Commission's dismissal of the matter. First, he asserts that his inability to make contributions as
 5 Jessica's guardian is tantamount to preventing her from exercising her First Amendment right to
 6 free speech.²⁵ Second, he argues that the facts presented in this matter constitute a novel issue
 7 and Commission precedent requires due process, fair notice, and clarity for First Amendment –
 8 related campaign finance laws.²⁶ Third, Chad argues that precedent supports not using limited
 9 Commission resources to pursue a matter involving a single contribution by someone who made
 10 efforts to ensure compliance with the Act prior to making the contribution.²⁷

11 The now-terminated Hill Committee responds to the original complaint that no one
 12 associated with the Committee had any connection to the Prices, and there was no reason to
 13 suspect that the information provided in connection with the contribution was incorrect.²⁸ The
 14 Hill Committee was notified of the supplemental complaint and provided with an opportunity to
 15 respond, but did not.²⁹

²⁵ *Id.* at 7; *see also Buckley v. Valeo*, 424 U.S. 1, 15, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976); *NAACP v. Alabama ex re. Patterson*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958).

²⁶ *Id.* at 8. The supplemental response cites to AR-87-88 (quoting *FCC v. Fox Television Stations, Inc.*, 132 S.Ct. 2307, 2317 (2012)) in support of the Commission's position that "a fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. *See* AR-87-88 (quoting *FCC v. Fox Television Stations, Inc.*, 132 S.Ct. 2307, 2317 (2012)). It also cites to *Campaign Legal Center and Democracy 21 v. FEC* in which the Court affirmed the Commission's dismissal of a complaint because respondents "were not provided adequate notice that their conduct could potentially violate" the straw donor provision of the Act. *Campaign Legal Center and Democracy 21 v. FEC*, 952 F.3d 352, 357 (2020).

²⁷ *Id.* at 7.

²⁸ Committee Response at 1, MUR 7605 (Chad E. Price) (July 11, 2019).

²⁹ *See* Notification Letter, MUR 7605 (Aug. 7, 2020).

1 **III. LEGAL ANALYSIS**

2 The Act defines “contribution” as “any gift, subscription, loan, advance, or deposit of
 3 money or anything of value made by any person for the purpose of influencing any election for
 4 Federal office.”³⁰ Under the Act, an individual may not make a contribution to a candidate with
 5 respect to any election in excess of the legal limit, which was \$2,700 per election during the
 6 2017-2018 election cycle.³¹ The Act also prohibits a person from making a contribution in the
 7 name of another or knowingly permitting his or her name to be used to effect such a
 8 contribution.³² Committees and candidates are barred from knowingly accepting contributions in
 9 the name of another³³ and committees, through their treasurers, have a duty to examine all
 10 contributions for evidence of illegality and return contributions that appear to be illegal.³⁴

11 The Commission has not previously addressed the legality of a contribution made by a
 12 legal guardian on behalf of an adult who appears to have the mental capacity of a very young
 13 minor.³⁵ However, the factors the Commission considers regarding contributions involving

³⁰ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

³¹ *See Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

³² *Id.* § 30122; 11 C.F.R. § 110.4(b)(i)-(ii).

³³ *Id.* § 30122; 11 C.F.R. § 110.4(b)(iv).

³⁴ *See* 11 C.F.R. § 103.3(b).

³⁵ 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* 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). The facts of the instant case contrast with MUR 4208 (Friends of Bob Bennett) Second Gen. Cnsl's Report at 5-6; Certification at 1 (Oct. 17, 1996) (taking no further action concerning contribution made by developmentally disabled minor, noting “difficult subjective determinations.”). In that case, the minor, who was nearly 18 at the relevant time, signed an affidavit stating that the candidate was “my friend” and “I like to help him.” We have no similar information in this case. More recently, the Commission dismissed allegations of section 30122 violations in a matter involving contributions made by minors who were 17 and 14. *See* Certification, MUR 7492 (Ben

minors are a useful framework for the consideration of this issue. Under Commission regulations, individuals under the age of 18 may make a contribution if: (a) “[t]he decision to contribute is made knowingly and voluntarily by the Minor; (b) the funds . . . are owned and controlled by the Minor, such as income earned by the Minor, the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor’s name; and (c) the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.”³⁶

In determining whether a contribution from a minor was “knowing and voluntary” under 11 C.F.R. § 110.19(a), the Commission has stated that it would consider, among other factors, the age of the minor at the time the contribution was made;³⁷ whether the value of the minor’s contribution, if attributed to an adult member of the minor’s immediate family, would cause that family member to exceed the contribution limitations under the Act and Commission regulations;³⁸ whether the minor has a history of making routine decisions about personal finances, such as how to earn, spend, and invest their money;³⁹ and the minor’s history of donating funds and the source of the funds contributed.⁴⁰

McAdams) (June 19, 2019). In support, the Commission noted the more advanced ages of the children and that the funds used were taken from the accounts established in each child’s name. *See* Factual and Legal Analysis at 7-10, MUR 7492 (Ben McAdams) (June 19, 2019).

³⁶ 11 C.F.R. § 110.19.

³⁷ *See* Explanation and Justification, 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)).

³⁸ *Id.* at 5567, citing to MUR 4255.

³⁹ 70 Fed. Reg. 5567.

⁴⁰ *Id.*

1 The Complaint alleges, and Chad does not dispute, that Jessica has the mental capacity of
2 a 3- or 4-year-old, and that Chad, rather than Jessica, made the decision to make the contribution.
3 As noted above, the record is unclear as to whether the funds belonged to Chad or Jessica.
4 Regardless as to their source, it is undisputed that Chad controlled the funds. The value of her
5 contribution (\$2,700), if attributed to Chad, would cause him to exceed the contribution limits of
6 the Act and Commission regulations. Further, the undisputed information before the
7 Commission is that Jessica does not have the ability to make routine decisions about personal
8 finances and does not have a history of donating funds on her own.

9 Applying by analogy the factors the Commission uses in connection with contributions
10 by minors, we conclude that Jessica did not make a knowing, voluntary contribution to the Hill
11 Committee. Instead, the contribution should be viewed as having been made by Chad in
12 Jessica's name.⁴¹ Given that he had already maxed out for the special election, Chad violated
13 52 U.S.C. §§ 30116(a) and 30122 by making an excessive contribution in the name of another.
14 However, we believe that under the circumstances of this case, the Commission should exercise
15 its prosecutorial discretion and dismiss the allegation as to Chad. In recommending dismissal,
16 we recognize that violations of section 30122 are serious, and this matter presents a close call.

17 Chad argues that he lacked notice that making a contribution as Jessica's legal guardian
18 under these circumstances could constitute a violation of the Act. Further, Chad asserts that he
19 sought advice from a Hill Committee representative regarding the legality of the contribution and
20 was advised that it would be legal for him to make a contribution under these circumstances. We

⁴¹ If Jessica Price had been notified of the Complaint or designated as a respondent, we would recommend finding no reason to believe that she knowingly allowed her name to be used to make a contribution in the name of another. Because she was never notified or designated as a respondent, we make no recommendation as to Jessica Price.

1 note that there are questions as to the credibility of Chad's assertion about receiving advice from
2 a Hill Committee representative given that it was not raised in response to the original complaint,
3 and appears to be in conflict with the Committee's assertion that it had no basis to know that
4 Jessica did not make the contribution herself.⁴² However, we do not totally discount Chad's
5 assertion that he acted in good faith reliance on advice from a state campaign (as set forth in his
6 original response) and from the Committee (as set forth in his supplemental response).

7 In recommending dismissal of the matter pursuant to *Heckler v. Chaney*, 470 U.S. 821
8 (1985), we take into account the single violation, the relatively small amount of money at issue,
9 the conflicting information before the Commission whether Chad was informed by a Committee
10 representative that he could legally make a contribution in the name of Jessica, and the
11 Commission's limited resources. Under these unique circumstances, including the proper
12 ordering of the Commission's priorities on its docket, it would not be a prudent use of the
13 Commission's limited resources to pursue the matter further. Accordingly, we recommend that
14 the Commission exercise its prosecutorial discretion and dismiss the allegations with a caution to
15 Chad Price.⁴³

16 We similarly recommend that the Commission exercise its prosecutorial discretion and
17 dismiss the allegations that Judson Hill for Congress and Chris D. Clayton in his official capacity

⁴² Chad, in his original response, stated that he made the "donation on her behalf to candidate Stephen Baldwin. I was told by the Campaign that this was OK since I had unrestricted and non-limited Guardianship. I looked online and couldn't find anything preventing it either." See Resp. Chad states that he sought advice from the Stephen Baldwin committee but makes no specific mention of having contacted the Hill Committee for advice. *Id.* The Hill Committee, in its complaint response, states that it had no knowledge of the circumstances under which the contribution was made by Chad. See Hill Committee Resp. It appears that Chad did not have the benefit of counsel when filing his original response but retained counsel to respond to the supplemental complaint. This may account for the more detailed response to the supplemental complaint regarding his alleged attempts to determine in advance whether he could make a contribution on behalf of Jessica as her legal guardian.

⁴³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

as treasurer knowingly accepted an excessive contribution in the name of another in violation of 52 U.S.C. §§ 30116(f) and 30122 with a caution to the Hill Committee.

IV. RECOMMENDATIONS

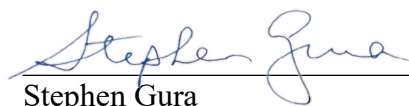
1. Dismiss the allegations that Chad Price violated 52 U.S.C. §§ 30116(a) and 30122.
2. Dismiss the allegations that Judson Hill and Chris D. Clayton in his official capacity violated 52 U.S.C. §§ 30116(f) and 30122.
3. Issue a letter of caution to Chad Price.
4. Issue a letter of caution to Judson Hill for Congress and Chris D. Clayton in his official capacity as treasurer.
5. Close the file as to the Respondents.
6. Approve the attached Factual and Legal Analyses.
7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

05.12.21

Date



Stephen Gura
Deputy Associate General Counsel
for Enforcement



Mark D. Shonkwiler
Assistant General Counsel



Kimberly D. Hart
Attorney

MUR 7605 (Chad E. Price)
First General Counsel's Report
Page 12 of 12

- 1 Attachments
- 2 1. Factual and Legal Analysis for Chad Price
- 3 2. Factual and Legal Analysis for the Hill Committee
- 4