



In the Matter of)	
Sam Brown;)	
Sam Brown for Nevada;)	
Duty First PAC; and)	
Chrissie Hastie,)	MUR 8183
in her official capacity as)	
Treasurer.)	

INTRODUCTION

The Complaint in this matter takes issue with the disposition of debt by Sam Brown for Nevada, the principal campaign committee for Sam Brown's unsuccessful 2022 primary campaign for U.S. Senate. The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act") and the Federal Election Commission's ("FEC" or "Commission") implementing regulations through the following actions:

- (1) Duty First PAC allegedly did not disclose to donors that contributions could potentially be used to retire debt that Duty First PAC assumed from Sam Brown for Nevada; and
- (2) Duty First PAC and Sam Brown for Nevada allegedly accepted contributions in excess of the 2022 primary election limit for primary debt retirement.

The first allegation fails on its face because there is no legal requirement to make such a disclosure. The second allegation also fails because the Complaint does not allege any transactions that resulted in excessive contributions. Accordingly, the Commission should find no reason to believe that Respondents violated the Act.

BACKGROUND

Sam Brown was a candidate in the 2022 Nevada Republican primary election for U.S. Senate. Sam Brown for Nevada (FEC Committee ID C00783936) was Brown's principal campaign committee for the 2022 election.

In the June 14, 2022 Nevada primary election, Brown did not win his party's nomination.¹ Afterwards, Brown was no longer a candidate but wished to remain active in politics and as a leader in the conservative movement.² To that end, he decided to rename and convert his campaign committee into a nonconnected committee, consistent with longstanding FEC precedent (discussed more below).

At the same time, as is common with direct-mail campaign fundraising, contributions to Sam Brown for Nevada would continue to trickle in by mail in response to direct-mail solicitations that the campaign committee had sent out before the primary. It was, of course, in the campaign committee's interest to accept those contributions after the primary, to the extent permissible, to retire primary debts in accordance with 11 C.F.R. § 110.1(b)(5)(i)(D).

It was possible, however, that the committee might be unable to deposit contribution checks payable to "Sam Brown for Nevada" if the committee had already changed its name as part of its conversion to a nonconnected committee. Accordingly, Brown and his campaign treasurer formed a separate nonconnected committee in the interim called "Duty First PAC" and registered it with the Commission on July 5, 2022.³

After sufficient time had elapsed to allow the campaign committee to accept the contributions that arrived by mail after the primary, Sam Brown for Nevada amended its Statement of Organization on August 18, 2022, to convert to a nonconnected committee and to change its name to "Sam Brown PAC."⁴ As the Statement of Organization indicates, the

¹ See Nev. Sec'y of State, 2022 Official Statewide Primary Election Results (June 14, 2022), <https://www.nvsos.gov/SOSelectionPages/results/2022StateWidePrimary/ElectionSummary.aspx>.

² On July 10, 2023, Brown became a candidate again—this time, in the 2024 Nevada Republican primary election for U.S. Senate. See FEC Form 2, <https://docquery.fec.gov/cgi-bin/forms/S4NV00288/1710755/>. His principal campaign committee for the 2024 election is, once again, called Sam Brown for Nevada (FEC Committee ID C00845032). See FEC Form 1, <https://docquery.fec.gov/pdf/187/202307109582471187/202307109582471187.pdf>. As the Complaint (at 2) correctly notes, the 2022 and 2024 principal campaign committees are "two separate entities with the same name," and the Complaint does not allege any violations by the 2024 committee.

³ See FEC Form 1, <https://docquery.fec.gov/pdf/771/202207059517790771/202207059517790771.pdf>.

⁴ See FEC Form 1, <https://docquery.fec.gov/pdf/742/202208189525533742/202208189525533742.pdf>.

resulting Sam Brown PAC was affiliated with the Duty First PAC that had been formed a month earlier because Brown established and/or controlled both entities.⁵

Allowing time before renaming and converting Sam Brown for Nevada to a nonconnected committee proved prescient: Between June 15 (the day after the primary) and August 17, 2022 (the day before converting to a nonconnected committee), Sam Brown for Nevada accepted 368 contributions totaling \$51,866.⁶

With there no longer being a need to maintain Sam Brown PAC as a separate but affiliated entity of Duty First PAC, Sam Brown PAC filed a termination report with the FEC on October 14, 2022.⁷ At the same time, Duty First PAC filed its October quarterly report and stated that it had assumed Sam Brown PAC's outstanding debts.⁸

ANALYSIS

1. The activities of Sam Brown for Nevada and Duty First PAC were perfectly permissible.

The Complaint insinuates impropriety by alleging that Respondents engaged in a “complicated maneuver” to avoid “following the usual protocol of retiring [primary campaign] debt through [the] existing campaign committee.”⁹ Tellingly, the Complaint does not identify any provision of the Act or Commission regulations that Respondents' alleged conduct violates. Rather, the Complaint ultimately concedes that “transferring the

⁵ *Id.*; 11 C.F.R. § 110.3(a)(3)(ii).

⁶ Individual Contributions, FEC Committee ID C00783936 (6/15/2022-7/17/2022)
https://www.fec.gov/data/individual-contributions/?committee_id=C00783936&two_year_transaction_period=2022&min_date=06%2F15%2F2022&max_date=08%2F17%2F2022.

⁷ See FEC Form 3 at 5,
<https://docquery.fec.gov/pdf/507/202210149532385507/202210149532385507.pdf> (“All remaining debt accumulated by Sam Brown PAC has been assumed by Duty First PAC (C00819888).”). Because it was a principal campaign committee at the beginning of the reporting period and did not become a nonconnected committee until later in the reporting period, the committee reported on the form for authorized committees (Form 3) rather than the form for other committees (Form 3X).

⁸ See FEC Form 3X at 6,
<https://docquery.fec.gov/pdf/338/202210149532407338/202210149532407338.pdf> (“All remaining debt accumulated by Sam Brown PAC (C00783936) has been assumed by Duty First PAC (C00819888).”).

⁹ Complaint at 2.

debt out of the campaign into a PAC” is—at most—“unprecedented” (at least in the Complainant’s estimation).¹⁰

Nevertheless, before addressing the specific violations that the Complaint alleges, we first address the incorrect suggestion that there was anything improper about the committee conversion or the assumption of debt here.

First, there is nothing impermissible about Sam Brown for Nevada’s conversion to a nonconnected committee affiliated with Duty First PAC. The Commission has issued numerous advisory opinions spanning decades “permitting candidates [who are no longer actively seeking office] to convert their authorized committees to nonconnected political committees, and to finance the activities of the nonconnected committees with contributions received by the candidates for elections in which the candidates had participated.”¹¹

Given that such nonconnected committees may carry pre-conversion contributions forward for post-conversion use, it follows that such committees may also—indeed, are required to—carry forward pre-conversion debts for post-conversion retirement. As the Commission’s Campaign Guide for Congressional Candidates and Committees instructs: “After the conversion, the committee *remains responsible for* resolving any outstanding obligations, *such as debts* and unrefunded impermissible contributions.”¹²

Second, Duty First PAC’s assumption of Sam Brown PAC’s debts is consistent with all applicable law. Commission regulations only specifically address “[a]n authorized committee that qualifies as a terminating committee [] assign[ing] debts to another authorized committee of the same candidate.”¹³ At the same time, neither the Act nor the regulations prohibits one committee from assuming the debts of another affiliated committee in other contexts.

Indeed, in AO 2005-15, the Commission expressly concluded that assumption of debt between affiliated committees is permissible. There, the West Virginia Republican

¹⁰ *Id.* at 6.

¹¹ AO 2012-06 (RickPerry.org) at 3 (citing AOs 2004-03 (Dooley for the Valley), 1994-31 (Gallo), 1993-22 (Roe), 1988-41 (Stratton)). The cited AOs do not appear to be exhaustive, as the Commission has issued numerous other AOs on this issue that were not cited in the Rick Perry AO.

¹² FEC Campaign Guide for Congressional Candidates and Committees (Oct. 2021) at 138 (emphasis added), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf>.

¹³ 11 C.F.R. § 116.2(c)(3).

Party committee sought to create a new state party committee that was incorporated for liability purposes only and to terminate the existing committee.¹⁴ But the existing committee had outstanding debts, and a political committee may only terminate, among other things, “provided that such committee has no outstanding debts and obligations.”¹⁵

The Commission approved the proposal and instructed the new committee “to assume all debts of” the existing committee.¹⁶ This “would constitute a simultaneous discharge of the debts” of the existing committee, “thereby allowing it to terminate.”¹⁷ Accordingly, what the Complaint characterizes as a nefarious and “complicated maneuver” is wholly consistent with what the Commission has permitted: After Sam Brown for Nevada converted to Sam Brown PAC (a nonconnected committee) in accordance with longstanding Commission precedent, it was affiliated with Duty First PAC. Duty First PAC “assume[d] all debts” of Sam Brown PAC, which “constitute[d] a simultaneous discharge of the debts” of Sam Brown PAC, “thereby allowing it to terminate” in the manner that the Commission prescribed in AO 2005-15.

2. The Act and Commission regulations do not require Duty First PAC’s solicitations to disclose that contributions could be used to pay debt.

The first explicit violation that the Complaint alleges is that Duty First PAC’s solicitations do not “include a specific disclosure when raising contributions to retire debts in order to properly designate the contribution for the prior election’s debt retirement,” which the Complaint alleges 11 C.F.R. § 110.1(b)(3) requires.¹⁸ The Complaint repeats this allegation at least three times.¹⁹

¹⁴ AO 2005-15 (Republican State Executive Committee of West Virginia) at 3.

¹⁵ 11 C.F.R. § 102.3(a)(1).

¹⁶ AO 2005-15 at 4.

¹⁷ *Id.*

¹⁸ Complaint at 4 n.19.

¹⁹ *Id.* at 5 (referencing “the requisite solicitation disclosure requirements that make it clear that contributions will go to retire campaign debt, which can make a solicitation much less desirable to donors”), 6 (alleging that “Duty First appears to be raising funds without disclosing that the donor’s funds will go towards debt retirement” and “there is no evidence that Duty First’s solicitations are informing contributors that their contributions will be used to retire Sam Brown’s 2022 Senate campaign debt”).

There are two fatal flaws in this theory of liability.

First, as explained above, Sam Brown for Nevada converted to a nonconnected committee, Sam Brown PAC, in accordance with longstanding Commission guidance. In doing so, the committee's primary debts carried forward to the nonconnected committee, also in accordance with Commission guidance. Duty First PAC then assumed all of Sam Brown PAC's debts, again in accordance with Commission precedent. At that point, Duty First PAC could not solicit contributions to retire debt from a "prior election," as the Complaint alleges. Rather, Duty First PAC was simply soliciting contributions for Duty First PAC. Like any other PAC, Duty First PAC could have debts: And like any other PAC, it could use the contributions it solicited to pay those debts.

This leads to the *second* (and more critical) flaw in this allegation: It invokes an entirely nonexistent "disclosure" requirement. Regardless of whether a campaign committee or a nonconnected committee is soliciting contributions, there simply is no requirement to be found under the Act or Commission regulations that a "disclosure" be made to donors that their contribution might be used to pay debt.

The Complaint's legal support for this purported "disclosure" requirement—11 C.F.R. § 110.1(b)(3)—addresses contributions "designated in writing for a particular election" that are "made after that election." It permits such contributions to be accepted "only to the extent that the contribution does not exceed net debts outstanding from such election." If a contribution does exceed net debts outstanding, 11 C.F.R. § 110.1(b)(3) sets forth three options for resolving the contribution. Nowhere does the cited provision—or any other Commission regulation, for that matter—require the type of "disclosure" that the Complaint imagines.

Moreover, the Complaint does not allege that any of the contributions at issue were "designated in writing for [that] particular election," as 11 C.F.R. § 110.1(b)(3) contemplates. For contributions not so designated, the applicable rule is 11 C.F.R. § 110.1(b)(5)(i)(D), which provides that undesignated contributions "received after the date of an election for which there are net debts outstanding" are to be resolved by obtaining a written redesignation from the donor for the prior election (here, the primary). There simply is no requirement that a committee "include a specific disclosure when raising contributions to

retire debts in order to properly designate the contribution for the prior election's debt retirement," as the Complaint alleges.²⁰

3. Duty First PAC and Sam Brown for Nevada have not accepted excessive contributions.

The second specific violation the Complaint alleges is that "Duty First can only accept funds from a donor for debt retirement that do not exceed their original 2022 primary contribution limit" of \$2,900, and "[y]et, Duty First and Brown's 2022 campaign accepted contributions from at least ten contributors in excess of the applicable limits."²¹

But once a candidate's campaign committee converts to a nonconnected committee, it is subject to the \$5,000 per calendar year limit on contributions to a nonconnected committee.²² In all of the advisory opinions the Commission has issued over decades permitting such conversions, the Commission has never suggested that the inflation-adjusted \$2,900 per election candidate contribution limit (as relevant to the 2022 primary at issue here) would continue to apply once a candidate committee converts to a nonconnected committee. Therefore, the Complaint is simply mistaken in its premise that Duty First PAC was subject to the 2022 \$2,900 primary contribution limit when it assumed

²⁰ The Complaint cannot be read to allege that Respondents are not obtaining written redesignations. The Complaint (at 6) twice takes issue specifically with the fact that the donations page on Duty First PAC's website "makes no mention whatsoever of debt retirement" and does not "inform[] contributors that their contributions will be used to retire Sam Brown's 2022 Senate campaign debt." This is decidedly not what the Commission's "written redesignation" rule requires.

Some Commissioners and staff may recall that past Commissioners' offices worked on a draft policy around 2008 or 2009 to allow for the type of preemptive redesignation that the Complaint suggests is required here. To wit, preemptive redesignation would allow committees to include a disclaimer on their solicitations advising donors that their contributions would apply toward debt retirement, thereby obviating the need to separately obtain written redesignations from donors. However, the Commission never adopted the draft policy, and the fact that such a policy was even drafted belies the Complaint's allegation that this type of preemptive redesignation is required.

²¹ Complaint at 5.

²² 52 U.S.C. § 30116(a)(1)(C); compare *id.* with *id.* § 30116(a)(1)(A).

Sam Brown PAC's debts. Without that erroneous premise, the Complaint's allegation of excessive contributions falls apart.²³

Even if there were some question over this issue, at the very least, the Commission has never found that a campaign committee with debt that converts to a nonconnected committee must pay that debt using contributions raised under the per-election limits that applied to the campaign committee before conversion. As Commissioners Broussard and Weintraub have explained, "the Commission cannot retroactively hold respondents to a standard in the enforcement context that they could not have previously divined[.]" particularly where the "Respondents appear to have comported their conduct with the guidance previously issued by the Commission."²⁴

Commissioners Cooksey, Dickerson, and Trainor have made this same point:

A fundamental value of due process is fair notice. If the regulated community cannot look to our regulations for clear guidance as to what it may and may not do, then this agency is failing in its mission and undermining the rule of law. When our regulations are unclear or incomplete, it is incumbent upon us to clarify them, whether through new regulations, interpretive guidance, advisory opinions, or otherwise. Yet *too often, this agency seeks to engage in interpretation-by-enforcement, using pending actions against individuals as the means for changing or evolving our regulatory rules sub silentio.*²⁵

²³ In fact, the largest contributor mentioned in the Complaint—Michael Brown—is alleged to have given \$7,900 in net receipts to Sam Brown PAC and Duty First PAC. Tellingly, this is nothing more than the total legal maximum that may be contributed to each committee (*i.e.*, \$5,000 to Duty First PAC and \$2,900 to Sam Brown for Nevada). Specifically, this donor gave \$5,800 to Sam Brown for Nevada on June 4, 2021, of which \$2,900 was allocated for the 2022 primary and \$2,900 was allocated for the 2022 general election. The \$2,900 allocated for the general election was then refunded on July 18, 2022. This donor gave another \$5,000 to Duty First PAC on August 25, 2022. While Sam Brown PAC (formerly Sam Brown for Nevada) and Duty First PAC were affiliated, the \$2,900 contribution for the primary that this donor made did not count against the donor's \$5,000 per calendar-year limit for contributions to Duty First PAC in 2022 because the \$2,900 contribution was made in 2021.

²⁴ MUR 7904 (Hansjorg Wyss), Statement of Reasons of Commissioners Shanna M. Broussard and Ellen L. Weintraub at 9.

²⁵ MUR 7243 (CITGO Petroleum Corp., et al.), Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 6 (emphasis added).

As explained above, and consistent with the Broussard-Weintraub statement, the Respondents here “comported their conduct with the guidance previously issued by the Commission” in AO 2005-15, and “the Commission cannot retroactively hold respondents to [the \$2,900 per-election limit on contributions to candidate committees] in the enforcement context” that the Complaint demands.

CONCLUSION

For the foregoing reasons, the Commission should find no reason to believe that the Respondents violated the Act or Commission regulations.

In the alternative and at a minimum, neither the Act nor Commission regulations foreclose Respondents’ alleged conduct, and no Commission guidance has addressed the specific fact pattern here. Accordingly, Respondents respectfully urge the Commission to dismiss this matter as an exercise of prosecutorial discretion under *Heckler v. Chaney*,²⁶ and to issue regulatory guidance regarding the retirement of debt incurred by a principal campaign committee that converts to a nonconnected committee, and where such debt is later assumed by an affiliated nonconnected committee.

Respectfully submitted,



Chris K. Gober

Eric Wang

Anne Marie Mackin

Counsel to Sam Brown, Sam Brown for Nevada, Duty First PAC, and

Chrissie Hastie, in her official capacity as Treasurer

²⁶ 470 U.S. 821 (1985).