

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

September 13, 2021

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: RR 21L-48

Dear Mr. Lockett,

This response is submitted by undersigned counsel on behalf of Burgess 4 Utah (the “Committee”) and Paul Kilgore, in his capacity as Treasurer (collectively, the “Respondents”), in connection with the above referenced Reports Analysis Division Referral to the Office of General Counsel. As explained herein, although the Committee was in receipt of the excessive contributions that form the basis of the Referral, a new compliance team has since been hired, legal counsel retained, an audit of the accounting conducted, the contributions at issue refunded, and new procedures and safeguards instituted to prevent any such occurrences in the future.

Excessive Contributions and Corrective Measures

As overviewed in the Commission’s referral letter, dated July 29, 2021 (the “Referral Letter”), the Committee was previously in receipt of excessive contributions in each of four consecutive reporting periods during the 2020 election cycle. As of the date of the Referral Letter, the Commission’s records reflected 146 excessive contributions not remedied within the permitted timeframe, totaling \$92,604.26. Of that total, Commission records showed \$15,829.41 in refunds outstanding.

The Committee does not dispute its possession of the contributions that formed the basis of the Referral. For the sake of clarity, however, the Committee wishes to provide additional information relative to three contributions that had, in fact, been properly refunded in a timely manner prior to the date of the Referral Letter, although not so reflected in the Committee’s reports. These contributions, totaling \$14,000, were refunded as follows:

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|-----------------|---------------------|-----------------------------|
| • Todd Ricketts | \$5,600 on 07/29/20 | Refunded 08/29/20 (31 days) |
| • Joel Marcus | \$2,800 on 09/25/20 | Refunded 10/27/20 (33 days) |
| • James Porter | \$5,600 on 11/13/20 | Refunded 11/13/20 (0 days) |

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Taking into account these timely refunds, the total excessive contributions not refunded within the permissible timeframe adjusts to \$78,604.26, with \$1,829.41 of that total outstanding as of the date of the Referral Letter.

With respect to the \$1,829.41 in excessive contributions yet to be refunded, they have been remedied since the date of the Referral as follows, although outside of the permissible timeframe:

- | | | |
|-------------------|---------------------|-------------------|
| • Richard Uihlein | \$329.41 on 9/16/20 | Refunded 08/23/21 |
| • William Cooley | \$1,500 on 09/29/20 | Refunded 08/23/21 |

Accordingly, as of the date of this Response, the Committee stands free of all excessive contributions that led to this Referral. To the extent that such status is not accurately reflected on the Committee's reports thus filed with the Commission, the Committee is in the process of making amendments to the 2020 October Quarterly and Post-General Reports as necessary. The most recently issued refunds will be included in the Committee's October 2021 Quarterly Report.

Committee Personnel, Internal Review, and Procedural Safeguards Instituted

Prior to December 2020, the time period during which the totality of the occurrences referenced in the Referral Letter took place, the Committee's accounting and reporting were handled by McCauley & Associates of Salt Lake City, Utah. It became apparent with time, however, that, despite any best efforts, the team simply did not possess the capability to handle a highly active federal campaign, and lacked the technology and procedural infrastructure to adequately track contributions from donors across the various fundraising platforms, particularly direct mail. To rectify the compliance issues that had come to light through dealings with the Commission, the Committee terminated that relationship and retained PDS Compliance, naming Paul Kilgore as Treasurer on its amended Statement of Organization filed December 15, 2020.

Upon commencing work with the Committee, Mr. Kilgore and his staff transferred the Committee's existing data to PDS's system, a centralized database capable of tracking all Committee donors across various categories and platforms relative to applicable contribution limits. Once imported, Mr. Kilgore conducted systematic audits to identify all Committee donors that remained excessive. As donors were identified, the Committee issued refunds as cashflow permitted and made corresponding amendments to past Commission reports, as referenced in the Referral Letter. When lingering errors due to the data transfer to the new system were discovered, they were promptly recorded and corrected.

In addition to implementing new software and rectifying the Committee's past accounting issues, Mr. Kilgore instituted new processes and safeguards to ensure proper compliance going forward. Such measures include generating weekly mock reports, compiling lists of "maxed out" donors and distributing those lists to vendors for suppression from fundraising lists, preparing extensive weekly reports that identify temporarily excessive donors

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and provide mechanisms to remedy the contributions at issue, and executing and disbursing refund checks when required.

Mitigating Factors for Consideration

In considering this Referral to the Office of General Counsel, the Commission is urged to take into consideration the mitigating factors present in this matter. The Committee's financial mismanagement occurred during the early phases of the campaign of a new, non-political federal candidate. The consequences of this early mismanagement were thereafter exacerbated by the unanticipated boon in fundraising the Committee experienced during the remainder of the 2020 election cycle, and the particular circumstances of the election results that followed. Moreover, this mismanagement was not the work of the current compliance team or Committee staff. Indeed, since learning of compliance issues, the Committee has hired a new, sophisticated team, has retained legal counsel, and has instituted new internal controls to avoid any improper activity in the future. In its efforts to cooperate with the Commission to rectify its past issues, the Committee has communicated openly with the Commission through Mr. Kilgore, issued all of the required refunds, and filed multiple amendments with the Commission to ensure the reports properly reflect the Committee's activity.

The current Treasurer of the Committee, Paul Kilgore, is a professional with 25 years of experience in the political compliance field. As detailed above, his firm, PDS compliance, utilizes sophisticated software capable of processing and tracking all contributions, expenditures, and other Committee disbursements. PDS Compliance has been actively involved in the daily financial affairs of the Committee since retained in December of 2020. Mr. Kilgore and his team review and execute all expenditures, generate weekly reports, review bank account statements and conduct monthly reconciliations, review all charges to accounts, and prepare and file all reports with the Commission.

In short, the Committee has undertaken highly substantial steps to put its financial house in order and instituted systems and controls to prevent a recurrence of the past instances of mismanagement that led to this Referral. We ask that you take this into consideration in your determination of this matter.

If there is any additional information or assistance we may provide, please do not hesitate to contact us.

Sincerely,



Jessica Furst Johnson
Counsel to Burgess 4 Utah