

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

MUR: 7778  
DATE COMPLAINT FILED: August 14, 2020  
DATE OF NOTIFICATION: August 18, 2020  
LAST RESPONSE RECEIVED: August 27, 2020  
DATE ACTIVATED: September 24, 2020

EXPIRATION OF SOL: May 11, 2023 –  
October 17, 2025  
ELECTION CYCLE: 2020

## ELECTION CYCLE: 2020

**COMPLAINANT:** Victor Whitehead

**RESPONDENTS:** Lake for Congress and  
Constance Saylease Prater-Baker  
in her official capacity as treasurer,  
Jeannine Lee Lake

|   |                              |
|---|------------------------------|
| <b>RELEVANT STATUTES AND REGULATIONS:</b> | 52 U.S.C. § 30101(2)         |
|   | 52 U.S.C. § 30102(e)(1)      |
|   | 52 U.S.C. § 30103            |
|   | 52 U.S.C. § 30104(a), (b)    |
|   | 52 U.S.C. § 30114            |
|   | 11 C.F.R. § 100.3            |
|   | 11 C.F.R. § 101.1(a)         |
|   | 11 C.F.R. § 102.1(a)         |
|   | 11 C.F.R. § 102.12           |
|   | 11 C.F.R. § 104.1            |
|   | 11 C.F.R. § 104.3(b)(4)(i)   |
|   | 11 C.F.R. § 104.5(a)(2), (f) |
|   | 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

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1     **I. INTRODUCTION**

2                 The Complaint alleges that Jeannine Lake and her authorized committee, Lake for  
3                 Congress and Constance Saylease Prater-Baker in her official capacity as treasurer<sup>1</sup> (collectively,  
4                 the “Committee”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”)  
5                 and Commission regulations, by “misrepresenting Lake’s status as a federal candidate,”  
6                 knowingly and willfully failing to file required reports with the Federal Election Commission  
7                 (the “Commission”), and failing to provide adequate purposes for its disbursements.<sup>2</sup> The  
8                 Complaint further alleges that the inadequately reported purposes for the disbursements indicate  
9                 that Lake and the Committee converted campaign funds to personal use.<sup>3</sup> Lake denies the  
10                 allegations, asserting that the Complaint is politically motivated and that the filing delays and  
11                 errors are due to “repeated software errors” and lack of funds to hire a professional accountant.<sup>4</sup>

13                 The available information indicates that Lake, a candidate for Congress in 2018 and 2020,  
14                 never filed a Statement of Candidacy for 2018 and filed her Statement of Candidacy for 2020  
15                 late. In addition, the Committee failed to timely file disclosure reports and failed to properly  
16                 itemize disbursements for the 2018 and 2020 election cycles, among other reporting violations.  
17                 As discussed further below, however, we do not recommend that the Commission pursue this  
18                 matter given that the Commission has already assessed penalties as to the Committee under the  
19                 Administrative Fine Program for failing to file several reports, and the other apparent violations

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<sup>1</sup>                 The Complaint lists Kizmin Jones and Jesse Nahshon Prater as former treasurers and respondents. The current named treasurer is Constance Saylease Prater-Baker. Compl. at 1 (Aug. 14, 2020).

<sup>2</sup>                 *Id.* at 1, 2.

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

<sup>4</sup>                 Lake Resp. (E-mail from Jeannine Lake to Christal Dennis, CELA, FEC (Aug. 27, 2020 14:30 EST)).

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1 do not appear to warrant the expenditure of additional Commission resources. Accordingly, we  
2 recommend that the Commission exercise its prosecutorial discretion and dismiss with caution  
3 the allegations that Lake violated 52 U.S.C. § 30102(e)(1) by failing to file or timely file  
4 Statements of Candidacy and the Committee violated 52 U.S.C. § 30103(c) by failing to amend  
5 its Statement of Organization, and 52 U.S.C. § 30104(a) by failing to timely file disclosure  
6 reports; and dismiss, as a matter of prosecutorial discretion, the allegations that the Committee  
7 violated 52 U.S.C. § 30104(b)(5)(A) and 6(A) by failing to properly itemize disbursements.<sup>5</sup>  
8 Further, we recommend that the Commission dismiss the allegations that Lake and the  
9 Committee violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

10 **II. FACTUAL BACKGROUND**

11 Jeannine Lee Lake was a candidate for the U.S. House of Representatives in Indiana's  
12 Sixth District in the 2018 and 2020 elections, advancing to the general election each time before  
13 ultimately losing. Lake for Congress has been Lake's principal campaign committee since  
14 2018.<sup>6</sup> The Committee filed a Statement of Organization on May 10, 2018, which disclosed  
15 Jesse Nahshon Prater as treasurer. However, all of the disclosure reports filed by the Committee  
16 from the 2018 July Quarterly Report to the 2020 July Quarterly Report were signed by Kizmin  
17 Jones, though Jones is not listed on the Committee's Statement of Organization as a new  
18 treasurer, assistant treasurer or designated agent of the Committee. On August 14, 2020, the  
19 Committee filed an amended Statement of Organization, designating Constance Saylease Prater-

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<sup>5</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>6</sup> See Statement of Organization (May 10, 2018).

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1 Baker as treasurer,<sup>7</sup> but all disclosure reports filed after that date have been signed by Michele  
 2 Harding rather than Prater-Baker. As with Jones, Harding is not listed on the Committee's  
 3 Statement of Organization as a new treasurer, assistant treasurer, or designated agent of the  
 4 Committee.

5         Although Lake had never filed a Statement of Candidacy for the 2018 election, Lake ran  
 6 as a candidate in the Democratic primary election for Indiana's Sixth Congressional District and  
 7 won that election on May 8, 2018.<sup>8</sup> On May 10, 2018, Lake for Congress filed a Statement of  
 8 Organization. The next day, on May 11, 2018, Lake called the Reports Analysis Division  
 9 ("RAD") to notify them that she had won the primary election and triggered the \$5,000 candidate  
 10 registration threshold.<sup>9</sup> Lake did not file a Statement of Candidacy, however, and RAD sent her  
 11 a disavowal notice on July 26, 2018 inquiring about the Statement.<sup>10</sup> Lake lost the general  
 12 election on November 6, 2018.<sup>11</sup>

13         During the 2018 election cycle, the Committee failed to timely file most of the required  
 14 reports. RAD sent the Committee non-filer notices for the 2018 12-Day Pre-General, 2018 30-

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<sup>7</sup>         See Amended Statement of Organization (Aug. 14, 2020); Amended Statement of Organization (Aug. 27, 2020) (amended to reflect a change of address).

<sup>8</sup>         2018 Indiana Primary Election Results, Indiana Election Division, <https://enr.indianavoters.in.gov/archive/2018Primary/index.html>.

<sup>9</sup>         The Committee's first disclosure report, the 2018 July Quarterly, shows expenditures totaling over \$5,000 by June 15, 2018. See 2018 July Quarterly Report (July 15, 2018).

<sup>10</sup>         See Disavowal Notice from RAD to Lake (Jul. 26, 2018). RAD sends a disavowal notice to a candidate when the authorized committee of the candidate receives contributions or makes expenditures in excess of \$5,000 and the candidate has not filed a Statement of Candidacy. The notice requests the candidate submit a Statement of Candidacy or disavow the campaign activity within 35 days of receipt of the notification. See also, 11 C.F.R. § 100.3(a) (individual must disavow such activity by letter to the Commission within 30 days of receipt of the notification.) RAD had previously discussed with Lake the need to file a Statement of Candidacy.

<sup>11</sup>         November 2018 Indiana Election Results, Indiana Election Division, <https://enr.indianavoters.in.gov/archive/2018General/index.html>.

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1 Day Post-General, and 2018 Year-End Reports. The Committee later filed the missing Pre-  
 2 General Report on October 30, 2018, the 30-Day Post-General Report on December 31, 2019,  
 3 and the Year-End Report on February 5, 2020. According to the Committee's reports, the  
 4 Committee raised \$100,644.90 for the entire 2018 cycle. On June 29, 2020, the Commission  
 5 assessed civil money penalties totaling \$1,571.00 under the Administrative Fine Program for the  
 6 failure to file the 2018 30-Day Post-General and Year-End Reports.<sup>12</sup>

7 In 2020, Lake ran again for the same congressional district and won the Democratic  
 8 primary on June 2, 2020.<sup>13</sup> Because she had yet to file a Statement of Candidacy for that  
 9 election, RAD sent her a disavowal notice on August 6, 2020.<sup>14</sup> On August 14, 2020, Lake filed  
 10 the Statement of Candidacy.<sup>15</sup> Lake ultimately lost the general election on November 3, 2020.  
 11 Because the Committee filed no reports for much of the 2020 election cycle, RAD sent non-filer  
 12 notices to the Committee for the 2019 April, July, and October Quarterly Reports; the 2019 Year-  
 13 End Report; the 2020 April and July Quarterly Reports; and the 2020 12-Day Pre-General

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<sup>12</sup> See Administrative Fine Case #3570 (June 29, 2020) (\$1,230 for non-filed 2018 30-Day Post-General Report) and #3696 (June 29, 2020) (\$341 for non-filed 2018 Year-End Report). In addition, the Committee received Requests for Additional Information (“RFAIs”) pertaining to its 2018 cycle reports for: (1) failing to file one or more 48-hour notices; (2) failing to continuously report all outstanding loans; (3) failing to report the receipt of possible prohibited contributions, unreimbursed contributions received after the 2018 primary election, and receipt of anonymous contributions; and (4) misreporting the cash balances. RAD has advised the Office of General Counsel (“OGC”) that none of these reporting issues would meet the RAD referral thresholds to OGC or to the Alternative Dispute Resolution Office (“ADRO”) under the RAD’s Review and Referral Procedures for the 2018-2019 or 2019-2020 election cycles. See Standard 3, Statement of Candidacy (not referable to OGC or to ADRO; Standard 4, Failure to File Reports and Late Filing (receipts or disbursements exceeding \$100,000 during election cycle sent to Administrative Fines); Standard 11, Failure to Properly Itemize Disbursements (referral to ADRO when total amount of disbursements with missing/inadequate information exceeds \$50,000 up to \$250,000, during a reporting period and to OGC for amount exceeding \$250,000).

<sup>13</sup> 2020 Indiana Primary Election Results, Indiana Election Division, <https://enr.indianavoters.in.gov/archive/2020Primary/index.html>.

<sup>14</sup> See Disavowal Notice from RAD to Lake (Aug. 6, 2020).

<sup>15</sup> See Statement of Candidacy (Aug. 14, 2020). The Committee filed an amended Statement of Candidacy to change the candidate’s address. See Statement of Candidacy (Sept. 1, 2020).

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1 Report.<sup>16</sup> The Committee later filed these reports in 2020. The 2019 April Quarterly was filed  
 2 on February 26, 2020; the 2019 July Quarterly on March 2, 2020; the 2019 October Quarterly on  
 3 June 2, 2020; the 2019 Year-End on July 21, 2020; the 2020 April Quarterly on August 20, 2020,  
 4 the 2020 July Quarterly on August 27, 2020; and the 2020 Pre-General on October 26, 2020.

5 The 2020 July Quarterly Report was referred to the Administrative Fine Program.<sup>17</sup> During the  
 6 2020 election cycle, the Committee raised a total of \$150,670.82.<sup>18</sup>

7 The Complaint alleges Respondents knowingly and willfully failed to file required  
 8 reports, including Statements of Candidacy, provided inadequate purposes for disbursements, and  
 9 may have converted campaign funds to personal use.

10 **II. LEGAL ANALYSIS**

11 **A. The Commission Should Dismiss with Caution Allegations that Respondents  
 12 Knowingly and Willfully Failed to Timely Register and File Reports with the  
 13 Commission**

14 An individual becomes a candidate under the Act when: (a) such individual receives  
 15 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her  
 16 consent to another person to receive contributions or make expenditures on behalf of such  
 17 individual and if such person has received such contributions or has made such expenditures in

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16 See Non-filer notice (Oct. 23, 2020) (failure to file 2020 12-Day Pre-General Report); Non-filer notice (July 30, 2020) (failure to file 2020 July Quarterly Report); Non-filer notice (April 30, 2020) (failure to file 2020 April Quarterly Report); Non-filer notice (Feb. 19, 2020) (failure to file 2019 Year-End Report); Non-filer notice (Oct. 30, 2019) (failure to file 2019 October Quarterly Report); Non-filer notice (July 31, 2019) (failure to file 2019 July Quarterly Report); and Non-filer notice (April 30, 2019) (failure to file 2019 April Quarterly Report).

17 Administrative Fine Case #3891. RAD recommended that the report be referred to the Administrative Fine Program and the Commission recently approved the reason believe recommendation with a preliminary determination for a \$1,878.00 civil penalty. Withdrawal and Resubmission of Reason to Believe Recommendation – 2020 July Quarterly Report for the Administrative Fine Program (Jan. 8, 2021); Certification (Jan. 8, 2021).

18 RAD has advised this Office that none of the reporting issues for the 2020 cycle to date would meet the referral thresholds to OGC or to ADRO.

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1 excess of \$5,000.<sup>19</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to  
 2 designate a principal campaign committee by filing a Statement of Candidacy with the  
 3 Commission.<sup>20</sup> Within 10 days after it has been designated by the candidate, the principal  
 4 campaign committee must register by filing with the Commission a Statement of Organization.<sup>21</sup>  
 5 Every political committee must have a treasurer and may designate, on the committee's  
 6 Statement of Organization, an assistant treasurer who shall assume the duties and responsibilities  
 7 of the treasurer in the event of a vacancy or where the treasurer is unavailable.<sup>22</sup> Finally, a  
 8 committee must report any change or correction of information contained in its Statement of  
 9 Organization within 10 days after the change.<sup>23</sup>

10           1.       Failure to File Statement of Candidacy

11           Lake was required to file a Statement of Candidacy within fifteen days of crossing the  
 12 \$5,000 candidate registration threshold. According to the Committee's disclosure reports, Lake  
 13 should have filed her 2018 Statement of Candidacy no later than fifteen days after June 15, 2018,  
 14 the date on which the Committee's expenditures appear to have reached the \$5,000 candidate  
 15 registration threshold.<sup>24</sup> However, Lake never filed a Statement of Candidacy for the 2018 cycle.

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<sup>19</sup>       52 U.S.C. § 30101(2).

<sup>20</sup>       52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>21</sup>       52 U.S.C. § 30102(g); 11 C.F.R. § 102(a).

<sup>22</sup>       11 C.F.R. § 102.7(a)

<sup>23</sup>       52 U.S.C. § 30103(c); 11 C.F.R. § 102.2(a)(2).

<sup>24</sup>       See Lake for Congress, Financial Summary for 2018 cycle (Spending).

<https://www.fec.gov/data/committee/C00678557/?tab=spending&cycle=2018>; 2018 July Quarterly Report at 18 (July 15, 2018) (disclosing \$290 expenditure on June 15, 2018). The Committee also disclosed unitemized contributions totaling \$216.00 in the election cycle- to-date, so the Committee may have crossed the \$5,000 threshold at an earlier date.

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1 Further, while Lake crossed the \$5,000 threshold for registering as a candidate for the 2020 cycle  
 2 on or before August 28, 2019, when the Committee's expenditures totaled over \$5,000 in the  
 3 cycle,<sup>25</sup> she did not file a Statement of Candidacy until August 14, 2020.

4                   2.        Failure to Amend of Statement of Organization

5                   The Committee filed a Statement of Organization on May 10, 2018, which disclosed  
 6 Jesse Nahshon Prater as treasurer. However, all of the disclosure reports filed by the Committee  
 7 from the 2018 July Quarterly Report to the 2020 July Quarterly Report were signed by Kizmin  
 8 Jones. The Committee did not file an amended Statement of Organization to disclose Jones as  
 9 the new treasurer, assistant treasurer, or designated agent during that period. Further, the  
 10 Committee filed an amended Statement of Organization on August 14, 2020, designating  
 11 Constance Saylease Prater-Baker as treasurer, but disclosure reports filed after that date have  
 12 been signed by Michele Harding rather than Prater-Baker.<sup>26</sup> The Committee has not filed an  
 13 amended Statement of Organization to disclose Harding as the new treasurer, assistant treasurer,  
 14 or designated agent for the Committee.

15                   3.        Failure to File Reports of Receipts and Disbursements

16                   Political committees must file reports of receipts and disbursements according to the  
 17 schedules prescribed in the Act and Commission regulations.<sup>27</sup> Authorized committees of  
 18 individuals running for House or Senate are required to file quarterly reports with the FEC, which

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<sup>25</sup>               See Lake for Congress, Financial Summary, (Spending).

<https://www.fec.gov/data/committee/C00678557/?tab=spending>; 2019 Amended October Quarterly Report at 18 (Aug. 27, 2020) (disclosing \$647 expenditure on August 28, 2019).

<sup>26</sup>               See *supra* note 7; 2020 October Quarterly, Pre-General, and Post-General Reports (FEC Form 3, Report of Receipts and Disbursements, page 1).

<sup>27</sup>               52 U.S.C. § 30104(a); 11 C.F.R. § 104.5.

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1 are due on April 15, July 15 and October 15, as well as a year-end report due on January 31 of  
 2 the following year. Authorized committees must also file pre- and post-election reports during  
 3 the candidate's election.<sup>28</sup>

4 Here, the Committee failed to timely file most of its disclosure reports for the 2018 and  
 5 2020 election cycles: the 2018 12-Day Pre-General, 30-Day Post-General, and Year-End  
 6 Reports; the 2019 April and October Quarterly Reports; the 2019 Year-End Report; the 2020  
 7 April and July Quarterly Reports; and the 2020 12-Day Pre-General Report. The Committee has  
 8 already incurred two outstanding Administrative Fines for the 2018 30-Day Post-General and  
 9 Year-End Reports and its 2020 July Quarterly Report has been referred to the Administrative  
 10 Fine Program.<sup>29</sup>

11 The Complaint alleges that the Committee's failure to file was knowing and willful,  
 12 relying on the multiple RFAIs and non-filer notices that RAD sent to the Committee. Lake denies  
 13 the delays and errors in reporting were intentional but were caused by software problems and  
 14 lack of funds to hire an accountant.

15 A violation of the Act is knowing and willful if the "acts were committed with full  
 16 knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>30</sup> This  
 17 does not require proving knowledge of the specific statute or regulation the respondent allegedly  
 18 violated.<sup>31</sup> Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was

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<sup>28</sup> 11 C.F.R. § 104.5(a)(2)(i), (ii)

<sup>29</sup> *See supra* note 17.

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

<sup>31</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. 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)).

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1 aware that his conduct was unlawful.”<sup>32</sup> This awareness may be shown through circumstantial  
2 evidence from which the respondent’s unlawful intent reasonably may be inferred.<sup>33</sup>

3 While the Committee has not met its reporting obligations, RAD’s documentation of  
4 multiple calls with Lake confirms that the Committee experienced continuing problems with the  
5 filing software and RAD’s attempts to help them resolve these problems. The Committee also  
6 advised RAD that the lack of funds and staff hindered its ability to resolve these filing issues.

7 Under these circumstances, it does not appear that the Committee’s failure to timely file  
8 disclosure reports was knowing and willful but due to its lack of experience and resources.

9 Despite the Committee’s apparent violations described above, we do not recommend that  
10 the Commission use its limited resources to pursue the allegations based upon a number of  
11 mitigating factors. First, the Committee’s failure to file its reports have been addressed through  
12 the referral of three of its reports to the Administrative Fine Program. Second, the Committee  
13 has sought to remedy its violations by filing all of the required reports and most of the missing  
14 reports were filed before the respective general elections. Third, the Committee’s receipts and  
15 disbursements appear to have been modest for both the 2018 and 2020 election cycles, and  
16 currently, the Committee reports a negative cash balance.<sup>34</sup> Accordingly, we recommend that the  
17 Commission dismiss with caution the allegations that Lake failed to file the 2018 Statement of

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<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, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>34</sup> See 2020 30-Day Post-General Report, Summary Page at 2 (Dec. 4, 2020).

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1      Candidacy and timely file the 2020 Statement of candidacy, and that the Committee failed to  
 2      amend its Statement of Organization and file required reports.<sup>35</sup>

3                   **B.      The Commission Should Dismiss the Allegations that the Committee Failed**  
 4                   **to Properly Itemize its Disbursements**

5  
 6                  The Act and Commission regulations provide that an authorized committee must itemize  
 7          and report the name and address of each person to whom it makes expenditures or other  
 8          disbursements that aggregate more than \$200 per election cycle, together with the date, amount,  
 9          and purpose of each expenditure.<sup>36</sup> The committee must keep a record of each disbursement  
 10       including its purpose (a brief but specific description of why the disbursement was made).<sup>37</sup>

11                 The Complaint alleges that with respect to the reports that the Committee has filed, those  
 12       reports contain mostly vague descriptions for purposes of disbursements.<sup>38</sup> It asserts that none of  
 13       the disbursements in the Committee's 2019 Year-End Report satisfies the "adequate purpose"  
 14       requirements, noting that disbursements to the Muncie Meijer Grocery store, located a few miles  
 15       from Lake's residence, includes purpose entries such as, "admin," "event," "travel," and that

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<sup>35</sup>                *Heckler*, 470 U.S. at 831.

<sup>36</sup>                52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a). The Commission's *Statement of Policy: "Purpose of Disbursement" Entries for Filings with the Commission* instructs that descriptions, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make clear the purpose of the disbursement. *See Statement of Policy "Purpose of Disbursement" Entries for Filings with the Commission*, 72 Fed. Reg. 887 (Jan. 9, 2007). Further, the policy includes a non-exhaustive list of sufficient and insufficient "purposes" for disbursements made by political committees, and instructs political committees to contact their RAD analysts with questions as to how to report the purposes of disbursements. *Id.* at 888. Examples of statements or descriptions, which meet the requirements of 11 C.F.R. § 104.3(b)(4) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. 11 C.F.R. § 104.3(b)(4)(i)(A). However, statements or descriptions such as *advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration* would not meet the requirements of 11 C.F.R. § 104.3(b)(4) for reporting the purpose of an expenditure. *Id.* (emphasis in original).

<sup>37</sup>                11 C.F.R. § 102.9(b)(1).

<sup>38</sup>                Compl. at 2.

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1 Lake spent \$353.99 at the Village Pantry (store 5524), a store located three miles from Lake's  
 2 residence, for "travel-gas."<sup>39</sup>

3 The Committee's 2019 Year-End Report and other disclosure reports include a number of  
 4 disbursements with missing or inadequate information: cash withdrawals with no payee or  
 5 purpose specified, disbursements with no payee specified, disbursements listed with inadequate  
 6 purposes such as "event," "campaign expense," and "campaign event expense."<sup>40</sup> However,  
 7 these disbursements represent only about \$1,773.48 in disbursements, and most are for small  
 8 dollar amounts that fall below the itemization threshold of \$200.<sup>41</sup> Under these circumstances,  
 9 we recommend that the Commission exercise its prosecutorial discretion and dismiss the  
 10 allegations pertaining to the failure to properly itemize disbursements, in violation of 52 U.S.C.  
 11 § 30104(b)(5)(A) and 6(A).<sup>42</sup>

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

15 The Act and Commission regulations provide that campaign funds "shall not be  
 16 converted by any person to personal use," and defines personal use as using funds "to fulfill any  
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<sup>39</sup> *Id.* at 3. The Committee's disclosure reports do not reflect any disbursements to Village Pantry, contrary to the allegation in the Complaint.

<sup>40</sup> Committee disclosure reports reflect several disbursements to Meijer for unspecified "campaign event expense" and "event" in the following amounts: \$3.21, \$51.41, \$98.54, \$39.70, \$26.16, \$49.04, \$55.78, \$54.42, \$20.53, and \$20.53. Disclosure reports reflect several cash withdrawals from Ball State Federal Credit Union without a specific payee or purpose: \$100, \$200, \$64, \$47.51, \$103.95, \$200, \$100, \$134.70, and \$404.00.

<sup>41</sup> *Id.* RAD has advised this Office that the amount of entries would not meet the RAD threshold for referral to OGC or to ADRO. *See RAD's Review and Referral Procedures for the 2017-2018 and 2019-2020 Election Cycles.*

<sup>42</sup> *See Heckler; see also* Factual and Legal Analysis at 1-2, MUR 7278 (McClintock for Congress) (*Heckler* dismissal for incorrectly describing the purpose of certain disbursements given the technical nature of the alleged violations).

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1 commitment, obligation, or expense of a person that would exist irrespective of the candidate's  
 2 election campaign or individual's duties as a holder of Federal office.”<sup>43</sup> The Act and  
 3 Commission regulations further enumerate certain types of disbursements that are *per se* personal  
 4 use.<sup>44</sup> These include, but are not limited to, household food items or supplies; mortgage, rent, or  
 5 utility payments for any part of a personal residence of the candidate; admission to a sporting  
 6 event or other form of entertainment unless part of a specific campaign or officeholder activity;  
 7 and dues, fees, or gratuities at a recreational facility unless they are part of the costs of a specific  
 8 fundraising event.<sup>45</sup> For all other disbursements, the regulation provides that the Commission  
 9 shall determine on a case-by-case basis, whether a given disbursement is personal use by  
 10 applying the “irrespective test” formulated in the statute.<sup>46</sup> Meals, travel, and vehicle expenses  
 11 are examples of disbursements that may be determined to be personal use after applying the  
 12 irrespective test.<sup>47</sup>

13 In this matter, the Complaint's personal use allegations rely upon the lack of specificity  
 14 for disbursements to the Meijer store *e.g.*, “event,” “campaign expense event,” combined with  
 15 disbursements to the same store for “meals,” “travel,” and “fuel,” and the store's proximity to  
 16

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<sup>43</sup> 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1(g).

<sup>44</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1).

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

<sup>46</sup> 11 C.F.R. § 113.1(g)(1)(ii).

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

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1 Lake's residence.<sup>48</sup> However, the allegations appear to be speculative.<sup>49</sup> None of the activity  
 2 represents *per se* personal use, and the store's proximity to Lake's residence does not establish  
 3 personal use. And, as previously noted, the disbursements represent a small number of  
 4 transactions, totaling about \$1,773.48 in disbursements. Further, while the candidate does not  
 5 specifically rebut the personal use allegations, the information, on balance, is insufficient to  
 6 create a credible allegation that a significant violation may have occurred.<sup>50</sup> Without additional  
 7 specificity regarding the nature of the potential personal use, the Complaint does not appear to  
 8 raise a reasonable inference that Committee funds were converted to personal use. Accordingly,  
 9 we recommend that the Commission dismiss the allegations that Lake for Congress Committee  
 10 and Constance Saylease Prater-Baker in her official capacity as treasurer and Jeannine Lake  
 11 violated 52 U.S.C. § 30114(b).

12 **III. RECOMMENDATIONS**

13 1. Dismiss with caution the allegation that Jeannine Lake violated 52 U.S.C.  
 14 § 30102(e)(1) by failing to file and timely file Statements of Candidacy;

15 2. Dismiss with caution the allegation that Lake for Congress Committee and  
 16 Constance Saylease Prater-Baker in her official capacity as treasurer violated  
 17 52 U.S.C. § 30103(c) by failing to amend Statements of Organization;

18 3. Dismiss with caution the allegation that Lake for Congress Committee and  
 19 Constance Saylease Prater-Baker in her official capacity as treasurer violated  
 20 52 U.S.C. § 30104(a) by failing to timely file disclosure reports;

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48 Compl. at 3.

49 See Factual and Legal Analysis at 7-8, MUR 7494 (Culberston) (dismissing personal use allegations where Complaint failed to provide sufficient information that expenditures in question were made to support candidate's business or personal interests).

50 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).

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4. Dismiss the allegation that Lake for Congress Committee and Constance Saylease Prater-Baker in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A) and 6(A) by failing to properly itemize disbursements;
5. Dismiss the allegation that Jeannine Lake and Lake for Congress Committee and Constance Saylease Prater-Baker in her official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use;
6. Approve the attached Factual and Legal Analysis;
7. Approve the appropriate letters; and
8. Close the file.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel for Enforcement

1/22/21

*Peter Blumberg by JG*  
Peter G. Blumberg  
Acting Deputy Associate General Counsel

Jin Lee  
Jin Lee  
Acting Assistant General Counsel

Dominique Dillenseger  
Dominique Dillenseger  
Attorney

## Attachment:

## (1) Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Lake for Congress and  
Constance Saylease Prater-Baker  
in her official capacity as treasurer,  
Jeannine Lee Lake

**MUR: 7778**

## I. INTRODUCTION

The Complaint alleges that Jeannine Lake and her authorized committee, Lake for  
ess and Constance Saylease Prater-Baker in her official capacity as treasurer<sup>1</sup> (collectively,  
ommittee”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”)  
ommission regulations, by “misrepresenting Lake’s status as a federal candidate,”  
ngly and willfully failing to file required reports with the Federal Election Commission  
Commission”), and failing to provide adequate purposes for its disbursements.<sup>2</sup> The  
aint further alleges that the inadequately reported purposes for the disbursements indicate  
ake and the Committee converted campaign funds to personal use.<sup>3</sup> Lake denies the  
ions, asserting that the Complaint is politically motivated and that the filing delays and  
are due to “repeated software errors” and lack of funds to hire a professional accountant.<sup>4</sup>

22 The available information indicates that Lake, a candidate for Congress in 2018 and 2020,  
23 never filed a Statement of Candidacy for 2018 and filed her Statement of Candidacy for 2020  
24 late. In addition, the Committee failed to timely file disclosure reports and failed to properly

<sup>1</sup> The Complaint lists Kizmin Jones and Jesse Nahshon Prater as former treasurers and respondents. The current named treasurer is Constance Saylease Prater-Baker. Compl. at 1 (Aug. 14, 2020).

2 *Id.* at 1, 2.

3 *Id.* at 3.

<sup>4</sup> Lake Resp. (E-mail from Jeannine Lake to Christal Dennis, CELA, FEC (Aug. 27, 2020 14:30 EST)).

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1 itemize disbursements for the 2018 and 2020 election cycles, among other reporting violations.

2 As discussed further below, however, the Commission is not pursuing this matter given that the

3 Commission has already assessed penalties as to the Committee under the Administrative Fine

4 Program for failing to file several reports, and the other apparent violations do not appear to

5 warrant the expenditure of additional Commission resources. Accordingly, the Commission

6 exercises its prosecutorial discretion and dismisses with caution the allegations that Lake violated

7 52 U.S.C. § 30102(e)(1) by failing to file or timely file Statements of Candidacy and the

8 Committee violated 52 U.S.C. § 30103(c) by failing to amend its Statement of Organization, and

9 52 U.S.C. § 30104(a) by failing to timely file disclosure reports; and dismisses, as a matter of

10 prosecutorial discretion, the allegations that the Committee violated 52 U.S.C. § 30104(b)(5)(A)

11 and 6(A) by failing to properly itemize disbursements.<sup>5</sup> Further, the Commission dismisses the

12 allegations that Lake and the Committee violated 52 U.S.C. § 30114(b) by converting campaign

13 funds to personal use.

14 **II. FACTUAL BACKGROUND**

15 Jeannine Lee Lake was a candidate for the U.S. House of Representatives in Indiana's

16 Sixth District in the 2018 and 2020 elections, advancing to the general election each time before

17 ultimately losing. Lake for Congress has been Lake's principal campaign committee since

18 2018.<sup>6</sup> The Committee filed a Statement of Organization on May 10, 2018, which disclosed

19 Jesse Nahshon Prater as treasurer. However, all of the disclosure reports filed by the Committee

20 from the 2018 July Quarterly Report to the 2020 July Quarterly Report were signed by Kizmin

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<sup>5</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>6</sup> See Statement of Organization (May 10, 2018).

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1 Jones, though Jones is not listed on the Committee's Statement of Organization as a new  
2 treasurer, assistant treasurer or designated agent of the Committee. On August 14, 2020, the  
3 Committee filed an amended Statement of Organization, designating Constance Saylease Prater-  
4 Baker as treasurer,<sup>7</sup> but all disclosure reports filed after that date have been signed by Michele  
5 Harding rather than Prater-Baker. As with Jones, Harding is not listed on the Committee's  
6 Statement of Organization as a new treasurer, assistant treasurer, or designated agent of the  
7 Committee.

8         Although Lake had never filed a Statement of Candidacy for the 2018 election, Lake ran  
9 as a candidate in the Democratic primary election for Indiana's Sixth Congressional District and  
10 won that election on May 8, 2018.<sup>8</sup> On May 10, 2018, Lake for Congress filed a Statement of  
11 Organization. The next day, on May 11, 2018, Lake called the Reports Analysis Division  
12 ("RAD") to notify them that she had won the primary election and triggered the \$5,000 candidate  
13 registration threshold.<sup>9</sup> Lake did not file a Statement of Candidacy, however, and RAD sent her

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<sup>7</sup>         See Amended Statement of Organization (Aug. 14, 2020); Amended Statement of Organization (Aug. 27, 2020) (amended to reflect a change of address).

<sup>8</sup>         2018 Indiana Primary Election Results, Indiana Election Division, <https://enr.indianavoters.in.gov/archive/2018Primary/index.html>.

<sup>9</sup>         The Committee's first disclosure report, the 2018 July Quarterly, shows expenditures totaling over \$5,000 by June 15, 2018. See 2018 July Quarterly Report (July 15, 2018).

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1 a disavowal notice on July 26, 2018 inquiring about the Statement.<sup>10</sup> Lake lost the general  
 2 election on November 6, 2018.<sup>11</sup>

3 During the 2018 election cycle, the Committee failed to timely file most of the required  
 4 reports. RAD sent the Committee non-filer notices for the 2018 12-Day Pre-General, 2018 30-  
 5 Day Post-General, and 2018 Year-End Reports. The Committee later filed the missing Pre-  
 6 General Report on October 30, 2018, the 30-Day Post-General Report on December 31, 2019,  
 7 and the Year-End Report on February 5, 2020. According to the Committee's reports, the  
 8 Committee raised \$100,644.90 for the entire 2018 cycle. On June 29, 2020, the Commission  
 9 assessed civil money penalties totaling \$1,571.00 under the Administrative Fine Program for the  
 10 failure to file the 2018 30-Day Post-General and Year-End Reports.<sup>12</sup>

11 In 2020, Lake ran again for the same congressional district and won the Democratic  
 12 primary on June 2, 2020.<sup>13</sup> Because she had yet to file a Statement of Candidacy for that  
 13 election, RAD sent her a disavowal notice on August 6, 2020.<sup>14</sup> On August 14, 2020, Lake filed

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<sup>10</sup> See Disavowal Notice from RAD to Lake (Jul. 26, 2018). RAD sends a disavowal notice to a candidate when the authorized committee of the candidate receives contributions or makes expenditures in excess of \$5,000 and the candidate has not filed a Statement of Candidacy. The notice requests the candidate submit a Statement of Candidacy or disavow the campaign activity within 35 days of receipt of the notification. *See also*, 11 C.F.R. § 100.3(a) (individual must disavow such activity by letter to the Commission within 30 days of receipt of the notification.) RAD had previously discussed with Lake the need to file a Statement of Candidacy.

<sup>11</sup> November 2018 Indiana Election Results, Indiana Election Division, <https://enr.indianavoters.in.gov/archive/2018General/index.html>.

<sup>12</sup> See Administrative Fine Case #3570 (June 29, 2020) (\$1,230 for non-filed 2018 Post-General Report) and #3696 (June 29, 2020) (\$341 for non-filed 2018 Year-End Report). In addition, the Committee received Requests for Additional Information ("RFAIs") pertaining to its 2018 cycle reports for: (1) failing to file one or more 48-hour notices; (2) failing to continuously report all outstanding loans; (3) failing to report the receipt of possible prohibited contributions, unreimbursed contributions received after the 2018 primary election, and receipt of anonymous contributions; and (4) misreporting the cash balances.

<sup>13</sup> 2020 Indiana Primary Election Results, Indiana Election Division, <https://enr.indianavoters.in.gov/archive/2020Primary/index.html>.

<sup>14</sup> See Disavowal Notice from RAD to Lake (Aug. 6, 2020).

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1 the Statement of Candidacy.<sup>15</sup> Lake ultimately lost the general election on November 3, 2020.

2 Because the Committee filed no reports for much of the 2020 election cycle, RAD sent non-filer

3 notices to the Committee for the 2019 April, July, and October Quarterly Reports; the 2019 Year-

4 End Report; the 2020 April and July Quarterly Reports; and the 2020 12-Day Pre-General

5 Report.<sup>16</sup> The Committee later filed these reports in 2020. The 2019 April Quarterly was filed

6 on February 26, 2020; the 2019 July Quarterly on March 2, 2020; the 2019 October Quarterly on

7 June 2, 2020; the 2019 Year-End on July 21, 2020; the 2020 April Quarterly on August 20, 2020,

8 the 2020 July Quarterly on August 27, 2020; and the 2020 12-Day Pre-General on October 26,

9 2020. During the 2020 election cycle, the Committee raised a total of \$150,670.82.

10 The Complaint alleges Respondents knowingly and willfully failed to file required

11 reports, including Statements of Candidacy, provided inadequate purposes for disbursements, and

12 may have converted campaign funds to personal use.

## 13 **II. LEGAL ANALYSIS**

### 14 **A. The Commission Dismisses with Caution Allegations that Respondents**

### 15 **Knowingly and Willfully Failed to Timely Register and File Reports with the**

### 16 **Commission**

17 An individual becomes a candidate under the Act when: (a) such individual receives

18 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her

19 consent to another person to receive contributions or make expenditures on behalf of such

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<sup>15</sup> See Statement of Candidacy (Aug. 14, 2020). The Committee filed an amended Statement of Candidacy to change the candidate's address. See Statement of Candidacy (Sept. 1, 2020).

<sup>16</sup> See Non-filer notice (Oct. 23, 2020) (failure to file 2020 12-Day Pre-General Report); Non-filer notice (July 30, 2020) (failure to file 2020 July Quarterly Report); Non-filer notice (April 30, 2020) (failure to file 2020 April Quarterly Report); Non-filer notice (Feb. 19, 2020) (failure to file 2019 Year-End Report); Non-filer notice (Oct. 30, 2019) (failure to file 2019 October Quarterly Report); Non-filer notice (July 31, 2019) (failure to file 2019 July Quarterly Report); and Non-filer notice (April 30, 2019) (failure to file 2019 April Quarterly Report).

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1 individual and if such person has received such contributions or has made such expenditures in  
 2 excess of \$5,000.<sup>17</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to  
 3 designate a principal campaign committee by filing a Statement of Candidacy with the  
 4 Commission.<sup>18</sup> Within 10 days after it has been designated by the candidate, the principal  
 5 campaign committee must register by filing with the Commission a Statement of Organization.<sup>19</sup>  
 6 Every political committee must have a treasurer and may designate, on the committee's  
 7 Statement of Organization, an assistant treasurer who shall assume the duties and responsibilities  
 8 of the treasurer in the event of a vacancy or where the treasurer is unavailable.<sup>20</sup> Finally, a  
 9 committee must report any change or correction of information contained in its Statement of  
 10 Organization within 10 days after the change.<sup>21</sup>

11           1.       Failure to File Statement of Candidacy

12           Lake was required to file a Statement of Candidacy within fifteen days of crossing the  
 13 \$5,000 candidate registration threshold. According to the Committee's disclosure reports, Lake  
 14 should have filed her 2018 Statement of Candidacy no later than fifteen days after June 15, 2018,  
 15 the date on which the Committee's expenditures appear to have reached the \$5,000 candidate  
 16 registration threshold.<sup>22</sup> However, Lake never filed a Statement of Candidacy for the 2018 cycle.

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17       52 U.S.C. § 30101(2).

18       52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

19       52 U.S.C. § 30102(g); 11 C.F.R. § 102(a).

20       11 C.F.R. § 102.7(a)

21       52 U.S.C. § 30103(c); 11 C.F.R. § 102.2(a)(2).

22       See Lake for Congress, Financial Summary for 2018 cycle (Spending).

<https://www.fec.gov/data/committee/C00678557/?tab=spending&cycle=2018>; 2018 July Quarterly Report at 18 (July 15, 2018) (disclosing \$290 expenditure on June 15, 2018). The Committee also disclosed unitemized

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1 Further, while Lake crossed the \$5,000 threshold for registering as a candidate for the 2020 cycle  
 2 on or before August 28, 2019, when the Committee's expenditures totaled over \$5,000 in the  
 3 cycle,<sup>23</sup> she did not file a Statement of Candidacy until August 14, 2020.

4                   2.        Failure to Amend of Statement of Organization

5                   The Committee filed a Statement of Organization on May 10, 2018, which disclosed  
 6 Jesse Nahshon Prater as treasurer. However, all of the disclosure reports filed by the Committee  
 7 from the 2018 July Quarterly Report to the 2020 July Quarterly Report were signed by Kizmin  
 8 Jones. The Committee did not file an amended Statement of Organization to disclose Jones as  
 9 the new treasurer, assistant treasurer, or designated agent during that period. Further, the  
 10 Committee filed an amended Statement of Organization on August 14, 2020, designating  
 11 Constance Saylease Prater-Baker as treasurer, but disclosure reports filed after that date have  
 12 been signed by Michele Harding rather than Prater-Baker.<sup>24</sup> The Committee has not filed an  
 13 amended Statement of Organization to disclose Harding as the new treasurer, assistant treasurer,  
 14 or designated agent for the Committee.

15                   3.        Failure to File Reports of Receipts and Disbursements

16                   Political committees must file reports of receipts and disbursements according to the  
 17 schedules prescribed in the Act and Commission regulations.<sup>25</sup> Authorized committees of

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contributions totaling \$216.00 in the election cycle- to-date, so the Committee may have crossed the \$5,000 threshold at an earlier date.

<sup>23</sup>               See Lake for Congress, Financial Summary, (Spending).

<https://www.fec.gov/data/committee/C00678557/?tab=spending>; 2019 Amended October Quarterly Report at 18 (Aug. 27, 2020) (disclosing \$647 expenditure on August 28, 2019).

<sup>24</sup>               See *supra* note 7; 2020 October Quarterly, Pre-General, and Post-General Reports (FEC Form 3, Report of Receipts and Disbursements, page 1).

<sup>25</sup>               52 U.S.C. § 30104(a); 11 C.F.R. § 104.5.

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1 individuals running for House or Senate are required to file quarterly reports with the FEC, which  
 2 are due on April 15, July 15 and October 15, as well as a year-end report due on January 31 of  
 3 the following year. Authorized committees must also file pre- and post-election reports during  
 4 the candidate's election.<sup>26</sup>

5 Here, the Committee failed to timely file most of its disclosure reports for the 2018 and  
 6 2020 election cycles: the 2018 Pre-General, Post-General, and Year-End Reports; the 2019 April  
 7 and October Quarterly Reports; the 2019 Year-End Report; the 2020 April and July Quarterly  
 8 Reports; and the 2020 Pre-General Report. The Committee has already incurred two outstanding  
 9 Administrative Fines for the 2018 30-Day Post-General and Year-End Reports.

10 The Complaint alleges that the Committee's failure to file was knowing and willful,  
 11 relying on the multiple RFAIs and non-filer notices that RAD sent to the Committee. Lake denies  
 12 the delays and errors in reporting were intentional but were caused by software problems and  
 13 lack of funds to hire an accountant.

14 A violation of the Act is knowing and willful if the "acts were committed with full  
 15 knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>27</sup> This  
 16 does not require proving knowledge of the specific statute or regulation the respondent allegedly  
 17 violated.<sup>28</sup> Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was

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<sup>26</sup> 11 C.F.R. § 104.5(a)(2)(i), (ii)

<sup>27</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>28</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. 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)).

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1 aware that his conduct was unlawful.”<sup>29</sup> This awareness may be shown through circumstantial  
2 evidence from which the respondent’s unlawful intent reasonably may be inferred.<sup>30</sup>

3 While the Committee has not met its reporting obligations, RAD’s documentation of  
4 multiple calls with Lake confirms that the Committee experienced continuing problems with the  
5 filing software and RAD’s attempts to help them resolve these problems. The Committee also  
6 advised RAD that the lack of funds and staff hindered its ability to resolve these filing issues.

7 Under these circumstances, it does not appear that the Committee’s failure to timely file  
8 disclosure reports was knowing and willful but due to its lack of experience and resources.

9 Despite the Committee’s apparent violations described above, the Commission is not  
10 pursuing the allegations based upon a number of mitigating factors. First, the Committee’s  
11 failure to file its reports have been addressed through the referral of several reports to the  
12 Administrative Fine Program. Second, the Committee has sought to remedy its violations by  
13 filing all of the required reports and most of the missing reports were filed before the respective  
14 general elections. Third, the Committee’s receipts and disbursements appear to have been  
15 modest for both the 2018 and 2020 election cycles, and currently, the Committee reports a  
16 negative cash balance.<sup>31</sup> Accordingly, the Commission dismisses with caution the allegations  
17 that Lake failed to file the 2018 Statement of Candidacy and timely file the 2020 Statement of

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<sup>29</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>30</sup> Cf. *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>31</sup> See 2020 30-Day Post-General Report, Summary Page at 2 (Dec. 4, 2020).

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1 candidacy, and that the Committee failed to amend its Statement of Organization and file  
 2 required reports.<sup>32</sup>

3           **B. The Commission Dismisses the Allegations that the Committee Failed to**  
 4           **Properly Itemize its Disbursements**

5           The Act and Commission regulations provide that an authorized committee must itemize  
 6 and report the name and address of each person to whom it makes expenditures or other  
 7 disbursements that aggregate more than \$200 per election cycle, together with the date, amount,  
 8 and purpose of each expenditure.<sup>33</sup> The committee must keep a record of each disbursement  
 9 including its purpose (a brief but specific description of why the disbursement was made).<sup>34</sup>

10           The Complaint alleges that with respect to the reports that the Committee has filed, those  
 11 reports contain mostly vague descriptions for purposes of disbursements.<sup>35</sup> It asserts that none of  
 12 the disbursements in the Committee’s 2019 Year-End Report satisfies the “adequate purpose”  
 13 requirements, noting that disbursements to the Muncie Meijer Grocery store, located a few miles  
 14 from Lake’s residence, includes purpose entries such as, “admin,” “event,” “travel,” and that  
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<sup>32</sup>           *Heckler*, 470 U.S. at 831.

<sup>33</sup>           52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a). The Commission’s *Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission* instructs that descriptions, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make clear the purpose of the disbursement. *See Statement of Policy “Purpose of Disbursement” Entries for Filings with the Commission*, 72 Fed. Reg. 887 (Jan. 9, 2007). Further, the policy includes a non-exhaustive list of sufficient and insufficient “purposes” for disbursements made by political committees, and instructs political committees to contact their RAD analysts with questions as to how to report the purposes of disbursements. *Id.* at 888. Examples of statements or descriptions, which meet the requirements of 11 C.F.R. § 104.3(b)(4) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. 11 C.F.R. § 104.3(b)(4)(i)(A). However, statements or descriptions such as *advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration* would not meet the requirements of 11 C.F.R. § 104.3(b)(4) for reporting the purpose of an expenditure. *Id.* (emphasis in original).

<sup>34</sup>           11 C.F.R. § 102.9(b)(1).

<sup>35</sup>           Compl. at 2.

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## Factual and Legal Analysis

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1 Lake spent \$353.99 at the Village Pantry (store 5524), a store located three miles from Lake's  
2 residence, for "travel-gas."<sup>36</sup>

3 The Committee’s 2019 Year-End Report and other disclosure reports include a number of  
4 disbursements with missing or inadequate information: cash withdrawals with no payee or  
5 purpose specified, disbursements with no payee specified, disbursements listed with inadequate  
6 purposes such as “event,” “campaign expense,” and “campaign event expense.”<sup>37</sup> However,  
7 these disbursements represent only about \$1,773.48 in disbursements, and most are for small  
8 dollar amounts that fall below the itemization threshold of \$200.<sup>38</sup> Under these circumstances,  
9 the Commission exercises its prosecutorial discretion and dismisses the allegations pertaining to  
10 the failure to properly itemize disbursements, in violation of 52 U.S.C. § 30104(b)(5)(A) and  
11 6(A).<sup>39</sup>

**C. The Commission Dismisses the Allegations that the Committee and Lake Violated 52 U.S.C. § 30114(b) by Converting Campaign Funds to Personal Use**

The Act and Commission regulations provide that campaign funds “shall not be

17 converted by any person to personal use,” and defines personal use as using funds “to fulfill any  
18 commitment, obligation, or expense of a person that would exist irrespective of the candidate’s

<sup>36</sup> *Id.* at 3. The Committee's disclosure reports do not reflect any disbursements to Village Pantry, contrary to the allegation in the Complaint.

<sup>37</sup> Committee disclosure reports reflect several disbursements to Meijer for unspecified “campaign event expense” and “event” in the following amounts: \$3.21, \$51.41, \$98.54, \$39.70, \$26.16, \$49.04, \$55.78, \$54.42, \$20.53, and \$20.53. Disclosure reports reflect several cash withdrawals from Ball State Federal Credit Union without a specific payee or purpose: \$100, \$200, \$64, \$47.51, \$103.95, \$200, \$100, \$134.70, and \$404.00.

38

Id.

<sup>39</sup> See Heckler; see also Factual and Legal Analysis at 1-2, MUR 7278 (McClintock for Congress) (Heckler dismissal for incorrectly describing the purpose of certain disbursements given the technical nature of the alleged violations).

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1 election campaign or individual's duties as a holder of Federal office.”<sup>40</sup> The Act and  
 2 Commission regulations further enumerate certain types of disbursements that are *per se* personal  
 3 use.<sup>41</sup> These include, but are not limited to, household food items or supplies; mortgage, rent, or  
 4 utility payments for any part of a personal residence of the candidate; admission to a sporting  
 5 event or other form of entertainment unless part of a specific campaign or officeholder activity;  
 6 dues, fees, or gratuities at a recreational facility unless they are part of the costs of a specific  
 7 fundraising event.<sup>42</sup> For all other disbursements, the regulation provides that the Commission  
 8 shall determine on a case-by-case basis, whether a given disbursement is personal use by  
 9 applying the “irrespective test” formulated in the statute.<sup>43</sup> Meals, travel, and vehicle expenses  
 10 are examples of disbursements that may be determined to be personal use after applying the  
 11 irrespective test.<sup>44</sup>

12 In this matter, the Complaint’s personal use allegations rely upon the lack of specificity  
 13 for disbursements to the Meijer store *e.g.*, “event,” “campaign expense event,” combined with  
 14 disbursements to the same store for “meals,” “travel,” and “fuel,” and the store’s proximity to  
 15 Lake’s residence.<sup>45</sup> However, the allegations appear to be speculative.<sup>46</sup> None of the activity

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<sup>40</sup> 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1(g).

<sup>41</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1).

<sup>42</sup> *Id.*

<sup>43</sup> 11 C.F.R. § 113.1(g)(1)(ii).

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

<sup>45</sup> Compl. at 3.

<sup>46</sup> See Factual and Legal Analysis at 7-8, MUR 7494 (Culberston) (dismissing personal use allegations where Complaint failed to provide sufficient information that expenditures in question were made to support candidate’s business or personal interests).

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1 represents *per se* personal use, and the store's proximity to Lake's residence does not establish  
2 personal use. And, as previously noted, the disbursements represent a small number of  
3 transactions, totaling about \$1,773.48 in disbursements. Further, while the candidate does not  
4 specifically rebut the personal use allegations, the information, on balance, is insufficient to  
5 create a credible allegation that a significant violation may have occurred.<sup>47</sup> Without additional  
6 specificity regarding the nature of the potential personal use, the Complaint does not appear to  
7 raise a reasonable inference that Committee funds were converted to personal use. Accordingly,  
8 the Commission dismisses the allegations that Lake for Congress Committee and Constance  
9 Saylease Prater-Baker in her official capacity as treasurer and Jeannine Lake violated 52 U.S.C.  
10 § 30114(b).

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<sup>47</sup> 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).