



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

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Via Electronic Mail

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James E. Tyrrell III, Esq.
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1825 Eye Street, NW, Suite 900
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RE: MUR 8066
Mike McCauley

Dear Mr. Tyrrell:

On September 19, 2022, the Federal Election Commission notified your client, Mike McCauley, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint and the information supplied by your client, the Commission, on October 3, 2023, voted to find no reason to believe that Mike McCauley violated 11 C.F.R. §§ 103.3, 110.1(k) in his personal capacity in connection with his former duties as treasurer of Burgess 4 Utah. Accordingly, on October 12, 2023, the Commission closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

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).

If you have any questions, please contact Crystal Liu, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mike McCauley

MUR 8066

I. INTRODUCTION

This matter arises from a Complaint filed by Burgess 4 Utah (the “Committee”) against its former treasurer, Mike McCauley, in connection with the same violations against the Committee in MUR 7973, which were resolved via conciliation.¹ In the prior matter, which was initiated via a Reports Analysis Division (“RAD”) Referral, the Commission found reason to believe that, during the 2020 election cycle, the Committee violated 52 U.S.C. § 30116(f) of the Federal Election Campaign Act of 1971, as amended (the “Act”), by accepting \$92,604.26 in excessive contributions that it failed to timely remedy.² The Complaint now asks the Commission to assess liability against McCauley in his personal capacity for the same violations.³ In his Response, McCauley argues that he used his best efforts in complying with his treasurer duties and that the violations stemmed from the campaign’s late authorization to use a new compliance and reporting software.⁴ Because there is no indication that McCauley engaged in knowing and willful violations of the Act, or that he was reckless in fulfilling his duties as treasurer, the Commission finds no reason to believe that McCauley violated the Act in his personal capacity.

¹ See generally Conciliation Agreement, MUR 7973 (Burgess 4 Utah).

² Factual & Legal Analysis (“F&LA”) at 5, MUR 7973 (Burgess 4 Utah). The Commission’s findings were made against McCauley’s successor in his official capacity, as McCauley was no longer the Committee’s treasurer at that time, and McCauley was not personally a respondent in that matter. See F&LA at 2-4, MUR 7973 (noting that the Committee averred that the excessive contributions were due to its prior treasurer, who was replaced in December 2020).

³ Compl. at 1-2 (Sept. 12, 2022).

⁴ Resp. at 6 (Jan. 23, 2023).

II. FACTUAL BACKGROUND

Previously in MUR 7973, the Commission found reason to believe that the Committee violated the Act by accepting excessive contributions totaling \$92,604.26 from 37 individuals and one multicandidate committee during the 2020 election cycle.⁵ These contributions were reported in the Committee's 2020 July Quarterly Report, Amended 2020 October Quarterly Report, and 2020 30-Day Post General Report.⁶ During the time periods covered by these reports, the Committee was Representative Burgess Owens' principal campaign committee and accepted over \$2 million in itemized contributions.⁷

The Committee's response in MUR 7973 stated that the excessive contributions were due to the actions of McCauley, who was its treasurer at the time of the allegations:⁸

[T]he 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.

⁵ F&LA at 5, MUR 7973.

⁶ *Id.* at 2.

⁷ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00725853&min_date=10%2F15%2F2020&max_date=11%2F23%2F2020 (last visited Aug. 8, 2023) (reflecting that Burgess 4 Utah accepted \$458,285.86 in itemized contributions from October 15, 2020, to November 23, 2020); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00725853&min_date=06%2F01%2F2020&max_date=09%2F30%2F2020 (last visited Aug. 8, 2023) (reflecting that Burgess 4 Utah accepted \$1,590,651.83 in itemized contributions from June 1, 2020, to September 30, 2020); Burgess Owens, Amended Statement of Candidacy at 1 (July 31, 2020), <https://docquery.fec.gov/pdf/604/202008069261267604/202008069261267604.pdf> (designating Burgess 4 Utah as his principal campaign committee).

⁸ Resp. at 2, MUR 7973; *see also* Burgess 4 Utah, Amended Statement of Organization (Aug. 6, 2020), <https://docquery.fec.gov/pdf/600/202008069261267600/202008069261267600.pdf> (reflecting that McCauley was the Committee's treasurer during 2020); Burgess 4 Utah, 2020 30-Day Post-General Report at 1 (Dec. 3, 2020), <https://docquery.fec.gov/pdf/139/202012039351644139/202012039351644139.pdf> (reflecting McCauley's signature as treasurer of the committee); Burgess 4 Utah, 2020 Amended October Quarterly Report at 1 (Nov. 10, 2020), <https://docquery.fec.gov/pdf/859/202011109336984859/202011109336984859.pdf> (same); Burgess 4 Utah, 2020 July Quarterly Report at 1 (July 15, 2020), <https://docquery.fec.gov/pdf/175/202007159250142175/202007159250142175.pdf> (same).

1 The Complaint now alleges that McCauley was reckless in fulfilling his duties as
2 treasurer, and that he should be held liable in his personal capacity.⁹ The Complaint argues that
3 McCauley failed to identify and remedy facially excessive contributions, and that his failure was
4 reckless as this “is among a treasurer’s most basic tasks” and he failed to do so “repeatedly.”¹⁰
5 Specifically, the Complaint alleges that McCauley violated 11 C.F.R. § 103.3, which imposes a
6 duty on committee treasurers to “ascertain[] whether contributions received, when aggregated
7 with other contributions from the same contributor, exceed the contribution limits of 11 C.F.R.
8 § 110.1 or 110.2,” and 11 C.F.R. § 110.1(k), which addresses joint contributions and
9 reattributions.¹¹

10 In his Response, McCauley asserts that the reason for his failure to comply with his
11 official duties as treasurer was due to the campaign’s late approval of a contract to use a new
12 compliance and reporting software and that the software initially made errors when importing the
13 campaign’s WinRed contribution records.¹²

14 McCauley states that the Committee previously used the free FECFile software to
15 manually track and report the campaign’s contributions and disbursements, which “worked fine
16 for the first eight months of the campaign.”¹³ After Owens won the primary election on June 30,
17 2020, McCauley states that he “foresaw a drastic influx in fundraising and sought the
18 campaign’s approval to purchase compliance software to handle the sheer number of

⁹ Compl. at 2-3. The Complaint states that it does not allege that McCauley engaged in knowing and willful conduct. *Id.* at 3.

¹⁰ *Id.* at 3-4.

¹¹ *See id.* at 2; *see also* 11 C.F.R. §§ 103.3(b), 110.1(k).

¹² Resp. at 4. WinRed is a fundraising platform. *See About, WINRED*, <https://winred.com/about/> (last visited Aug. 8, 2023).

¹³ Resp. at 3.

contributions coming in.”¹⁴ Thus, McCauley contends that, on July 1, 2020, he began looking for a new compliance software, and procured a standard contract on July 2, 2020.¹⁵ However, according to McCauley, the campaign did not authorize execution of the contract until July 30, 2020.¹⁶ On August 3, 2020, McCauley sent the campaign’s FECFile information to the software company to import it into the new software.¹⁷ Unfortunately, the software had difficulty importing the campaign’s WinRed contribution information, and created records with just last names.¹⁸ This issue was then fixed on September 30, 2020, which McCauley contends left insufficient time for him to accurately complete the 2020 October Quarterly Report due on October 15, 2020.¹⁹ Thus, McCauley argues that he used his “best efforts” to fulfill his treasurer duties.²⁰

III. LEGAL ANALYSIS

The Act limits the amount an individual may contribute to a candidate’s authorized committee per election,²¹ and likewise, the Act prohibits any candidate or committee from knowingly accepting an excessive contribution.²² During the 2020 election cycle, the Act and Commission regulations limited an authorized committee to accepting a total of \$2,800 per

¹⁴ *Id.*

¹⁵ *Id.* at 3-4, Ex. A (reflecting a July 2, 2020 email from a software company indicating that a contract to use the software is attached to the email).

¹⁶ Resp. at 4.

¹⁷ *Id.* at 4, Ex. E (reflecting an August 3, 2020 email from McCauley to the software company’s employees indicating that the campaign’s records were attached).

¹⁸ Resp. at 4, Ex. F at 1-2 (reflecting a September 23, 2020 email from the software company indicating that the software would create records with just last names when importing records from WinRed).

¹⁹ *See* Resp. at 4, Ex. F at 1 (reflecting a September 30, 2020 email from the software company indicating that the software’s problem with the WinRed imports was fixed).

²⁰ Resp. at 5.

²¹ 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b).

²² 52 U.S.C. § 30116(f), *see also* 11 C.F.R. § 110.9.

election from any individual and \$5,000 from a multicandidate committee.²³ Pursuant to Commission regulation, “[t]he treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.”²⁴

When a committee receives a contribution that exceeds the limits of the Act, or which exceeds the limits when aggregated with other contributions from the same contributor, Commission regulations allow the treasurer 60 days from the date of receipt to refund, redesignate, or reattribute the excessive amount.²⁵ The treasurer may also request a redesignation or reattribution by the contributor, but must refund the contribution if a redesignation or reattribution is not obtained within 60 days of the treasurer’s receipt of the contribution.²⁶

In light of the legal obligations for committee treasurers under the Act, the Commission may proceed against a treasurer in both their official and personal capacities for failing to fulfill their responsibilities under the Act and Commission regulations.²⁷ The Commission, however, only pursues treasurers in their personal capacity when “the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill the

²³ *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Disclosure Threshold*, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019); *see also* 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 C.F.R. §§ 110.1(a)-(b), 110.2(b)(1).

²⁴ 11 C.F.R. § 103.3(b).

²⁵ *Id.* §§ 103.3(b)(3), 110.1(b).

²⁶ *Id.* §§ 103.3(b)(3), 110.1(b). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. *Id.* § 110.1(b)(5), 110.1(k)(3).

²⁷ *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

1 duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the
 2 operative facts giving rise to the violation.”²⁸ “In prior matters, the Commission has held
 3 treasurers personally liable for knowingly and willfully violating the law in an effort to conceal
 4 the deliberate misappropriation of committee funds.”²⁹ “The Commission has also held a
 5 treasurer personally liable for recklessly failing to fulfill his or her duties as treasurer where the
 6 available information indicated a systemic lack of diligence.”³⁰ For example, in MUR 5652, the
 7 Commission found that the assistant treasurer recklessly accepted “such a large number of
 8 excessive contributions from individuals so as to suggest a lack of attention” where she accepted
 9 541 excessive contributions totaling \$552,773 during the 2002 election cycle.³¹ In addition, in
 10 MUR 7905, the Commission similarly found that the treasurer recklessly fulfilled his duties due
 11 to “the number of apparent reporting and recordkeeping violations” where, among others, the
 12 treasurer only reported one-third of the committee’s total receipts and disbursements during the
 13 2018 election cycle, and less than 7% of disbursements during the 2020 election cycle.³²

²⁸ *Id.* at 5; *see also* F&LA at 3, 5-6, MUR 7223 (Applegate for Congress, *et al.*) (finding no reason to believe that the treasurer violated the Act in his personal capacity where the committee failed to disclose a total of \$373,530.14 in additional disbursements across two disclosure reports, and the error was allegedly in part due to the actions of a committee’s former consulting firm that was hired to perform recordkeeping tasks).

²⁹ F&LA at 5, MUR 7223; *see also* Conciliation Agreement ¶¶ IV.9, V, VII, MUR 5453 (Thomas M. Ariola, Jr.) (agreeing that the deputy treasurer violated the Act in his personal capacity by knowingly and willfully accepting \$4,500 in excessive individual contributions and \$7,750 in corporate contributions without refunding them); 8th Gen. Counsel’s Rpt. at 18, MUR 5453 (explaining that the deputy treasurer admitted to knowing that he received excessive and corporate contributions without taking action to return or disgorge the checks); *cf.* Conciliation Agreement ¶¶ IV.4-6, V.1, MUR 7796 (Louis G. Baglietto) (agreeing that the treasurer violated the Act in his personal capacity where he did not file any reports addressing the period from January 1, 2020, to December 31, 2021, and failed to maintain any records to support the committee’s disbursements during that period); F&LA at 3-4, MUR 7796 (Buzz Patterson for Congress) (noting that the Committee failed to file any reports addressing the period from January 1, 2020, to December 31, 2021). A violation is knowing and willful where the unlawful “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. 12197, 12199 (May 3, 1976); *see also United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013).

³⁰ F&LA at 5, MUR 7223.

³¹ F&LA at 3, MUR 5652 (Susan Arceneaux).

³² F&LA at 8, 11, MUR 7905 (Robert George Lucero Jr.).

1 Here, the available information does not indicate that McCauley knowingly and willfully
2 accepted excessive contributions or declined to remedy them. The Complaint also does not
3 make this allegation.³³ According to McCauley, he was diligent in his efforts as treasurer and
4 the unresolved excessive contributions were due to the Committee's transition to a new reporting
5 software.³⁴ McCauley asserts that, after the candidate won the primary election, McCauley
6 “foresaw a drastic influx in fundraising and sought the campaign's approval to purchase
7 compliance software to handle the sheer number of contributions coming in.”³⁵ McCauley
8 further asserts that, despite his efforts, the campaign did not authorize him to acquire the
9 software until about one month later.³⁶ In addition, the software could not properly create
10 records from the campaign's WinRed imports until September 30, 2020, about two weeks before
11 the 2020 October Quarterly Report was due.³⁷

12 McCauley's explanation also appears to be supported by a review of the timing of the
13 excessive contributions. Of the \$92,604.26 in excessive contributions at issue here, \$70,754.26
14 of those contributions appeared on the 2020 October Quarterly Report, which is the report
15 affected by the software-transition described by McCauley.³⁸ That leaves just \$21,850 in
16 excessive contributions that were accepted outside of the software-transition period, which were
17 reported across two separate reports.³⁹ Thus, the available information does not indicate that the
18 committee's failure to remedy excessive contributions was knowing and willful.

³³ *See* Compl. at 3.

³⁴ *See* Resp. at 3-4.

³⁵ *Id.* at 3.

³⁶ *Id.* at 4.

³⁷ *See id.*

³⁸ *See* Referral, Attach. 2, MUR 7973.

³⁹ *See id.*

1 McCauley's failure to remedy excessive contributions totaling \$92,604.26 from 37
2 individuals and one multicandidate committee during the 2020 election cycle also does not
3 indicate a systemic lack of diligence. As indicated above, McCauley represents that the majority
4 of the excessive contributions were due to the delay in transitioning to a new software that ended
5 up having problems integrating certain records, which is uncontroverted and undercuts a
6 conclusion that there was a systemic a lack of attention. Moreover, the amount of unremedied
7 excessive contributions here does not suggest a systemic lack of diligence as the amount does not
8 nearly rise to the 541 excessive contributions totaling \$552,773 in MUR 5652.⁴⁰ In contrast,
9 during McCauley's time as treasurer, the Committee only accepted excessive contributions
10 totaling \$92,604.26 from 37 individuals and one multicandidate committee that it failed to timely
11 remedy.⁴¹ The percentage of excessive contributions are also not as high as the percentage of
12 apparent reporting and recordkeeping violations in MUR 7905, where, among others, the
13 treasurer only reported one-third of the committee's total receipts and disbursements during the
14 2018 election cycle, and less than 7% of the disbursements in the 2020 election cycle.⁴² Instead,
15 the proportion of excessive contributions accepted and untimely remedied by McCauley is less
16 than 5% of the itemized contributions received by the Committee during that time period.

17 Based on these circumstances, the Commission finds no reason to believe that McCauley,
18 in connection with his former duties as treasurer of Burgess 4 Utah, violated 11 C.F.R. §§ 103.3,
19 110.1(k) in his personal capacity.

⁴⁰ F&LA at 3, MUR 5652.

⁴¹ F&LA at 5, MUR 7973.

⁴² F&LA at 8, 11, MUR 7905.