

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT**

MUR: 7693

DATE COMPLAINT FILED: February 10, 2020

DATE OF NOTIFICATION: February 14, 2020

LAST RESPONSE RECEIVED: March 3, 2020

DATE ACTIVATED: May 29, 2020

EXPIRATION OF SOL: January 7, 2024 –

May 13, 2025

ELECTION CYCLE: 2020

COMPLAINANT:

Donald E. Hill

RESPONDENTS:Lance Gooden for Congress Committee and Leigh
Pool in her official capacity as Treasurer,
Lance Gooden**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30104(b)(5)(A)

52 U.S.C. § 30114

11 C.F.R. § 104.3(b)(4)(i)

11 C.F.R. § 104.9(a)

11 C.F.R. § 113.1(g)

11 C.F.R. § 113.2

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Lance Gooden's authorized committee, Lance Gooden for Congress Committee and Leigh Pool in her official capacity as Treasurer (collectively, the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to provide any information about the purpose of certain expense reimbursement disbursements to Gooden. Complainant further alleges that the lack of explanation indicates that the Committee and Gooden converted campaign funds to personal use. The Committee asserts

1 that its expense reimbursements have been “clean,” and there was no personal use of campaign
2 funds.

3 As explained below, although some of the disbursements lacked required memo entries,
4 we recommend that the Commission exercise its prosecutorial discretion and dismiss the
5 allegations that the Committee violated 52 U.S.C. § 30104(b) because of the amount at issue, the
6 memo entry information disclosed in the Committee’s original 2019 April Quarterly Report, and
7 the lack of available information suggesting that additional memo entries were required for
8 certain other expense reimbursements. Further, because the available information does not raise
9 a reasonable inference that Gooden converted campaign funds to personal use, we recommend
10 that the Commission dismiss the allegations that the Committee and Gooden violated 52 U.S.C.
11 § 30114(b).

12 **II. FACTUAL ANALYSIS**

13 The Committee made 34 disbursements to Gooden between January 7, 2019, and May 13,
14 2020, which collectively totaled \$147,954.21.¹ Of those disbursements, 24 were expense
15 reimbursements that were itemized in memo entries identifying the ultimate payee in the
16 Committee’s reports.² The total of the itemized entries for each disbursement was lower than the
17 total amount of the disbursement to Gooden for 22 of the 24 itemized disbursements.³
18 Specifically, for the 24 itemized disbursements to Gooden, the total reimbursements exceeded

¹ See Lance Gooden for Congress, 2019 April Quarterly Report at 32-46 (Apr. 15, 2019); Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 40-45 (Sept. 19, 2019); Lance Gooden for Congress, Am. 2019 July Quarterly Report at 70-86 (Nov. 15, 2019); Lance Gooden for Congress, 2019 October Quarterly Report at 51-65 (Nov. 15, 2019); Lance Gooden for Congress, 2019 Year-End Report at 61-75 (Jan. 31, 2020); Lance Gooden for Congress, 2020 July Quarterly Report at 22-23 (July 15, 2020).

² *Id.*

³ *Id.*

1 the memo entries by over \$21,000. In addition, the disbursements to Gooden between January 7,
2 2019, and March 31, 2019, were itemized in the Committee's original 2019 April Quarterly
3 Report, but were not itemized in the Committee's Third Amended 2019 April Quarterly Report.⁴

4 There were also 10 disbursements to Gooden between January 22, 2019, and March 27,
5 2019, that were not itemized in memo entries.⁵ The Committee described these disbursements,
6 which totaled \$5,350.02, as office supplies, meals, travel, Google ads, email services, phone, and
7 printing.⁶

8 The Complaint focuses on 23 "Expense Reimbursement" disbursements to Gooden in
9 2019, alleging that the Committee failed to provide any explanation for the payments or describe
10 the nature of the expenses.⁷ The Complaint further notes that most of the disbursements are in
11 round numbers, and there is no explanation why Gooden advanced such large amounts instead of
12 having the Committee pay such expenses directly.⁸ The Complaint asserts that Respondents
13 converted campaign contributions to personal use because the amounts are "grossly excessive
14 when compared to other members of Texas's congressional delegation."⁹

⁴ Compare Lance Gooden for Congress, 2019 April Quarterly Report at 32-46 (Apr. 15, 2019) with Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 40-45 (Sept. 19, 2019).

⁵ See Lance Gooden for Congress, 2019 April Quarterly Report at 32-55 (Apr. 15, 2019); Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 40-45 (Sept. 19, 2019).

⁶ *Id.*

⁷ Compl. at 1 (Feb. 10, 2020). Based on the exhibits attached to the complaint, it appears that the Complainant may be unaware that additional information is contained in memo entries in the Committee's reports. *Id.* at Ex. A-D.

⁸ *Id.* at 1.

⁹ *Id.* at 1-2.

1 The Committee responds that its “expense reimbursements have been clean and never
2 questioned by the FEC.”¹⁰ In addressing the 2019 October Quarterly Report, the Committee
3 asserts that its reimbursement reporting “complies 100%” with the regulations, as its reports have
4 38 itemized memo entries tied to expense reimbursements that provide the required information
5 regarding vendors, costs, dates, and expense explanations.¹¹ Respondents further assert that the
6 itemized memo entries make clear that the expenses are not personal use.¹²

7 **III. LEGAL ANALYSIS**

8 **A. The Commission Should Dismiss the Allegation that the Committee Failed to** 9 **Provide Memo Entries for all Expense Reimbursements.**

10 The Act and Commission regulations provide that an authorized committee must itemize
11 and report the name and address of each person to whom it makes expenditures or other
12 disbursements that aggregate more than \$200 per election cycle, together with the date, amount,
13 and purpose of each expenditure.¹³ When the expenditure is made to reimburse an individual
14 who advanced personal funds to pay committee expenses, the Commission requires “a memo
15 entry [identifying the ultimate payee] ... for any reimbursement of expense other than travel and
16 subsistence expenses if the individual’s payments to the vendor on behalf of the committee
17 aggregate more than \$200” in an election cycle for an authorized committee.¹⁴ “When the
18 reimbursement is for travel and subsistence advances that exceed \$500, a memo entry is required

¹⁰ Resp. at 1 (Mar. 2, 2020).

¹¹ *Id.*

¹² *Id.*

¹³ 52 U.S.C. §30104(b)(5)(A); 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a).

¹⁴ Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40625, 40626 (Jul. 8, 2013) (“Ultimate Payee Reporting Rule”).

1 for each payment to a specific vendor by that individual on behalf of the political committee if
2 total payments to that vendor by the political committee or by that individual on behalf of the
3 committee aggregate more than \$200” in an election cycle for an authorized committee.¹⁵ “Each
4 memo entry must include the name and address of the vendor, as well as the date, amount, and
5 purpose of the payment.”¹⁶

6 On their face, three of the Committee’s reimbursements, collectively totaling \$3,056.07,
7 did not contain any memo entries identifying the ultimate payee, but appear to require such
8 memo entries. First, Gooden received a reimbursement of \$300.00 with the description of
9 “Phone Expense” on January 22, 2019, but the Committee did not provide a memo entry
10 containing the name and address of the vendor or the date of the payment.¹⁷ Second, Gooden
11 received a reimbursement of \$1,088.35 with the description of “Anthem Printing Expense” on
12 January 28, 2019, but the Committee did not provide a memo entry containing the address of the
13 vendor or the date of the payment.¹⁸ Third, Gooden received a reimbursement of \$1,667.72 with
14 the description of “Southwest Airlines Travel Expense” on March 27, 2019, but the Committee
15 did not provide any memo entries containing the address of the vendor or the date of the
16 payment.¹⁹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Lance Gooden for Congress, 2019 April Quarterly Report at 36 (Apr. 15, 2019); Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 41 (Sept. 19, 2019).

¹⁸ Lance Gooden for Congress, 2019 April Quarterly Report at 39 (Apr. 15, 2019); Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 42 (Sept. 19, 2019).

¹⁹ Lance Gooden for Congress, 2019 April Quarterly Report at 51 (Apr. 15, 2019); Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 44 (Sept. 19, 2019).

1 In addition, there are other expense reimbursements for which it is unclear whether
2 additional memo entries were required. First, Gooden received a reimbursement of \$1,198.76
3 with the description of “meals expense” on March 27, 2019, and available information does not
4 make clear whether the Committee was required to identify the ultimate payee for any of the
5 expenses included in this reimbursement.²⁰ Second, it is unclear whether additional itemized
6 memo entries were required for the 22 expense reimbursements for which the total amounts
7 reimbursed were greater than the sum of the amounts paid to the ultimate payees the Committee
8 identified in its reports by about \$21,000.²¹ Specifically, it is unclear whether Gooden advanced
9 more than \$500 to a single vendor for meals during the election cycle, thus requiring a memo
10 entry. As to the approximately \$21,000 in reimbursements, it is similarly unclear whether a
11 single vendor received more than \$200 directly from Gooden during the election cycle, thus
12 requiring memo entries. Further, the Committee’s original 2019 April Quarterly Report
13 contained memo entries for some expense reimbursements to Gooden, but those memo entries
14 were not included in the Committee’s 2019 Third Amended April Quarterly Report.²² Although

²⁰ Lance Gooden for Congress, 2019 April Quarterly Report at 51 (Apr. 15, 2019); Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 44 (Sept. 19, 2019).

²¹ See Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 40-45 (Sept. 19, 2019); Lance Gooden for Congress, Am. 2019 July Quarterly Report at 70-86 (Nov. 15, 2019); Lance Gooden for Congress, 2019 October Quarterly Report at 51-65 (Nov. 15, 2019); Lance Gooden for Congress, 2019 Year-End Report at 61-75 (Jan. 31, 2020); Lance Gooden for Congress, 2020 July Quarterly Report at 22-23 (July 15, 2020).

The difference between the amount covered by the itemized memo entries identifying the ultimate payee and the amount of the expense reimbursements to Gooden would not trigger a Request for Additional Information by the Reports Analysis Division.

²² Compare Lance Gooden for Congress, 2019 April Quarterly Report at 32-46 (Apr. 15, 2019) with Lance Gooden for Congress, Third Am. 2019 April Quarterly Report at 40-45 (Sept. 19, 2019).

1 the Committee responds that its “expense reimbursements have been clean,” it did not
2 specifically address the discrepancies noted above.²³

3 An investigation would be needed to clarify the record as to some of the reimbursements,
4 which does not appear to be a prudent use of the Commission’s resources given the amounts at
5 issue.²⁴ Therefore, despite these discrepancies, we recommend that the Commission exercise its
6 prosecutorial discretion and dismiss the allegations that the Committee violated 52 U.S.C.
7 § 30104(b).²⁵ We further recommend that the Commission caution the Committee that 52
8 U.S.C. § 30104(b)(5)(A) requires it to provide memo entries in its reports, because the
9 Committee asserts that its reimbursement reporting “complies 100%” with this requirement but it
10 failed to provide memo entries identifying the ultimate payee for three expense reimbursements
11 that appear to require them.

12 **B. The Commission Should Dismiss the Allegation that the Committee and Gooden**
13 **Violated 52 U.S.C. § 30114(b) by Converting Campaign Funds to Personal Use.**

14 The Act and Commission regulations provide that funds in a campaign account may be
15 used for expenditures arising from a candidate’s campaign for federal office or a federal
16 officeholder’s official duties, as well as “for any other lawful purpose.”²⁶ The Act and
17 Commission regulations further provide that campaign funds “shall not be converted by any

²³ Resp. at 1 (Mar. 2, 2020).

²⁴ As discussed above, the Committee’s reports show that three disbursements to Gooden (totaling \$3,056.07) required, but did not contain, any memo entries. These allegations do not meet Standard 11 of the Report Analysis Division’s Review and Referral Procedures for the 2019-2020 Election Cycle for referral to the Office of General Counsel or Alternative Dispute Resolution Office, which provides for referral to the Alternative Dispute Resolution Office if the missing or inadequate information is in excess of \$50,000 and less than or equal to \$250,000 during a reporting period, and a referral to the Office of General Counsel if the missing or inadequate information is in excess of \$250,000 during a reporting period.

²⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

²⁶ 52 U.S.C. § 30114(a); 11 C.F.R. § 113.2.

1 person to personal use,” and defines personal use as using funds “to fulfill any commitment,
2 obligation, or expense of a person that would exist irrespective of the candidate’s election
3 campaign or individual’s duties as a holder of Federal office.”²⁷

4 The Act and Commission regulations enumerate certain types of disbursements that are
5 *per se* personal use.²⁸ These include, but are not limited to, household food items or supplies;
6 mortgage, rent, or utility payments for any part of a personal residence of the candidate;
7 admission to a sporting event or other form of entertainment unless part of a specific campaign or
8 officeholder activity; and dues, fees, or gratuities at a recreational facility unless they are part of
9 the costs of a specific fundraising event.²⁹ For all other disbursements, the regulation provides
10 that the Commission shall determine on a case-by-case basis, whether a given disbursement is
11 personal use by applying the “irrespective test” formulated in the statute.³⁰ Meals, travel, and
12 vehicle expenses are examples of disbursements that may be determined to be personal use after
13 applying the irrespective test.³¹

14 The Complaint’s personal use allegations are based on the expense reimbursement
15 disbursements from the Committee to Gooden and a comparison of such reimbursements to those
16 paid to all other members of Texas’s congressional delegation for the same period.³² As
17 discussed above, the Committee’s reports fail to provide itemized memo entries for at least three

²⁷ 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1(g).

²⁸ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1).

²⁹ *Id.*

³⁰ 11 C.F.R. § 113.1(g)(1)(ii).

³¹ *Id.*

³² Compl. at 1-2. The Committee’s reimbursements to Gooden were more than twelve times larger than those paid to all other members of the Texas congressional delegation in 2019 and are more than 8 times larger than those

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1 reimbursements to Gooden for which they were required, and it is unknown from the available
2 information whether additional itemized memo entries identifying the ultimate payee were
3 required for over \$21,000 in other expense reimbursements. The Committee's response does not
4 specifically address these deficiencies, or why many of the expense reimbursements were in
5 round numbers, or why the reimbursements to Gooden were significantly higher than those paid
6 to all other members of Texas's congressional delegation over the same period.

7 In addressing the apparent disparity of expense reimbursements of one committee versus
8 another, the Commission previously dismissed a somewhat analogous matter in which the
9 complaint alleged that certain expenditures had to be personal use because they were larger in
10 comparison to those of other committees.³³ The Commission noted that "there is nothing
11 inherently suggestive about the fact that the Committee reported spending more on [disputed
12 expenditures] than other committees."³⁴ In contrast, this Office recently recommended the
13 Commission find reason to believe that funds had been converted to personal use based on
14 specific information that a former candidate used funds raised by her authorized committee to
15 pay for, among other things, tickets to a Disney theme park, meals, and hotel expenses that
16 appeared unrelated to her participation in legitimate committee business.

paid to all other members of the Texas congressional delegation during the 2020 election cycle through July 2020.

³³ Factual & Legal Analysis at 7-8, MUR 7494 (John Culberson, *et al.*) (dismissing personal use allegation regarding purportedly excessive expenditures for books and reference materials).

³⁴ *Id.* at 7.

1 On balance, the information is insufficient to create a credible allegation that a significant
 2 violation may have occurred.³⁶ Without additional specificity regarding the nature of the
 3 potential personal use, the Complaint's comparative analysis does not raise a reasonable
 4 inference that Committee funds were converted to personal use. Additionally, the available
 5 information is less probative than cases in which the Commission has pursued personal use
 6 violations.³⁷ Accordingly, we recommend that the Commission dismiss the allegations that
 7 Lance Gooden for Congress Committee and Leigh Pool in her official capacity as Treasurer and
 8 Lance Gooden violated 52 U.S.C. § 30114(b).

9 **IV. RECOMMENDATIONS**

- 10 1. Dismiss the allegation that Lance Gooden for Congress Committee and Leigh
 11 Pool in her official capacity as Treasurer violated 52 U.S.C. § 30104(b) by failing
 12 to provide itemized memo entries for expense reimbursements, pursuant to the
 13 Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821
 14 (1985);
- 15 2. Caution Lance Gooden for Congress Committee and Leigh Pool in her official
 16 capacity as Treasurer of the requirements pursuant to 52 U.S.C. § 30104(b) to
 17 provide memo entries for expense reimbursements;
- 18 3. Dismiss the allegation that Lance Gooden for Congress Committee and Leigh
 19 Pool in her official capacity as Treasurer and Lance Gooden violated 52
 20 U.S.C. § 30114(b) by converting campaign funds to personal use;

³⁶ The Commission's stated policy regarding matters at the initial stage in the enforcement process is that a reason to believe finding is appropriate "when a complaint credibly alleges that a significant violation may have occurred." *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

³⁷ *See, e.g.*, Factual and Legal Analysis at 9-11,

Factual and Legal

Analysis at 10-11, MUR 7292 (Clifford "Cliff" B. Stearns) (finding reason to believe that Respondents violated 52 U.S.C. § 30114(b) when the Committee paid for the former officeholder to attend and eat meals at an annual conference, paid his membership fees and expenses for a political interest club, and paid for his lodging so he could present a contribution to an elementary school); Factual and Legal Analysis at 5-11, MUR 7068 (Mowrer for Iowa) (finding reason to believe that Respondents violated 52 U.S.C. § 30114(b) when the Committee paid the candidate a salary after the election and reimbursed the candidate for health insurance expenses).

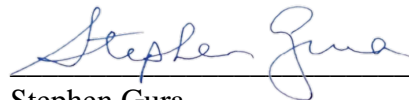
- 1 4. Approve the attached Factual and Legal Analysis;
- 2 5. Approve the appropriate letters; and
- 3 6. Close the file as to all Respondents.

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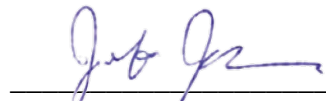
Lisa J. Stevenson
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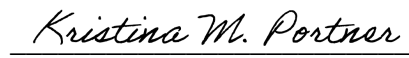
August 27, 2020
Date



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