

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

RR 23L-27

DATE REFERRED:	June 12, 2023
DATE OF NOTIFICATION:	June 14, 2023
RESPONSE RECIEVED:	June 28, 2023
DATE ACTIVATED:	September 27, 2023
■	■
SOL:	January 2, 2025 – November 3, 2025
ELECTION CYCLE:	2020

SOURCE: Internally Generated

RESPONDENT: John James for Senate, Inc. and Bradley T. Crate in
his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30116(a), (f)
 52 U.S.C. § 30118(a)
 11 C.F.R. § 103.3
 11 C.F.R. § 104.3(a)
 11 C.F.R. § 110.1(b), (g)
 11 C.F.R. § 110.2(b)
 11 C.F.R. § 110.9
 11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred John James for Senate, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for knowingly accepting excessive and prohibited 2020 primary and general election contributions, totaling \$587,406.72, in violation of the Federal Election Campaign Act of 1971,

as amended (the “Act”).¹ According to the Referral, the Committee untimely refunded all of the excessive and prohibited contributions within between 62 and 1,293 days of receipt.² The Committee does not dispute the untimely refunds and attributes their lateness to “a historic anomaly that is unlikely to repeat itself[,]” due to direct mail delays during the COVID-19 pandemic and further notes the late refunds only make up a small percentage of the total contributions received.³ In consideration of these reasons and because the contributions have been refunded, the Committee asks the Commission to dismiss the matter.⁴

For the reasons discussed below, we recommend that the Commission open a matter under review (“MUR”), find reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive contributions and 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting corporate contributions, authorize pre-probable cause conciliation with the Committee, [REDACTED]

¹ RAD Referral 23L-27 (John James for Senate, Inc.) (June 12, 2023) (“Referral”). The Committee is currently a respondent in an unrelated matter from the 2020 election cycle involving the personal use of campaign funds. MUR 7976 (John James for Senate, Inc.) [REDACTED]

² Referral, Attach. 1 (Excessive and Prohibited Contributions Remedied Outside Permissible Timeframes, Listed by Report). Three contributions were refunded 965, 1089, and 1293 days after receipt but all other excessive or prohibited contributions were refunded between 62 and 285 days after receipt. *Id.*

³ Resp. at 1 (June 28, 2023).

⁴ *Id.*

II. FACTUAL BACKGROUND

The Committee is an authorized committee and the principal campaign committee for John James, a candidate in the 2020 election for the U.S. Senate in Michigan.⁵ The Committee's treasurer is Bradley T. Crate.⁶ According to the Referral, the Committee failed to timely refund \$587,406.72 in excessive and prohibited contributions received during the 2020 election cycle.⁷ The Referral describes \$578,306.72 in excessive contributions and \$9,100 in prohibited contributions from three corporations and five limited liability companies ("LLCs").⁸ The excessive and prohibited contributions were disclosed on the Committee's 2020 April Quarterly, 2020 July Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General, and 2020 30-Day Post-General Reports.⁹ These contributions were not refunded until between 62 and 1,293 days after receipt.¹⁰

Below is a chart summarizing the contributions cited in the Referral, as disclosed on the Committee's reports.¹¹

⁵ John James, Amended Statement of Candidacy at 1 (Sept. 11, 2020). James lost the 2020 general election and subsequently ran in the 2022 election cycle for the U.S. House of Representatives from the 10th District of Michigan and won. Referral at 1, n.2.

⁶ John James for Senate, Inc., Amended Statement of Organization (June 19, 2023).

⁷ Referral at 1-5.

⁸ *Id.*

⁹ *Id.*

¹⁰ Prohibited contributions were refunded between 62 and 242 days after receipt. Excessive contributions were refunded between 76 and 1,293 days after receipt. *Id.*

¹¹ *Id.*, Attach. 1.

1

Report	Excessive Contributions Refunded Outside of 60- Day Timeframe	Contributions from LLCs and Corporations Refunded Outside of 30- Day Timeframe
2020 April Quarterly	\$21,129.91	\$5,550.00
2020 July Quarterly	\$14,910.33	\$3,550.00
2020 October Quarterly	\$257,377.71	\$0
2020 12-Day Pre-General	\$76,175.96	\$0
2020 30-Day Post-General	\$208,712.81	\$0
Total:	\$578,306.72	\$9,100.00

2

3 RAD sent the Committee five Requests for Additional Information (“RFAs”)
 4 referencing the excessive and apparent prohibited contributions.¹² In response to each RFA, the
 5 Committee filed an FEC Form 99 stating that refunds, redesignations, or reattributions of the
 6 contributions would appear on future reports.¹³ On May 23, 2023, the Committee filed Amended
 7 2020 April Quarterly, 2020 July Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General,
 8 and 2020 30-Day Post-General Reports to disclose refunds for all of the excessive and prohibited

¹² *Id.* at 1-5; *see also* John James for Senate, Inc., RFAI (July 27, 2020) (referencing 2020 April Quarterly Report); John James for Senate, Inc., RFAI (July 27, 2020) (referencing 2020 July Quarterly Report); John James for Senate, Inc., RFAI (Dec. 3, 2020) (referencing 2020 October Quarterly Report); John James for Senate, Inc., RFAI (Jan. 5, 2021) (referencing the 2020 12-Day Pre-General Report); John James for Senate, Inc., RFAI (Mar. 7, 2021) (referencing the amended 2020 30-Day Post-General Report).

¹³ Referral at 1-5; *see also* John James for Senate, Inc., Misc. Electronic Submission (FEC Form 99) (Aug. 31, 2020) (in reference to the 2020 April Quarterly Report RFAI); John James for Senate, Inc., Misc. Electronic Submission (FEC Form 99) (Aug. 31, 2020) (in reference to the 2020 July Quarterly Report RFAI); John James for Senate, Inc., Misc. Electronic Submission (FEC Form 99) (Jan. 7, 2021) (in reference to the 2020 October Quarterly Report RFAI); John James for Senate, Inc., Misc. Electronic Submission (FEC Form 99) (Feb. 9, 2021) (in reference to the 2020 12-Day Pre-General Report RFAI); John James for Senate, Inc., Misc. Electronic Submission (FEC Form 99) (Apr. 12, 2021) (in reference to the 2020 30-Day Post-General Report RFAI).

1 contributions cited in the RFAIs (there were no reattributions or redesignations).¹⁴ On the same
2 day, the Committee filed an additional FEC Form 99 summarizing the refunds.¹⁵

3 The Committee acknowledges accepting the excessive and prohibited contributions and
4 that its refunds were not timely, but requests a dismissal on the basis of an “historic anomaly that
5 is unlikely to repeat itself[,]” due to the delay of direct mail during the COVID-19 pandemic and
6 because all of the contributions in question have been refunded.¹⁶ The Committee states that it
7 received a large proportion of contributions via direct mail but the postal service was hampered
8 by the COVID-19 pandemic, delaying its time for recording the contributions.¹⁷ The Committee
9 further states that it attempted to refund excessive contributions as quickly as possible under the
10 circumstances, and also points out that the late refunds made up only a small portion of overall
11 contributions (1.21%).¹⁸ Lastly, the Committee provides that it has replaced its volunteer
12 treasurer with a professional from Red Curve Solutions, a campaign management service, and
13 updated contact information to clarify communication with FEC staff.¹⁹

¹⁴ The Committee filed an Amended 2020 October Quarterly report on May 30, 2023, itemizing an additional excessive contribution refund that was previously included in the unitemized total. Referral at 5.

¹⁵ *Id.*; see John James for Senate, Inc., Misc. Electronic Submission (FEC Form 99) (May 23, 2021).

¹⁶ Resp. at 2.

¹⁷ *Id.* The Committee notes in its Response that it received “documentation” of contributions received through its direct mail firm via postal service which led to the delays in recording of contributions. *Id.*

¹⁸ *Id.*

¹⁹ The Committee provides in its Response that the contact information on the Statement of Organization belonged to Red Curve Solutions and not the Committee’s treasurer. Resp. at 2. The Committee notes Red Curve Solutions assured that communications were promptly returned, and it worked with RAD to resolve the issue. Resp. at 2.

1 **III. LEGAL ANALYSIS**

2 During the 2020 election cycle, the Act and Commission regulations limited an
 3 authorized committee to accepting a total of \$2,800 per election from any individual.²⁰ The Act
 4 also prohibits corporations from making contributions to federal candidates, and likewise bars
 5 candidates and political committees (other than independent expenditure-only political
 6 committees and committees with hybrid accounts) from knowingly accepting or receiving
 7 corporate contributions.²¹ Commission regulations allow receipt of contributions from LLCs
 8 provided the LLC is treated as a partnership for tax purposes and has not elected to be treated as
 9 a corporation by the Internal Revenue Service.²² LLCs that claim corporate status or those that
 10 are publicly traded are treated as corporations for purposes of the Act.²³

11 A committee's treasurer is responsible for examining all contributions received for
 12 evidence of illegality and for ascertaining whether contributions received, when aggregated with
 13 other contributions from the same contributor, exceed the Act's contribution limits.²⁴
 14 Contributions that present genuine questions as to whether they were made by a corporation
 15 may, within ten days of receipt, be either deposited or refunded.²⁵ If deposited, the treasurer

²⁰ 52 U.S.C. §§ 30116(a)(1)(A), (2)(A); 30116(f); 11 C.F.R. §§ 110.1(a)-(b); 110.9; *see also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

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

²² 11 C.F.R. § 110.1(g).

²³ *Id.* § 110.1(g)(3).

²⁴ *Id.* § 103.3(b).

²⁵ *Id.* § 103.3(b)(1).

1 must make their best efforts to determine the legality of the contribution.²⁶ If the legality of the
 2 contribution cannot be determined, the treasurer shall, within 30 days, refund the contribution.²⁷

3 Contributions which on their face exceed the contribution limits, and contributions which
 4 do not appear on their face to exceed the contribution limits but exceed contribution limits when
 5 aggregated with other contributions, and which cannot be accepted under the net debts
 6 outstanding provisions, may be returned to the contributor or deposited.²⁸ If deposited, excessive
 7 contributions must be: (1) redesignated in accordance with 11 C.F.R. §§ 110.1(b)(5) or
 8 110.2(b)(5); (2) reattributed in accordance with 11 C.F.R. § 110.1(k)(3); or (3) refunded within
 9 60 days of the date that the committee has actual notice of the need to refund, redesignate or
 10 reattribute the contributions.²⁹

11 As an authorized committee, the Committee was limited to accepting \$2,800 per election
 12 from individuals and was prohibited from accepting any corporate contribution. The Committee,
 13 however, received \$578,306.72 in excessive contributions and \$9,100.00 in prohibited corporate
 14 contributions across five disclosure reports: the 2020 April Quarterly Report, 2020 July
 15 Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General, and the 2020 30-Day Post-
 16 General Reports.³⁰ Although the Committee ultimately refunded the \$578,306.72 in excessive
 17 contributions that it received, it did not do so until between 76 and 1293 days after receipt,
 18 beyond the 60-day period set forth in the regulations.³¹ Similarly, although the Committee

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* § 103.3(b)(3).

²⁹ *Id.*

³⁰ Referral at 1-5.

³¹ 11 C.F.R. § 103.3(b)(3).

1 refunded the \$9,100.00 in corporate contributions that it received, it did not do so until between
 2 62 and 242 days after receipt, outside the 30-day period set forth in the regulations.³²

3 The Committee does not dispute its failure to make timely refunds but asserts that
 4 because all contributions have been remedied, the Referral should be dismissed.³³ Additionally,
 5 the Committee asserts that despite, as its claims, delays in receiving notification of contributions
 6 in need of refunds due to the slow delivery of direct mail during the COVID-19 pandemic, it
 7 acted diligently to ensure compliance and notes the late-refunds only made up a small portion of
 8 overall contributions.³⁴ [REDACTED]

9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 Accordingly, we recommend that the Commission open a MUR and find reason to
 13 believe that John James for Senate, Inc. and Bradley T. Crate in his official capacity as treasurer
 14 violated 52 U.S.C. §§ 30116(f) and 30118(a) and 11 C.F.R. §§ 110.9 and 114.2(d) by knowingly
 15 accepting excessive and prohibited corporate contributions.

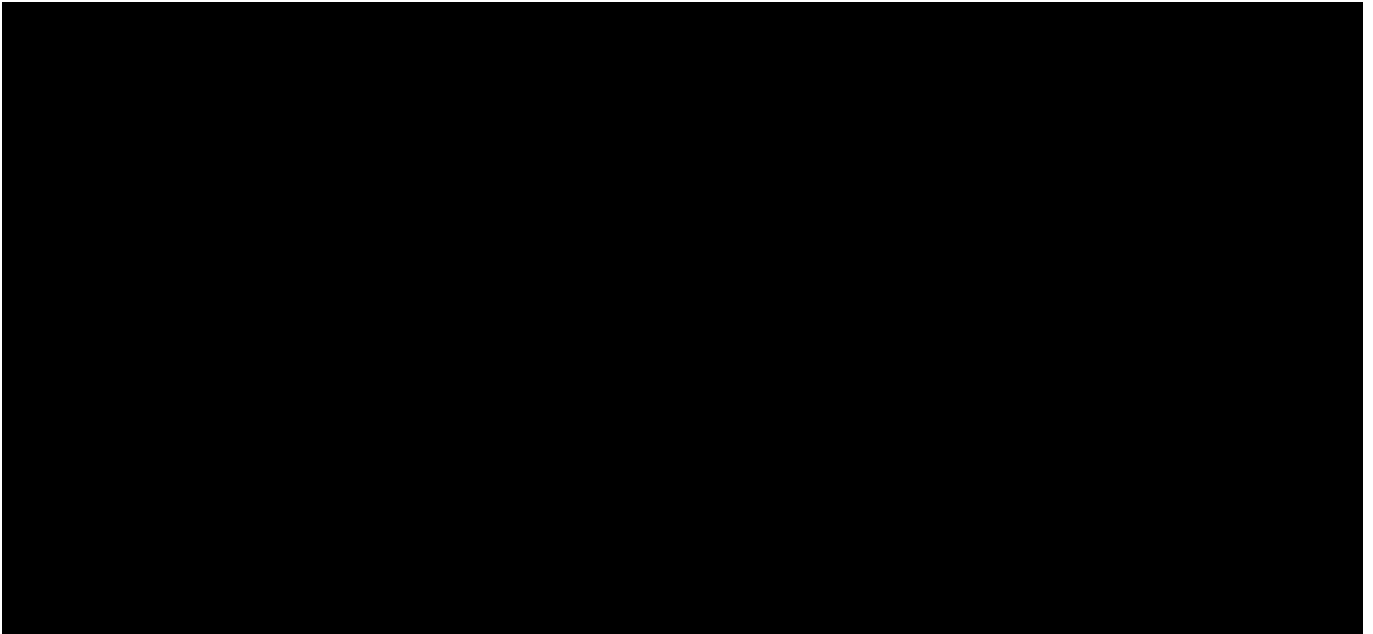
16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]

³² *Id.* § 103.3(b)(1).

³³ Resp. at 1.

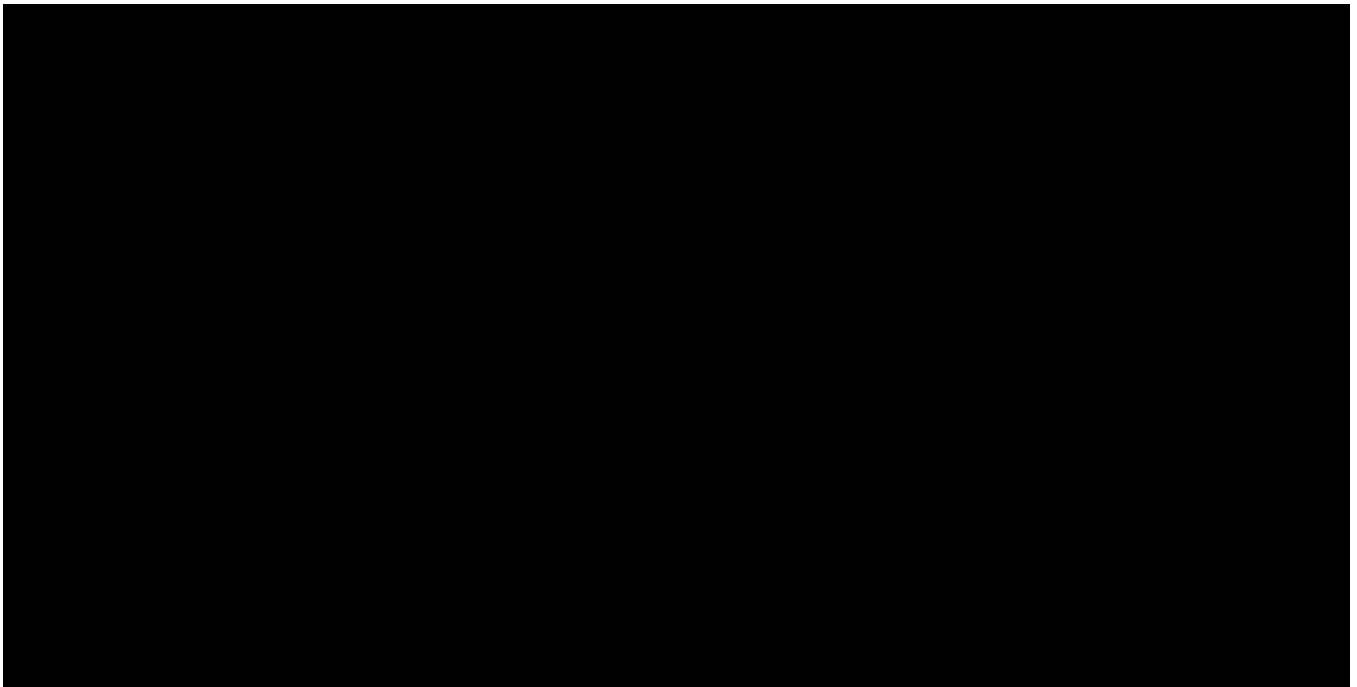
³⁴ *Id.*
 [REDACTED]

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10 **V. RECOMMENDATIONS**

- 11 1. Open a Matter Under Review;
12
13 2. Find reason to believe that John James for Senate, Inc. and Bradley T. Crate in his
14 official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9
15 by knowingly accepting excessive contributions;
16



3. Find reason to believe that John James for Senate, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting corporate contributions;
4. Approve the attached Factual and Legal Analysis;
5. Authorize conciliation with John James for Senate, Inc. and Bradley T. Crate in his official capacity as treasurer prior to a finding of probable cause to believe;
6. Approve the attached Conciliation Agreement; and
7. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel
For Enforcement

Date: November 30, 2023

Claudio Pavia
Claudio J. Pavia
Deputy Associate General Counsel for
Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Colin Hughes
Colin Hughes
Attorney

Constantine V Soupios
Constantine Soupios
Attorney

Attachments

1. Factual and legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: John James for Senate, Inc. and Bradley T. Crate MUR ____
in his official capacity as treasurer

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred John James for Senate, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for knowingly accepting excessive and prohibited 2020 primary and general election contributions, totaling \$587,406.72, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ According to the Referral, the Committee untimely refunded all of the excessive and prohibited contributions within between 62 and 1,293 days of receipt.² The Committee does not dispute the untimely refunds and attributes their lateness to “a historic anomaly that is unlikely to repeat itself[,]” due to direct mail delays during the COVID-19 pandemic and further notes the late refunds only make up a small percentage of the total contributions received.³ In consideration of these reasons and because the contributions have been refunded, the Committee asks the Commission to dismiss the matter.⁴

¹ RAD Referral 23L-27 (John James for Senate, Inc.) (June 12, 2023) (“Referral”).

² Referral, Attach. 1 (Excessive and Prohibited Contributions Remedied Outside Permissible Timeframes, Listed by Report). Three contributions were refunded 965, 1089, and 1293 days after receipt but all other excessive or prohibited contributions were refunded between 62 and 285 days after receipt. *Id.*

³ Resp. at 1 (June 28, 2023).

⁴ *Id.*

For the reasons discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive contributions and 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting corporate contributions.

II. FACTUAL BACKGROUND

The Committee is an authorized committee and the principal campaign committee for John James, a candidate in the 2020 election for the U.S. Senate in Michigan.⁵ The Committee's treasurer is Bradley T. Crate.⁶ According to the Referral, the Committee failed to timely refund \$587,406.72 in excessive and prohibited contributions received during the 2020 election cycle.⁷ The Referral describes \$578,306.72 in excessive contributions and \$9,100 in prohibited contributions from three corporations and five limited liability companies ("LLCs").⁸ The excessive and prohibited contributions were disclosed on the Committee's 2020 April Quarterly, 2020 July Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General, and 2020 30-Day Post-General Reports.⁹ These contributions were not refunded until between 62 and 1,293 days after receipt.¹⁰

⁵ John James, Amended Statement of Candidacy at 1 (Sept. 11, 2020). James lost the 2020 general election and subsequently ran in the 2022 election cycle for the U.S. House of Representatives from the 10th District of Michigan and won. Referral at 1, n.2.

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¹⁰ Prohibited contributions were refunded between 62 and 242 days after receipt. Excessive contributions were refunded between 76 and 1,293 days after receipt. *Id.*

1 Below is a chart summarizing the contributions cited in the Referral, as disclosed on the
 2 Committee's reports.¹¹

Report	Excessive Contributions Refunded Outside of 60- Day Timeframe	Contributions from LLCs and Corporations Refunded Outside of 30- Day Timeframe
2020 April Quarterly	\$21,129.91	\$5,550.00
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 4 RAD sent the Committee five Requests for Additional Information ("RFAs") referencing
 5 the excessive and apparent prohibited contributions.¹² In response to each RFAI, the Committee
 6 filed an FEC Form 99 stating that refunds, redesignations, or reattributions of the contributions
 7 would appear on future reports.¹³ On May 23, 2023, the Committee filed Amended 2020 July

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Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General, 2020 30-Day Post-General, 2020 Year-End, and 2021 April Quarterly Reports to disclose refunds for all of the excessive and prohibited contributions cited in the RFAIs (there were no reattributions or redesignations).¹⁴ On the same day, the Committee filed an additional FEC Form 99 summarizing the refunds.¹⁵

The Committee acknowledges accepting the excessive and prohibited contributions and that its refunds were not timely, but requests a dismissal on the basis of an “historic anomaly that is unlikely to repeat itself[,]” due to the delay of direct mail during the COVID-19 pandemic and because all of the contributions in question have been refunded.¹⁶ The Committee states that it received a large proportion of contributions via direct mail but the postal service was hampered by the COVID-19 pandemic, delaying its time for recording the contributions.¹⁷ The Committee further states that it attempted to refund excessive contributions as quickly as possible under the circumstances, and also points out that the late refunds made up only a small portion of overall contributions (1.21%).¹⁸ Lastly, the Committee provides that it has replaced its volunteer treasurer with a professional from Red Curve Solutions, a campaign management service, and updated contact information to clarify communication with FEC staff.¹⁹

¹⁴ The Committee filed an Amended 2020 October Quarterly report on May 30, 2023, itemizing an additional excessive contribution refund that was previously included in the unitemized total. Referral at 5.

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1 **III. LEGAL ANALYSIS**

2 During the 2020 election cycle, the Act and Commission regulations limited an authorized
 3 committee to accepting a total of \$2,800 per election from any individual.²⁰ The Act also
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 6 committees and committees with hybrid accounts) from knowingly accepting or receiving
 7 corporate contributions.²¹ Commission regulations allow receipt of contributions from LLCs
 8 provided the LLC is treated as a partnership for tax purposes and has not elected to be treated as a
 9 corporation by the Internal Revenue Service.²² LLCs that claim corporate status or those that are
 10 publicly traded are treated as corporations for purposes of the Act.²³

11 A committee's treasurer is responsible for examining all contributions received for
 12 evidence of illegality and for ascertaining whether contributions received, when aggregated with
 13 other contributions from the same contributor, exceed the Act's contribution limits.²⁴
 14 Contributions that present genuine questions as to whether they were made by a corporation may,
 15 within ten days of receipt, be either deposited or refunded.²⁵ If deposited, the treasurer must make

²⁰ 52 U.S.C. § 30116(a)(1)(A); 30116(f); 11 C.F.R. §§ 110.1(a)-(b); 110.9; *see also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

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

²² 11 C.F.R. § 110.1(g).

²³ *Id.* § 110.1(g)(3).

²⁴ *Id.* § 103.3(b).

²⁵ *Id.* § 103.3(b)(1).

MUR _____ (John James for Senate, Inc.)

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their best efforts to determine the legality of the contribution.²⁶ If the legality of the contribution cannot be determined, the treasurer shall, within 30 days, refund the contribution.²⁷

Contributions which on their face exceed the contribution limits, and contributions which do not appear on their face to exceed the contribution limits but exceed contribution limits when aggregated with other contributions, and which cannot be accepted under the net debts outstanding provisions, may be returned to the contributor or deposited.²⁸ If deposited, excessive contributions must be: (1) redesignated in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); (2) reattributed in accordance with 11 C.F.R. § 110.1(k)(3); or (3) refunded within 60 days of the date that the committee has actual notice of the need to refund, redesignate or reattribute the contributions.²⁹

As an authorized committee, the Committee was limited to accepting \$2,800 per election from individuals and was prohibited from accepting any corporate contribution. The Committee, however, received \$578,306.72 in excessive contributions and \$9,100.00 in prohibited corporate contributions across five disclosure reports: the 2020 April Quarterly, 2020 July Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General, and 2020 30-Day Post-General Reports.³⁰ Although the Committee ultimately refunded the \$578,306.72 in excessive contributions that it received, it did not do so until between 76 and 1293 days after receipt, beyond the 60-day period

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* § 103.3(b)(3).

²⁹ *Id.*

³⁰ Referral at 1-5.

MUR _____ (John James for Senate, Inc.)

Factual and Legal Analysis

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1 set forth in the regulations.³¹ Similarly, although the Committee refunded the \$9,100.00 in
2 corporate contributions that it received, it did not do so until between 62 and 242 days after
3 receipt, outside the 30-day period set forth in the regulations.³²

4 The Committee does not dispute its failure to make timely refunds but asserts that because
5 all contributions have been remedied, the Referral should be dismissed.³³ Additionally, the
6 Committee asserts that despite, as its claims, delays in receiving notification of contributions in
7 need of refunds due to the slow delivery of direct mail during the COVID-19 pandemic, it acted
8 diligently to ensure compliance and notes the late-refunds only made up a small portion of overall
9 contributions.³⁴

10 Therefore, the Commission finds reason to believe that John James for Senate, Inc. and
11 Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30118(a)
12 and 11 C.F.R. §§ 110.9 and 114.2(d) by knowingly accepting excessive and prohibited corporate
13 contributions.

³¹ 11 C.F.R. § 103.3(b)(3).

³² *Id.* § 103.3(b)(1).

³³ Resp. at 1.

³⁴ *Id.*

