



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 11, 2021

VIA CERTIFIED MAIL

Craig Robinson
The Patriots Foundation
4020 121st Street
Urbandale, IA 50323

RE: MUR 7618

Dear Mr. Robinson:

On July 27, 2021, the Federal Election Commission reviewed the allegations in your complaint dated June 14, 2019, and found that, on the basis of the information provided in your complaint and information provided by the respondents, there is no reason to believe that Dan McCready and McCready for Congress and Holly Giarraputo in her official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30118(a), or 30125(e), or that Double Time Capital, LLC violated 52 U.S.C. §§ 30116(a), 30118(a), or 30125(e). Accordingly, the Commission closed its file in this matter.

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). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,


Jin Lee

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: McCready for Congress and Holly Giarraputo in her official capacity as treasurer MUR 7618
Dan McCready
Double Time Capital, LLC

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

As discussed below, the facts do not indicate that DTC’s payments for legal services were intended to influence a federal election, or that DTC made a prohibited or excessive contribution. For the reasons set forth below, the Commission: (1) finds no reason to believe that DTC, McCready, and the Committee violated 52 U.S.C. § 30118(a) by making or accepting a prohibited in-kind contribution; (2) finds no reason to believe that DTC, McCready, and the Committee violated 52 U.S.C. § 30116(a) or (f) by making or accepting an excessive in-kind

1 contribution; and (3) finds no reason to believe that DTC, McCready, or the Committee violated
2 52 U.S.C. § 30125(e) by soliciting, receiving, directing, or transferring non-federal funds.

3 **II. FACTUAL BACKGROUND**

4 McCready was a candidate for U.S. Congress for North Carolina’s 9th Congressional
5 District in the 2019 special election.¹ The Committee is his principal campaign committee.²
6 DTC is an investment company founded by McCready and Rye Barcott in 2013 that specializes
7 in solar energy projects.³ DTC is organized as a limited liability company (“LLC”) that has
8 elected to be taxed as a partnership by the Internal Revenue Service (“IRS”).⁴

9 On May 28, 2019, Fox News published an article about DTC and McCready’s business
10 record with the company.⁵ The article stated that DTC “outsourced production to China and
11 imported devices from a Chinese company [Huawei] deemed a national security risk.”⁶ The
12 article further referenced McCready’s congressional campaign and critically contrasted
13 McCready’s campaign trail promise to “get tough with China” with DTC’s alleged dealings with
14 Chinese companies.⁷ Hours after its publication, the Congressional Leadership Fund (“CLF”)
15 and the NRCC (formerly known as the National Republican Congressional Committee) began to

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).

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.*

1 publicize the article’s allegations regarding McCready and DTC’s links to outsourcing, China,
 2 and Huawei, including what the article described as a national-security risk Huawei may pose to
 3 the United States.⁸ Over the course of the following week, CLF and NRCC continued to amplify
 4 the article’s accusations on their respective websites and on social media.⁹

5 Respondents managed the allegations differently. McCready and the Committee did not
 6 respond to Fox News’s requests for comment for the article, nor did they make any public
 7 statements or responses in the press to challenge the allegations contained therein.¹⁰ On the other
 8 hand, DTC, through its counsel, Robinson, Bradshaw, and Hinson, P.A. (“Robinson
 9 Bradshaw”),¹¹ privately sent cease-and-desist letters to both CLF and NRCC regarding the
 10 claims made about DTC.¹² In those letters, DTC asserts that CLF and NRCC made “false and
 11 defamatory statements” by alleging it had endangered U.S. national-security interests and

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 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.

1 outsourced jobs to China.¹³ The letters further contain factual assertions seeking to correct the
2 purported false statements, as well as DTC's demands that the respective recipients retract the
3 posts, publish retractions, and preserve evidence related to the publication of the false statements
4 pursuant to North Carolina defamation statutes.¹⁴ Each recipient published the cease-and-desist
5 letter on its respective website.¹⁵

6 **III. LEGAL ANALYSIS**

7 **A. The Factual Record Does Not Indicate that DTC Made a Prohibited** 8 **Corporate Contribution or an Excessive Contribution**

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

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.

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).

1 The available information indicates that DTC is an LLC that has elected to be taxed as a
2 partnership by the IRS.²⁰ Thus, Commission regulations do not treat DTC as a corporation, and
3 DTC is not subject to the Act’s ban on corporate contributions to candidate committees.
4 Therefore, even assuming *arguendo* that DTC’s activities constituted a contribution, the
5 Commission finds no reason to believe that DTC made, and that McCready and the Committee
6 accepted, a prohibited in-kind contribution in violation of section 30118(a) of the Act.

7 DTC’s treatment under the tax code does not end the inquiry into any alleged
8 contributions. As a partnership, its contributions are subject to the contribution limits set forth at
9 52 U.S.C. § 30116(a) and 11 C.F.R. § 110.1(e).²¹ In 2019, a partnership could make a
10 contribution of up to \$2,800 per election to a candidate committee.²²

11 The Act defines “contribution” to include “any gift . . . or anything of value made by any
12 person for the purpose of influencing any election for Federal office.”²³ Similarly, “expenditure”
13 is defined to include “any . . . payment . . . or gift of money or anything of value, made by any
14 person for the purpose of influencing any election for Federal office.”²⁴ The Commission’s
15 implementing regulation provides that “*anything of value* includes all in-kind contributions.”²⁵
16 In-kind contributions include, among other things, “the provision of any goods or services

²⁰ See DTC Resp. at 3. The Commission is 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).

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).

1 without charge or at a charge that is less than the usual and normal charge for such goods or
2 services.”²⁶

3 In MUR 7024 (Van Hollen), the Commission considered whether the provision of pro
4 bono legal services by a law firm to a federal candidate constituted an impermissible in-kind
5 contribution. The Commission determined that “the question under the Act is whether the legal
6 services were provided *for the purpose of influencing a federal election*,” not whether such
7 services provided a benefit to the candidate’s campaign.²⁷ Ultimately, the Commission
8 concluded that the services in question did not result in a contribution because the legal services
9 were provided in connection with a rulemaking proceeding that would not have a direct effect on
10 the candidate’s election.²⁸

11 The available information does not support a reason to believe finding that DTC paid for
12 the legal services at issue for the purpose of influencing a federal election; therefore, it does not
13 appear that DTC made a contribution to McCready and the Committee. Rather, the available
14 information indicates that there was a legitimate business and commercial purpose for the legal
15 services at issue and that, consistent with Commission precedent, these services were not
16 provided for the purpose of influencing a federal election.²⁹

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).

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

1 DTC credibly asserts that its use of Robinson Bradshaw’s legal services sought to protect
2 its commercial interests and combat reputational damage by asserting and preserving defamation
3 claims against CLF and NRCC for false and misleading statements.³⁰ The cease-and-desist
4 letters Robinson Bradshaw sent on behalf of DTC assert, and preserve DTC’s right to assert,
5 defamation claims against CLF and NRCC for allegedly false and misleading statements about
6 DTC’s business.³¹ Neither letter references McCready’s candidacy, the Committee, or the
7 upcoming election in which McCready was running. They only reference McCready in his
8 capacity as a co-founder of DTC and do not respond to any of the purported political criticism of
9 McCready. Furthermore, Robinson Bradshaw sent the letters privately; the letters are only
10 public because the recipients chose to release them.

11 Additionally, the Committee denies that DTC’s law firm, Robinson Bradshaw, was acting
12 on its behalf and states that Perkins Coie has represented it since the campaign began in May
13 2017.³² Whereas Robinson Bradshaw has been DTC’s counsel since 2013 when DTC was first
14 formed, the Committee notes that it engaged Perkins Coie in a comparable scenario to respond to

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 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.*

1 a political attack advertisement it viewed as false and defamatory during the 2018 election
2 cycle.³³ DTC and the Committee's past conduct in engaging separate counsel supports their
3 contention that DTC's payment for legal services here was made for commercial purposes and
4 not for the purpose of influencing a federal election.

5 For the reasons set forth above, the Commission finds no reason to believe that DTC
6 made, and that McCready and the Committee accepted, an excessive in-kind contribution in
7 violation of 52 U.S.C. § 30116(a) and (f).

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

10
11 The Act prohibits a federal candidate, officeholder, agent thereof, or an entity directly or
12 indirectly established, financed, maintained or controlled by or acting on behalf of a federal
13 candidate or officeholder from soliciting, receiving, directing, transferring or spending funds in
14 connection with a federal campaign unless the funds are subject to the limitations, prohibitions,
15 and reporting requirements of the Act.³⁴ Because the available information does not indicate that
16 DTC paid for legal services that constituted an in-kind contribution, as discussed above, the
17 Commission finds no reason to believe that the Respondents violated 52 U.S.C. § 30125(e).

³³ McCready Resp. at 1-2.

³⁴ 52 U.S.C. § 30125(e)(1).