

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7618

DATE COMPLAINT FILED: June 17, 2019

DATE OF NOTIFICATION: June 19, 2019

DATE OF LAST RESPONSE: Aug. 9, 2019

DATE ACTIVATED: Oct. 28, 2019

EXPIRATION OF SOL: June 5, 2024 (earliest)

June 6, 2024 (latest)

ELECTION CYCLE: 2019

COMPLAINANT:

The Patriots Foundation

RESPONDENTS:McCready for Congress and Holly Giarraputo in her
official capacity as treasurer

Dan McCready

Double Time Capital, LLC

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30116(a), (f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30125(e)

11 C.F.R. § 100.52(d)(1)

11 C.F.R. § 110.1(e), (g)

11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

North Carolina Secretary of State

I. INTRODUCTION

The Complaint alleges that Double Time Capital, LLC (“DTC”) made, and Dan McCready and McCready for Congress and Holly Giarraputo in her official capacity as treasurer (the “Committee”) accepted, a prohibited in-kind corporate contribution in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. According to the Complaint, DTC made an in-kind contribution to the Committee by paying for legal services that responded to political criticisms against McCready, who is one of DTC’s founders and managing partners. The Complaint asserts that those legal services impermissibly

1 benefitted his campaign. The Complaint further alleges that McCready violated the Act's soft-
2 money prohibitions by "facilitating" the in-kind corporate contribution. Respondents contend
3 that DTC is not a corporation and that any legal services that DTC paid for were provided for
4 legitimate business and commercial purposes to respond to false and defamatory statements.

5 As discussed below, the facts do not indicate that DTC's payments for legal services
6 were intended to influence a federal election, or that DTC made a prohibited or excessive
7 contribution. For the reasons set forth below, we recommend that the Commission: (1) find no
8 reason to believe that DTC, McCready, and the Committee violated 52 U.S.C. § 30118(a) by
9 making or accepting a prohibited in-kind contribution; (2) dismiss the allegations that DTC,
10 McCready, and the Committee violated 52 U.S.C. § 30116(a) or (f) by making or accepting an
11 excessive in-kind contribution; and (3) dismiss the allegations that DTC, McCready, or the
12 Committee violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, or transferring non-
13 federal funds.

14 **II. FACTUAL BACKGROUND**

15 McCready was a candidate for U.S. Congress for North Carolina's 9th Congressional
16 District in the 2019 special election.¹ The Committee is his principal campaign committee.²
17 DTC is an investment company founded by McCready and Rye Barcott in 2013 that specializes

¹ Compl. ¶¶ 1, 11 (June 17, 2019); McCready and McCready for Congress Resp. at 1 (Aug. 9, 2019) ("McCready Resp."); Daniel McCready, FEC Form 2 Statement of Candidacy (Feb. 9, 2019). McCready was also a candidate in the same congressional district for the 2018 general election. *See* McCready Resp. at 1.

² McCready Resp. at 1; McCready for Congress, FEC Form 1 Statement of Organization (Feb. 9, 2019).

1 in solar energy projects.³ DTC is organized as a limited liability company (“LLC”) that has
2 elected to be taxed as a partnership by the Internal Revenue Service (“IRS”).⁴

3 On May 28, 2019, Fox News published an article about DTC and McCready’s business
4 record with the company.⁵ The article stated that DTC “outsourced production to China and
5 imported devices from a Chinese company [Huawei] deemed a national security risk.”⁶ The
6 article further referenced McCready’s congressional campaign and critically contrasted
7 McCready’s campaign trail promise to “get tough with China” with DTC’s alleged dealings with
8 Chinese companies.⁷ Hours after its publication, the Congressional Leadership Fund (“CLF”)
9 and the NRCC (formerly known as the National Republican Congressional Committee) began to
10 publicize the article’s allegations regarding McCready and DTC’s links to outsourcing, China,
11 and Huawei, including what the article described as a national-security risk Huawei may pose to
12 the United States.⁸ Over the course of the following week, CLF and NRCC continued to amplify
13 the article’s accusations on their respective websites and on social media.⁹

³ DTC Resp. at 1 (Aug. 9, 2019); McCready Resp. at 2; Compl. ¶ 12.

⁴ DTC Resp. at 3.

⁵ Lukas Mikelionis, *North Carolina Dem Candidate Vows to ‘Get Tough’ with China – Despite Investing in Company That Outsourced to China*, FOX NEWS (May 28, 2019), <https://www.foxnews.com/politics/north-carolina-democrat-dan-mccready-china-outsourced> (“Fox News Article”) (cited by Compl. ¶ 13 n.11).

⁶ *See* Fox News Article.

⁷ *See id.*

⁸ *McCready Outsourced Jobs to China, Endangered N.C.’s Power Grid*, CONGRESSIONAL LEADERSHIP FUND (May 28, 2019), <https://www.congressionalleadershipfund.org/blog/mccready-outsourced-jobs-to-china-endangered-n-c-s-power-grid/> (“CLF Blog Post”) (cited by Compl. ¶ 14 & n.12); Camille Gallo, *China Dan McCready Is Back into Hiding!*, NRCC (May 28, 2019), <https://www.nrcc.org/2019/05/28/china-dan-mccready-is-back-into-hiding/> (“NRCC Press Update”) (cited by Compl. ¶ 14 & n.12).

⁹ *See* Letter from John R. Wester, Counsel, Robinson, Bradshaw & Hinson, P.A., to Dan Conston, Congressional Leadership Fund at 1 (June 5, 2019), <https://www.congressionalleadershipfund.org/wp-content/uploads/2019/06/McCready-Letter-to-CLF.pdf> (“CLF Letter”) (cited by Compl. ¶ 15 & n.13); Letter from John R. Wester, Counsel, Robinson, Bradshaw & Hinson, P.A., to Parker Polling, Nat’l Republican Congressional

1 Respondents managed the allegations differently. McCready and the Committee did not
2 respond to Fox News's requests for comment for the article, nor did they make any public
3 statements or responses in the press to challenge the allegations contained therein.¹⁰ On the
4 other hand, DTC, through its counsel, Robinson, Bradshaw, and Hinson, P.A. ("Robinson
5 Bradshaw"),¹¹ privately sent cease-and-desist letters to both CLF and NRCC regarding the
6 claims made about DTC.¹² In those letters, DTC asserts that CLF and NRCC made "false and
7 defamatory statements" by alleging it had endangered U.S. national-security interests and
8 outsourced jobs to China.¹³ The letters further contain factual assertions seeking to correct the
9 purported false statements, as well as DTC's demands that the respective recipients retract the
10 posts, publish retractions, and preserve evidence related to the publication of the false statements
11 pursuant to North Carolina defamation statutes.¹⁴ Each recipient published the cease-and-desist
12 letter on its respective website.¹⁵

Comm. at 1 (June 6, 2019), https://www.nrcc.org/wp-content/uploads/2019/06/DTC_Ltr-to-Parker-Poling-and-NRCC.pdf ("NRCC Letter") (cited by Compl. ¶ 15 & n.13). DTC's counsel represented in the CLF and NRCC Letters that Fox News "ha[d] been made aware, in writing, of [the] inaccuracies" in the article as well. CLF Letter at 1; NRCC Letter at 1.

¹⁰ See Fox News Article ("McCready's campaign didn't respond to Fox News' repeated requests for comment."); Compl. ¶ 16; McCready Resp. at 7.

¹¹ Robinson Bradshaw has served as DTC's counsel since the company's founding in 2013 and is DTC's designated counsel with the Commission in the instant matter. See DTC Resp. at 1; see also Designation of Counsel, DTC (July 3, 2019). Perkins Coie has represented the Committee since its launch in May 2017 and is the Committee's designated counsel with the Commission in the instant matter. McCready Resp. at 1-2; Designation of Counsel, McCready for Congress (July 3, 2019). Between May 2017 and June 30, 2019, the Committee paid \$261,062.05 to Perkins Coie for legal services rendered. See McCready Resp. at 1-2.

¹² Compl. ¶ 15 & n.13 (citing CLF Letter and NRCC Letter); DTC Resp. at 2.

¹³ See CLF Letter at 1-2; NRCC Letter at 1-2.

¹⁴ See CLF Letter at 2-3; NRCC Letter at 1-2.

¹⁵ See *supra* note 9.

1 **III. LEGAL ANALYSIS**

2 **A. The Factual Record Does Not Indicate that DTC Made a Prohibited**
3 **Corporate Contribution or an Excessive Contribution**

4 The Act prohibits corporations from making contributions or expenditures to a candidate
5 or candidate committee in connection with any election to political office.¹⁶ Likewise, federal
6 candidates and their committees may not knowingly accept or receive such a prohibited
7 corporate contribution.¹⁷ An LLC that elects to be treated as a corporation by the IRS is treated
8 as a corporation for contribution purposes under the Act and is prohibited from making
9 contributions to a candidate or candidate committee.¹⁸ In contrast, contributions by an LLC that
10 elects to be treated as a partnership by the IRS are treated under the Act as partnership
11 contributions rather than corporate contributions.¹⁹

12 The available information indicates that DTC is an LLC that has elected to be taxed as a
13 partnership by the IRS.²⁰ Thus, Commission regulations do not treat DTC as a corporation, and
14 DTC is not subject to the Act's ban on corporate contributions to candidate committees. We
15 therefore recommend that the Commission find no reason to believe that DTC made, and that
16 McCready and the Committee accepted, a prohibited in-kind contribution in violation of section
17 30118(a) of the Act.

¹⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2.

¹⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(d).

¹⁸ 11 C.F.R. § 110.1(g)(3).

¹⁹ *See id* § 110.1(g)(2).

²⁰ *See* DTC Resp. at 3. We are not aware of any information that contradicts DTC's representation that it has elected to be treated as a partnership by the IRS. DTC is also registered as an LLC with the state of North Carolina. *See Double Time Capital, LLC*, N.C. Sec'y of State, https://www.sosnc.gov/online_services/Search/Business_Registration_profile?Id=10251379 (last visited Apr. 22, 2020).

1 DTC's treatment under the tax code does not end the inquiry into any alleged
2 contributions. As a partnership, its contributions are subject to the contribution limits set forth at
3 52 U.S.C. § 30116(a) and 11 C.F.R. § 110.1(e).²¹ In 2019, a partnership could make a
4 contribution of up to \$2,800 per election to a candidate committee.²²

5 The Act defines "contribution" to include "any gift . . . or anything of value made by any
6 person for the purpose of influencing any election for Federal office."²³ Similarly, "expenditure"
7 is defined to include "any . . . payment . . . or gift of money or anything of value, made by any
8 person for the purpose of influencing any election for Federal office."²⁴ The Commission's
9 implementing regulation provides that "*anything of value* includes all in-kind contributions."²⁵
10 In-kind contributions include, among other things, "the provision of any goods or services
11 without charge or at a charge that is less than the usual and normal charge for such goods or
12 services."²⁶

13 In MUR 7024 (Van Hollen), the Commission considered whether the provision of pro
14 bono legal services by a law firm to a federal candidate constituted an impermissible in-kind
15 contribution. The Commission determined that "the question under the Act is whether the legal
16 services were provided *for the purpose of influencing a federal election*," not whether such

²¹ See 11 C.F.R. § 110.1(g)(2).

²² 52 U.S.C. § 30116(a)(1)(A).

²³ *Id.* § 30101(8)(A).

²⁴ *Id.* § 30101(9)(A).

²⁵ 11 C.F.R. § 100.52(d) (emphasis in original).

²⁶ *Id.* Other examples of in-kind contributions include coordinated communications, subject to a three-part test codified at 11 C.F.R. § 109.21, and coordinated expenditures, defined at 11 C.F.R. § 109.20(a).

1 services provided a benefit to the candidate's campaign.²⁷ Ultimately, the Commission
2 concluded that the services in question did not result in a contribution because the legal services
3 were provided in connection with a rulemaking proceeding that would not have a direct effect on
4 the candidate's election.²⁸

5 The available information does not support a reasonable inference that DTC paid for the
6 legal services at issue for the purpose of influencing a federal election; therefore, it does not
7 appear that DTC made a contribution to McCready and the Committee. Rather, the available
8 information indicates that there was a legitimate business and commercial purpose for the legal
9 services at issue and that, consistent with Commission precedent, these services were not
10 provided for the purpose of influencing a federal election.²⁹

11 DTC credibly asserts that its use of Robinson Bradshaw's legal services sought to protect
12 its commercial interests and combat reputational damage by asserting and preserving defamation
13 claims against CLF and NRCC for false and misleading statements.³⁰ The cease-and-desist
14 letters Robinson Bradshaw sent on behalf of DTC assert, and preserve DTC's right to assert,

²⁷ Factual and Legal Analysis at 6, MUR 7024 (Van Hollen for Senate) ("F&LA") (emphasis added).

²⁸ F&LA at 5-6, MUR 7024 (Van Hollen for Senate); *cf.* Advisory Op. 2003-15 at 3 (Committee to Re-Elect Congresswoman Denise Majette) (candidate's costs of defending lawsuit to overturn elections she won were not "in connection with" election).

²⁹ The Commission has found that activity undertaken to influence any number of non-electoral purposes — including, *e.g.*, activity to advance a commercial interest — does not necessarily result in a "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election. *See, e.g.*, Advisory Op. 2004-06 at 4 (Meetup) (commercial web service provider did not make contributions because services were provided to "any similarly situated member of the general public"); *see* First Gen. Counsel's Report at 13-17, MURs 5474 & 5539 (Dog Eat Dog Films) (recommending finding no reason to believe finding that producers and distributors of a film criticizing a federal candidate made "contributions" or "expenditures," because the record established that the film was made and distributed "for genuinely commercial purposes rather than to influence a federal election"); Certification ¶¶ A.1-2, B.1, MURs 5474 & 5539 (approving recommendations).

³⁰ *See* DTC Resp. at 2 ("[O]ur letters addressed only [DTC]'s business interests and potential claims."); *id.* at 3 ("Robinson Bradshaw . . . acted only in defense of the business interest of its client, [DTC]."); *see also* CLF

1 defamation claims against CLF and NRCC for allegedly false and misleading statements about
2 DTC's business.³¹ Neither letter references McCready's candidacy, the Committee, or the
3 upcoming election in which McCready was running. They only reference McCready in his
4 capacity as a co-founder of DTC and do not respond to any of the purported political criticism of
5 McCready. Furthermore, Robinson Bradshaw sent the letters privately; the letters are only
6 public because the recipients chose to release them.

7 Additionally, the Committee denies that DTC's law firm, Robinson Bradshaw, was
8 acting on its behalf and states that Perkins Coie has represented it since the campaign began in
9 May 2017.³² Whereas Robinson Bradshaw has been DTC's counsel since 2013 when DTC was
10 first formed, the Committee notes that it engaged Perkins Coie in a comparable scenario to
11 respond to a political attack advertisement it viewed as false and defamatory during the 2018
12 election cycle.³³ DTC and the Committee's past conduct in engaging separate counsel supports
13 their contention that DTC's payment for legal services here was made for commercial purposes.

14 For the reasons set forth above, we recommend the Commission dismiss the allegations
15 that DTC made, and that McCready and the Committee accepted, an excessive in-kind
16 contribution in violation of 52 U.S.C. § 30116(a) and (f).

Letter (warning CLF of potential defamation claims and state statutory pre-action notification requirements); NRCC
Letter (same).

³¹ See CLF Letter; NRCC Letter; *see also* DTC Resp. at 2-3 (contending that, "[u]nder North Carolina law, a
business can state claims for defamation and unfair and deceptive trade practices for statements made in an
advertisement by a political campaign regarding a candidate").

³² McCready Resp. at 1-2. In a prior matter, the Commission found no reason to believe that a campaign
committee received free legal services from an attorney where the legal services were provided to the candidate's
wife who was a plaintiff in a lawsuit unrelated to her husband's candidacy. F&LA at 9, MUR 6592 (Jacob Turk for
Congress, *et al.*). There, the Commission accepted the campaign and attorney's assertions that the attorney
represented the candidate's wife in her individual capacity and not the campaign. *Id.*

³³ McCready Resp. at 1-2.

1 **B. Respondents Do Not Appear to Have Violated the Act's Soft Money**
2 **Prohibition**

3
4 The Act prohibits a federal candidate, officeholder, agent thereof, or an entity directly or
5 indirectly established, financed, maintained or controlled by or acting on behalf of a federal
6 candidate or officeholder from soliciting, receiving, directing, transferring or spending funds in
7 connection with a federal campaign unless the funds are subject to the limitations, prohibitions,
8 and reporting requirements of the Act.³⁴ Because the available information does not indicate that
9 DTC paid for legal services that constituted an in-kind contribution, as discussed above, we
10 correspondingly recommend the Commission dismiss the allegations that the Respondents
11 violated 52 U.S.C. § 30125(e).

12 **IV. RECOMMENDATIONS**

- 13 1. Find no reason to believe that Dan McCready and McCready for Congress and Holly
14 Giarraputo in her official capacity as treasurer violated 52 U.S.C. § 30118(a) by
15 accepting a prohibited in-kind corporate contribution from Double Time Capital,
16 LLC;
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18 2. Find no reason to believe that Double Time Capital, LLC, violated 52 U.S.C.
19 § 30118(a) by making a prohibited in-kind corporate contribution to Dan McCready
20 and McCready for Congress;
21
22 3. Dismiss the allegation that Dan McCready and McCready for Congress and Holly
23 Giarraputo in her official capacity as treasurer violated 52 U.S.C. § 30116(f) by
24 accepting an excessive in-kind contribution from Double Time Capital, LLC;
25
26 4. Dismiss the allegation that Double Time Capital, LLC, violated 52 U.S.C. § 30116(a)
27 by making an excessive in-kind contribution to Dan McCready and McCready for
28 Congress;
29
30 5. Dismiss the allegation that Dan McCready and McCready for Congress and Holly
31 Giarraputo in her official capacity as treasurer violated 52 U.S.C. § 30125(e) by
32 soliciting, receiving, directing, transferring or spending non-federal funds;
33

³⁴ 52 U.S.C. § 30125(e)(1).

- 1 6. Dismiss the allegation that Double Time Capital, LLC, violated 52 U.S.C. § 30125(e)
- 2 by soliciting, receiving, directing, transferring or spending non-federal funds;
- 3
- 4 7. Approve the attached Factual and Legal Analysis; and
- 5
- 6 8. Approve the appropriate letters.

7

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Lisa J. Stevenson
Acting General Counsel

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April 23, 2020

Charles Kitcher

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Date

Charles Kitcher
Acting Associate General Counsel for Enforcement

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