

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

RAD REFERRAL:	18L-29
DATE REFERRED:	August 20, 2018
DATE OF NOTIFICATIONS:	August 20, 2018; November 21, 2018; May 16, 2019
DATE OF LAST RESPONSE:	September 21, 2018
DATE ACTIVATED:	April 23, 2019
EPS:	
EXPIRATION OF SOL:	December 1, 2022 (earliest) – April 22, 2023 (latest)
ELECTION CYCLE:	2020

SOURCE: RAD REFERRAL

RESPONDENTS: Adam Kokesh American Referendum Project and Angela Thornton as treasurer
Angela Fisher
Ethan Owens

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30101(13)(A)
52 U.S.C. § 30102(a), (b)(3), (c), (d), (h)(1)
52 U.S.C. § 30104(b)
11 C.F.R. § 100.12
11 C.F.R. § 102.7(b)
11 C.F.R. § 102.9
11 C.F.R. § 102.15
11 C.F.R. § 103.3
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED: Disclosure Reports

AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred the Adam Kokesh American Referendum Project and Angela Thornton in her capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for unauthorized activity totaling \$27,216.30 disclosed in its

1 2018 April Quarterly Report.¹ Specifically, the Committee reported that its receipts totaling
2 \$11,551.04 and disbursements totaling \$15,665.26 were “unauthorized” or “undocumented.” In
3 a memo included on this Report and in a Form 99 (Miscellaneous Electronic Submission) filed
4 the same day, the Committee identified a number of violations allegedly committed by the
5 Committee’s former treasurer, Ethan Owens, and its former Campaign Manager, Angela Fisher,
6 who is also Owens’s wife.² The alleged violations include: (1) failure to disclose the
7 Committee’s official depository institution and timely deposit funds into the depository; (2)
8 failure to segregate campaign funds from personal funds; (3) failure to keep and maintain
9 adequate records; and (4) failure to accurately report the Committee’s receipts,
10 disbursements, and loans.³

11 Based on the available information, we recommend that the Commission find reason to
12 believe that the Committee violated: (1) 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by
13 failing to deposit receipts in an account at a properly designated campaign depository;
14 (2) 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by failing to keep campaign funds
15 segregated from the personal funds of any individual; (3) 52 U.S.C. § 30102(a) and
16 11 C.F.R. § 102.7(b) by making disbursements during a period in which it had no treasurer;
17 (4) 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9 by failing to keep and maintain adequate
18 records of contributions and disbursements; and (5) 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3
19 by failing to accurately report its receipts, disbursements, and loans.

¹ RR18L-29 at 2 (Adam Kokesh American Referendum Project).

² *Id.* at 2-4.

³ *Id.* at 4.

1 In addition, because the record indicates that the Committee's past treasurer, Ethan
2 Owens, should be held personally liable for his actions as treasurer, we recommend that the
3 Commission find reason to believe that Owens violated in his personal capacity:
4 (1) 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with
5 personal funds; (2) 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit receipts
6 in an account at a properly designated campaign depository; (3) 52 U.S.C. § 30102(c), (d) and
7 11 C.F.R. § 102.9 by failing to keep adequate records of contributions and disbursements; and
8 (4) 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to accurately report the Committee's
9 contributions, disbursements, and loans.

10 With respect to Fisher, we recommend that the Commission find reason to believe that
11 Fisher violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign
12 funds with personal funds.

13 Because neither Owens nor Fisher have cooperated with the Committee's attempts to
14 obtain the relevant records, and because without such information the Committee cannot provide
15 documentation regarding its activities between December 2017 and March 2018,⁴ we
16 recommend that the Commission authorize the use of compulsory process.

17 **II. FACTUAL BACKGROUND**

18 Adam Kokesh is a Libertarian Party candidate for President, and the Committee is his
19 principal campaign committee. The Committee was organized in December 2017, with Ethan
20 Owens as its treasurer and Owens's wife, Angela Fisher, as its Campaign Manager and the

⁴ Resp. at 1 (Sept. 20, 2018).

Committee's agent.⁵ Its registered depository institution was a Fort Wayne, Indiana, branch of Wells Fargo Bank.⁶

Between December 1, 2017, and March 5, 2018, however, Owens and Fisher allegedly maintained the campaign's funds in multiple personal accounts rather than in the campaign's account at Wells Fargo.⁷ Owens also accepted \$11,551.04 in contributions for the campaign for which he failed to record any contributor information and which he failed to deposit in the campaign's depository within ten days, and some of which the Committee alleges it never received at all.⁸ Owens and Fisher further made \$15,665.26 in disbursements to Fisher and campaign vendors, at least some potentially for legitimate campaign expenses and reimbursement thereof, but Owens failed to maintain necessary records documenting the disbursements.⁹ Fisher also made two loans to the Committee aggregating \$3,801.04, which the Committee alleged were "unauthorized."¹⁰

On or around March 5, 2018, the Committee terminated Owens and Fisher.¹¹ Nonetheless, Owens and Fisher continued to disburse campaign funds and access the accounts

⁵ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017).

⁶ *Id.*

⁷ FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018); RR18L-29 at 4.

⁸ FEC Form 3P, Committee 2018 April Quarterly Report at 8, sched. A-P at 12-22 (Apr. 22, 2018); RR18L-29, attach. 2 at 7-8.

⁹ FEC Form 3P, Committee 2018 April Quarterly Report, sched. B-P at 33-58 (Apr. 22, 2018); RR18L-29, attach. 2 at 11-12. Though a number of the disbursements were made to Fisher, and could therefore represent conversion of campaign funds for personal use, there is no evidence to suggest that a violation of this kind occurred, and we make no recommendation regarding such a violation at this time.

¹⁰ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3. Though the Committee has alleged that the loan resulted in an excessive contribution by Fisher, it does not appear that the two loans would actually be excessive, as the loans could properly be allocated between Fisher's separate contribution limits for the primary race and the general election.

¹¹ FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018).

1 they maintained on behalf of the campaign after their terminations.¹² On March 28, 2018, the
 2 Committee named Angela Thornton as its new treasurer and no longer listed Wells Fargo as its
 3 campaign depository.¹³ Instead, on April 10, 2018, the Committee reported that it maintained an
 4 account with PNC Bank in Hartland, Michigan.¹⁴

5 The new treasurer, Thornton, attempted to obtain the necessary records regarding the
 6 campaign's receipts and disbursements from Owens and Fisher, but they refused to provide them
 7 to her.¹⁵ According to Thornton, Owens and Fisher were unresponsive to requests for
 8 information from the Committee, and the little communication the Committee had with Fisher
 9 was "sporadic, incomplete and even hostile."¹⁶

10 On April 22, 2018, the Committee reported the alleged violations to the Commission in
 11 its April Quarterly Report and an associated Form 99, in which it disclosed what it referred to as
 12 "illegal contribution activity as well as some unauthorized expenditures" in the amount of
 13 \$27,216.30.¹⁷ The Committee's Quarterly Report notes:

14 While this report is true and complete to the best of my ability, we are aware that
 15 the disclosure indicates some illegal contribution activity as well as some
 16 unauthorized expenditures. We are self-reporting all known violations, but
 17 [Owens] has not handed over any financial statements. The information herein is
 18 largely based on a spreadsheet provided by [Fisher], who also accessed our funds
 19 after [Owen's] resignation. We have reason to believe we are under-reporting

¹² FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018). On July 15, 2018, the Committee disclosed a \$4,226.36 "[c]ash-on-hand adjustment due to unauthorized disbursements." FEC Form 3P, Committee 2018 July Quarterly Report (July 15, 2018).

¹³ FEC Form 1, Committee Amended Statement of Organization (Mar. 28, 2018).

¹⁴ FEC Form 1, Committee Amended Statement of Organization (Apr. 10, 2018).

¹⁵ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

¹⁶ *Id.*

¹⁷ FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018). ; RR18L-29 at 2, 2 n.1.

expenditures. We know that co-mingling [sic] personal funds resulted in excess contributions, a fictitious [sic] depository was listed, payments to vendors were made via cryptocurrency[.] Additionally, donations were made to, but not received by, the campaign. Unauthorized expenditures were made to the treasurer's wife. We are aware there are serious violations in the report, and anticipate that an amendment will be required in the future[.]¹⁸

The report did not disclose Fisher's loans to the Committee on the report's Schedule C-P, but rather on Schedule B-P with its itemized disbursements.¹⁹

In early June of 2018, the Committee hired an independent auditor, Dan Wholihan, who requested bank statements and financial records from Owens via certified mail.²⁰ The Committee states that the "letter was never retrieved and was returned after several delivery attempts."²¹

Upon reviewing the Committee's April Quarterly Report, RAD spoke with Thornton on June 20, 2018, and advised her to call Jeff Jordan in OGC concerning the Commission's self-reporting policy.²² While Thornton states that she did so,²³ OGC has no record indicating that Thornton ever spoke with Jordan or any member of his staff.

By September 20, 2018, the Committee states that it strengthened its internal controls: it ceased maintaining Committee bank accounts in the name of an individual, delegated bank

¹⁸ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018). Though the Committee describes payments made via cryptocurrency as a violation, payments made via cryptocurrency received as contributions have not been found to be impermissible so long as they are appropriately documented and the necessary records maintained. *See* Advisory Op. 2014-02 at 4 (Make Your Laws PAC, Inc.) ("The Commission could not approve a response by the required four affirmative votes as to whether [a PAC] may acquire goods and services with bitcoins it receives as contributions.").

¹⁹ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018).

²⁰ Resp. at 1.

²¹ *Id.*

²² *Id.*; RR18L-29, attach. 3 at 13.

²³ Resp. at 1.

reconciliations and check receipts to an individual with no other access to financial systems, required expenditures to be authorized by someone other than the treasurer, and required all expenditures over \$1,000 to be approved by two principals.²⁴ The Committee indicates that it has also implemented “traditional internal ‘Safe Harbor’ controls” and retrained staff on compliance with campaign finance rules.²⁵

III. LEGAL ANALYSIS

A. Failure to Use Proper Campaign Depository

The Federal Election Campaign Act of 1971, as amended, (the “Act”) requires that every political committee designate as its campaign depository one or more state banks, federally chartered depository institutions, or depository institutions in which the accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.²⁶ Each political committee shall maintain at least one checking or transaction account at one of its depositories, and all receipts received by the committee shall be deposited in such accounts.²⁷ All disbursements (except petty cash) must be drawn on such accounts.²⁸ Commission regulations further provide that all deposits shall be made within ten days of the treasurer’s receipt.²⁹

The Committee admits that it failed to maintain a campaign depository for approximately four months. From December 1, 2017 to March 14, 2018, the Committee listed the Fort Wayne,

²⁴ *Id.* at 1-2.

²⁵ *Id.*; FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

²⁶ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 11 C.F.R. § 103.3(a).

1 Indiana branch of Wells Fargo Bank as its depository institution in its Statement of
 2 Organization³⁰ but acknowledges that this depository was “ficti[t]ious.”³¹ Instead, it appears that
 3 the Committee’s former treasurer, Owens, and his wife, Fisher, opened and operated multiple
 4 undisclosed personal accounts in which they kept and from which they disbursed the
 5 Committee’s funds.³² According to the Committee’s filings, \$11,551.04 in receipts were made
 6 to these accounts and were “undocumented.”³³ In addition, Owens allegedly failed to deposit an
 7 unknown number of donations into the campaign account within ten days and failed to deposit
 8 some additional donations at all.³⁴

9 The Committee argues that any violations of the Act are attributable solely to Owens and
 10 Fisher. However, a principal is liable vicariously for the acts of its agent committed within the
 11 scope of agency.³⁵ Thus, the Commission has previously held committees responsible for failure
 12 to comply with the Act based upon actions undertaken by their fiduciaries.³⁶ Here, the
 13 Committee can be held liable for the actions of Owens and Fisher because they engaged in the

³⁰ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017); FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018); FEC Form 1, Committee Amended Statement of Organization (Mar. 14, 2018).

³¹ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

³² *Id.*

³³ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3.

³⁴ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

³⁵ *See* RESTATEMENT (THIRD) OF AGENCY § 7.07 (2006).

³⁶ *See, e.g.*, Factual & Legal Analysis, MUR 7126 (Michigan Democratic State Central Committee) (holding state party committee liable for various recordkeeping and reporting violations based on the conduct of the treasurer); Factual & Legal Analysis, MUR 6922 (ACA/ACPAC) (finding trade association and separate segregated fund liable for actions of individual who was both a corporate officer and Assistant Treasurer of PAC); Cert., RR16L-06 (Rohrabacher for Congress, *et al.*) (Feb. 3, 2017) (referring committee to the Alternative Dispute Resolution Office where reporting failures were due to treasurer’s embezzlement); Factual & Legal Analysis, MUR 5923 (American Dream PAC, *et al.*) (finding reason to believe committee violated the Act due to erroneous records kept by treasurer embezzling committee funds).

1 alleged illegal activities, such as using personal accounts as campaign depositories (as well as
2 commingling campaign funds with personal funds, and failing to maintain records, discussed
3 *infra*), while performing their duties as treasurer and campaign manager respectively.

4 Accordingly, we recommend that the Commission find reason to believe that the Committee
5 violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit receipts in an
6 account at a properly designated campaign depository.

7 In addition, under the Commission's Statement of Policy Regarding Treasurers Subject to
8 Enforcement Proceedings, the Commission will pursue "allegations that involve a past or present
9 treasurer's violation of obligations that the Act or regulations impose specifically on
10 treasurers."³⁷ Further, the Commission may name a treasurer in his or her personal capacity
11 when the available information supports a reasonable inference that "the treasurer had
12 knowledge that his or her conduct violated a duty imposed by law, or where the treasurer
13 recklessly failed to fulfill his or her duties under the [A]ct and regulations, or intentionally
14 deprived himself or herself of facts giving rise to the violations."³⁸ Here, the facts indicate that
15 Owens acted recklessly when he apparently used personal accounts as campaign depositories and
16 failed to ensure that contributions made to the Committee were deposited into its designated
17 depository. Further, his lack of cooperation with the Committee's attempts to comply with the
18 Act indicate reckless failure to fulfill his duties as treasurer. We therefore recommend that the
19 Commission find reason to believe that Owens in his personal capacity violated 52 U.S.C. §

³⁷ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 n.7 (Jan. 3, 2005).

³⁸ *Id.* at 5.

30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit contributions to the Committee in the designated depository institution.

B. Commingling of Campaign Funds with Personal Funds

The Act and Commission regulations requires that all campaign funds be “segregated from, and may not be commingled with, the personal funds of any individual.”³⁹ As discussed above, Owens and Fisher appear to have used personal accounts as campaign depositories.⁴⁰ The Committee’s filings and Response indicate that Owens and Fisher accepted \$11,551.04 in receipts to and made \$15,665.26 in disbursements from these personal accounts.⁴¹ Thirty-two disbursements appear to have been made to Fisher from these accounts between January 4, 2018 and March 2, 2018, while Owens was still treasurer and Fisher still Campaign Manager, and for which the Committee has no documentation. The purported purposes for these disbursements were reimbursements to Fisher for expenditures such as travel expenses (*e.g.*, \$269.30 to “Mxn Eurocar,”), a \$162.96 “Fundraising Expense” at “Com Mexicano Restaurant,” and a \$51.83 purchase from “Capitol Liquor.”⁴²

Under these circumstances, we recommend that the Commission find reason to believe that the Committee, Owens in his personal capacity, and Fisher violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with personal funds.

³⁹ 52 U.S.C. § 30102(b)(3); *see also* 11 C.F.R. § 102.15.

⁴⁰ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

⁴¹ RR18L-29, attach. 2 at 5.

⁴² FEC Form 3-P, Committee April Quarterly Report, sched. B-P (Apr. 22, 2018); RR18L-29, attach. 2 at 9-10.

C. Disbursement of Campaign Funds During Vacancy of Treasurer

Under the Act and Commission regulations, no committee may accept contributions or make expenditures at a time when there is a vacancy in the office of the treasurer.⁴³ Of the nearly \$15,655.26 in disbursements the Committee has disclosed as “unauthorized,” 26 disbursements totaling \$6,920.54 were made after Owens’s resignation, while the Committee had no treasurer.⁴⁴ Thirteen of these disbursements were made to Fisher. Of these, the Committee has no record of the purpose for which many were made, though some are noted as reimbursements for salaries paid to Committee employees. A further 13 disbursements during this time period were made to “Stripe.com,” an online payment vendor, in amounts such as \$0.70 and \$4.30 for “post Treasurer resignation merchant fees.” Accordingly, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30102(a) and 11 C.F.R. § 102.7(b) by making disbursements during a period in which it had no treasurer.

D. Failure to Keep Records of Receipts and Disbursements

The treasurer of a political committee must keep an accurate account of the committee’s receipts and disbursements.⁴⁵ The Act and Commission regulations provide that committees must record the name and address of every person to whom a disbursement is made, and the date, amount, and purpose of the disbursement, and retain records (*e.g.*, receipt, cancelled check, invoice) related to each disbursement in excess of \$200.⁴⁶ The Act and Commission regulations also provide that records must be kept regarding contributions in excess

⁴³ 52 U.S.C. § 30102(a); 11 C.F.R. § 102.7(b).

⁴⁴ FEC Form 3-P, Committee April Quarterly Report, sched. B-P (Apr. 22, 2018); RR18L-29, attach. 2 at 11-12.

⁴⁵ 52 U.S.C. § 30102(c); 11 C.F.R. § 102.9.

⁴⁶ 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

1 of \$50. For each such receipt, the account shall include the person's name and address together
2 with the date and amount of the contribution.⁴⁷ For any person who makes contributions
3 aggregating more than \$200 in a calendar year, the record must also include the contributor's
4 occupation and employer.⁴⁸ Further, the treasurer must preserve all such records for three years
5 after the report is filed with the Commission.⁴⁹

6 The Committee acknowledges that it has not maintained its records and that it would be
7 unable to pass "even a rudimentary audit" with the documents currently in its possession.⁵⁰ The
8 Committee states that it does not have access to any of the records possessed by Owens,
9 including bank statements covering December 2017 through March 2018 for the personal
10 accounts maintained by Owens and Fisher in which the campaign's funds were kept. In addition
11 to the total absence of records regarding the Committee's receipts and disbursements, the
12 Committee received 31 separate \$250 contributions from contributors from whom it collected no
13 information as the recorded data includes only the date and amount of the contributions at
14 issue.⁵¹ Further, the Committee concedes that multiple disbursements were made to Fisher as
15 reimbursements for campaign expenses but has no associated documentation for the expenses
16 reimbursed.⁵²

⁴⁷ 52 U.S.C. § 30102(c)(2); 11 C.F.R. § 102.9(a)(1).

⁴⁸ 52 U.S.C. § 30102(c)(3); 11 C.F.R. § 102.9(a)(2); *see also* 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12 (defining "identification" of an individual).

⁴⁹ 52 U.S.C. § 30102(d); 11 C.F.R. § 102.9(c).

⁵⁰ Resp. at 1.

⁵¹ Resp. at 1; FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018). It appears that these donations may have consisted solely of donations in the form of cryptocurrency, but the current record is unclear on this point, and we would seek further information as part of any subsequent investigation.

⁵² Resp. at 1; FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

As a result, we recommend that the Commission find reason to believe that the Committee and Owens in his personal capacity violated 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9 by failing to keep and maintain adequate records of receipts and disbursements.

D. Failure to Accurately Report Receipts, Disbursements, and Loans

The Act requires a political committee to accurately disclose its receipts, disbursements, and loans.⁵³ With respect to receipts, a political committee must report the identification of each person who makes a contribution or contributions having an aggregate amount or value in excess of \$200 within an election cycle.⁵⁴ A political committee also must itemize disbursements on its disclosure reports, including a brief description of each disbursement's purpose.⁵⁵ Further, a political committee's disclosure report must identify any person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan.⁵⁶

Because the Committee failed to maintain its records, it concedes that it is unable to accurately disclose its receipts and disbursements prior to April 2018. As discussed above, it cannot report donor information for at least 31 persons who each contributed \$250 to the campaign, nor can it properly itemize loans and disbursements authorized by the prior treasurer. According to the Committee, the amount of inadequately documented receipts and disbursements

⁵³ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

⁵⁴ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

⁵⁵ 52 U.S.C. § 30104(b)(4)-(7); 11 C.F.R. § 104.3(b)(3), (4).

⁵⁶ 52 U.S.C. § 30104(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv).

totals \$27,216.30, which includes two loans made by Fisher to the Committee totaling \$3,801.04.⁵⁷ The Committee further failed to itemize the loans from Fisher on its Schedule C-P, instead including the loans on Schedule B-P with its itemized disbursements.⁵⁸

In 2007, the Commission established a safe harbor to benefit committees that file inaccurate reports because their funds were unknowingly misappropriated by committee fiduciaries and staff.⁵⁹ The Commission stated that it would not seek a monetary penalty from a committee for filing inaccurate reports due to embezzlement if the committee had at the time the violation occurred implemented certain internal controls, such as opening all bank accounts in the name of the committee rather than an individual, requiring written authorization for and/or two signatures on checks larger than \$1,000, and promptly alerting the Commission and other law enforcement authorities of misappropriations.⁶⁰

Here, the facts suggest that Owens and Fisher misappropriated campaign funds by depositing them in multiple personal accounts and making unauthorized disbursements, and as described above, the Committee contends that the Commission should not hold the Committee liable for the actions of a “rogue Treasurer.”⁶¹ However, the record indicates that the Committee failed to implement any of the enumerated minimum internal controls and does not satisfy the

⁵⁷ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3.

⁵⁸ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018).

⁵⁹ *See* Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007).

⁶⁰ The other internal controls identified in the policy include: (1) reviewing monthly bank statements for unauthorized transactions and reconciling the statements by someone other than the individual with check-signing authority or who has responsibility for the committee's accounting; (2) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (3) maintaining safeguards for managing a petty cash account. Further, when a committee discovers misappropriation of funds, under the policy the committee must notify the Commission and relevant law enforcement authorities and also promptly amend its reports. 72 Fed. Reg. at 16,695.

⁶¹ Resp. at 1.

requirements of the Safe Harbor. For instance, prior to Owens's and Fisher's terminations, the Committee's authorized depository account was in the name of an individual.⁶² Accordingly, we recommend that the Commission find reason to believe that the Committee and Owens in his personal capacity violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to file accurate reports concerning the Committee's receipts, disbursements, and loans.

IV. PROPOSED INVESTIGATION

We plan to seek information regarding the Committee's receipts and expenditures during the relevant time period and to determine the extent of Owens's and Fisher's violations of the Act, including commingling, and whether such violations were knowing and willful. In addition, we plan to obtain additional information regarding the Committee's internal controls. Although the Committee has been forthcoming with the Commission, the Committee indicates that Fisher and Owens have been hostile to attempts by the Committee to obtain information necessary to complete the factual record with respect to the allegations at issue. As a result, we also request that the Commission authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

V. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that the Adam Kokesh American Referendum Project and Angela Thornton in her official capacity as treasurer violated 52 U.S.C. § 30102(h)(1)

⁶² See *Resp.* at 1-2 (indicating that the Committee had begun implementing internal controls only after the alleged violations of the Act had occurred); 72 Fed. Reg. at 16,695. See also Factual & Legal Analysis at 20, MUR 6922 (ACA/ACPAC) (noting that the Commission's embezzlement safe harbor for reporting violations is available only when the committee had "certain internal controls in place at the time of the embezzlement"); First Gen. Counsel's Report at 5, RR 15L-03, 15L-12, 15L-16 (McConnell Senate Committees, *et al.*) (noting that, while internal controls and post-discovery remedial action represent the minimum efforts a committee must undertake to qualify for the safe harbor, "the Commission will consider 'the presence of some but not all' of the controls as mitigating factors when fashioning a civil penalty offer even if a committee fails to satisfy the policy's additional requirements") (quoting 72 Fed. Reg. 16,695).

- 1 and 11 C.F.R. § 103.3 by failing to deposit its receipts in an account at a properly
2 designated campaign depository;
- 3 3. Find reason to believe that the Adam Kokesh American Referendum Project and
4 Angela Thornton in her official capacity as treasurer violated 52 U.S.C. § 30102(b)(3)
5 and 11 C.F.R. § 102.15 by failing to keep campaign funds segregated from the
6 personal funds of any individual;
- 7 4. Find reason to believe that the Adam Kokesh American Referendum Project and
8 Angela Thornton in her official capacity as treasurer violated 52 U.S.C. § 30102(a)
9 and 11 C.F.R. § 102.7(b) by making disbursements during a period in which it had no
10 treasurer;
- 11 5. Find reason to believe that the Adam Kokesh American Referendum Project and
12 Angela Thornton in her official capacity as treasurer violated
13 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9 by failing to keep and maintain
14 adequate records;
- 15 6. Find reason to believe that the Adam Kokesh American Referendum Project and
16 Angela Thornton in her official capacity as treasurer violated 52 U.S.C. § 30104(b)
17 and 11 C.F.R. § 104.3 by failing to file accurate reports concerning the Committee's
18 receipts, disbursements, and loans;
- 19 7. Find reason to believe that Ethan Owens and Angela Fisher violated
20 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds
21 with personal funds;
- 22 8. Find reason to believe that Ethan Owens violated 52 U.S.C. § 30102(h)(1) and
23 11 C.F.R. § 103.3 by failing to deposit receipts in an account at a properly designated
24 campaign depository;
- 25 9. Find reason to believe that Ethan Owens violated 52 U.S.C. § 30102(c), (d) and
26 11 C.F.R. § 102.9 by failing to keep and maintain adequate records;
- 27 10. Find reason to believe that Ethan Owens violated 52 U.S.C. § 30104(b) and
28 11 C.F.R. § 104.3 by failing to accurately report receipts, disbursements, and loans;
- 29 11. Approve the attached Factual and Legal Analyses;
- 30 12. Authorize the use of compulsory process; and

13. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

August 21, 2019

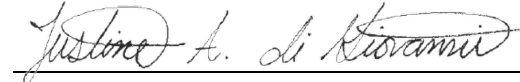
DATE

Peter G. Blumberg by JAdG

Peter G. Blumberg
Acting Deputy Associate General Counsel

Jin Lee by JAdG

Jin Lee
Acting Assistant General Counsel



Justine A. di Giovanni
Attorney

Attachments:

1. Factual and Legal Analysis – The Adam Kokesh American Referendum Project
2. Factual and Legal Analysis – Ethan Owens
3. Factual and Legal Analysis – Angela Fisher

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Adam Kokesh American Referendum Project and Angela Thornton in her official capacity as treasurer **MUR:** _____

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities.¹

The Reports Analysis Division (“RAD”) referred the Adam Kokesh American Referendum Project and Angela Thornton in her capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for unauthorized activity totaling \$27,216.30 disclosed in its 2018 April Quarterly Report.² Specifically, the Committee reported that its receipts totaling \$11,551.04 and disbursements totaling \$15,665.26 were “unauthorized” or “undocumented.” In a memo included on this Report and in a Form 99 (Miscellaneous Electronic Submission) filed the same day, the Committee identified a number of violations allegedly committed by the Committee’s former treasurer, Ethan Owens, and its former Campaign Manager, Angela Fisher, who is also Owens’s wife.³ The alleged violations include: (1) failure to disclose the Committee’s official depository institution and timely deposit funds into the depository; (2) failure to segregate campaign funds from personal funds; (3) failure to keep and maintain

¹ See 52 U.S.C. § 30109(a)(2).

² RR18L-29 at 2 (Adam Kokesh American Referendum Project).

³ *Id.* at 2-4.

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adequate records; and (4) failure to accurately report the Committee's receipts,
disbursements, and loans.⁴

Based on the available information, the Commission finds reason to believe that the
Committee violated: (1) 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit
receipts in an account at a properly designated campaign depository; (2) 52 U.S.C. § 30102(b)(3)
and 11 C.F.R. § 102.15 by failing to keep campaign funds segregated from the personal funds of
any individual; (3) 52 U.S.C. § 30102(a) and 11 C.F.R. § 102.7(b) by making disbursements
during a period in which it had no treasurer; (4) 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9
by failing to keep and maintain adequate records of receipts and disbursements; and
(5) 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to accurately report its receipts,
disbursements, and loans.

II. FACTUAL BACKGROUND

Adam Kokesh is a Libertarian Party candidate for President, and the Committee is his
principal campaign committee. The Committee was organized in December 2017, with Ethan
Owens as its treasurer and Owens's wife, Angela Fisher, as its Campaign Manager and the
Committee's agent.⁵ Its registered depository institution was a Fort Wayne, Indiana, branch of
Wells Fargo Bank.⁶

Between December 1, 2017, and March 5, 2018, however, Owens and Fisher allegedly
maintained the campaign's funds in multiple personal accounts rather than in the campaign's

⁴ *Id.* at 4.

⁵ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017).

⁶ *Id.*

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1 account at Wells Fargo.⁷ Owens also accepted \$11,551.04 in contributions for the campaign for
2 which he failed to record any contributor information and which he failed to deposit in the
3 campaign's depository within ten days, and some of which the Committee alleges it never
4 received at all.⁸ Owens and Fisher further made \$15,665.26 in disbursements to Fisher and
5 campaign vendors, at least some potentially for legitimate campaign expenses and
6 reimbursement thereof, but Owens failed to maintain necessary records documenting the
7 disbursements.⁹ Fisher also made two loans to the Committee aggregating \$3,801.04, which the
8 Committee alleged were "unauthorized."¹⁰

9 On or around March 5, 2018, the Committee terminated Owens and Fisher.¹¹
10 Nonetheless, Owens and Fisher continued to disburse campaign funds and access the accounts
11 they maintained on behalf of the campaign after their terminations.¹² On March 28, 2018, the
12 Committee named Angela Thornton as its new treasurer and no longer listed Wells Fargo as its

⁷ FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018); RR18L-29 at 4.

⁸ FEC Form 3P, Committee 2018 April Quarterly Report at 8, sched. A-P at 12-22 (Apr. 22, 2018); RR18L-29, attach. 2 at 7-8.

⁹ FEC Form 3P, Committee 2018 April Quarterly Report, sched. B-P at 33-58 (Apr. 22, 2018); RR18L-29, attach. 2 at 11-12. Though a number of the disbursements were made to Fisher, and could therefore represent conversion of campaign funds for personal use, there is no evidence to suggest that a violation of this kind occurred, and the Commission takes no action regarding such a violation at this time.

¹⁰ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3. Though the Committee has alleged that the loan resulted in an excessive contribution by Fisher, it does not appear that the two loans would actually be excessive, as the loans could properly be allocated between Fisher's separate contribution limits for the primary race and the general election.

¹¹ FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018).

¹² FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018). On July 15, 2018, the Committee disclosed a \$4,226.36 "[c]ash-on-hand adjustment due to unauthorized disbursements." FEC Form 3P, Committee 2018 July Quarterly Report (July 15, 2018).

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campaign depository.¹³ Instead, on April 10, 2018, the Committee reported that it maintained an account with PNC Bank in Hartland, Michigan.¹⁴

The new treasurer, Thornton, attempted to obtain the necessary records regarding the campaign's receipts and disbursements from Owens and Fisher, but they refused to provide them to her.¹⁵ According to Thornton, Owens and Fisher were unresponsive to requests for information from the Committee, and the little communication the Committee had with Fisher was "sporadic, incomplete and even hostile."¹⁶

On April 22, 2018, the Committee reported the alleged violations to the Commission in its April Quarterly Report and an associated Form 99, in which it disclosed what it referred to as "illegal contribution activity as well as some unauthorized expenditures" in the amount of \$27,216.30.¹⁷ The Committee's Quarterly Report notes:

While this report is true and complete to the best of my ability, we are aware that the disclosure indicates some illegal contribution activity as well as some unauthorized expenditures. We are self-reporting all known violations, but [Owens] has not handed over any financial statements. The information herein is largely based on a spreadsheet provided by [Fisher], who also accessed our funds after [Owen's] resignation. We have reason to believe we are under-reporting expenditures. We know that co-mingling [sic] personal funds resulted in excess contributions, a fictitious [sic] depository was listed, payments to vendors were made via cryptocurrency[.] Additionally, donations were made to, but not received by, the campaign. Unauthorized expenditures were made to the

¹³ FEC Form 1, Committee Amended Statement of Organization (Mar. 28, 2018).

¹⁴ FEC Form 1, Committee Amended Statement of Organization (Apr. 10, 2018).

¹⁵ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

¹⁶ *Id.*

¹⁷ FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018). ; RR18L-29 at 2, 2 n.1.

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treasurer's wife. We are aware there are serious violations in the report, and anticipate that an amendment will be required in the future[.]¹⁸

The report did not disclose Fisher's loans to the Committee on the report's Schedule C-P, but rather on Schedule B-P with its itemized disbursements.¹⁹

In early June of 2018, the Committee hired an independent auditor, Dan Wholihan, who requested bank statements and financial records from Owens via certified mail.²⁰ The Committee states that the "letter was never retrieved and was returned after several delivery attempts."²¹

Upon reviewing the Committee's April Quarterly Report, RAD spoke with Thornton on June 20, 2018, and advised her to call Jeff Jordan in OGC concerning the Commission's self-reporting policy.²² While Thornton states that she did so,²³ OGC has no record indicating that Thornton ever spoke with Jordan or any member of his staff.

By September 20, 2018, the Committee states that it strengthened its internal controls: it ceased maintaining Committee bank accounts in the name of an individual, delegated bank reconciliations and check receipts to an individual with no other access to financial systems, required expenditures to be authorized by someone other than the treasurer, and required all

¹⁸ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018). Though the Committee describes payments made via cryptocurrency as a violation, payments made via cryptocurrency received as contributions have not been found to be impermissible so long as they are appropriately documented and the necessary records maintained. *See* Advisory Op. 2014-02 at 4 (Make Your Laws PAC, Inc.) ("The Commission could not approve a response by the required four affirmative votes as to whether [a PAC] may acquire goods and services with bitcoins it receives as contributions.").

¹⁹ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018).

²⁰ Resp. at 1.

²¹ *Id.*

²² *Id.*; RR18L-29, attach. 3 at 13.

²³ Resp. at 1.

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expenditures over \$1,000 to be approved by two principals.²⁴ The Committee indicates that it has also implemented “traditional internal ‘Safe Harbor’ controls” and retrained staff on compliance with campaign finance rules.²⁵

III. LEGAL ANALYSIS

A. Failure to Use Proper Campaign Depository

The Federal Election Campaign Act of 1971, as amended, (the “Act”) requires that every political committee designate as its campaign depository one or more state banks, federally chartered depository institutions, or depository institutions in which the accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.²⁶ Each political committee shall maintain at least one checking or transaction account at one of its depositories, and all receipts received by the committee shall be deposited in such accounts.²⁷

All disbursements (except petty cash) must be drawn on such accounts.²⁸ Commission regulations further provide that all deposits shall be made within ten days of the treasurer’s receipt.²⁹

The Committee admits that it failed to maintain a campaign depository for approximately four months. From December 1, 2017 to March 14, 2018, the Committee listed the Fort Wayne, Indiana branch of Wells Fargo Bank as its depository institution in its Statement of

²⁴ *Id.* at 1-2.

²⁵ *Id.*; FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

²⁶ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 11 C.F.R. § 103.3(a).

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Organization³⁰ but acknowledges that this depository was “ficti[t]ious.”³¹ Instead, it appears that the Committee’s former treasurer, Owens, and his wife, Fisher, opened and operated multiple undisclosed personal accounts in which they kept and from which they disbursed the Committee’s funds.³² According to the Committee’s filings, \$11,551.04 in receipts were made to these accounts and were “undocumented.”³³ In addition, Owens allegedly failed to deposit an unknown number of donations into the campaign account within ten days and failed to deposit some additional donations at all.³⁴

The Committee argues that any violations of the Act are attributable solely to Owens and Fisher. However, a principal is liable vicariously for the acts of its agent committed within the scope of agency.³⁵ Thus, the Commission has previously held committees responsible for failure to comply with the Act based upon actions undertaken by their fiduciaries.³⁶ Here, the Committee can be held liable for the actions of Owens and Fisher because they engaged in the alleged illegal activities, such as using personal accounts as campaign depositories (as well as commingling campaign funds with personal funds, and failing to maintain records, discussed

³⁰ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017); FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018); FEC Form 1, Committee Amended Statement of Organization (Mar. 14, 2018).

³¹ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

³² *Id.*

³³ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3.

³⁴ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

³⁵ *See* RESTATEMENT (THIRD) OF AGENCY § 7.07 (2006)

³⁶ *See, e.g.*, Factual & Legal Analysis, MUR 7126 (Michigan Democratic State Central Committee) (holding state party committee liable for various recordkeeping and reporting violations based on the conduct of the treasurer); Factual & Legal Analysis, MUR 6922 (ACA/ACPAC) (finding trade association and separate segregated fund liable for actions of individual who was both a corporate officer and Assistant Treasurer of PAC); Factual & Legal Analysis, MUR 5923 (American Dream PAC, *et al.*) (finding reason to believe committee violated the Act due to erroneous records kept by treasurer embezzling committee funds).

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infra), while performing their duties as treasurer and campaign manager respectively.

Accordingly. Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit receipts in an account at a properly designated campaign depository.

B. Commingling of Campaign Funds with Personal Funds

The Act and Commission regulations require that all campaign funds be “segregated from, and may not be commingled with, the personal funds of any individual.”³⁷ As discussed above, Owens and Fisher appear to have used personal accounts as campaign depositories.³⁸ The Committee’s filings and Response indicate that Owens and Fisher accepted \$11,551.04 in receipts to and made \$15,665.26 in disbursements from these personal accounts.³⁹ Thirty-two disbursements appear to have been made to Fisher from these accounts between January 4, 2018 and March 2, 2018, while Owens was still treasurer and Fisher still Campaign Manager, and for which the Committee has no documentation. The purported purposes for these disbursements were reimbursements to Fisher for expenditures such as travel expenses (*e.g.*, \$269.30 to “Mxn Eurocar,”), a \$162.96 “Fundraising Expense” at “Com Mexicano Restaurant,” and a \$51.83 purchase from “Capitol Liquor.”⁴⁰

Under these circumstances, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with personal funds.

³⁷ 52 U.S.C. § 30102(b)(3); *see also* 11 C.F.R. § 102.15.

³⁸ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

³⁹ RR18L-29, attach. 2 at 5.

⁴⁰ FEC Form 3-P, Committee April Quarterly Report, sched. B-P (Apr. 22, 2018); RR18L-29, attach. 2 at 9-10.

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C. Disbursement of Campaign Funds During Vacancy of Treasurer

Under the Act and Commission regulations, no committee may accept contributions or make expenditures at a time when there is a vacancy in the office of the treasurer.⁴¹ Of the nearly \$15,655.26 in disbursements the Committee has disclosed as “unauthorized,” 26 disbursements totaling \$6,920.54 were made after Owens’s resignation, while the Committee had no treasurer.⁴² Thirteen of these disbursements were made to Fisher. Of these, the Committee has no record of the purpose for which many were made, though some are noted as reimbursements for salaries paid to Committee employees. A further 13 disbursements during this time period were made to “Stripe.com,” an online payment vendor, in amounts such as \$0.70 and \$4.30 for “post Treasurer resignation merchant fees.” Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30102(a) and 11 C.F.R. § 102.7(b) by making disbursements during a period in which it had no treasurer.

D. Failure to Keep Records of Receipts and Disbursements

The treasurer of a political committee must keep an accurate account of the committee’s receipts and disbursements.⁴³ The Act and Commission regulations provide that committees must record the name and address of every person to whom a disbursement is made, and the date, amount, and purpose of the disbursement, and retain records (*e.g.*, receipt, cancelled check, invoice) related to each disbursement in excess of \$200.⁴⁴ The Act and Commission regulations also provide that records must be kept regarding contributions in excess

⁴¹ 52 U.S.C. § 30102(a); 11 C.F.R. § 102.7(b).

⁴² FEC Form 3-P, Committee April Quarterly Report, sched. B-P (Apr. 22, 2018); RR18L-29, attach. 2 at 11-12.

⁴³ 52 U.S.C. § 30102(c); 11 C.F.R. § 102.9.

⁴⁴ 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

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of \$50. For each such receipt, the account shall include the person's name and address together with the date and amount of the contribution.⁴⁵ For any person who makes contributions aggregating more than \$200 in a calendar year, the record must also include the contributor's occupation and employer.⁴⁶ Further, the treasurer must preserve all such records for three years after the report is filed with the Commission.⁴⁷

The Committee acknowledges that it has not maintained its records and that it would be unable to pass "even a rudimentary audit" with the documents currently in its possession.⁴⁸ The Committee states that it does not have access to any of the records possessed by Owens, including bank statements covering December 2017 through March 2018 for the personal accounts maintained by Owens and Fisher in which the campaign's funds were kept. In addition to the total absence of records regarding the Committee's receipts and disbursements, the Committee received 31 separate \$250 contributions from contributors from whom it collected no information as the recorded data includes only the date and amount of the contributions at issue.⁴⁹ Further, the Committee concedes that multiple disbursements were made to Fisher as reimbursements for campaign expenses but has no associated documentation for the expenses reimbursed.⁵⁰

⁴⁵ 52 U.S.C. § 30102(c)(2); 11 C.F.R. § 102.9(a)(1).

⁴⁶ 52 U.S.C. § 30102(c)(3); 11 C.F.R. § 102.9(a)(2); *see also* 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12 (defining "identification" of an individual).

⁴⁷ 52 U.S.C. § 30102(d); 11 C.F.R. § 102.9(c).

⁴⁸ Resp. at 1.

⁴⁹ Resp. at 1; FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

⁵⁰ Resp. at 1; FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

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As a result, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9 by failing to keep and maintain adequate records of receipts and disbursements.

D. Failure to Accurately Report Receipts, Disbursements, and Loans

The Act requires a political committee to accurately disclose its receipts, disbursements, and loans.⁵¹ With respect to receipts, a political committee must report the identification of each person who makes a contribution or contributions having an aggregate amount or value in excess of \$200 within an election cycle.⁵² A political committee also must itemize disbursements on its disclosure reports, including a brief description of each disbursement's purpose.⁵³ Further, a political committee's disclosure report must identify any person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan.⁵⁴

Because the Committee failed to maintain its records, it concedes that it is unable to accurately disclose its receipts and disbursements prior to April 2018. As discussed above, it cannot report donor information for at least 31 persons who each contributed \$250 to the campaign, nor can it properly itemize loans and disbursements authorized by the prior treasurer. According to the Committee, the amount of inadequately documented receipts and disbursements totals \$27,216.30, which includes two loans made by Fisher to the Committee totaling

⁵¹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

⁵² 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

⁵³ 52 U.S.C. § 30104(b)(4)-(7); 11 C.F.R. § 104.3(b)(3), (4).

⁵⁴ 52 U.S.C. § 30104(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv).

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1 \$3,801.04.⁵⁵ The Committee further failed to itemize the loans from Fisher on its Schedule C-P,
2 instead including the loans on Schedule B-P with its itemized disbursements.⁵⁶

3 In 2007, the Commission established a safe harbor to benefit committees that file
4 inaccurate reports because their funds were unknowingly misappropriated by committee
5 fiduciaries and staff.⁵⁷ The Commission stated that it would not seek a monetary penalty from a
6 committee for filing inaccurate reports due to embezzlement if the committee had at the time the
7 violation occurred implemented certain internal controls, such as opening all bank accounts in
8 the name of the committee rather than an individual, requiring written authorization for and/or
9 two signatures on checks larger than \$1,000, and promptly alerting the Commission and other
10 law enforcement authorities of misappropriations.⁵⁸

11 Here, the facts suggest that Owens and Fisher misappropriated campaign funds by
12 depositing them in multiple personal accounts and making unauthorized disbursements, and as
13 described above, the Committee contends that the Commission should not hold the Committee
14 liable for the actions of a “rogue Treasurer.”⁵⁹ However, the record indicates that the Committee
15 failed to implement any of the enumerated minimum internal controls and does not satisfy the
16 requirements of the Safe Harbor. For instance, prior to Owens’s and Fisher’s terminations, the

⁵⁵ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3.

⁵⁶ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018).

⁵⁷ *See* Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007).

⁵⁸ The other internal controls identified in the policy include: (1) reviewing monthly bank statements for unauthorized transactions and reconciling the statements by someone other than the individual with check-signing authority or who has responsibility for the committee’s accounting; (2) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (3) maintaining safeguards for managing a petty cash account. Further, when a committee discovers misappropriation of funds, under the policy the committee must notify the Commission and relevant law enforcement authorities and also promptly amend its reports. 72 Fed. Reg. at 16,695.

⁵⁹ Resp. at 1.

MUR ____ (Adam Kokesh American Referendum Project)
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- 1 Committee’s authorized depository account was in the name of an individual.⁶⁰ Accordingly, the
- 2 Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11
- 3 C.F.R. § 104.3 by failing to file accurate reports concerning the Committee’s receipts,
- 4 disbursements, and loans.

⁶⁰ See Resp. at 1-2 (indicating that the Committee had begun implementing internal controls only after the alleged violations of the Act had occurred); 72 Fed. Reg. at 16,695. See also Factual & Legal Analysis at 20, MUR 6922 (ACA/ACPAC) (noting that the Commission’s embezzlement safe harbor for reporting violations is available only when the committee had “certain internal controls in place at the time of the embezzlement”).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENTS:** Ethan Owens**MUR:** _____**I. INTRODUCTION**

This matter was generated based on information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities.¹

The Reports Analysis Division (“RAD”) referred the Adam Kokesh American Referendum Project and Angela Thornton in her capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for unauthorized activity totaling \$27,216.30 disclosed in its 2018 April Quarterly Report.² Specifically, the Committee reported that its receipts totaling \$11,551.04 and disbursements totaling \$15,665.26 were “unauthorized” or “undocumented.” In a memo included on this Report and in a Form 99 (Miscellaneous Electronic Submission) filed the same day, the Committee identified a number of violations allegedly committed by the Committee’s former treasurer, Ethan Owens, and its former Campaign Manager, Angela Fisher, who is also Owens’s wife.³ The alleged violations include: (1) failure to disclose the Committee’s official depository institution and timely deposit funds into the depository; (2) failure to segregate campaign funds from personal funds; (3) failure to keep and maintain adequate records; and (4) failure to accurately report the Committee’s receipts, disbursements, and loans.⁴

¹ See 52 U.S.C. § 30109(a)(2).

² RR18L-29 at 2 (Adam Kokesh American Referendum Project).

³ *Id.* at 2-4.

⁴ *Id.* at 4.

MUR ____ (Ethan Owens)
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Because the record indicates that the Committee's past treasurer, Ethan Owens, should be held personally liable for his actions as treasurer, the Commission finds reason to believe that Owens violated in his personal capacity: (1) 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with personal funds; (2) 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to deposit receipts in an account at a properly designated campaign depository; (3) 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9 by failing to keep adequate records of receipts and disbursements; and (4) 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to accurately report the Committee's receipts, disbursements, and loans.

II. FACTUAL BACKGROUND

Adam Kokesh is a Libertarian Party candidate for President, and the Committee is his principal campaign committee. The Committee was organized in December 2017, with Ethan Owens as its treasurer and Owens's wife, Angela Fisher, as its Campaign Manager and the Committee's agent.⁵ Its registered depository institution was a Fort Wayne, Indiana, branch of Wells Fargo Bank.⁶

Between December 1, 2017, and March 5, 2018, however, Owens and Fisher allegedly maintained the campaign's funds in multiple personal accounts rather than in the campaign's account at Wells Fargo.⁷ Owens also accepted \$11,551.04 in contributions for the campaign for which he failed to record any contributor information and which he failed to deposit in the campaign's depository within ten days, and some of which the Committee alleges it never

⁵ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017).

⁶ *Id.*

⁷ FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018); RR18L-29 at 4.

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received at all.⁸ Owens and Fisher further made \$15,665.26 in disbursements to Fisher and campaign vendors, at least some potentially for legitimate campaign expenses and reimbursement thereof, but Owens failed to maintain necessary records documenting the disbursements.⁹ Fisher also made two loans to the Committee aggregating \$3,801.04, which the Committee alleged were “unauthorized.”¹⁰

On or around March 5, 2018, the Committee terminated Owens and Fisher.¹¹ Nonetheless, Owens and Fisher continued to disburse campaign funds and access the accounts they maintained on behalf of the campaign after their terminations.¹² On March 28, 2018, the Committee named Angela Thornton as its new treasurer and no longer listed Wells Fargo as its campaign depository.¹³ Instead, on April 10, 2018, the Committee reported that it maintained an account with PNC Bank in Hartland, Michigan.¹⁴

The new treasurer, Thornton, attempted to obtain the necessary records regarding the campaign’s receipts and disbursements from Owens and Fisher, but they refused to provide them

⁸ FEC Form 3P, Committee 2018 April Quarterly Report at 8, sched. A-P at 12-22 (Apr. 22, 2018); RR18L-29, attach. 2 at 7-8.

⁹ FEC Form 3P, Committee 2018 April Quarterly Report, sched. B-P at 33-58 (Apr. 22, 2018); RR18L-29, attach. 2 at 11-12. Though a number of the disbursements were made to Fisher, and could therefore represent conversion of campaign funds for personal use, there is no evidence to suggest that a violation of this kind occurred, and the Commission takes no action regarding such a violation at this time.

¹⁰ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3. Though the Committee has alleged that the loan resulted in an excessive contribution by Fisher, it does not appear that the two loans would actually be excessive, as the loans could properly be allocated between Fisher’s separate contribution limits for the primary race and the general election.

¹¹ FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018).

¹² FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018). On July 15, 2018, the Committee disclosed a \$4,226.36 “[c]ash-on-hand adjustment due to unauthorized disbursements.” FEC Form 3P, Committee 2018 July Quarterly Report (July 15, 2018).

¹³ FEC Form 1, Committee Amended Statement of Organization (Mar. 28, 2018).

¹⁴ FEC Form 1, Committee Amended Statement of Organization (Apr. 10, 2018).

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1 to her.¹⁵ According to Thornton, Owens and Fisher were unresponsive to requests for
2 information from the Committee, and the little communication the Committee had with Fisher
3 was “sporadic, incomplete and even hostile.”¹⁶

4 On April 22, 2018, the Committee reported the alleged violations to the Commission in
5 its April Quarterly Report and an associated Form 99, in which it disclosed what it referred to as
6 “illegal contribution activity as well as some unauthorized expenditures” in the amount of
7 \$27,216.30.¹⁷ The Committee’s Quarterly Report notes:

8 While this report is true and complete to the best of my ability, we are aware that
9 the disclosure indicates some illegal contribution activity as well as some
10 unauthorized expenditures. We are self-reporting all known violations, but
11 [Owens] has not handed over any financial statements. The information herein is
12 largely based on a spreadsheet provided by [Fisher], who also accessed our funds
13 after [Owen’s] resignation. We have reason to believe we are under-reporting
14 expenditures. We know that co-mingling [sic] personal funds resulted in excess
15 contributions, a fictitious [sic] depository was listed, payments to vendors were
16 made via cryptocurrency[.] Additionally, donations were made to, but not
17 received by, the campaign. Unauthorized expenditures were made to the
18 treasurer’s wife. We are aware there are serious violations in the report, and
19 anticipate that an amendment will be required in the future[.]¹⁸

¹⁵ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

¹⁶ *Id.*

¹⁷ FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018). ; RR18L-29 at 2, 2 n.1.

¹⁸ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018). Though the Committee describes payments made via cryptocurrency as a violation, payments made via cryptocurrency received as contributions have not been found to be impermissible so long as they are appropriately documented and the necessary records maintained. *See* Advisory Op. 2014-02 at 4 (Make Your Laws PAC, Inc.) (“The Commission could not approve a response by the required four affirmative votes as to whether [a PAC] may acquire goods and services with bitcoins it receives as contributions.”).

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III. LEGAL ANALYSIS

A. Failure to Use Proper Campaign Depository

The Federal Election Campaign Act of 1971, as amended, (the “Act”) requires that every political committee designate as its campaign depository one or more state banks, federally chartered depository institutions, or depository institutions in which the accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.¹⁹ Each political committee shall maintain at least one checking or transaction account at one of its depositories, and all receipts received by the committee shall be deposited in such accounts.²⁰ All disbursements (except petty cash) must be drawn on such accounts.²¹ Commission regulations further provide that all deposits shall be made within ten days of the treasurer’s receipt.²²

The Committee admits that it failed to maintain a campaign depository for approximately four months. From December 1, 2017 to March 14, 2018, the Committee listed the Fort Wayne, Indiana branch of Wells Fargo Bank as its depository institution in its Statement of Organization²³ but acknowledges that this depository was “ficti[t]ious.”²⁴ Instead, it appears that the Committee’s former treasurer, Owens, and his wife, Fisher, opened and operated multiple undisclosed personal accounts in which they kept and from which they disbursed the

¹⁹ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3.

²⁰ *Id.*

²¹ *Id.*

²² 11 C.F.R. § 103.3(a).

²³ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017); FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018); FEC Form 1, Committee Amended Statement of Organization (Mar. 14, 2018).

²⁴ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

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Committee's funds.²⁵ According to the Committee's filings, \$11,551.04 in receipts were made to these accounts and were "undocumented."²⁶ In addition, Owens allegedly failed to deposit an unknown number of donations into the campaign account within ten days and failed to deposit some additional donations at all.²⁷

Under the Commission's Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, the Commission will pursue "allegations that involve a past or present treasurer's violation of obligations that the Act or regulations impose specifically on treasurers."²⁸ Further, the Commission may name a treasurer in his or her personal capacity when the available information supports a reasonable inference that "the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the [A]ct and regulations, or intentionally deprived himself or herself of facts giving rise to the violations."²⁹ Here, the facts indicate that Owens acted recklessly when he apparently used personal accounts as campaign depositories and failed to ensure that contributions made to the Committee were deposited into its designated depository. Further, his lack of cooperation with the Committee's attempts to comply with the Act indicate reckless failure to fulfill his duties as treasurer. The Commission therefore finds reason to believe that Owens in his personal capacity violated 52 U.S.C. § 30102(h)(1) and

²⁵ *Id.*

²⁶ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3.

²⁷ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

²⁸ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 n.7 (Jan. 3, 2005).

²⁹ *Id.* at 5.

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11 C.F.R. § 103.3 by failing to deposit contributions to the Committee in the designated depository institution.

B. Commingling of Campaign Funds with Personal Funds

The Act and Commission regulations require that all campaign funds be “segregated from, and may not be commingled with, the personal funds of any individual.”³⁰ As discussed above, Owens and Fisher appear to have used personal accounts as campaign depositories.³¹ The Committee’s filings and Response indicate that Owens and Fisher accepted \$11,551.04 in receipts to and made \$15,665.26 in disbursements from these personal accounts.³² Thirty-two disbursements appear to have been made to Fisher from these accounts between January 4, 2018 and March 2, 2018, while Owens was still treasurer and Fisher still Campaign Manager, and for which the Committee has no documentation. The purported purposes for these disbursements were reimbursements to Fisher for expenditures such as travel expenses (*e.g.*, \$269.30 to “Mxn Eurocar,”), a \$162.96 “Fundraising Expense” at “Com Mexicano Restaurant,” and a \$51.83 purchase from “Capitol Liquor.”³³

Under these circumstances, the Commission finds reason to believe that Owens in his personal capacity violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with personal funds.

³⁰ 52 U.S.C. § 30102(b)(3); *see also* 11 C.F.R. § 102.15.

³¹ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

³² RR18L-29, attach. 2 at 5.

³³ FEC Form 3-P, Committee April Quarterly Report, sched. B-P (Apr. 22, 2018); RR18L-29, attach. 2 at 9-10.

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C. Failure to Keep Records of Receipts and Disbursements

The treasurer of a political committee must keep an accurate account of the committee's receipts and disbursements.³⁴ The Act and Commission regulations provide that committees must record the name and address of every person to whom a disbursement is made, and the date, amount, and purpose of the disbursement, and retain records (*e.g.*, receipt, cancelled check, invoice) related to each disbursement in excess of \$200.³⁵ The Act and Commission regulations also provide that records must be kept regarding contributions in excess of \$50. For each such receipt, the account shall include the person's name and address together with the date and amount of the contribution.³⁶ For any person who makes contributions aggregating more than \$200 in a calendar year, the record must also include the contributor's occupation and employer.³⁷ Further, the treasurer must preserve all such records for three years after the report is filed with the Commission.³⁸

The Committee acknowledges that it has not maintained its records.³⁹ The Committee states that it does not have access to any of the records possessed by Owens.⁴⁰ In addition to the total absence of records regarding the Committee's receipts and disbursements, the Committee received 31 separate \$250 contributions from contributors from whom it collected no information as the recorded data includes only the date and amount of the contributions at

³⁴ 52 U.S.C. § 30102(c); 11 C.F.R. § 102.9.

³⁵ 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

³⁶ 52 U.S.C. § 30102(c)(2); 11 C.F.R. § 102.9(a)(1).

³⁷ 52 U.S.C. § 30102(c)(3); 11 C.F.R. § 102.9(a)(2); *see also* 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12 (defining "identification" of an individual).

³⁸ 52 U.S.C. § 30102(d); 11 C.F.R. § 102.9(c).

³⁹ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

⁴⁰ *Id.*

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issue.⁴¹ Further, multiple disbursements were made to Fisher as reimbursements for campaign expenses but has no associated documentation for the expenses reimbursed.⁴²

Given Owens' reckless failure to fulfill his duties as treasurer as described above, the Commission finds reason to believe that Owens in his personal capacity violated 52 U.S.C. § 30102(c), (d) and 11 C.F.R. § 102.9 by failing to keep and maintain adequate records of receipts and disbursements.

D. Failure to Accurately Report Receipts, Disbursements, and Loans

The Act requires a political committee to accurately disclose its receipts, disbursements, and loans.⁴³ With respect to receipts, a political committee must report the identification of each person who makes a contribution or contributions having an aggregate amount or value in excess of \$200 within an election cycle.⁴⁴ A political committee also must itemize disbursements on its disclosure reports, including a brief description of each disbursement's purpose.⁴⁵ Further, a political committee's disclosure report must identify any person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan.⁴⁶

Because the Committee failed to maintain its records, it is unable to accurately disclose its receipts and disbursements prior to April 2018. As discussed above, it cannot report

⁴¹ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

⁴² FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

⁴³ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

⁴⁴ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

⁴⁵ 52 U.S.C. § 30104(b)(4)-(7); 11 C.F.R. § 104.3(b)(3), (4).

⁴⁶ 52 U.S.C. § 30104(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv).

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1 donor information for at least 31 persons who each contributed \$250 to the campaign, nor can it
2 properly itemize loans and disbursements authorized by the prior treasurer. According to the
3 Committee, the amount of inadequately documented receipts and disbursements totals
4 \$27,216.30, which includes two loans made by Fisher to the Committee totaling \$3,801.04.⁴⁷

5 Given Owens' reckless failure to fulfill his duties as treasurer as described above, the
6 Commission finds reason to believe that Owens in his personal capacity violated 52 U.S.C. §
7 30104(b) and 11 C.F.R. § 104.3 by failing to file accurate reports concerning the Committee's
8 receipts, disbursements, and loans.

⁴⁷ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENTS:** Angela Fisher**MUR:** _____**I. INTRODUCTION**

This matter was generated based on information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities.¹

The Reports Analysis Division (“RAD”) referred the Adam Kokesh American Referendum Project and Angela Thornton in her capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for unauthorized activity totaling \$27,216.30 disclosed in its 2018 April Quarterly Report.² Specifically, the Committee reported that its receipts totaling \$11,551.04 and disbursements totaling \$15,665.26 were “unauthorized” or “undocumented.” In a memo included on this Report and in a Form 99 (Miscellaneous Electronic Submission) filed the same day, the Committee identified a number of violations allegedly committed by the Committee’s former treasurer, Ethan Owens, and its former Campaign Manager, Angela Fisher, who is also Owens’s wife.³

Based on the available information, the Commission finds reason to believe that Angela Fisher violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with personal funds.

¹ See 52 U.S.C. § 30109(a)(2).

² RR18L-29 at 2 (Adam Kokesh American Referendum Project).

³ *Id.* at 2-4.

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II. FACTUAL BACKGROUND

Adam Kokesh is a Libertarian Party candidate for President, and the Committee is his principal campaign committee. The Committee was organized in December 2017, with Ethan Owens as its treasurer and Owens's wife, Angela Fisher, as its Campaign Manager and the Committee's agent.⁴ Its registered depository institution was a Fort Wayne, Indiana, branch of Wells Fargo Bank.⁵

Between December 1, 2017, and March 5, 2018, however, Owens and Fisher allegedly maintained the campaign's funds in multiple personal accounts rather than in the campaign's account at Wells Fargo.⁶ Owens and Fisher made \$15,665.26 in disbursements to Fisher and campaign vendors, at least some potentially for legitimate campaign expenses and reimbursement thereof.⁷ Fisher also made two loans to the Committee aggregating \$3,801.04, which the Committee alleged were "unauthorized."⁸

On or around March 5, 2018, the Committee terminated Owens and Fisher.⁹ Nonetheless, Owens and Fisher continued to disburse campaign funds and access the accounts

⁴ FEC Form 1, Committee Statement of Organization (Dec. 1, 2017).

⁵ *Id.*

⁶ FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018); RR18L-29 at 4.

⁷ FEC Form 3P, Committee 2018 April Quarterly Report, sched. B-P at 33-58 (Apr. 22, 2018); RR18L-29, attach. 2 at 11-12. Though a number of the disbursements were made to Fisher, and could therefore represent conversion of campaign funds for personal use, there is no evidence to suggest that a violation of this kind occurred, and the Commission takes no action regarding such a violation at this time.

⁸ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018); RR18L-29 at 3. Though the Committee has alleged that the loan resulted in an excessive contribution by Fisher, it does not appear that the two loans would actually be excessive, as the loans could properly be allocated between Fisher's separate contribution limits for the primary race and the general election.

⁹ FEC Form 1, Committee Amended Statement of Organization (Mar. 5, 2018).

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they maintained on behalf of the campaign after their terminations.¹⁰ On March 28, 2018, the Committee named Angela Thornton as its new treasurer and no longer listed Wells Fargo as its campaign depository.¹¹ Instead, on April 10, 2018, the Committee reported that it maintained an account with PNC Bank in Hartland, Michigan.¹²

The new treasurer, Thornton, attempted to obtain the necessary records regarding the campaign's receipts and disbursements from Owens and Fisher, but they refused to provide them to her.¹³ According to Thornton, Owens and Fisher were unresponsive to requests for information from the Committee, and the little communication the Committee had with Fisher was "sporadic, incomplete and even hostile."¹⁴

On April 22, 2018, the Committee reported the alleged violations to the Commission in its April Quarterly Report and an associated Form 99, in which it disclosed what it referred to as "illegal contribution activity as well as some unauthorized expenditures" in the amount of \$27,216.30.¹⁵ The Committee's Quarterly Report notes:

While this report is true and complete to the best of my ability, we are aware that the disclosure indicates some illegal contribution activity as well as some unauthorized expenditures. We are self-reporting all known violations, but [Owens] has not handed over any financial statements. The information herein is largely based on a spreadsheet provided by [Fisher], who also accessed our funds after [Owen's] resignation. We have reason to believe we are under-reporting

¹⁰ FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text at 1 (Apr. 10, 2018). On July 15, 2018, the Committee disclosed a \$4,226.36 "[c]ash-on-hand adjustment due to unauthorized disbursements." FEC Form 3P, Committee 2018 July Quarterly Report (July 15, 2018).

¹¹ FEC Form 1, Committee Amended Statement of Organization (Mar. 28, 2018).

¹² FEC Form 1, Committee Amended Statement of Organization (Apr. 10, 2018).

¹³ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

¹⁴ *Id.*

¹⁵ FEC Form 3P, Committee 2018 April Quarterly Report at 8 (Apr. 22, 2018); FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018). ; RR18L-29 at 2, 2 n.1.

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expenditures. We know that co-mingling [sic] personal funds resulted in excess contributions, a fictitious [sic] depository was listed, payments to vendors were made via cryptocurrency[.] Additionally, donations were made to, but not received by, the campaign. Unauthorized expenditures were made to the treasurer's wife. We are aware there are serious violations in the report, and anticipate that an amendment will be required in the future[.]¹⁶

The report did not disclose Fisher's loans to the Committee on the report's Schedule C-P, but rather on Schedule B-P with its itemized disbursements.¹⁷

III. LEGAL ANALYSIS

The Act and Commission regulations require that all campaign funds be "segregated from, and may not be commingled with, the personal funds of any individual."¹⁸ As discussed above, Fisher appears to have used personal accounts as campaign depositories.¹⁹ The Committee's filings and Response indicate that Fisher accepted \$11,551.04 in receipts to and made \$15,665.26 in disbursements from these personal accounts.²⁰ Thirty-two disbursements appear to have been made to Fisher from these accounts between January 4, 2018 and March 2, 2018, while Fisher was still Campaign Manager, and for which the Committee has no documentation. The purported purposes for these disbursements were reimbursements to Fisher for expenditures such as travel expenses (*e.g.*, \$269.30 to "Mxn Eurocar,"), a \$162.96

¹⁶ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018). Though the Committee describes payments made via cryptocurrency as a violation, payments made via cryptocurrency received as contributions have not been found to be impermissible so long as they are appropriately documented and the necessary records maintained. *See* Advisory Op. 2014-02 at 4 (Make Your Laws PAC, Inc.) ("The Commission could not approve a response by the required four affirmative votes as to whether [a PAC] may acquire goods and services with bitcoins it receives as contributions.").

¹⁷ FEC Form 3P, Committee 2018 April Quarterly Report (Apr. 22, 2018).

¹⁸ 52 U.S.C. § 30102(b)(3); *see also* 11 C.F.R. § 102.15.

¹⁹ FEC Form 99, Committee Miscellaneous Text (Apr. 22, 2018).

²⁰ RR18L-29, attach. 2 at 5.

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1 “Fundraising Expense” at “Com Mexicano Restaurant,” and a \$51.83 purchase from “Capitol
2 Liquor.”²¹

3 Under these circumstances, the Commission finds reason to believe that Fisher violated
4 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling campaign funds with personal
5 funds.

²¹ FEC Form 3-P, Committee April Quarterly Report, sched. B-P (Apr. 22, 2018); RR18L-29, attach. 2 at 9-10.