

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION  
COMMISSION

In the Matter of

MUR 6674

Montanans for Rehberg

and Lorna Kuney as treasurer

Dennis Rehberg

Ted P. Beck

Vicki E. Beck

DISMISSAL AND

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

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**SENSITIVE**

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act or Commission regulations has occurred, to make no reason to believe findings.<sup>1</sup>

The Office of General Counsel has scored MUR 6674 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegation that Respondents Montanans for Rehberg and Lorna Kuney in her official capacity as treasurer (collectively the "Committee"), accepted excessive in-kind contributions in violation of

<sup>1</sup> The EPS rating information is as follows: Complaint Filed: October 25, 2012. Responses from Committee Filed: November 16, 2012 and December 19, 2012. Response from Ted P. Beck and Vicki E. Beck Filed: December 6, 2012. Response from Dennis Rehberg Filed: January 28, 2013.

1 2 U.S.C. § 441a(f). The Office of General Counsel also recommends that the Commission dismiss  
2 the allegation that Respondents Ted P. Beck and Vicki E. Beck (collectively the "Becks") made  
3 excessive in-kind contributions, in violation of 2 U.S.C. § 441a(a)(1)(A). Finally, the Office of  
4 General Counsel recommends that the Commission find no reason to believe that Respondent  
5 Dennis Rehberg ("Rehberg") violated the Act or Commission regulations.

6 Preston Elliott ("Elliott"), on behalf of Montanans for Tester (collectively "Complainants"),  
7 filed a Complaint alleging that the Committee accepted excessive in-kind contributions in violation  
8 of the Act. Compl. at 1. The Complaint states that in September 2012 the Rehberg campaign  
9 conducted a campaign tour in Montana using a "1999 Prevost Entertainer luxury bus" owned by  
10 Rehberg supporter Ted Beck. *Id.* at 2. In an interview broadcast by Yellowstone Public Radio  
11 ("YPR") on October 9, 2012, Beck allegedly stated that the Committee did not pay for expenses  
12 associated with the bus, including most of the fuel, and that he "provides everything" to the  
13 Rehberg campaign.<sup>2</sup> *Id.* In the same interview, a Rehberg spokesperson reportedly "claimed that  
14 this was a misunderstanding" and said that the Committee would pay the fair market value for the  
15 use of the bus and associated expenses, including fuel. *Id.*<sup>3</sup>

16 Nonetheless, the Complaint contends that the Committee's 2012 October Quarterly Report,  
17 ("October Quarterly Report"), which was filed after the interview, fails to show that the Becks' in-  
18 kind contributions were consistent with prevailing market rates for bus services. Compl. at 2. The  
19 Committee's October Quarterly Report, filed on October 15, 2012, discloses two in-kind  
20 contributions from Ted Beck and Vicki Beck of \$2,440 each for "transportation for bus tour."  
21 See October Quarterly Report at 52 on Schedule A (Itemized Receipts) and at 1203 on Schedule B

<sup>2</sup> The Complaint states that the interview is available at the following link: [http://vpr-pc.streamguys.net/podcast/news\\_12\\_10\\_09bus.mp3](http://vpr-pc.streamguys.net/podcast/news_12_10_09bus.mp3). *Id.* at 2.

<sup>3</sup> The Complaint estimates that the campaign bus tour lasted for at least seven days and covered more than 3,700 miles statewide. *Id.*

1 (Itemized Disbursements).<sup>4</sup> However, based on information apparently obtained from an entity  
2 called "USA Bus Charter,"<sup>5</sup> the Complaint asserts that "this model of luxury bus" rents for \$2,000  
3 per day, for a total fair market value of \$14,000 for seven days. *Id.* at 2-4. The Complaint also  
4 estimates that the cost of fuel for the bus during the September campaign tour exceeded \$2,300, for  
5 a total cost of at least \$16,300 for the Rehberg bus tour during the month of September. *Id.*<sup>6</sup> Noting  
6 that the Committee's October Quarterly Report discloses no payments for the use of the bus aside  
7 from the Becks' in-kind contributions, the Complaint claims that the "fair market value for the use  
8 of the bus and the associated expenses" were well above Ted and Vicki Beck's separate  
9 contribution limits of \$2,500 per election.<sup>7</sup> *Id.* at 4. Therefore, the Complaint concludes that the  
10 Committee accepted excessive in-kind contributions from the Becks, in violation of the Act. *Id.* at  
11 4-5.

12 Jacob Eaton ("Eaton"), who filed a Response on behalf of the Committee, states that the  
13 Complaint's claims are "baseless and false" and asserts that the Committee contacted two Montana-  
14 based bus rental agencies in order to determine the "appropriate fair market value" for the Rehberg  
15 campaign's use of the bus. Eaton Resp. The Committee obtained quotes ranging from \$850 to  
16 \$900 per day, which included the costs of fuel, estimated at "approximately \$400,"<sup>8</sup> and the services

<sup>4</sup> Itemized in-kind contributions must be reported as both itemized contributions and itemized expenditures on the same report. See 11 C.F.R. §§ 104.13(a)(1) and (2); see also A.O. 2004-36 at 2-3.

<sup>5</sup> The Complaint does not include source documents or other information in support of its "fair market value" calculations.

<sup>6</sup> The Complaint states the Rehberg bus tour continued in October and that the cost estimates provided are limited to the September bus tour.

<sup>7</sup> The Becks also made in-kind contributions of \$60 each for "transportation for bus tour" on November 6, 2012. See Committee's 30-Day Post-General Election Report, filed on December 6, 2012 ("30-Day Post-General Election Report"), at 24-25 on Schedule A (Itemized Receipts) and 442-443 (Itemized Disbursements). Thus, the Becks' contributions totaled \$2,500 apiece.

<sup>8</sup> Eaton does not state whether the \$400 for fuel represents the daily cost of fuel for the bus or the cost of refueling the bus as needed.

1 of a driver, estimated at \$120 - \$150 per day. *Id.* Explaining that the Committee purchased the fuel  
2 and that Beck volunteered to drive the bus, Eaton calculates that the fair market value of the "actual  
3 bus usage" was approximately \$330 - \$350 per day,<sup>9</sup> but states that the Committee chose to value  
4 the cost of renting the bus at a higher amount, or \$365 per day. *Id.*<sup>10</sup>

5 Eaton states that the Rehberg campaign used the bus for thirteen days during the time period  
6 covered by its October Quarterly Report, for a total cost of \$4,745. Eaton Resp.; *see also* Schedule  
7 A (document entitled "Bus Usage" lists dates on which bus was allegedly used by the Rehberg  
8 campaign).<sup>11</sup> The Committee reflected this cost, plus \$135 in "incidental expenses" incurred by  
9 Beck, as two \$2,440 contributions from Ted and Vicki Beck. Eaton Resp. Additionally, Eaton  
10 states that the Rehberg campaign continued to use the bus in October, for which the campaign  
11 reimbursed Beck approximately \$8,510. *Id.* Committee treasurer Lorna Kuncy filed a separate  
12 Response affirming the statements made by Eaton.

13 In the Response submitted by Ted and Vicki Beck, they assert that Complainants took the  
14 statements made by Ted Beck during the YPR broadcast "out of context and do not represent the  
15 total conversation that occurred." Becks Resp. at 1. Mr. Beck states that he purchased the used bus,  
16 which was built in 1999, a few years ago for \$200,000 and that it is presently worth less than  
17 \$150,000. *Id.* They maintain "there is no place in this country" where a bus similar to the 1999 bus  
18 can be rented. The Becks suggest that "three luxury cars" could be rented for \$75 to \$100 apiece  
19 per day, which is less than the \$365 per day figure used by the Committee and far less than the  
20 \$2000/day figure set forth in the Complaint. *Id.* at 2. The Becks state that they invoiced the

<sup>9</sup> It appears that Eaton derived the \$330 figure by subtracting \$400 for fuel and \$120 for a bus driver, or \$520, from \$850. It also appears that Eaton derived the \$350 figure by subtracting \$400 for fuel and \$150 for a bus driver, or \$550, from \$900.

<sup>10</sup> Eaton does not include source documents or other information to support his calculations.

<sup>11</sup> Upon reviewing the dates set forth in Eaton's Schedule A, it appears that twelve days are listed, not thirteen.

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1 Committee \$9,185.38 for the use of the bus, which the Committee paid them, and they offer to  
2 provide the Commission with an itemized invoice, as well as documentation as to the current value  
3 of the bus, upon request. *Id.* at 1-2; see also Committee's 30-Day Post-General Election Report at  
4 442 (\$9,185.38 paid to Ted Beck, with the purpose described as "reimburse bus expenses").<sup>12</sup>

5 Rehberg filed a response concerning "Mr. Beck's offer to make an in-kind contribution of  
6 his personally owned recreational vehicle (RV)" and "to transport other volunteers on door to door  
7 tours." Rehberg Resp. at 1. Rehberg's staff "review[ed] the FEC requirements" to determine  
8 whether his campaign could legally accept Mr. Beck's offer and whether Beck could volunteer his  
9 services as the driver. *Id.* Rehberg states that his staff also contacted local providers to determine  
10 the appropriate rental charge for the bus and allocated a portion of the costs as an in-kind  
11 contribution, with the Committee reimbursing "all additional costs not qualifying for exemption,"  
12 such as Beck's volunteering to drive his bus during the campaign tour. *Id.* Rehberg asserts that fuel  
13 and incidental expenses were paid by his campaign. *Id.*

14 According to Rehberg, the "assertion by [Complainants] that a higher price was quoted by a  
15 national charter company for charter service is irrelevant" because Complainants did not explain  
16 whether their price quote was based on the normal and usual rates in Montana, as opposed to an  
17 urban center such as New York City. Rehberg Resp. at 1. Rehberg also states that Complainants  
18 did not describe what "incidental services," if any, were included in the price quotations set forth in  
19 the Complaint. In contrast, Rehberg asserts that Beck, who was not in the charter service business,

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<sup>12</sup> The Becks request that the Commission "take punitive action" against Complainants for filing what they describe as a "frivolous" complaint. *Id.* at 2.

provided a vehicle that was approximately thirteen years old and was capable of carrying only eight to ten passengers, and that Complainants' price quotations were, therefore, "spurious." *Id.*<sup>13</sup>

The Act and Commission regulations define "contribution" as any "gift, subscription, loan . . . or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R. § 100.52(a). The term "anything of value" includes in-kind contributions of goods or services without charge, or at less than the usual and normal charge (*i.e.* "fair market value"). 11 C.F.R. § 100.52(d)(1). The Act limits the amount any person may contribute to a candidate with respect to any election for Federal office. 2 U.S.C. § 441a(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). A husband and wife each have a separate contribution limit, even if only one of them has income. 11 C.F.R. § 110.1(i). "Contribution" does not include "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B)(i); *see also* 11 C.F.R. § 100.74 (the value of services provided by a volunteer is not a contribution).

It is undisputed that Beck volunteered his services to drive the bus; therefore, to the extent that Complainants' price estimate of \$2,000 per day includes the services of a driver, their estimate is potentially inaccurate. The Committee denies the statement reportedly made by Mr. Beck on the YPR broadcast that he paid all costs associated with the tour. The Committee also claims that it paid for fuel for the bus, and its financial disclosure reports for the last quarter of 2012 disclose

<sup>13</sup> Rehberg also states that Complainants posted the Complaint and an accompanying press release on their website and alleges that, by doing so, they violated the Commission's "confidentiality" provisions at 2 U.S.C. § 437g(a)(12) and 11 C.F.R. § 111.21. Rehberg Resp. at 2. The Commission has interpreted its "confidentiality" provisions to allow a complainant to communicate with the press regarding the complaint, provided that the complainant does not disclose information concerning an investigation or any notification of findings by the Commission. *See* MUR 6243 (Nancy Navarro, *et al.*, n. 1; *see also* Statement of Reasons, Comm'rs. Hunter, Petersen, and Weintraub. MUR 6656 (Anchin, *et al.*) at 2 ("Complainants often publicly reveal that they have filed a complaint, as well as disclose the contents of that complaint without any threat of adverse action by the Commission"). Therefore, we do not address Mr. Rehberg's contention further.

1 thousands of dollars in expenditures for fuel, although it is not clear which expenditures are  
2 associated with the bus tour.

3 Neither the Complainants nor the Respondents provide documentation to support the  
4 disparity in their fair market valuations of the rental value of the bus. However, it appears that the  
5 Becks, who were acting in good faith as Rehberg volunteers, accepted the Committee's valuation.  
6 In addition, after the Becks reached their contribution limits of \$2,500 each, the Committee  
7 continued to use the bus and paid Mr. Beck over \$9,000.

8 Therefore, in light of the difficulty of ascertaining the market value of renting a bus similar  
9 to the Becks' bus, coupled with the lack of detail in how the parties arrived at their valuations for the  
10 bus, and in furtherance of Commission priorities, the Office of General Counsel recommends that  
11 the Commission exercise its prosecutorial discretion and dismiss the allegations that Montanans for  
12 Rehberg and Lorna Kuney in her official capacity as treasurer accepted excessive in-kind  
13 contributions, in violation of 2 U.S.C. § 441a(f), and that Ted P. Beck and Vicki E. Beck made  
14 excessive in-kind contributions, in violation of 2 U.S.C. § 441a(a)(1)(A). *See Heckler v. Chaney*,  
15 470 U.S. 821 (1985). As to candidate Dennis Rehberg, it does not appear that he was personally  
16 involved in the transaction at issue. Therefore, the Office of General Counsel recommends that the  
17 Commission find no reason to believe that Rehberg violated the Act or Commission regulations as  
18 to the allegations in this matter. Finally, the Office of General Counsel recommends that the  
19 Commission approve the Factual and Legal Analysis and the appropriate letters, and close the file.

20 **RECOMMENDATIONS**


- 21 1. Dismiss the allegation that Montanans for Rehberg and Lorna Kuney in her official  
22 capacity as treasurer accepted excessive in-kind contributions, in violation of 2 U.S.C.  
23 § 441a(f), pursuant to the Commission's prosecutorial discretion;  
24
- 25 2. Dismiss the allegation that Ted P. Beck and Vicki E. Beck made excessive in-kind  
26 contributions, in violation of 2 U.S.C. § 441a(a)(1)(A), pursuant to the Commission's  
27 prosecutorial discretion;

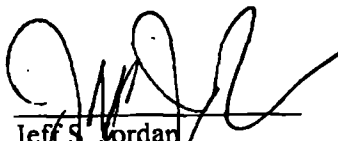
3. Find no reason to believe that Dennis Rehberg violated the Federal Election Campaign Act of 1971 as amended, or Commission regulations, as to the allegations in this matter;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file.

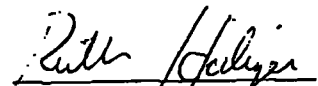
General Counsel

10/25/14  
Date

BY:

  
Gregory R. Baker  
Deputy General Counsel

  
Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination  
& Legal Administration

  
Ruth Heilizer  
Attorney  
Complaints Examination  
& Legal Administration