



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 7, 2022

VIA ELECTRONIC MAIL
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Larry M. Meyers, Esq.
Liberty Law Firm
334 W. Tabernacle, Unit J-3
St. George, UT 84770

RE: MUR 7728
Mary Burkett
Burkett for Utah and Mary Burkett in
her official capacity as treasurer

Dear Mr. Meyers:

On April 27, 2020, and October 8, 2020, the Federal Election Commission notified your clients, Mary Burkett and Burkett for Utah and Mary Burkett 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. On May 24, 2022, the Commission dismissed as a matter of prosecutorial discretion the allegations that the Committee and Mary Burkett accepted a prohibited contribution through a coordinated communication in violation of 52 U.S.C. § 30118. The Commission also dismissed as a matter of prosecutorial discretion the allegation that the Committee failed to report a prohibited contribution in violation of 52 U.S.C. § 30104(b). Accordingly, the Commission closed the 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 decision, is enclosed.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Burkett for Utah and Mary Burkett **MUR 7728**
in her official capacity as treasurer
Mary Burkett
Stronger America Fund, Inc.
Patrick Krason

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) alleging that Stronger America Fund, Inc. (“Stronger America Fund”), a non-profit corporation controlled by Patrick Krason, made, and Mary Burkett and her authorized campaign committee, Burkett for Utah and Mary Burkett in her official capacity as treasurer (“the Committee”) accepted, an illegal in-kind contribution in the form of a coordinated April 2020 mass text communication advocating the defeat of Burkett’s opponent, Chris Stewart. According to the Complaint, Patrick Krason, the Incorporator and Governor of Stronger America Fund, was simultaneously serving the Committee as both treasurer and vendor.

Burkett and the Committee acknowledge Krason’s role with the Committee but deny any prior knowledge of the Stronger America Fund text message, and state that Burkett received information that the text message was sent to only 558 individuals at a cost of \$59.95.¹

Because the apparent amount in violation appears to be *de minimis*, the Commission exercises its prosecutorial discretion and dismisses the allegations that Stronger America Fund, Inc. and Patrick Krason violated 52 U.S.C. § 30118 by making an illegal in-kind contribution, and that Mary Burkett and Burkett for Utah and Mary Burkett in her official capacity as treasurer

¹ Burkett and Committee Resp. at 2 (Nov. 10, 2020); Burkett Decl. ¶ 6.

violated 52 U.S.C. §§ 30118 and 30104(b) by accepting and failing to report a prohibited in-kind contribution, and closes the file.²

II. FACTUAL BACKGROUND

Mary Burkett was a 2020 candidate to represent Utah’s 2nd Congressional District in the U.S. House of Representatives.³ Burkett for Utah is Burkett’s authorized campaign committee and Patrick Krason was the Committee’s treasurer when it first registered with the Commission until the candidate filed an amended Statement of Organization in July 2021 naming herself as treasurer.⁴ In addition to serving as the Committee’s treasurer, Krason also operated several consulting companies, including “A Political Firm, LLC,”⁵ which provided the Committee with campaign strategy and fundraising consulting services.⁶ Krason also formed Respondent Stronger America Fund, a non-profit corporation. That entity was incorporated in the District of Columbia and operated from April 2017 until it dissolved on April 27, 2020.⁷

² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

³ Statement of Candidacy, Mary Burkett (May 3, 2019).

⁴ Statement of Organization (Apr. 29, 2019) (naming Krason as treasurer and Burkett as custodian of records and designated agent); Amended Statement of Organization (July 7, 2021) (naming the candidate as treasurer and custodian of records). Krason has signed all of the reports that Burkett for Utah has filed with the Commission to date, including its most recent report, the 2021 April Quarterly Report. See Burkett for Utah, 2021 April Quarterly Rpt. (Apr. 15, 2021). The Committee no longer appears to be active. In 2021, its Commission filings show \$0 in receipts and disbursements, \$2,868.24 in cash on hand, and \$32,035.60 in debts owed to the candidate. See 2021-2022 Financial Summary Page, Burkett for Utah, FEC.gov (last accessed July 1, 2021).

⁵ Krason registered A Political Firm, LLC in Virginia on January 9, 2017 and in West Virginia on December 11, 2020; as of April 30, 2019, the entity has been in inactive status in Virginia but remains active in West Virginia. See Clerk’s Information System, Virginia State Corporation Commission, <https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=924618&source=FromEntityResult&isSeries=false> (listing Krason as its registered agent); West Virginia Sec. of State, <http://apps.sos.wv.gov/business/corporations/organization.aspx?org=504114> (listing “Red Action Strategies” as the company’s DBA).

⁶ The Committee made \$21,271 in payments to A Political Firm. See Burkett and Committee Resp. at 1. The purposes listed for those payments included “Campaign Strategy Consulting,” “Campaign Fundraising Consulting,” “Political Strategy Consulting,” “Research Project,” “Texting Service,” and various meal and travel expense reimbursements.

⁷ See https://opencorporates.com/companies/us_dc/EXTUID_4183895 (listing Krason as “Governor” and “Executing Officer” of the organization). The Complaint describes the entity as a 501(c)(4) organization and the

Chris Stewart was the incumbent congressman in Utah’s Second Congressional District and was selected as the 2020 nominee at the Republican nominating convention held on April 25, 2020.⁸

The Complaint alleges that that Stronger America Fund spent funds to send text messages in early April 2020 advocating the defeat of Rep. Stewart at the upcoming convention. The Complaint focuses on a text criticizing Stewart and stating “Anybody would be a better choice at the convention.”⁹ A screenshot included in the Complaint is shown below.¹⁰



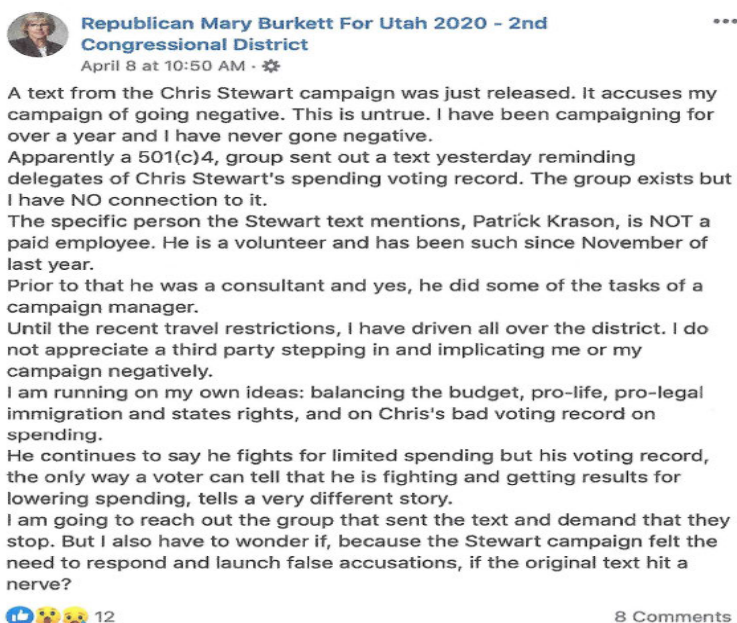
text message at issue here states that it was “Paid for by Stronger America Fund, Inc, a 501c(4) org,” but Stronger for America Fund does not appear to be registered with the Internal Revenue Service. The company’s single report filed with the District of Columbia Department of Consumer and Regulatory Affairs is not available on the agency’s website.

⁸ 2020 Utah GOP Convention Results, <https://utgop.org/2020-convention-results/> and <https://revis.com/visualize=2020-convention-results-cd2json> (last accessed July 1, 2021).

⁹ Compl. at 2 (Apr. 22, 2020).

¹⁰ *Id.*

The screenshot does not display a date, but based on the date of a statement that Burkett posted on her campaign's Facebook page, it appears that the text message from Stronger America Fund was distributed on or about April 8, 2020.¹¹ Burkett's Facebook post denies any connection to the text message, stating that she had "NO connection to it" and that Krason "is NOT a paid employee. He is a volunteer and has been such since November of last year."¹² Burkett acknowledges that Krason, her campaign treasurer, was previously a consultant for the campaign and "did some of the tasks of a campaign manager."¹³ A screenshot appears below.¹⁴



Burkett and the Committee submitted a joint response to the Complaint, along with a declaration signed by Mary Burkett. Krason was separately notified of the Complaint in his

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ Burkett's campaign Facebook page has since been deleted. See Republican Mary Burkett for Utah 2020 – 2nd Congressional District, FACEBOOK AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=170418103874596&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=170418103874596&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

1 capacity as Committee treasurer, while he was still serving as treasurer, and as Governor of
 2 Stronger America Fund, but he did not submit a response in either capacity. Burkett and the
 3 Committee deny playing a role with the texts sent by Stronger America Fund.¹⁵ The Response
 4 states that “[n]either Mary Burkett nor any other agent of Burkett for Utah had communicated
 5 with Patrick Krason regarding the text messages prior to the texts being sent by Stronger
 6 America Fund” and that Burkett and the Committee “did not want any such texts to be sent and
 7 quickly denounced them.”¹⁶ Burkett and the Committee acknowledge that the Committee paid
 8 Krason’s consulting firm, A Political Firm, for campaign-related services in 2019 and that in
 9 2019 through 2020, Krason served as a volunteer treasurer.¹⁷ The Response also states that
 10 “Krason was never employed by Burkett for Utah.”¹⁸

11 Burkett’s declaration also states that “according to information provided to [Burkett],”
 12 the text messages at issue from Stronger America Fund were only sent one time, to 558
 13 individuals at a total cost of \$59.95.¹⁹ The Response, however, does not provide supporting
 14 documentation or explain who provided the information to Burkett.

15 III. LEGAL ANALYSIS

16 Federal candidates and their campaign committees are prohibited from accepting any
 17 corporate contributions, including in-kind contributions from nonprofit corporations such as

¹⁵ Burkett and Committee Resp. at 2.

¹⁶ *Id.* at 2 and Burkett Decl. ¶ 7.

¹⁷ Burkett and Committee Resp. at 1 and Burkett Decl. ¶¶ 2-3.

¹⁸ Burkett and Committee Resp. at 2 and Burkett Decl. ¶ 4.

¹⁹ Burkett Decl. ¶ 6 (noting that the cost information was provided to Burkett without naming the source of that information); *see also* Committee Resp. at 2. The Committee also paid A Political Firm for “Texting Service[s]” on October 29, 2019, in the amount of \$100, on November 12, 2019, in the amount of \$65, and on December 11, 2019, in the amount of \$61. *See* 2019 Year-End Report at 8-9, Burkett for Utah (Jan. 31, 2020).

Stronger America Fund.²⁰ Any person who is otherwise prohibited from making contributions or expenditures under the Federal Election Campaign Act of 1971, as amended (the “Act”), or Commission regulations is prohibited from paying for a coordinated communication.²¹ Political committees, through their treasurers, are required to report all contributions made and received, and treasurers are responsible for examining all contributions for evidence of illegality.²²

Under the Act, “[c]oordinated means made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”²³ The Commission’s regulations provide a three-part test for determining when a communication is a coordinated expenditure, which is treated as an in-kind contribution.²⁴ The communication must: (1) be paid for, in whole or in part, by a person other than the candidate or committee (the “payment prong”); (2) satisfy one of five content standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of five conduct standards listed in 11 C.F.R. § 109.21(d).²⁵ Under Commission regulations, all three prongs must be satisfied for a communication to be considered coordinated.²⁶

The text message appears to satisfy the payment prong because it was paid for by a third party; the message clearly states that it was “Paid for by Stronger America Fund Inc., a 501(c)(4)

²⁰ 52 U.S. § 30118.

²¹ 11 C.F.R. § 109.22.

²² 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 103.3(b). .

²³ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

²⁴ *Id.* § 109.21(a)-(b).

²⁵ *Id.* § 109.21 (a), (c)-(d). The five types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; and (5) use of a former employee or independent contractor. *Id.* § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See* 11 C.F.R. § 109.21(d)(6).

²⁶ 11 C.F.R. § 109.21(d)(4);

org (www.safundinc.com).” Burkett also provided information that she received from an unnamed third party indicating that “Patrick Krason’s PAC, the Stronger America Fund, Inc.” sent the text to 558 individuals at a cost of \$59.95.²⁷

Because the available information indicates that the amount paid for the texts was small, and other Committee disbursements to A Political Fund for similar texting services were also in small amounts, the Commission need not analyze whether the text message meets the content or conduct prongs for a coordinated communication.²⁸ The Commission dismisses as a matter of prosecutorial discretion the allegation that Stronger America Fund and Patrick Krason made a prohibited contribution in violation of 52 U.S.C. § 30118 through a coordinated communication; dismisses as a matter of prosecutorial discretion the allegation that Burkett for Utah and Mary Burkett in her official capacity as treasurer accepted a prohibited contribution in violation of 52 U.S.C. § 30118 through a coordinated communication and that it failed to report such a contribution in violation of 52 U.S.C. § 30104(b); and dismisses as a matter of prosecutorial discretion the allegation that Mary Burkett accepted a prohibited contribution in violation of 52 U.S.C. § 30118 through a coordinated communication.²⁹

²⁷ Burkett Decl. ¶¶ 5-6 .

²⁸ See note 19.

²⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).