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OFFICE OF GENERAL COUNSEL

**BEFORE THE
FEDERAL ELECTION COMMISSION**

MUR 7791

Daniel Caruso

Mechanicsburg, PA 17050

Complainant,

v.

Congressman Scott Perry

Dillsburg, PA 17019

Patriots for Perry and Lisa Stone, Treasurer
P.O. Box 633
New Cumberland, PA 17070

First Capital PAC and Lisa Stone, Treasurer
P.O. Box 82
New Cumberland, PA 17070

Koch Industries, Inc. Political Action Committee (KOCHPAC) and Lacye R. Tennille, Treasurer
4111 East 37th Street North
Wichita, KS 67220

Respondents.

COMPLAINT

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against Congressman Scott Perry; his principal campaign committee, Patriots for Perry and Lisa Stone in her official capacity as treasurer (the "Campaign"); his leadership political action committee ("PAC"), First Capital PAC and Lisa Stone in her official capacity as treasurer ("FC PAC"); and Koch Industries, Inc. Political Action Committee (KOCHPAC) and Lacye R. Tennille in her official capacity as treasurer ("KOCHPAC") for apparently violating the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission (the "Commission")

regulations. The facts here are messy and call into question the accuracy of the reports filed with the FEC by Respondents and also reveal that the Campaign has mishandled an excessive or otherwise inappropriately deposited contribution.

In short, it appears that: (1) the Campaign has reported receiving a contribution from KOCHPAC that KOCHPAC has not reported making, meaning one of the two committees has committed a reporting violation; (2) the Campaign transferred a KOCHPAC contribution to FC PAC, when a principal campaign committee and a leadership PAC cannot transfer funds to each other and the Campaign was required under the Commission's regulations to refund the contribution to KOCHPAC; and (3) FC PAC failed to report a contribution from KOCHPAC. Filing inaccurate reports and mishandling contributions are serious violations of the Act. The Commission should immediately investigate whether Perry, the Campaign, FC PAC, and KOCHPAC have violated the law.

FACTUAL BACKGROUND

Congressman Scott Perry currently represents Pennsylvania's Tenth Congressional District and is running for reelection in 2020.¹ Patriots for Perry is his principal campaign committee.² First Capital PAC is Congressman Perry's leadership PAC and a qualified multicandidate committee.³ Koch Industries, Inc. PAC is also a multicandidate committee, and it is the separate segregated fund of Koch Industries, Inc.⁴ The allegations in this complaint center

¹ About Scott, CONGRESSMAN SCOTT PERRY, <https://perry.house.gov/about-scott/default.aspx> (last visited Aug. 9, 2020); Scott Perry, FEC Form 2, Statement of Candidacy (amended Nov. 29, 2018), <https://docquery.fec.gov/pdf/058/201811299133877058/201811299133877058.pdf>.

² Patriots for Perry, FEC Form 1, Statement of Organization (amended Oct. 14, 2019), <https://docquery.fec.gov/pdf/639/201910149163852639/201910149163852639.pdf>.

³ First Capital PAC, FEC Form 1, Statement of Organization (amended Jan. 31, 2019), <https://docquery.fec.gov/pdf/965/201901319144475965/201901319144475965.pdf>.

⁴ Koch Industries, Inc. Political Action Committee (KOCHPAC), FEC Form 1, Statement of Organization (amended May 29, 2019), <https://docquery.fec.gov/pdf/997/201905299149837997/201905299149837997.pdf>.

on the Campaign's reporting of three contributions from KOCHPAC, and issues related to those contributions, as described below.

- **Contribution 1:** KOCHPAC reported making a \$5,000 contribution to the Campaign on November 19, 2019, which it designated for Perry's primary election.⁵ The Campaign reported receiving the \$5,000 contribution for the primary election on November 25, 2019.⁶
- **Contribution 2:** The Campaign reported receiving a second \$5,000 contribution from KOCHPAC on December 20, 2019.⁷ The Campaign's FEC report stated that KOCHPAC designated the contribution for Perry's primary election, but the Campaign was re-designating the contribution for the general election.⁸ KOCHPAC, however, did not report making this additional contribution to the Campaign. Instead, KOCHPAC reported making a \$5,000 contribution to FC PAC on December 9, 2019.⁹
- **Contribution 3:** The Campaign reported receiving a third \$5,000 contribution from KOCHPAC on June 30, 2020, this time designated to the general election.¹⁰ The report noted that KOCHPAC had contributed \$15,000 in the aggregate.¹¹ On the same day, in an apparent attempt to remedy the excessive contribution, the Campaign disbursed \$5,000 to FC PAC, which it reported as a memo item on Line 21 for "other disbursements."¹² The Campaign reported the purpose of the disbursement as a "transfer of KOCH PAC check from 2019."¹³ The memo item accompanying the disbursement stated, "check was inadvertently deposited into the candidate."¹⁴ This time, KOCHPAC did report making a June 2020 contribution to the Campaign for Perry's general election.¹⁵

⁵Koch Industries, Inc. Political Action Committee (KOCHPAC), Amended December Monthly Report at 807 (Jan. 2, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202001029166893258>.

⁶Patriots for Perry, Amended 2019 Year End Report at 131 (Apr. 15, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202004159216796569>.

⁷*Id.* at 132, <https://docquery.fec.gov/cgi-bin/fecimg/?202004159216796570>.

⁸*Id.*

⁹Koch Industries, Inc. Political Action Committee (KOCHPAC), 2019 Year End Report at 822 (Jan. 31, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202001319184868670>.

¹⁰Patriots for Perry, 2020 July Quarterly Report at 173 (July 15, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202007159249913831>.

¹¹*Id.* at 205, <https://docquery.fec.gov/cgi-bin/fecimg/?202007159249913863>.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵Koch Industries, Inc. Political Action Committee (KOCHPAC), 2020 July Monthly Report at 587, <https://docquery.fec.gov/cgi-bin/fecimg/?202007209259971153> (reporting making the contribution on June 22, 2020).

In addition, KOCHPAC reported making a \$5,000 contribution to FC PAC on June 22, 2020.¹⁶ FC PAC, however, has not reported receiving this contribution nor any other contribution from KOCHPAC this cycle.¹⁷

LEGAL ANALYSIS

The Act and Commission regulations establish strict reporting requirements.¹⁸ Their cardinal rule is that all contributions received by a political committee must be reported and reported accurately.¹⁹ This ensures transparency and provides an opportunity for the Commission to spot substantive issues and require committees to take remedial actions, such as refunding an excessive contribution. The regulations also provide detailed instructions for complying with the reporting requirements and remedying mistakes and compliance errors that committees may identify as they prepare their reports.

Understanding that mistakes and compliance errors happen, the Commission has established a mandatory process for remedying excessive contributions.²⁰ Contributions which do not appear to be excessive on their face but, when aggregated with other contributions from the same contributor may be excessive, may be deposited or returned to the contributor.²¹ If the contributor has not exceeded the aggregate limit for both the primary and general elections, the committee can, within 60 days, re-designate a contribution to either the general or primary election.²² If a re-designation is not obtained within that time frame, the treasurer must refund the

¹⁶ *Id.* at 572, <https://docquery.fec.gov/cgi-bin/fecimg/?202007209259971138>.

¹⁷ *Filter Receipts: First Capital PAC, FEC*,

https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00528075&contributor_name=C00236489&two_year_transaction_period=2020 (last visited Aug. 10, 2020).

¹⁸ See 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

¹⁹ See 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

²⁰ See 11 C.F.R. §§ 103.3(b), 110.2(b)(5).

²¹ *Id.* § 103.3(b)(3).

²² *Id.* (noting that a contribution can be redesignated or reattributed).

contribution to the contributor.²³ Thus, if a candidate receives a contribution in excess of \$5,000 per election, and a re-designation cannot be obtained within 60 days, the candidate must return the contribution to the contributor.²⁴ There is no mechanism for candidates to give excessive contributions to their leadership PACs.

The Commission also sets forth rules differentiating between a candidate's authorized committee and a leadership PAC. An authorized committee is a "principal campaign committee" or a committee authorized by a candidate "to receive contributions or make expenditures on behalf of such candidate."²⁵ A leadership PAC, on the other hand, "is not an authorized committee of the candidate or individual and . . . is not affiliated with an authorized committee of the candidate or individual."²⁶

Again, understanding mistakes happen, the Commission has standard procedures to remedy an error, like a candidate's authorized committee depositing a check that was actually intended for a different committee, such as a leadership PAC. Typically, candidates must refund the contribution, which would give the contributor the opportunity to use the refunded money to make another contribution to the intended recipient.²⁷ Transferring the contribution to the intended committee is not an option contemplated by the regulations, not least of all because a leadership PAC is not affiliated with a candidate's principal campaign committee so the two cannot engage in transfers.²⁸

Here, while it is difficult to decipher the facts, it is apparent that at least one Respondent has not properly reported a contribution and that an unlawful transfer has occurred. The best read

²³ *Id.*

²⁴ *See id.*

²⁵ *Id.* § 100.5(f)(1).

²⁶ *Id.* § 100.5(e)(6).

²⁷ *Cf. Handling a Questionable Contribution*, FEC, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/questionable-contributions> (last visited Aug. 10, 2020) ("Questionable Contributions").

²⁸ *See* 11 C.F.R. § 100.5(c)(6); *Transfers Between a Candidate's Committees*, FEC, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/transfers/> (last visited Aug. 10, 2020).

of the committees' reports is that KOCHPAC made two \$5,000 contributions to the Campaign and two \$5,000 contributions to FC PAC, but the Campaign deposited one of the FC PAC contributions into its account. The Campaign, upon depositing the third \$5,000 contribution from KOCHPAC—which was \$5,000 in excess of the legal limit²⁹—discovered the error. However, rather than refunding \$5,000 to KOCHPAC, as required by the Commission's regulations when a committee receives an excessive contribution that cannot be re-designated or realizes that it otherwise improperly deposited a contribution,³⁰ the Campaign "transferred" \$5,000 to FC PAC. This sequence of events means that Perry and the Campaign (1) misreported receipt of a contribution from KOCHPAC on December 20, 2019, (2) failed to properly remedy an excessive contribution by refunding the contribution to the donor, and (3) made an unauthorized transfer of funds to FC PAC, which FC PAC likely accepted.

Alternatively, because it is very odd that the Campaign believed the second contribution from KOCHPAC was so clearly designated for Perry's primary election that it needed to formally re-designate the contribution for the general, it is possible that KOCHPAC was the committee that made the reporting error. If that is the case, and KOCHPAC made a contribution to the Campaign on December 9, 2019 but reported making a contribution to FC PAC, then KOCHPAC has filed an inaccurate report. While under this potential sequence of events, the Campaign correctly reported receiving the December 20, 2019 contribution from KOCHPAC, the Campaign still violated the Commission's regulations by transferring \$5,000 to FC PAC to remedy the subsequent excessive contribution from KOCHPAC, rather than refunding the contribution.³¹

²⁹See 52 U.S.C. § 30116(a)(2)(A).

³⁰See 11 C.F.R. § 103.3(b)(3); Questionable Contributions, *supra* note 27.

³¹See 11 C.F.R. § 103.3(b)(3); Questionable Contributions, *supra* note 27.

Finally, KOCHPAC reported making a contribution to FC PAC on June 22, 2020. However, FC PAC did not report receipt of the contribution on its 2020 July quarterly report. Therefore, it appears that FC PAC has also committed a reporting violation—and that FC PAC's next report may disclose another violation if it accepts a "transfer" from the Campaign.

REQUESTED ACTION

Public records indicate that Perry's Campaign or KOCHPAC violated the Act and Commission regulations by misreporting a \$5,000 contribution, and that Perry, his Campaign, and his leadership PAC did not follow the proper procedures for handling an excessive or otherwise improperly deposited contribution and instead engaged in an illegal transfer of funds. Further, FC PAC has failed to report at least one contribution. As such, we respectfully request that the Commission immediately investigate these violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.


Sincerely,



Daniel Caruso

. 17050

SUBSCRIBED AND SWORN to before me this 8th day of September, 2020.



Notary Public

My Commission Expires:

10/06/2020

