



THE FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2018 JUL 23 PM 4:17

July 23, 2018

**MEMORANDUM**

To: The Commission

Through: Alec Palmer *WHP/for*  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Thomas E. Hintermister *TH*  
Assistant Staff Director  
Audit Division

Kendrick Smith *KDS*  
Audit Manager

By: Sheraline Thomas  
Lead Auditor

Subject: Resubmission: Audit Division Recommendation Memorandum on Brian Higgins for Congress (A17-03)

This office is resubmitting the Audit Division Recommendation Memorandum (ADRM) for Brian Higgins for Congress (BHFC). The original ADRM was circulated on June 29, 2018, and rescinded on July 12, 2018 to add missing information within Audit staff's recommendation for Finding 1 – Misstatement of Financial Activity and to add clarifying<sup>1</sup> language to Finding 2 – Receipt of Contributions in Excess of the Limit.

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to BHFC on June 7, 2018 (see attachment). In response to the DFAR, BHFC did not provide any additional comments or request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR. The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

<sup>1</sup> As per a discussion held on July 12, 2018 with a Commissioner, executive assistants and Office of Compliance personnel.

**Finding 1. Misstatement of Financial Activity**

In response to the Interim Audit Report, BHFC amended its most recently filed disclosure reports to correct its cash balance. In 2015, BHFC overstated its beginning and ending cash balances by \$36,151 and \$38,560, respectively. In 2016, the beginning cash balance was overstated by \$38,560 and the ending cash balance was overstated by \$36,242. BHFC did not file an additional response to the DFAR.

The Audit staff recommends that the Commission find that BHFC misstated its beginning and ending cash balances for calendar years 2015 and 2016.

**Finding 2. Receipt of Contributions in Excess of the Limit**

In response to the Interim Audit Report, BHFC resolved the remaining excessive contributions totaling \$5,400 by providing a completed reattribution letter from its contributors. As such, BHFC has provided copies of redesignation/retribution letters and evidence of a refund to resolve, albeit untimely, all of the excessive contributions identified by the Audit staff totaling \$41,424.<sup>2</sup> BHFC did not file an additional response to the DFAR.

The Audit staff recommends that the Commission find that BHFC received excessive contributions totaling \$41,424.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

**In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.**

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Sheraline Thomas or Kendrick Smith at 694-1200.

**Attachment:**

- Draft Final Audit Report of the Audit Division on Brian Higgins for Congress

cc: Office of General Counsel

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<sup>2</sup> BHFC searched its contribution records and identified excessive contributions totaling \$41,560.



## **Draft Final Audit Report of the Audit Division on Brian Higgins for Congress (January 1, 2015 – December 31, 2016)**

### **Why the Audit Was Done**

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### **Future Action**

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### **About the Campaign (p. 2)**

Brian Higgins for Congress is the principal campaign committee for Brian Higgins, Democratic candidate for the United States House of Representatives from the state of New York, 26th Congressional District, and is headquartered in Buffalo, New York. For more information, see the Campaign Organization chart, p. 2.

### **Financial Activity (p. 2)**

• Receipts	
○ Contributions from Individuals	\$ 455,744
○ Contributions from Political Committees	338,581
○ Other Receipts	1,167
<b>Total Receipts</b>	<b>\$ 795,492</b>
• Disbursements	
○ Operating Expenditures	\$ 390,111
○ Transfers to Other Authorized Committees	118,500
○ Other Disbursements	111,386
<b>Total Disbursements</b>	<b>\$ 619,997</b>

### **Findings and Recommendations (p. 3)**

- Misstatement of Financial Activity (Finding 1)
- Receipt of Contributions in Excess of the Limit (Finding 2)

<sup>1</sup> 52 U.S.C. §30111(b).

**Draft Final Audit Report of the  
Audit Division on  
Brian Higgins for Congress**

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(January 1, 2015 - December 31, 2016)



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of Brian Higgins for Congress (BHFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

### **Scope of Audit**

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

## Part II Overview of Campaign

### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	May 17, 2004
• Audit Coverage	January 1, 2015 – December 31, 2016
<b>Headquarters</b>	Buffalo, New York
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	Two federal checking, one savings
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Gary Kanaley (June 3, 2005 – August 23, 2017) Holly Giarraputo (August 24, 2017 – Present)
• Treasurer During Period Covered by Audit	Gary Kanaley (June 3, 2005 – August 23, 2017)
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff and Volunteer

### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2015</b>	<b>\$ 584,769</b>
<b>Receipts</b>	
o Contributions from Individuals	455,744
o Contributions from Political Committees	338,581
o Other Receipts	1,167
<b>Total Receipts</b>	<b>\$ 795,492</b>
<b>Disbursements</b>	
o Operating Expenditures	390,111
o Transfers to Other Authorized Committees	118,500
o Other Disbursements	111,386
<b>Total Disbursements</b>	<b>\$ 619,997</b>
<b>Cash-on-hand @ December 31, 2016</b>	<b>\$ 760,264</b>

## **Part III Summaries**

### **Findings and Recommendations**

#### **Finding 1. Misstatement of Financial Activity**

During audit fieldwork, a comparison of BHFC's reported financial activity with its bank records revealed a misstatement of the beginning and ending cash balances for calendar years 2015 and 2016. In 2015, BHFC overstated its beginning and ending cash balances by \$36,151 and \$38,560, respectively. In 2016, BHFC overstated its beginning and ending cash balances by \$38,560 and \$36,242, respectively. In response to the Interim Audit Report recommendation, BHFC amended its most recently filed disclosure report to correct the cash balance. (For more detail, see p. 4.)

#### **Finding 2. Receipt of Contributions in Excess of the Limit**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that BHFC received apparent excessive contributions totaling \$41,424. These errors occurred as a result of BHFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors, obtaining signed redesignation or reattribution letters from its contributors, or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, BHFC untimely resolved excessive contributions from individuals totaling \$36,024. In response to the Interim Audit Report recommendation, BHFC provided a completed reattribution letter from the contributors which untimely resolved the remaining excessive contributions. (For more detail, see p. 5.)



## **Part IV**

# **Findings and Recommendations**

### **Finding 1. Misstatement of Financial Activity**

#### **Summary**

During audit fieldwork, a comparison of BHFC's reported financial activity with its bank records revealed a misstatement of the beginning and ending cash balances for calendar years 2015 and 2016. In 2015, BHFC overstated its beginning and ending cash balances by \$36,151 and \$38,560, respectively. In 2016, BHFC overstated its beginning and ending cash balances by \$38,560 and \$36,242, respectively. In response to the Interim Audit Report recommendation, BHFC amended its most recently filed disclosure report to correct the cash balance.

#### **Legal Standard**

**Contents of Reports.** Each report must disclose:

- The amount of cash-on-hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle; and
- The total amount of disbursements for the reporting period and for the election cycle; 52 U.S.C. §30104(b)(1), (2), and (4).

#### **Facts and Analysis**

##### **A. Facts**

During audit fieldwork, the Audit staff reconciled BHFC's reported financial activity with its bank records for calendar years 2015 and 2016. This review indicated that, in 2015, the beginning and ending cash balances were overstated by \$36,151 and \$38,560, respectively. Further, the review indicated that, in 2016, the beginning and ending cash balances were overstated by \$38,560 and \$36,242, respectively. The cash balance discrepancies for 2015 and 2016 resulted primarily from prior period adjustments, as well as, minor misstatements of both receipts and disbursements during the audit period.

##### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the misstatements for 2015 and 2016 with BHFC representatives during the exit conference and provided copies of relevant workpapers detailing the misstatements. In response, BHFC representatives stated that it intended to file amendments.

The Interim Audit Report recommended that BHFC amend its most recently filed disclosure report to correct the cash balance with an explanation that the change resulted from prior period adjustments. It was further recommended that BHFC reconcile the ending cash balance of its most recent report to identify any subsequent discrepancies that would affect the adjustment recommended by the Audit staff.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, BHFC amended its most recently filed disclosure report to correct the cash balance.

## **Finding 2. Receipt of Contributions in Excess of the Limit**

### **Summary**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that BHFC received apparent excessive contributions totaling \$41,424. These errors occurred as a result of BHFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors, obtaining signed redesignation or reattribution letters from its contributors, or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, BHFC untimely resolved excessive contributions from individuals totaling \$36,024. In response to the Interim Audit Report recommendation, BHFC provided a completed reattribution letter from the contributors which untimely resolved the remaining excessive contributions.

### **Legal Standard**

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C §30116; 11 CFR §§110.1(a) and (b) and 110.9(a).
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
  - Deposit the check into its federal account and:
    - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
    - Keep a written record explaining why the contribution may be illegal;
    - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
    - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
    - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- C. Joint Contributions.** Any contribution made by more than one person, except for a contribution made by a partnership, must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A

joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

**D. Reattribution of Excessive Contributions.** The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be presumptively attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(B).

**E. Resignation of Excessive Contributions.** When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead.

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff utilized sample testing and a review of other contributions not included in the sample population to identify apparent excessive contributions from individuals. These reviews revealed that BHFC received apparent excessive contributions from individuals totaling \$41,424. This included contributions that could still be resolved, albeit untimely, via written presumptive reattribution or redesignation notifications to the contributors (\$35,964<sup>2</sup>). The remaining excessive contributions (\$5,460<sup>3</sup>) could only be timely resolved through demonstration that timely redesignation and/or reattribution letters were sent and signed by the contributors. If sent in response to the audit, these excessive contributions would be untimely resolved by BHFC.

The excessive contributions that could still be resolved by BHFC (\$35,964) were the result of BHFC not resolving the excessive portion of contributions by timely forwarding a presumptive letter to its contributors informing them how their contribution had been redesignated and/or reattributed, or refunding the excessive portion of contributions.

For the remaining excessive contributions (\$5,460), these errors were the result of BHFC reattributing the excessive portion of contributions written on checks imprinted with a single account holder to another individual without authorization from its contributors.

BHFC did not maintain a separate account for questionable contributions. However, based on its cash-on-hand at the end of the audit period (\$760,264), it appears that BHFC did maintain sufficient funds to make refunds of the apparent excessive contributions.

<sup>2</sup> The sample error amount (\$13,864) was projected using a Monetary Unit Sample with a 95 percent confidence level. A review of high dollar contributions not included in the sample error population identified excessive contributions totaling \$22,100. The sample estimate could be as low as \$7,638 or as high as \$23,955.

<sup>3</sup> In addition to the \$22,100 that could be resolved with a presumptive letter, the review of high dollar contributions identified excessive contributions totaling \$5,460 that could be resolved via a redesignation, reattribution, and/or refund to the contributor.

**B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with BHFC representatives at the exit conference and provided schedules of the apparent excessive contributions. BHFC representatives asked questions regarding the presumptive reattribution and/or redesignation letters that could be issued. The Audit staff explained that the presumptive letters sent in response to the exit conference would untimely resolve the excessive contributions of \$35,964. In response to the exit conference, BHFC representatives submitted presumptive reattribution and redesignation letters that were sent to all the contributors identified by the Audit staff as having given apparent excessive contributions. In addition, BHFC reviewed its contribution records and identified an additional 9 contributions. BHFC sent letters to these contributors as well and submitted them to the Audit staff for review. As such, the Audit staff concludes that BHFC has untimely resolved all excessive contributions which could have been remedied with a presumptive reattribution and/or redesignation letter.

For the excessive amount of \$5,460, BHFC representatives provided documentation demonstrating that some of the excessive portion (\$60) has been refunded, albeit untimely. However, the remaining \$5,400 had not been reattributed and remained unresolved.

The Interim Audit Report recommended that BHFC provide documentation which demonstrated that the unresolved excessive contributions in question, totaling \$5,400, were resolved through the receipt of authorization from its contributors or refunded. Absent such demonstration, it was further recommended that BHFC refund the contributions and provide evidence of such refunds or disgorge the funds.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, BHFC untimely resolved the remaining excessive contributions (\$5,400) by providing a completed reattribution letter from its contributors. As such, all the excessive contributions have been resolved by BHFC, albeit untimely.