

1 **FEDERAL ELECTION COMMISSION**  
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3 **FIRST GENERAL COUNSEL'S REPORT**  
4

5 **Pre-MUR 631**

6 DATE FILED: March 6, 2020

7 DATE OF NOTIFICATION: March 16, 2020

8 LAST RESPONSE RECEIVED: October 28, 2020

9 DATE ACTIVATED: January 15, 2021

10 SOL EXPIRATION: Sept. 2, 2021 / Jan. 31, 2024

11 ELECTION CYCLE: 2016, 2018, 2020

12 **SOURCE:**

*Sua Sponte*

13 **RESPONDENTS:**

14 Rebuilding America Now and Chris Marston in his  
15 official capacity as treasurer

16 **RELEVANT STATUTES  
17 AND REGULATIONS:**

18 52 U.S.C. § 30102(b)(3)

19 52 U.S.C. § 30104(b)

20 11 C.F.R. § 102.15

21 11 C.F.R. § 104.3

22 **REPORTS CHECKED:**

23 Disclosure Reports

24 **FEDERAL AGENCIES CHECKED:**

25 None

26 **MUR 7729**

27 DATE FILED: April 22, 2020

28 DATE OF NOTIFICATION: April 28, 2020

29 LAST RESPONSE RECEIVED: August 11, 2020

30 DATE ACTIVATED: January 15, 2021

31 SOL EXPIRATION: Sept. 2, 2021 / Jan. 31, 2024

32 ELECTION CYCLE: 2016, 2018, 2020

33 **COMPLAINANT:**

34 Rebuilding America Now and Chris Marston in his  
35 official capacity as treasurer

36 **RESPONDENTS:**

37 Ryan Call

38 Hale Westfall

39 **RELEVANT STATUTES  
40 AND REGULATIONS:**

41 52 U.S.C. § 30102(b)(3)

42 52 U.S.C. § 30104(b)

43 11 C.F.R. § 102.15

44 11 C.F.R. § 104.3

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1 **II. FACTUAL SUMMARY**

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3 **A. *Sua Sponte* Submission and Complaint**

4 The Committee is an independent expenditure-only political committee that was  
5 established in 2016.<sup>1</sup> Call served as treasurer of the Committee from June 2016 to June 2019<sup>2</sup>  
6 and he also was employed as an attorney at Hale Westfall. Hale Westfall is a law firm based in  
7 Denver, Colorado, which provided legal and compliance services to the Committee; Call was the  
8 primary attorney at the law firm working with the Committee.<sup>3</sup>

9 The Committee filed a *sua sponte* submission and a Complaint alleging that Call had  
10 misappropriated and deliberately misreported Committee funds between September 2016 and  
11 January 2019.<sup>4</sup> The Committee states that it performed an internal audit that revealed that Call  
12 received Committee funds that he was not authorized to receive in the form of checks, cash  
13 withdrawals, debit charges, and wire transfers.<sup>5</sup> The Committee alleges that the audit showed  
14 that payments were made directly to Call and reported as being paid to him, and other payments

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1 <sup>1</sup> See Statement of Organization (June 12, 2016).

2 <sup>2</sup> See *id.*; Amended Statement of Organization (June 4, 2019).

3 <sup>3</sup> See Compl., Ex. 2 (Apr. 22, 2020).

4 <sup>4</sup> *Sua Sponte* Submission (Mar. 6, 2020); Compl, Ex. 4.

5 <sup>5</sup> *Sua Sponte* Submission at 3. The internal audit was initiated after questions were raised regarding a reporting problem that Ryan Call faced during his tenure as treasurer that is the subject of another matter, RR 19L-09 (Rebuilding America Now), concerning increased financial activity of \$1 million disclosed on the Committee's Amended 2016 Post-General Counsel Report that was not disclosed on its original report. See *Sua Sponte* Submission at 1, 4-5. The First General Counsel's Report in RR 19L-09 is pending before the Commission. The reporting violation in RR 19L-09 does not appear to be related to the allegations of misappropriation of Committee funds in Pre-MUR 631 and MUR 7729: the amounts are notably different and the Committee has not alleged that they are related as an explanation of the RR 19L-09 reporting violation. Moreover, the Committee expressly stated that the misreported \$1 million and the alleged misappropriation are not related. See Committee Resp. to OGC Letter at 3 (Oct. 28, 2020).

1 were made to him, but either falsely reported as made to his law firm, Hale Westfall, or were not  
2 reported at all on the Committee's disclosure reports.<sup>6</sup>

3 According to the *sua sponte*, the unauthorized funds totaling \$278,169.45 that Call  
4 received included three checks made out to him for \$5,000 each; a "bank originated debit,"  
5 likely a cashier's check, which appears to be payable to Call for \$23,135"; five automated teller  
6 machine withdrawals totaling \$1,700; a debit card charge by him in New Orleans for \$900.42;  
7 and 32 wire transfers totaling \$237,434.03 made out to him with the payee listed as "First  
8 Bank/Ryan Call," "First Bank/Ryan Richard Call," "Ryan Call," or "Ryan R. Call."<sup>7</sup> The *sua*  
9 *sponte* asserts that the wire transfers were directed to Call's personal bank account.<sup>8</sup> Further, the  
10 *sua sponte* asserts that Call made deposits into the Committee's account that "appear to have  
11 been from his personal funds totaling \$47,446.34," but is "uncertain" whether these funds "are  
12 meant to be a reimbursement of Committee funds previously misappropriated."<sup>9</sup>

13 According to the *sua sponte*, there was a segregation of duties between the treasurer,  
14 Call, who was responsible for handling and processing disbursements and preparing disclosure  
15 reports to the Commission, and the assistant treasurer, Chris Marston, who was responsible for  
16 handling contributions and deposits and reconciling bank records.<sup>10</sup> The Committee contends  
17 that despite extraordinary steps to maintain divided responsibilities for financial management,  
18 Call was able to avoid detection of his embezzlement.<sup>11</sup> The Committee also asserts that,

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<sup>6</sup> *Sua Sponte* Submission at 3.

<sup>7</sup> *Id.*, Compl., Ex. 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3, 4.

<sup>11</sup> *Id.* at 4.

1 beginning in November 2016, Call shifted some of the responsibilities to avoid discovery of his  
2 actions.<sup>12</sup> After the 2016 election, Call stopped providing regular cash-on-hand updates to  
3 Marston and to Committee consultants, and Marston and Call worked less closely together.<sup>13</sup>  
4 The Committee removed Call and appointed Chris Marston as treasurer on June 4, 2019, and it  
5 has amended the relevant disclosure reports based on the information and documentation it has  
6 been able to recover.<sup>14</sup>

7         Shortly after filing the *sua sponte* submission, the Committee filed the MUR 7729  
8 Complaint against Call and the law firm, Hale Westfall, where Call was employed during the  
9 time of the events at issue. The Committee alleges that it entered into an agreement with Hale  
10 Westfall in which the law firm was retained to serve as treasurer of the Committee, manage  
11 disbursements, handle banking responsibilities, conduct reconciliations and prepare disclosure  
12 reports to the Commission with Call serving as the primary attorney.<sup>15</sup> The Complaint alleges  
13 that Call and Hale Westfall failed to properly account for receipts and disbursements and  
14 maintain records of all transactions, and falsely reported the Committee's receipts and  
15 disbursements.<sup>16</sup> The Complaint also claims that Hale Westfall failed to properly supervise Call

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<sup>12</sup> *Id.*

<sup>13</sup> Committee Resp. to OGC Letter at 2, 3.

<sup>14</sup> *Sua Sponte* Submission at 4, 5. Amended 2016 October Quarterly Report at 59 (Mar. 5, 2020); Amended 2016 Pre-General Report at 19 (Mar. 5, 2020); Amended 2016 Post-General Report at 21 (Mar. 5, 2020); Amended 2016 Year-End Report at 8 (Mar. 5, 2020); Amended 2017 Year-End Report at 7-10 (Mar. 5, 2020); Amended 2018 April Quarterly Report at 9-10 (March 5, 2020); Amended 2018 July Quarterly at 7 (Mar. 5, 2020); Amended 2018 October Quarterly Report at 7, 9 (Mar. 5, 2020); Amended 2018 Post-General Report at 8 (Mar. 5, 2020); Amended 2018 Year-End Report at 7-8 (Mar. 5, 2020); and Amended 2019 Mid-Year Report at 7-8 (Mar. 5, 2020).

<sup>15</sup> Compl at 1-2 (Apr. 21, 2020). The engagement letter refers to Call, the signatory on the engagement letter on behalf of Hale Westfall, as the treasurer of the Committee. *Id.*, Ex. 2 at 1.

<sup>16</sup> Compl. at 2-4.

1 and ensure compliance with the Act.<sup>17</sup> As a result, the Complaint alleges, Call was able to  
2 misappropriate \$278,169.45 over nearly a three-year period.<sup>18</sup>

3           The Complaint includes additional examples of Call's alleged violations. Some  
4 Committee payments were made to Call, but allegedly appeared as payments to the law firm.  
5 For example, the Complaint claims that Call was the payee on a transaction for \$23,135  
6 reportedly made to Hale Westfall, but that this transaction is not reflected in Hale Westfall's  
7 records.<sup>19</sup> The Complaint also alleges that Call entered into a political consulting contract with  
8 the Committee in which he signed both as treasurer of the Committee and as the consultant or  
9 payee, and no persons associated with the Committee were aware of this contract and no records  
10 or evidence exist of the performance of this contract.<sup>20</sup> Overall, the Committee alleges that for a  
11 period of nearly three years, Call filed numerous false and misleading disclosure reports to  
12 disguise his unauthorized disbursements.<sup>21</sup> Finally, the Complaint claims that there were  
13 recordkeeping problems because many expense reimbursements were made to persons that were  
14 not accompanied by receipts or underlying documentation.<sup>22</sup>

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<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*, Ex. 4.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 3, 4.

<sup>22</sup> *Id.* at 2, 3.

1           **B.     Responses to Complaint**

2                   **1.     Ryan Call**

3           Call asserts that both he and Marston were authorized signers on the Committee's bank  
4           account, and that Marston routinely reviewed bank statements and had access to and utilized the  
5           campaign finance reporting software system.<sup>23</sup> Under the engagement agreement between the  
6           Committee and the law firm, Call claims that his duties were supposed to be limited to legal and  
7           campaign compliance matters, which would amount to 10 to 15 hours per week.<sup>24</sup> However, he  
8           claims that his responsibilities quickly expanded to managing the day-to-day political operations  
9           of the Committee and that he thus spent more than 40 hours per week on Committee activities.<sup>25</sup>  
10          Call asserts that in July 2016 he had the Committee pay him for this additional operational,  
11          strategic, and political consulting work, and that, as treasurer, he had the sole authority to  
12          approve and make these additional payments.<sup>26</sup> As he performed legal and compliance duties  
13          along with the consulting work, in May 2017, Call asserts that he determined that a flat, monthly  
14          retainer of \$5,000 was appropriate for the political consulting, that he had discussions with  
15          Committee consultant Lawrence Gay about the monthly retainer, and that Marston was aware of  
16          the payments.<sup>27</sup> Call claims that, in August 2017, he formalized the monthly retainer by  
17          executing a separate political consulting contract with the Committee, signing on behalf of the

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<sup>23</sup> Call Resp. at 2 (Aug. 10, 2020).

<sup>24</sup> *Id.* at 3; *See* Compl. Ex. 2 at 3.

<sup>25</sup> Call Resp. at 3.

<sup>26</sup> *Id.* During this period, Call claims, there was an instance where the Committee paid him \$33,000 for political consulting, but the services provided were better characterized as legal and compliance-related so Call paid this amount to Hale Westfall because he perceived the law firm to be the "ultimate vendor." *Id.*

<sup>27</sup> *Id.* at 3.

1 Committee as well on behalf of himself.<sup>28</sup> Call claims that he used the same type of contract that  
2 the Committee used for other vendors and political consultants.<sup>29</sup>

3       Regarding specific allegations that the Committee made against him, Call asserts that the  
4 allegation that he misappropriated \$278,169.45 is misleading because the Committee has  
5 conflated the payments made pursuant to his contract with the Committee with the payments  
6 made to the law firm and to Committee consultant Lawrence Gay.<sup>30</sup> Call claims that this amount  
7 does not take into account reimbursements made by him to the Committee in 2018 and 2019 as  
8 offsets against payments made.<sup>31</sup> Finally, Call asserts that the Committee had access to  
9 Committee records and information inputted into an associated software system and had  
10 opportunities to review any discrepancies or irregularities during his tenure as treasurer.<sup>32</sup> With  
11 respect to specific concerns about the wire transfer payment of \$23,135 to him on November 23,  
12 2016, Call asserts that this payment was for his political consulting for the Committee, and was  
13 not related to legal and compliance services provided by Hale Westfall.<sup>33</sup> In regard to expense  
14 reimbursements to vendors and political consultants such as Lawrence Gay, Call asserts that he  
15 had no reason to question the information on the invoices from Gay and that committees rely

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<sup>28</sup> *Id.* at 4, Ex. A.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 8.



1 upon invoices in paying consultants or vendors.<sup>34</sup> Finally, Call denies all other allegations made  
2 in the Complaint.<sup>35</sup>

3 Call also states that he is reluctant to provide any additional information and  
4 documentation in this matter because of an ongoing investigation of the Committee by the  
5 Department of Justice and to avoid the possible disclosure of attorney-client privileged  
6 information or work product.<sup>36</sup> Call states that after the Department of Justice investigation of  
7 the Committee is complete, he will be willing to provide additional information and  
8 documentation to clarify his response to the Complaint.<sup>37</sup>

## 9 2. Hale Westfall

10 Hale Westfall denies the contention in the Complaint that it was the treasurer of the  
11 Committee on the basis that the *sua sponte* submission, as well as the engagement letter between  
12 the Committee and Hale Westfall, indicate that Call was the treasurer of the Committee.<sup>38</sup> Hale  
13 Westfall denies that it failed to properly account for the Committee's contributions and  
14 expenditures and denies that it engaged in false reporting of the Committee's receipts and  
15 disbursements.<sup>39</sup> The firm claims that the Committee is trying to hold it responsible when the

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 8. During the fall of 2018, Call asserts that he learned that the U.S. Attorney's office for the Eastern District of New York was investigating the Committee and also learned of another investigation in December 2018 concerning the Committee and certain consultants and media vendors. *Id.* at 4. In January 2019, Call asserts, he was informed of other issues involving the Committee and political consultants and vendors and feared that the Committee or its consultants might try to mischaracterize his work or shift blame to him for some of the Committee's actions. *Id.* Call states that in August 2019 he was contacted by the Department of Justice about an investigation of the Committee and that he has cooperated with the investigation. *Id.*

<sup>37</sup> Call Resp. at 8.

<sup>38</sup> Hale Westfall Resp. at 2 (May 13, 2020); Compl., Ex. 2 at 1.

<sup>39</sup> Hale Westfall Resp. at 4.

1 Committee's internal controls were insufficient to uncover the embezzlement until two years  
2 later.<sup>40</sup> Hale Westfall also asserts that the Commission should dismiss this matter as to Hale  
3 Westfall or find no reason to believe that it violated federal election law.<sup>41</sup>  
4 Hale Westfall further claims that when the Committee sent a memorandum to it on  
5 July 29, 2019, with questions about Call and seeking missing documentation about the  
6 Committee's finances, the firm took corrective action by requesting that Call provide responsive  
7 explanations and documentation to the Committee.<sup>42</sup> On September 9, 2019, Hale Westfall  
8 asserts, it submitted a detailed response to the Committee's July 29, 2019, memorandum, and  
9 engaged in best efforts to provide information and documentation that it possessed to the  
10 Committee.<sup>43</sup> Hale Westfall further claims that it was unaware of the separate contract that Call  
11 had entered into with the Committee until a few days before the end of his employment at the  
12 firm.<sup>44</sup> When Call told Hale Westfall that he had hired an attorney to represent him and could no  
13 longer answer any questions from Hale Westfall about the Committee, Hale Westfall terminated  
14 his employment on August 16, 2019.<sup>45</sup> Finally, Hale Westfall claims that it has no responsibility  
15 for funds misappropriated by Call because such misappropriation is an intentional tort.<sup>46</sup> Hale

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<sup>40</sup> *Id.* at 6.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 4, Attach. B.

<sup>43</sup> *Id.* at 5, Attach.C.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

1 Westfall asserts that any funds misappropriated by Call were neither misappropriated within the  
2 scope of his employment with Hale Westfall nor for the benefit of Hale Westfall.<sup>47</sup>

### 3 **III. LEGAL ANALYSIS**

4 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that each  
5 treasurer of a political committee shall file reports of receipts and disbursements in accordance  
6 with the provisions of 52 U.S.C. § 30104.<sup>48</sup> The Commission established a safe harbor for  
7 committees following certain procedures but nevertheless end up filing inaccurate reports due to  
8 committee funds having been misappropriated without the committee’s knowledge by committee  
9 fiduciaries and staff.<sup>49</sup> Under this policy, the Commission stated that it would not seek a  
10 monetary penalty against a committee if the committee had certain internal controls in place at  
11 the time of the embezzlement and took certain steps after discovering the embezzlement.<sup>50</sup>  
12 Nonetheless, the Commission will consider “the presence of some but not all” of the controls as  
13 mitigating factors when fashioning a civil penalty offer even if a committee fails to satisfy the  
14 policy’s additional requirements.<sup>51</sup>

15 The internal controls in the policy include (1) opening all bank accounts in the name of  
16 the committee using its Employer Identification Number; (2) reviewing monthly bank statements  
17 for unauthorized transactions and reconciling the statements by someone other than the  
18 individual with check-signing authority or who has responsibility for the committee’s

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<sup>47</sup> *Id.* at 6.

<sup>48</sup> 52 U.S.C. § 30104(a); *see also* 52 U.S.C. § 30104(b).

<sup>49</sup> Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

1 accounting; (3) dual signing authority for checks over \$1,000; (4) having in place procedures for  
2 handling incoming receipts by someone other than the individuals with accounting or banking  
3 authority; and (5) maintaining safeguards for managing a petty cash account.<sup>52</sup> Further, when a  
4 committee discovers misappropriation of funds, it must notify the Commission and the relevant  
5 law enforcement authority and promptly amend its reports.<sup>53</sup> Similarly, the Commission's *sua*  
6 *sponte* policy encourages submitters to self-report related violations to any law enforcement  
7 agency with jurisdiction over the activity.<sup>54</sup>

8 The Act also requires that a political committee's funds shall be segregated from and may  
9 not be commingled with, the personal funds of any individual.<sup>55</sup>

10 Finally, a violation of the Act is knowing and willful if the "acts were committed with  
11 full knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>56</sup>  
12 This does not require proving knowledge of the specific statute or regulation the respondent  
13 allegedly violated.<sup>57</sup> Rather, it is sufficient to demonstrate that a respondent "acted voluntarily  
14 and was aware that his conduct was unlawful."<sup>58</sup> This awareness may be shown through

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte Submissions*), 72 Fed. Reg. 16,695, 16,698 (Apr. 5, 2007).

<sup>55</sup> 52 U.S.C. § 30102(b)(3).

<sup>56</sup> 122 Cong. Rec. 12,197, 12,199 (daily ed. May 3, 1976).

<sup>57</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>58</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

1 circumstantial evidence from which the respondent's unlawful intent reasonably may be  
2 inferred.<sup>59</sup> For example, a person's awareness that an action is prohibited may be inferred from  
3 "the person's elaborate scheme for disguising . . . the political contribution."<sup>60</sup>

4 **A. The Commission Should Refer the Committee to ADRO**

5 After the Committee made its *sua sponte* submission, the Office of General Counsel  
6 submitted various questions to the Committee relating to its internal controls.<sup>61</sup> The Committee  
7 had some internal controls in place, but the internal controls were insufficient to reveal the  
8 embezzlement of Committee funds by Call that had been ongoing for more than two years. The  
9 Committee asserts that Call claims that he conducted monthly reconciliations of the Committee's  
10 bank statements and accounting records with the disclosure reports, but there was no evidence  
11 that reconciliations were completed.<sup>62</sup> Further, the Committee asserts that Call and Chris  
12 Marston had signature authority over the Committee's checking account, but acknowledged that  
13 there was no written policy for authorizing checks over \$1,000.<sup>63</sup> The Committee had not  
14 implemented some of the other internal controls set forth in the Commission's Safe Harbor  
15 Policy. For example, the Committee did not always conduct monthly bank reconciliations and

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<sup>59</sup> *Cf. United States v. Hopkins*, 916 F. 2d 207, 213 (5th Cir. 1990) (quoting *United States V. Bordelon*, 871 F.2d 491 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendant's convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>60</sup> *Id.* at 214-215. As the *Hopkins* court noted, it has long been recognized that 'efforts at concealment may be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

<sup>61</sup> OGC Letter to Rebuilding America Now (Aug. 26, 2020).

<sup>62</sup> Committee Resp. to OGC Letter at 2 (Oct. 28, 2020).

<sup>63</sup> *Id.* at 1.

1 when conducted, they were done by Call.<sup>64</sup> The Committee asserts that it has a new internal  
2 control policy.<sup>65</sup> Further, to our knowledge, the Committee has not notified the appropriate law  
3 enforcement authority about the alleged embezzlement of Committee funds by Call.<sup>66</sup>

4 The Committee declares in its *sua sponte* submission that it has received all of the  
5 documentation that it is going to receive from Call, the law firm, the bank, and third parties.<sup>67</sup>  
6 On March 5, 2020, the Committee amended numerous disclosure reports from calendar years  
7 2016 through 2019 to correct alleged misreporting stemming from the embezzlement by Call.<sup>68</sup>  
8 Based on the available documentation and information, the Committee amended these reports to  
9 disclose payments to Call totaling \$220,569 that were originally disclosed as payments to Hale  
10 and Westfall.<sup>69</sup> Further, the Committee amended these reports to disclose payments to Call

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<sup>64</sup> *Id.* at 2.

<sup>65</sup> *Id.* at 4.

<sup>66</sup> In response to our question whether the Committee notified law enforcement officials of the misappropriation of funds, the Committee stated “[it] had understood, based on [Committee counsel’s] prior experiences in similar situations, that the Commission’s preference is to receive the possible misappropriation of funds and then refer the matter to the DOJ after review by the Commission.” The Committee counsel stated she would take this “refer[ral]” to DOJ under advisement. Committee Resp. to OGC Letter at 4.

<sup>67</sup> *Sua Sponte* Submission at 3.

<sup>68</sup> *Id.*; *see supra*, n.14.

<sup>69</sup> *See Supra*, n. 14.

1 totaling \$31,597 that had not previously been disclosed.<sup>70</sup> The Committee also amended the  
2 reports to disclose receipts totaling \$47,446.34 from Call to the Committee.<sup>71</sup>

3 Based upon the Commission's handling of similarly-situated committees in past matters,  
4 and because the Committee may benefit from guidance regarding internal controls, we  
5 recommend that the Committee be transferred to the Office of Alternative Dispute Resolution.<sup>72</sup>

6 **B. The Commission Should Find Reason to Believe that Ryan Call Knowingly**  
7 **and Willfully Violated the Reporting and Commingling Provisions of the Act**  
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9 The Committee alleges that Call filed false reports with the Commission and  
10 misappropriated Committee funds by making unauthorized payments to himself. Call denies the  
11 allegations but has not provided a detailed explanation about the Committee funds that he  
12 received. Call asserts that the Complaint does not distinguish between payments made to him as a  
13 political consultant through his separate contract with Committee and payments made to Hale  
14 Westfall. Some of these payments to him were not disclosed on the Committee disclosure reports  
15 he filed. Call created a separate political consulting contract with the Committee with his name  
16 listed on behalf of the Committee as treasurer and also as the consultant. Call asserts that  
17 Marston and some Committee consultants were aware of his separate contract with the

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See Certification, Pre-MUR 623 (Friends of Dave Joyce) (Jan. 19, 2021); First Gen. Counsel's Rpt. at 10, Pre-MUR 623 (Committee lacked effective internal controls in its accounting and financial operations); Certification, RR 16L-06 (Rohrabacher for Congress) (March 22, 2017); First Gen. Counsel's Rpt. at 9 in RR 16L-06 (Rohrabacher for Congress)(Committee did not have in place many of the relevant internal controls from the Commission's Safe Harbor Policy); Certification, Pre-MUR 596, (Amedisys, Inc. PAC) (May 10, 2017) First Gen. Counsel's Rpt. at 6 in Pre-MUR 596 (Committee lacked effective internal controls in its accounting and financial operations);

1 Committee, but the Committee claims to have no knowledge of this contract or any work  
2 performed by Call pursuant to this contract.

3 Further, the Committee alleges that Call made deposits totaling \$47,446.34 into the  
4 Committee's bank account from his personal funds, which may have been reimbursements for  
5 funds taken out of the Committee's bank account. In his response to the Complaint, Call  
6 acknowledges making reimbursements to the Committee account, but asserts that these deposits  
7 were offsets for payments to him. According to the Committee, these deposits were not reported  
8 on the Committee's disclosure reports.<sup>73</sup> Call has not explained or described the payments that he  
9 is referencing in additional detail. If these payments to him were improper, as the Committee has  
10 alleged, Call appears to have commingled Committee funds with his personal funds.

11 This is not the typical embezzlement matter before the Commission, in which the alleged  
12 embezzler has pled guilty or is the subject of ongoing criminal prosecution or has otherwise  
13 admitted to the alleged embezzlement.<sup>74</sup> Instead, Call, who to our knowledge has not been  
14 reported by the Committee to law enforcement, generally denies the allegations. Without a  
15 forensic audit, we do not know the exact amount of the violation and the level of Call's  
16 misconduct. Nevertheless, the allegations of reporting violations and commingling appear to be  
17 credible in light of the Committee's actions filing corrective reports with the Commission, and  
18 Call himself has acknowledged actions consistent with violations, such as assigning to himself

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<sup>73</sup> Compl., Ex 4. The Committee amended its reports to reflect that Call made these deposits in 2018 and 2019. *See* Amended 2018 Year-End Report at 7 (Mar. 5, 2020); Amended Mid-Year 2019 Report at 7 (Mar. 5, 2020).

<sup>74</sup>

(embezzler criminally prosecuted)  
MUR 7132 (Michael David Pitts) (same).

MUR 7692 (Scott Coleman)  
MUR 7225 (Jack Wu) (embezzler criminally prosecuted);



1 additional Committee funds without an executed agreement signed by a Committee representative  
2 other than himself. Call does not dispute that he created a separate contract between him and the  
3 Committee and that he paid himself for work allegedly done pursuant to this contract.

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13 Under these circumstances, we recommend that the Commission find reason to believe  
14 that Call violated the Act. By taking unauthorized funds from the Committee, disclosing  
15 payments to him as being made to Hale Westfall or not disclosing the payments to him at all, Call  
16 appears to have violated 52 U.S.C. § 30104(b). Further, these violations appear to be knowing  
17 and willful because they were designed to cover up his alleged embezzlement. Thus, we  
18 recommend that the Commission find reason to believe that Ryan Call knowingly and willfully  
19 violated 52 U.S.C. § 30102(b)(3) and 52 U.S.C. § 30104(b).

1           **C.     The Commission Should Find No Reason to Believe that Hale Westfall**  
2           **violated the Reporting and Commingling Provisions of the Act**

3  
4           Call, not Hale Westfall, was the Committee treasurer of record.<sup>75</sup> There was an  
5 engagement letter between the Committee and Hale Westfall designating Call as the primary  
6 attorney providing compliance-related services. Hale Westfall asserts that it was unaware of any  
7 embezzlement by Call, and we have no information to the contrary. The law firm states that  
8 when the Committee informed it of the activities of Call, it cooperated with the Committee to  
9 gather available information and documentation about Call's activities. Further, Hale Westfall  
10 asserts that it was unaware of Call's separate contract with the Committee paying him \$5,000 per  
11 month until he informed the firm about it near the end of his employment with the law firm.

12           Because Hale Westfall was not the treasurer of the Committee and the Act's  
13 commingling provision applies to the personal funds of individuals,<sup>76</sup> Hale Westfall does not  
14 appear to have liability under the Act in this matter. Accordingly, we recommend that the  
15 Commission find no reason to believe that Hale Westfall violated the 52 U.S.C. §§ 30102(b)(3)  
16 and 30104(b).

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<sup>75</sup> See Statement of Organization at 3 (June 12, 2016).

<sup>76</sup> See 52 U.S.C. § 30102(b)(3).

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**V. RECOMMENDATIONS**

1. Transfer Pre-MUR 631 concerning Rebuilding America Now and Chris Marston in his official capacity as treasurer to the Office of Alternative Dispute Resolution;
2. Find reason to believe that Ryan Call knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and 30104(b), by commingling Committee funds with his personal funds and failing to file accurate reports with the Commission;
3. Enter into conciliation with Ryan Call prior to a finding of probable cause to believe;
4. Find no reason to believe that Hale Westfall violated 52 U.S.C. §§ 30102(b)(3) and 30104(b);
5. Approve the attached Factual and Legal Analyses;
6. Approve the attached Conciliation Agreement; and

1           7.    Approve the appropriate letters.  
2  
3

4                                    Lisa J. Stevenson  
5                                    Acting General Counsel  
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8  
9    June 2, 2021  
10 Date

*Charles Kitcher*  
                                  \_\_\_\_\_  
11                                   Charles Kitcher  
12                                   Acting Associate General Counsel for Enforcement  
13

14                                   *Mark Allen*  
15                                   \_\_\_\_\_  
16                                   Mark Allen  
17                                   Assistant General Counsel  
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19                                   *Delbert K. Rigsby*  
20                                   \_\_\_\_\_  
21                                   Delbert K. Rigsby  
22                                   Attorney

23 **Attachments**

- 24       1. Factual and Legal Analysis for Ryan Call  
25       2. Factual and Legal Analysis for Hale Westfall  
26

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 Respondent: Ryan Call

MUR 7729

6  
7 **I. INTRODUCTION**

8 This matter arose from a Complaint filed by Rebuilding America Now and Chris Marston  
9 in his official capacity as treasurer (the “Committee”) alleging that Ryan Call, the former  
10 treasurer of the Committee, misappropriated Committee funds by disbursing the funds to himself  
11 and deliberately misreporting Committee funds by falsely reporting payments to the law firm  
12 where Call was employed, Hale Westfall, that were in fact made to him. Call denies embezzling  
13 funds from the Committee.

14 he Commission finds that there is reason to believe that Ryan Call knowingly and  
15 willfully violated 52 U.S.C. § 30102(b)(3) by commingling Committee funds with his personal  
16 funds and that he knowingly and willfully violated 52 U.S.C. § 30104(b) by failing to file  
17 accurate reports with the Commission.

18 **II. FACTUAL SUMMARY**

19  
20 **A. Complaint**

21 The Committee is an independent expenditure-only political committee that was  
22 established in 2016.<sup>1</sup> Call served as treasurer of the Committee from June 2016 to June 2019<sup>2</sup>  
23 and he also was employed as an attorney at Hale Westfall. Hale Westfall is a law firm based in

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<sup>1</sup> See Statement of Organization (June 12, 2016).

<sup>2</sup> See *id.*; Amended Statement of Organization (June 4, 2019).

1 Denver, Colorado, which provided legal and compliance services to the Committee; Call was the  
2 primary attorney at the law firm working with the Committee.<sup>3</sup>

3 The Committee filed a Complaint alleging that Call had misappropriated and deliberately  
4 misreported Committee funds between September 2016 and January 2019.<sup>4</sup> The Commission  
5 has information that Call received Committee funds that he was not authorized to receive in the  
6 form of checks, cash withdrawals, debit charges, and wire transfers. The Complaint indicates  
7 that payments were made directly to Call and reported as being paid to him, and other payments  
8 were made to him, but either falsely reported as made to his law firm, Hale Westfall, or were not  
9 reported at all on the Committee's disclosure reports.<sup>5</sup>

10 The Complaint alleges that Call received unauthorized funds totaling \$278,169.45  
11 including three checks made out to him for \$5,000 each; a "'bank originated debit,' likely a  
12 cashier's check, which appears to be payable to Call for \$23,135"; five automated teller machine  
13 withdrawals totaling \$1,700; a debit card charge by him in New Orleans for \$900.42; and 32  
14 wire transfers totaling \$237,434.03 made out to him with the payee listed as "First Bank/Ryan  
15 Call," "First Bank/Ryan Richard Call," "Ryan Call," or "Ryan R. Call."<sup>6</sup> The Commission also  
16 has information that the wire transfers were directed to Call's personal bank account. Further,  
17 the Commission has information that Call made deposits into the Committee's account from his  
18 personal funds totaling \$47,446.34, and the funds may have been a reimbursement of Committee  
19 funds previously misappropriated.

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<sup>3</sup> See Compl., Ex. 2 (Apr. 22, 2020).

<sup>4</sup> Compl, Ex. 4.

<sup>5</sup> Compl. at 3., Ex. 4.

<sup>6</sup> Compl., Ex. 4.

1           According to the information available to the Commission, there was a segregation of  
2           duties between the treasurer, Call, who was responsible for handling and processing  
3           disbursements and preparing disclosure reports to the Commission, and the assistant treasurer,  
4           Chris Marston, who was responsible for handling contributions and deposits and reconciling  
5           bank records. Further, the Commission has information that despite efforts to maintain divided  
6           responsibilities for financial management, Call was able to avoid detection of his embezzlement.  
7           The Commission also has information that, beginning in November 2016, Call shifted some of  
8           the responsibilities to avoid discovery of his actions. There is information available to the  
9           Commission that after the 2016 election, Call stopped providing regular cash-on-hand updates to  
10          Marston and to Committee consultants, and Marston and Call worked less closely together. The  
11          Committee removed Call and appointed Chris Marston as treasurer on June 4, 2019, and it has  
12          amended the relevant disclosure reports based on the information and documentation it has been  
13          able to recover.<sup>7</sup>

14          The Complaint alleges that Call failed to properly account for receipts and disbursements  
15          and maintain records of all transactions, and falsely reported the Committee's receipts and  
16          disbursements.<sup>8</sup>

17          The Complaint includes additional examples of Call's alleged violations. Some  
18          Committee payments were made to Call, but allegedly appeared as payments to the law firm.

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<sup>7</sup>           See Amended Statement of Organization (June 4, 2019); Amended 2016 October Quarterly Report at 59 (Mar. 5, 2020); Amended 2016 Pre-General Report at 19 (Mar. 5, 2020); Amended 2016 Post-General Report at 21 (Mar. 5, 2020); Amended 2016 Year-End Report at 8 (Mar. 5, 2020); Amended 2017 Year-End Report at 7-10 (Mar. 5, 2020); Amended 2018 April Quarterly Report at 9-10 (March 5, 2020); Amended 2018 July Quarterly at 7 (Mar. 5, 2020); Amended 2018 October Quarterly Report at 7, 9 (Mar. 5, 2020); Amended 2018 Post-General Report at 8 (Mar. 5, 2020); Amended 2018 Year-End Report at 7-8 (Mar. 5, 2020); and Amended 2019 Mid-Year Report at 7-8 (Mar. 5, 2020).

<sup>8</sup>           Compl. at 2-4.

1 For example, the Complaint claims that Call was the payee on a transaction for \$23,135  
2 reportedly made to Hale Westfall, but that this transaction is not reflected in Hale Westfall's  
3 records.<sup>9</sup> The Complaint also alleges that Call entered into a political consulting contract with  
4 the Committee in which he signed both as treasurer of the Committee and as the consultant or  
5 payee, and no persons associated with the Committee were aware of this contract and no records  
6 or evidence exist of the performance of this contract.<sup>10</sup> Overall, the Committee alleges that for a  
7 period of nearly three years, Call filed numerous false and misleading disclosure reports to  
8 disguise his unauthorized disbursements.<sup>11</sup> Finally, the Complaint claims that there were  
9 recordkeeping problems because many expense reimbursements were made to persons that were  
10 not accompanied by receipts or underlying documentation.<sup>12</sup>

## 11 **B. Response to Complaint**

12 Call asserts that both he and Marston were authorized signers on the Committee's bank  
13 account, and that Marston routinely reviewed bank statements and had access to and utilized the  
14 campaign finance reporting software system.<sup>13</sup> Under the engagement agreement between the  
15 Committee and the law firm, Call claims that his duties were supposed to be limited to legal and  
16 campaign compliance matters, which would amount to 10 to 15 hours per week.<sup>14</sup> However, he  
17 claims that his responsibilities quickly expanded to managing the day-to-day political operations

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<sup>9</sup> Compl. at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3, 4.

<sup>12</sup> *Id.* at 2, 3.

<sup>13</sup> Call Resp. at 2 (Aug. 10, 2020).

<sup>14</sup> *Id.* at 3; *see* Compl. Ex. 2 at 3.



1 of the Committee and that he thus spent more than 40 hours per week on Committee activities.<sup>15</sup>  
2 Call asserts that in July 2016 he had the Committee pay him for this additional operational,  
3 strategic, and political consulting work, and that, as treasurer, he had the sole authority to  
4 approve and make these additional payments.<sup>16</sup> As he performed legal and compliance duties  
5 along with the consulting work, in May 2017, Call asserts that he determined that a flat, monthly  
6 retainer of \$5,000 was appropriate for the political consulting, that he had discussions with  
7 Committee consultant Lawrence Gay about the monthly retainer, and that Marston was aware of  
8 the payments.<sup>17</sup> Call claims that, in August 2017, he formalized the monthly retainer by  
9 executing a separate political consulting contract with the Committee, signing on behalf of the  
10 Committee as well on behalf of himself.<sup>18</sup> Call claims that he used the same type of contract that  
11 the Committee used for other vendors and political consultants.<sup>19</sup>

12       Regarding specific allegations that the Committee made against him, Call asserts that the  
13 allegation that he misappropriated \$278,169.45 is misleading because the Committee has  
14 conflated the payments made pursuant to his contract with the Committee with the payments  
15 made to the law firm and to Committee consultant Lawrence Gay.<sup>20</sup> Call claims that this amount  
16 does not take into account reimbursements made by him to the Committee in 2018 and 2019 as

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<sup>15</sup> Call Resp. at 3.

<sup>16</sup> *Id.* During this period, Call claims, there was an instance where the Committee paid him \$33,000 for political consulting, but the services provided were better characterized as legal and compliance-related so Call paid this amount to Hale Westfall because he perceived the law firm to be the “ultimate vendor.” *Id.*

<sup>17</sup> Call Resp. at 3.

<sup>18</sup> *Id.* at 4; Ex. A.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 5.

1 offsets against payments made.<sup>21</sup> Finally, Call asserts that the Committee had access to  
2 Committee records and information inputted into an associated software system and had  
3 opportunities to review any discrepancies or irregularities during his tenure as treasurer.<sup>22</sup> With  
4 respect to specific concerns about the wire transfer payment of \$23,135 to him on November 23,  
5 2016, Call asserts that this payment was for his political consulting for the Committee, and was  
6 not related to legal and compliance services provided by Hale Westfall.<sup>23</sup> In regard to expense  
7 reimbursements to vendors and political consultants such as Lawrence Gay, Call asserts that he  
8 had no reason to question the information on the invoices from Gay and that committees rely  
9 upon invoices in paying consultants or vendors.<sup>24</sup> Finally, Call denies all other allegations made  
10 in the Complaint.<sup>25</sup>

11 Call also states that he is reluctant to provide any additional information and  
12 documentation in this matter because of an ongoing investigation of the Committee by the  
13 Department of Justice and to avoid the possible disclosure of attorney-client privileged  
14 information or work product.<sup>26</sup> Call states that after the Department of Justice investigation of

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 8.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 8. During the fall of 2018, Call asserts that he learned that the U.S. Attorney's office for the Eastern District of New York was investigating the Committee and also learned of another investigation in December 2018 concerning the Committee and certain consultants and media vendors. *Id.* at 4. In January 2019, Call asserts, he was informed of other issues involving the Committee and political consultants and vendors and feared that the Committee or its consultants might try to mischaracterize his work or shift blame to him for some of the Committee's actions. *Id.* Call states that in August 2019 he was contacted by the Department of Justice about an investigation of the Committee and that he has cooperated with the investigation. *Id.*

1 the Committee is complete, he will be willing to provide additional information and  
2 documentation to clarify his response to the Complaint.<sup>27</sup>

### 3 III. LEGAL ANALYSIS

4 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that each  
5 treasurer of a political committee shall file reports of receipts and disbursements in accordance  
6 with the provisions of 52 U.S.C. § 30104.<sup>28</sup>

7 The Act also requires that a political committee’s funds shall be segregated from and may  
8 not be commingled with, the personal funds of any individual.<sup>29</sup>

9 A violation of the Act is knowing and willful if the “acts were committed with full  
10 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”<sup>30</sup> This  
11 does not require proving knowledge of the specific statute or regulation the respondent allegedly  
12 violated.<sup>31</sup> Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was  
13 aware that his conduct was unlawful.”<sup>32</sup> This awareness may be shown through circumstantial  
14 evidence from which the respondent’s unlawful intent reasonably may be inferred.<sup>33</sup> For

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<sup>27</sup> Call Resp. at 8.

<sup>28</sup> 52 U.S.C. § 30104(a); *see also* 52 U.S.C. § 30104(b).

<sup>29</sup> 52 U.S.C. § 30102(b)(3).

<sup>30</sup> 122 Cong. Rec. 12,197, 12,199 (daily ed. May 3, 1976).

<sup>31</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>32</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

<sup>33</sup> *Cf. United States v. Hopkins*, 916 F. 2d 207, 213 (5th Cir. 1990) (quoting *United States V. Bordelon*, 871 F.2d 491 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth

1 example, a person’s awareness that an action is prohibited may be inferred from “the person’s  
2 elaborate scheme for disguising . . . the political contribution.”<sup>34</sup>

3           The Committee alleges that Call filed false reports with the Commission and  
4 misappropriated Committee funds by making unauthorized payments to himself. Call denies the  
5 allegations but has not provided a detailed explanation about the Committee funds that he  
6 received. Call asserts that the Complaint does not distinguish between payments made to him as  
7 a political consultant through his separate contract with Committee and payments made to Hale  
8 Westfall. Some of these payments to him were not disclosed on the Committee disclosure  
9 reports he filed. Call created a separate political consulting contract with the Committee with his  
10 name listed on behalf of the Committee as treasurer and also as the consultant. Call asserts that  
11 Marston and some Committee consultants were aware of his separate contract with the  
12 Committee, but the Committee claims to have no knowledge of this contract or any work  
13 performed by Call pursuant to this contract.

14           Further, the Committee alleges that Call made deposits totaling \$47,446.34 into the  
15 Committee’s bank account from his personal funds, which may have been reimbursements for  
16 funds taken out of the Committee’s bank account. In his response to the Complaint, Call  
17 acknowledges making reimbursements to the Committee account, but asserts that these deposits  
18 were offsets for payments to him. According to the Committee, these deposits were not reported

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Circuit concerned the sufficiency of the evidence supporting the defendant’s convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>34</sup> *Id.* at 214-215. As the *Hopkins* court noted, it has long been recognized that ‘efforts at concealment may be reasonably explainable only in terms of motivation to evade’ lawful obligations.’ *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 on the Committee's disclosure reports.<sup>35</sup> Call has not explained or described the payments that he  
2 is referencing in additional detail. If these payments to him were improper, as the Committee has  
3 alleged, Call appears to have commingled Committee funds with his personal funds.

4 By taking unauthorized funds from the Committee, disclosing payments to him as being  
5 made to Hale Westfall or not disclosing the payments to him at all, Call violated 52 U.S.C.  
6 § 30104(b). Further, these violations appear to be knowing and willful because they were  
7 designed to cover up his alleged embezzlement. Thus, the Commission finds that there is reason  
8 to believe that Ryan Call knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 52 U.S.C.  
9 § 30104(b).

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<sup>35</sup> Compl., Ex. 4. The Committee amended its reports to reflect that Call made these deposits in 2018 and 2019. *See* Amended 2018 Year-End Report at 7 (Mar. 5, 2020); Amended Mid-Year 2019 Report at 7 (Mar. 5, 2020).

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 Respondent: Hale Westfall

MUR 7729

6  
7 **I. INTRODUCTION**

8 This matter arose from a Complaint filed by Rebuilding America Now and Chris Marston  
9 in his official capacity as treasurer (the “Committee”) alleging that Hale Westfall failed to  
10 account properly for contributions and expenditures and falsely reported the Committee’s  
11 receipts and disbursements.

12 Because the information available to the Commission indicates that Hale Westfall did not  
13 participate in the actions alleged in the Complaint, the Commission finds that there is no reason  
14 to believe that Hale Westfall violated 52 U.S.C. §§ 30102(b)(3) and 30104(b).

15 **II. FACTUAL SUMMARY**

16  
17 **A. Complaint**

18 The Committee is an independent expenditure-only political committee that was  
19 established in 2016.<sup>1</sup> Ryan Call served as treasurer of the Committee from June 2016 to June  
20 2019<sup>2</sup> and he also was employed as an attorney at Hale Westfall. Hale Westfall is a law firm  
21 based in Denver, Colorado, which provided legal and compliance services to the Committee;  
22 Ryan Call, the former treasurer of the Committee, was the primary attorney at the law firm  
23 working with the Committee.<sup>3</sup>  
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<sup>1</sup> See Statement of Organization (June 12, 2016).

<sup>2</sup> See *id.*; Amended Statement of Organization (June 4, 2019).

<sup>3</sup> See Compl., Ex. 2 (Apr. 22, 2020).

1           The Committee filed the Complaint against Hale Westfall, where Call was employed  
2 during the time of the events at issue. The Committee alleges that it entered into an agreement  
3 with Hale Westfall in which the law firm was retained to serve as treasurer of the Committee,  
4 manage disbursements, handle banking responsibilities, conduct reconciliations and prepare  
5 disclosure reports to the Commission with Call serving as the primary attorney.<sup>4</sup> The Complaint  
6 alleges that Hale Westfall failed to properly account for receipts and disbursements and maintain  
7 records of all transactions, and falsely reported the Committee's receipts and disbursements.<sup>5</sup>  
8 The Complaint also claims that Hale Westfall failed to properly supervise Call and ensure  
9 compliance with the Act.<sup>6</sup> As a result, the Complaint alleges, Call was able to misappropriate  
10 \$278,169.45 over nearly a three-year period.<sup>7</sup>

11           **B.     Response to Complaint**

12           Hale Westfall denies the contention in the Complaint that it was the treasurer of the  
13 Committee on the basis that the engagement letter between the Committee and Hale Westfall  
14 indicates that Call was the treasurer of the Committee.<sup>8</sup> Hale Westfall denies that it failed to  
15 properly account for the Committee's contributions and expenditures and denies that it engaged  
16 in false reporting of the Committee's receipts and disbursements.<sup>9</sup> The firm claims that  
17 Committee is trying to hold it responsible when the Committee's internal controls were

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<sup>4</sup> Compl at 1-2 (Apr. 21, 2020). The engagement letter refers to Call, the signatory on the engagement letter on behalf of Hale Westfall, as the treasurer of the Committee. *Id.*, Ex. 2 at 1.

<sup>5</sup> Compl. at 2-4.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*, Ex. 4.

<sup>8</sup> Hale Westfall Resp. at 2 (May 13, 2020). *See* Compl., Ex. 2 at 1.

<sup>9</sup> *Id.* at 4.

1 insufficient to uncover the embezzlement until two years later.<sup>10</sup> Hale Westfall also asserts that  
2 the Commission should dismiss this matter as to Hale Westfall or find no reason to believe that it  
3 violated federal election law.<sup>11</sup>

4 Hale Westfall further claims that when the Committee sent a memorandum to it on  
5 July 29, 2019, with questions about Call and seeking missing documentation about the  
6 Committee's finances, the firm took corrective action by requesting that Call provide responsive  
7 explanations and documentation to the Committee.<sup>12</sup> On September 9, 2019, Hale Westfall  
8 asserts, it submitted a detailed response to the Committee's July 29, 2019, memorandum, and  
9 engaged in best efforts to provide information and documentation that it possessed to the  
10 Committee.<sup>13</sup> Hale Westfall further claims that it was unaware of the separate contract that Call  
11 had entered into with the Committee until a few days before the end of his employment at the  
12 firm.<sup>14</sup> When Call told Hale Westfall that he had hired an attorney to represent him and could no  
13 longer answer any questions from Hale Westfall about the Committee, Hale Westfall terminated  
14 his employment on August 16, 2019.<sup>15</sup> Finally, Hale Westfall claims that it has no responsibility  
15 for funds misappropriated by Call because such misappropriation is an intentional tort.<sup>16</sup> Hale

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<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 4, Attach. B.

<sup>13</sup> *Id.* at 5, Attach. C.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



1 Westfall asserts that any funds misappropriated by Call were neither misappropriated within the  
2 scope of his employment with Hale Westfall nor for the benefit of Hale Westfall.<sup>17</sup>

### 3 **III. LEGAL ANALYSIS**

4 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that each  
5 treasurer of a political committee shall file reports of receipts and disbursements in accordance  
6 with the provisions of 52 U.S.C. § 30104.<sup>18</sup>

7 The Act also requires that a political committee’s funds shall be segregated from and may  
8 not be commingled with, the personal funds of any individual.<sup>19</sup>

9 Call, not Hale Westfall, was the Committee treasurer of record.<sup>20</sup> There was an  
10 engagement letter between the Committee and Hale Westfall designating Call as the primary  
11 attorney providing compliance-related services. Hale Westfall asserts that it was unaware of any  
12 embezzlement by Call, and the Commission has no information to the contrary. The law firm  
13 states that when the Committee informed it of the activities of Call, it cooperated with the  
14 Committee to gather available information and documentation about Call’s activities. Further,  
15 Hale Westfall asserts that it was unaware of Call’s separate contract with the Committee paying

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> 52 U.S.C. § 30104(a). *See also* 52 U.S.C. § 30104(b).

<sup>19</sup> 52 U.S.C. § 30102(b)(3).

<sup>20</sup> *See* Rebuilding America Now Statement of Organization at 3 (June 12, 2016).

MUR 7729 (Hale Westfall)  
Factual and Legal Analysis  
Page 5 of 5

1 him \$5,000 per month until he informed the firm about it near the end of his employment with  
2 the law firm.

3           Because Hale Westfall was not the treasurer of the Committee and the Act's  
4 commingling provision applies to the personal funds of individuals,<sup>21</sup> Hale Westfall does not  
5 appear to have liability under the Act in this matter. Accordingly, the Commission finds that  
6 there is no reason to believe that Hale Westfall violated the 52 U.S.C. §§ 30102(b)(3) and  
7 30104(b).

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<sup>21</sup> *See* 52 U.S.C. § 30102(b)(3).