

**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

August 9, 2021

**CERTIFIED MAIL
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jsena@cutolobarros.com

Jason N. Sena, Esq.
Cutolo Barros LLC
46-50 Throckmorton Street
Freehold, NJ 07728

RE: MUR 7799

Dear Mr. Sena:

This is in reference to the complaint that you filed with the Federal Election Commission on September 21, 2020, on behalf of Monmouth County Republican Committee, concerning Stephanie for New Jersey and Jason Hinton in his official capacity as treasurer (“Committee”) and Stephanie Schmid. Based on that complaint, on August 2, 2021, the Commission dismissed the allegations that the Committee and Stephanie Schmid violated 52 U.S.C. § 30104(a), 52 U.S.C. § 30104(b), 52 U.S.C. § 30116(f), and 52 U.S.C. § 30118(a). Accordingly, the Commission closed the file in this matter. The Factual and Legal Analysis, which more fully explains the basis for the Commission’s decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission’s dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

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Jason N. Sena, Esq.
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If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Mark Allen

BY: Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Stephanie for New Jersey and Jason Hinton
in his official capacity as treasurer
Stephanie Schmid

MUR 7799

I. INTRODUCTION

The Complaint alleges that Stephanie Schmid, a candidate for U.S. Congress from the 4th Congressional District of New Jersey in 2020, and her campaign committee, Stephanie for New Jersey and Jason Hinton in his official capacity as treasurer (“Committee”), accepted excessive and prohibited contributions and failed to accurately report receipts and disbursements in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). For the reasons set forth below, the Commission dismisses the allegations.

II. FACTUAL SUMMARY

Schmid was the Democratic Party nominee for U.S. Congress from the 4th Congressional District of New Jersey in 2020.¹ The Committee is her principal campaign committee.²

The Complaint alleges that the Committee’s 2019 October Quarterly Report and 2019 Year-End Report show it accepted excessive contributions. Although the Complaint did not identify the specific excessive contributions in either report, the Commission’s Reports Analysis Division’s (“RAD’s”) Request for Additional Information (“RFAI”) for the 2019 October Quarterly Report identified excessive contributions from seven individuals totaling \$19,600.³ Similarly, the RFAI for the 2019 Year-End Report identified \$11,500 in excessive contributions

¹ See Schmid Statement of Candidacy (Aug. 29, 2019). Schmid lost the general election on November 3, 2020.

² Stephanie for New Jersey Amended Statement of Organization (Nov. 17, 2020).

³ See RFAI for 2019 October Quarterly Report, Attach. 1 (Apr. 8, 2020).

from individuals, a \$300 excessive contribution from a multicandidate committee and \$1,400 in contributions from unregistered organizations.⁴ The Complaint states that the Committee did not file an amended 2019 October Quarterly Report “explaining these contributions” until after RAD sent it an RFAI.⁵ The Complaint also notes that the Committee took seven months to amend the 2019 October Quarterly Report.⁶ Similarly, the Complaint states that the 2019 Year-End Report was amended late and only after RAD issued an RFAI inquiring about the excessive contributions.⁷

The Complaint also alleges various reporting violations. First, it alleges that between October 2019 and June 2020, the Committee disclosed 19 payments totaling over \$112,000 to Paychex for “salary/wages” but failed to list the names and addresses of the Committee employees who received salaries.⁸ The Complaint states that the Committee subsequently itemized the salary payments to some of the employees on amended disclosure reports.⁹ In addition, the Complaint alleges that on an amended 2019 Year-End Report, payments to the candidate lacked an adequate description of the purpose. Specifically, the Committee disclosed payments of \$8,718.60 and \$3,659.64 to the candidate for “Candidate Reimbursements:

⁴ See RFAI for 2019 Year-End Report, Attach. 1 (Apr. 9, 2020). The Complaint acknowledges that the Committee amended its 2019 Year-End Report in response to the RFAI. Compl. at 4. (Sept. 21, 2020). The pages of the Complaint are not numbered, but the Commission has identified the Complaint by page numbers.

⁵ Compl. at 3.

⁶ *Id.* The Committee amended the disclosure report a month after it received the RFAI. See 2019 October Quarterly Report (Oct. 15, 2019); RFAI for 2019 October Quarterly Report (Apr. 8, 2020); Amended 2019 October Quarterly Report (May 14, 2020).

⁷ Compl. at 3. See RFAI for 2019 Year-End Report at 1 (Apr. 9, 2020).

⁸ Compl. at 4; see RFAI for 2019 Year End Report at 1 (Sept. 7, 2020) and RFAI for 2020 April Quarterly Report at 1 (Sept. 7, 2020).

⁹ Compl at 5.

\$8,718.60: for campaign-related expenses” and “reimbursements from Oct 2019 to mid Dec 2019,” respectively.¹⁰ Finally, the Complaint alleges that the Committee filed the incorrect date of receipt of a \$100,000 candidate loan on a 48-hour report. The Complaint states that the Committee first reported the loan as being received on July 5, 2020, but later filed an amendment changing the receipt date to June 27, 2020.¹¹

In response, Schmid and the Committee (“Respondents”) assert that most of the excessive contributions were redesignated, and that “technology based user errors” caused it to accept the excessive contributions in the first place.¹² Respondents assert that the Committee added new computer software to identify potential compliance issues going forward and that its contribution errors constitute a small fraction of the \$720,000 raised by the Committee during the election cycle.¹³

In regard to the allegation that the Committee failed to itemize its payroll disbursements, Respondents point to a computer software problem that it later corrected and state that they amended the disclosure reports on their own initiative to properly report the payments.¹⁴ With respect to the \$8,718 and \$3,659 payments to the candidate, Respondents state that they itemized these expenses on the same report as memo items with more detailed purposes so that the filing

¹⁰ *Id.* at 5-6; *see also* Amended 2019 Year-End Report at 115, 127 (June 24, 2020).

¹¹ Compl. at 7-8; *see* 48-Hour Report at 1 (July 5, 2020); Amended 48-Hour Report at 1 (July 29, 2020). The amended 48-hour report states that it amends the notice filed on July 22, 2020, but the loan was originally reported on the 48-hour report filed on July 5, 2020.

¹² Resp. at 1 (Oct. 15, 2020). Respondents also state that \$2,965 of the excessive contributions or contributions from unregistered organizations was refunded. *Id.* The pages of the Response are not numbered, but the Commission has identified the Response by page numbers.

¹³ *Id.* at 1.

¹⁴ *Id.* at 2.

was in compliance.¹⁵ Finally, in response to the allegation regarding the reporting of the candidate loan, the Committee claims that there was a misunderstanding regarding the reporting of the loan and the Committee amended its 48-hour report on its own initiative to reflect that the loan was actually made on June 27, 2020, one week earlier than originally reported.¹⁶

III. LEGAL ANALYSIS

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁷ These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required.¹⁸ During the 2020 election cycle, individuals were limited to a contribution of \$2,800 per candidate per election.¹⁹ Contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may be deposited or returned to the contributor.²⁰ If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor.²¹ If a redesignation or reattribution is not obtained, the treasurer shall within sixty days of the treasurer's receipt of the contribution refund the contribution to the contributor.²² No multicandidate political

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁸ *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

¹⁹ *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i) and (ii).

²⁰ *See* 11 C.F.R. § 103.3(b)(3).

²¹ *Id.*

²² *Id.*; *see also* 11 C.F.R. § 110.1(b)(3)(i).

committee shall make contributions to any candidate and his authorized committee with respect to any election for Federal office which in the aggregate exceed \$5,000, and no candidate or political committee shall knowingly accept any contribution or expenditure in violation of section 30116.²³ The Act and Commission regulations prohibit corporations from making contributions to candidate committees, and candidate committees are prohibited from knowingly accepting or receiving such contributions.²⁴ If any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours before the date of the election, the principal campaign committee of that candidate shall notify the Commission including the name of the candidate, the office sought by the candidate, the identification of the contributor and the date of receipt and amount of the contribution.²⁵

According to the Complaint, the Committee accepted excessive contributions and prohibited contributions referenced in the RFAIs for the Committee's 2019 October Quarterly and Year-End Reports. The Committee asserts that it redesignated most of the excessive contributions for the general election and refunded \$2,925 to contributors. A review of the 2019 October Quarterly and Year-End Reports indicates that the Committee timely redesignated all of the excessive contributions except for \$3,300, which remains outstanding as excessive contributions.²⁶ In regard to the prohibited contributions of \$1,400, the Committee refunded

²³ 52 U.S.C. § 30116(a)(2)(A); 52 U.S.C. § 30116(f).

²⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

²⁵ 52 U.S.C. § 30104(a)(6)(A); 11 C.F.R. § 104.5(f). The primary election was on July 7, 2020, and the original 48-hour report was filed on July 5, 2020, reporting the loan as being made on July 4, 2020. *See* 48-Hour Report at 1 (July 5, 2020).

²⁶ *See* Amended 2019 October Quarterly Report at 9, 41, 56, 57, 59, 61, and 63 (May 14, 2020); Amended 2019 Year-End Report at 30, 38, 57, and 80 (June 24, 2020).

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\$1,200, but untimely.²⁷ The Committee also failed to properly itemize salaries for employees totaling \$112,000 between October 2019 and June 2020, but amended disclosure reports to correct some of the record and it filed those amendments before the Complaint was filed or any RFAI was issued.²⁸ Similarly, the \$100,000 candidate loan was initially reported on a 48-hour report with an inaccurate date, but the Committee self-initiated the correction. With respect to the \$8,718.60 and \$3,659.64 payments to the candidate, the Committee disclosed most of the specific campaign expenses comprising those payments as memo items on the same report, the 2019 Year-End Report.²⁹

Based on these circumstances, where many violations were corrected by self-initiative and the remainder are of modest amount, the Commission dismisses the allegations that the Committee and Stephanie Schmid accepted excessive and prohibited contributions, failed to properly itemize disbursements, and incorrectly reported the candidate loan.³⁰

²⁷ See 2020 Pre-General Report at 62 (Oct. 22, 2020).

²⁸ See Amended 2020 Pre-Primary Report at 98-111 (July 29, 2020) (disclosing salary payments itemized by name and address of the employee); *see also* Amended 2020 July Quarterly Report at 72 (July 29, 2020). However, the Committee did not respond to the RFAs concerning unitemized salary payments on the 2019 Year-End Report (Sept. 7, 2020) and the 2020 April Quarterly Report (Sept. 7, 2020), which were issued two weeks before the Complaint was filed. The amount of unitemized salary payments on those two reports totaled \$64,591.92 of the \$112,000 alleged in the Complaint. The Committee itemized salary payments on the 2020 October Quarterly, 2020 Pre-General and 2020 Post-General Reports, filed after the September 7, 2020, RFAs and the Complaint.

²⁹ In regard to the \$8,718.60 payment, the Committee reported itemized expenses totaling \$8,114.24, including an additional item of \$28.67 on the amended 2019 Year-End Report. *See* 2019 Year-End Report at 109-121 (Jan. 26, 2020); Amended 2019 Year-End Report at 126 (June 24, 2020). In regard to the \$3,659.64 payment, the Committee reported itemized expenses totaling \$3,123.32. *See* 2019 Year-End Report at 121-129 (Jan. 26, 2020). In summary, the reimbursements to the candidate for campaign-related expenses totaled \$12,378.24 and the Committee itemized expenses to the candidate totaling \$11,237.56, or 91% of total payments to the candidate, and the itemized expenses included expenses as low as \$7.82. While the Complaint states that there should be an adequate description of the purpose of expenses and requiring disclosure and itemization of disbursements of \$200 or more is designed to ensure that funds are used properly, *see* Compl. at 5, of the two payments for reimbursements to the candidate, the total amount that was not itemized on the report is \$1,140.68. The available information does not indicate personal use regarding the \$1,140.68, which is not specifically alleged in the Complaint. *See* 52 U.S.C. § 30114(b), 11 C.F.R. § 113.1(g).

³⁰ *See Heckler v. Chaney*, 470 U.S. 821 (1985).