



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

OCT 10 2012

James Gilbert, Treasurer
Jason Buck for Congress
32 West 200 South, Suite 508
Salt Lake City, UT 84101

RE: MUR 6532
Jason Buck for Congress

Dear Mr. Gilbert:

On February 24, 2012, the Federal Election Commission ("Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time.

After considering the circumstances of this matter, the Commission, on October 2, 2012, found that there is no reason to believe Jason Buck for Congress and you in your official capacity as treasurer (the "Committee") violated 2 U.S.C. § 441a(f), a provision of the Act. Also on this date, the Commission dismissed, as a matter of prosecutorial discretion, any violation of 2 U.S.C. § 434(b)(1) and (3) by the Committee. In addition, the complaint described the Committee's alleged failure to disclose certain disputed debts, in accordance with 2 U.S.C. § 434(b)(8). The Commission has referred that issue to its Office of Alternative Dispute Resolution, which will contact you. The Factual and Legal Analysis, explaining the Commission's findings, is enclosed.

Based on the information before the Commission, it appears that the Committee may have violated 2 U.S.C. § 434(b)(1) and (3) by failing to disclose and itemize two contributions. The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and Commission regulations.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open. The Commission will notify you when the entire file has been closed.

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James Gilbert
MUR 6532 (Jason Buck for Congress)
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If you have any questions, please contact Margaret Ritzert Howell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jason Buck for Congress MUR: 6532
and James Gilbert in his
official capacity as treasurer
Jason Buck

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Kelly Casaday. *See*
2 U.S.C. § 437(g)(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Jason Buck for Congress and James Gilbert in his official capacity as treasurer
("Committee") is the principal campaign committee of Jason Buck, a first-time candidate who
sought the Republican nomination for the U.S. House of Representatives from Utah's Second
Congressional District in 2012. Buck and the Committee filed a Statement of Candidacy and
Statement of Organization, respectively, on August 28, 2011. Buck failed to win the Republican
nomination at the party's nominating convention on April 21, 2012.

1. Failure to Disclose Debts

Complainant alleges that the Committee failed to disclose three debts totaling \$42,900 in
its reports: (1) \$19,500 owed to Letter23, LLC ("Letter23"); (2) \$11,400 owed to Lime
Marketing ("Lime"); and (3) \$12,000 owed to JPC Development ("JPC"). The Complaint
includes several documents supporting this allegation, including a Letter23 invoice dated
December 19, 2011, showing a balance due of \$19,500; an October 6, 2011, e-mail purporting to
show Buck acknowledging two billing statements from Lime in the amounts of \$793.65 and

1 \$10,599.60; and a JPC invoice dated December 27, 2011, showing a balance due of \$12,018.

2 Compl., Attach. 2, 3, 6.

3 In response, the Committee asserts the claims listed by the Complainant were all in
4 dispute with the vendors, because the amounts billed were for services that were either not
5 approved or were not provided. Committee Resp. at 1 (Mar. 14, 2012) ("Comm. Resp."). In
6 support of this assertion, the Committee includes letters from its counsel to Letter23 and JPC,
7 both dated January 20, 2012, disputing the amounts billed but offering to settle the issue. *Id.*,
8 Attach. 4.

9 The Response also includes unsworn statements from Buck addressing the claims related
10 to each vendor. *See id.*, Attach. 2. Buck states that he verbally engaged Kelly Casaday of
11 Letter23 as a consultant on August 8, 2011, but that there "is no signed contract" and Letter23
12 never performed the services detailed in its proposal. *Id.* Buck also states that he received the
13 first and only invoice from Letter23 on December 19, 2011. *Id.* Regarding Lime, Buck simply
14 states that the dispute was resolved as of February 29, 2012. *Id.* The Committee's disclosure
15 reports show that it disbursed \$500 to Letter23 on October 25, 2011, and \$1,000 to Lime on
16 February 29, 2012. *See* 2011 Year End Report; 2012 Pre-Convention Report. Finally, regarding
17 JPC, Buck asserts that he has never had "any contract, arrangement, or understanding with
18 Judson Carter," who appears to be the principal of JPC; rather, Carter raised money for the
19 Committee through Letter23. Comm. Resp., Attach 2. However, in an effort to resolve the
20 matter, Buck has offered Carter ten percent of the money that Carter raised, which is apparently
21 consistent with the terms that Casaday and Carter agreed upon. *Id.*

22

2. Excessive Contributions

As reflected in the chart below, the Committee disclosed loans from seventeen individuals ("Contributors") totaling \$80,500 on Schedules A (Itemized Receipts) and C (Loans) of its 2011 Year End Report. Complainant alleges that these loans were excessive contributions. Compl. at 1.

The Committee's 2012 Pre-Convention Report, filed April 9, 2012, disclosed disbursements made to repay these loans prior to the nominating convention on April 21, 2012. At that time, loan balances remained outstanding for only four of the seventeen Contributors – Bruce Frandsen, Nyla Frandsen, Ty Mattingly, and Bruce Morrison (indicated with an asterisk) – and those amounts were from loans made in connection with the nominating convention.

| Contributor | Election | Amount of Loan | Date Loan Made | Amount Repaid | Date of Repayment |
|-------------------------|------------|----------------|----------------|---------------|-------------------|
| Karen Abelhouzen | Primary | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| Richard Todd Abelhouzen | Primary | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| Bruce Frandsen* | Convention | \$500 | 12/30/11 | \$0 | N/A |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| Mary Frandsen | Convention | \$2,500 | 12/29/11 | Paid in full | 1/23/12 |
| | Primary | \$2,500 | 12/29/11 | Paid in full | 1/23/12 |
| Mel Frandsen | Convention | \$500 | 12/29/11 | Paid in full | 1/23/12 |
| | Primary | \$2,500 | 12/29/11 | Paid in full | 1/23/12 |
| Nyla Frandsen* | Convention | \$2,500 | 12/30/11 | \$1,000 | 1/09/12 |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| Lee Johnson | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| Michelle Johnson | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| Ty Mattingly* | Convention | \$2,500 | 12/30/11 | \$1,500 | 1/11/12 |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| Julie Mattingly | Convention | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| Amy Morrison | Convention | \$2,500 | 12/31/11 | Paid in full | 1/07/12 |
| Bruce Morrison* | Convention | \$2,500 | 12/31/11 | \$2,250 | 1/07/12 |
| Tina Sawyer | Convention | \$2,500 | 12/31/11 | Paid in full | 1/10/12 |
| Becky Warner | Convention | \$500 | 12/31/11 | Paid in full | 1/26/12 |
| Vincent Warner | Convention | \$2,500 | 12/31/11 | Paid in full | 1/26/12 |
| Brigitte Wing | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| Hal Wing | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |

- 1 The only four Contributors to respond to the Complaint – Bruce, Mary, Mel, and Nyla
- 2 Frandsen – all submitted identical Responses. See Mary Frandsen Resp. (Mar. 15, 2012); Bruce
- 3 Frandsen Resp. (Mar. 14, 2012); Nyla Frandsen Resp. (Mar. 14, 2012); Melvin Frandsen Resp.
- 4 (no date). According to their Responses, the Committee advised these individuals that they

1 could each contribute \$2,500 for each of three elections (convention, primary, and general),
2 totaling \$7,500 per person. *Id.* The Committee also assured them that they could make the
3 contributions as loans that would be repaid as it raised money from other contributors. *Id.* Each
4 of them made loans of varying amounts and, according to the Contributors' Responses and the
5 Committee's disclosure reports, the majority of these loans have been repaid. *Id.*

6 In its Response, the Committee asserts that a Reports Analysis Division ("RAD") analyst
7 confirmed in a March 1, 2012, phone conversation that its reported contributions, including the
8 loans, were all "within the limit," and "there was no issue with any of the contributions."
9 Comm. Resp. at 1.

10 3. Failure to Disclose Contributions

11 Finally, Complainant alleges that the Committee failed to disclose three \$250
12 contributions from J. Clark Morzelewski, Chris Lundell, and Phil Harker. Compl. at 2.
13 According to the Complaint, these contributions were made via the campaign's online "Fundly"
14 account between September and December 2011. *Id.* Complainant attaches a screen capture of
15 the Committee's Fundly page, showing all three contributions, as well as a statement from
16 Morzelewski that he made a \$250 contribution to the Committee in September 2011. Compl.,
17 Attach. 8, 9.

18 In response, the Committee asserts that these contributions were received during the
19 exploratory stage, and that the omissions have since been "amended on the report." Comm.
20 Resp. at 1. In support of this assertion, the Committee attaches the February 23, 2012, RFAI
21 questioning the initial cash on hand balance disclosed on the 2011 Year End Report and
22 requesting that the Committee disclose any contributions received during the exploratory stage.
23 Comm. Resp., Attach. 1. Despite its assertion, the Committee has not yet amended the report.

1 However, the Year End Report does disclose a \$250 contribution from Lundell on
2 December 5, 2011.

3 **B. Legal Analysis**

4 1. Failure to Disclose Debts

5 The Federal Election Campaign Act of 1971, as amended (the "Act") requires political
6 committees to report the amount and nature of outstanding debts and obligations owed by or to
7 such political committee. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d). Commission regulations
8 further provide that if a debt is disputed, the political committee must report it if the creditor has
9 provided something of value to the political committee. 11 C.F.R. § 116.10(a). Specifically, the
10 political committee must disclose any amounts paid to the creditor, any amount the political
11 committee admits it owes, and the amount the creditor claims is owed. *Id.* The political
12 committee may make a notation that "the disclosure of the disputed debt does not constitute an
13 admission of liability or a waiver of any claims the political committee may have against the
14 creditor." *Id.*

15 The Committee's Response states that the debts alleged in the Complaint were in dispute
16 when the Year End Report was filed on January 31, 2012. Letter23 and JPC submitted invoices
17 to the Committee on December 19 and 27, 2011, respectively, and the Committee's counsel
18 responded with letters disputing the amounts billed on January 20, 2011. Additionally, the
19 October 6, 2011, e-mail in which Buck acknowledges two billing statements from Lime, coupled
20 with the lack of any disbursements from the Committee to Lime until February 29, 2012,
21 supports an inference that the Lime account was also in dispute when the Report was filed.

22 It also appears that these vendors provided something of value to the Committee. A
23 December 15, 2011, e-mail chain between the Committee, Letter23, Lime, and JPC, discussing

1 the content of and technical issues regarding the Committee's website, indicates that the vendors
2 were performing services related to this website. *See* Compl., Attach. 4. Additionally, while the
3 Committee disputes that Letter23 performed any of its promised services, it also states that
4 Letter 23 hired JPC to conduct fundraising for the Committee. Comm. Resp., Attach. 2. Finally,
5 the Committee acknowledges that JPC raised some amount of money, as it has offered ten
6 percent of the amount raised to resolve the dispute. *Id.*

7 Thus, although the debts are disputed, it appears that the creditors all provided something
8 of value to the Committee, and therefore the claims should have been disclosed on the 2011 Year
9 End Report in accordance with 11 C.F.R. § 116.10. Accordingly, the Commission is assigning
10 the Committee to the Office of Alternative Dispute Resolution ("ADR") for resolution of its
11 failure to report disputed debt.

12 2. Excessive Contributions

13 The Act defines "contribution" to include loans made by any person for the purpose of
14 influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a). A
15 loan is a contribution at the time it is made and is a contribution to the extent that it remains
16 unpaid. 11 C.F.R. § 100.52(b)(2). A loan that exceeds the contribution limits of the Act is
17 unlawful whether or not it is repaid. 11 C.F.R. § 100.52(b)(1). Also, the aggregate amount
18 loaned to a committee by a contributor, when added to any other contributions from that
19 individual to that committee, shall not exceed the contribution limits set forth by the Act. *Id.*

20 For the 2011-2012 election cycle, the Act limits the amount of contributions that any
21 person can make to any authorized political committee to an aggregate of \$2,500 per election.
22 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b). The Act defines "election" to include a general
23 election, a primary election, and a convention or caucus of a political party which has authority

1 to nominate a candidate. 2 U.S.C. § 431(1)(A), (B); *see also* 11 C.F.R. § 100.2. The
2 Commission has previously stated that the question of whether a particular event – including a
3 nominating convention – constitutes an election is determined by an analysis of relevant state
4 law. *See* Advisory Op. 2004-20 (Farrell for Congress) at 3. In analyzing state law, so long as a
5 convention has the potential to nominate a candidate, the Commission will deem it to have the
6 “authority to nominate” within the meaning of the Act and Commission regulations. *See id.*

7 While Utah law does not specifically address nominating conventions, it does allow
8 them, in that political parties are not required to participate in the primary election and may
9 instead submit the names of its candidates to the lieutenant governor. *See* Utah Code Ann.
10 § 20A-9-403(2)(d).¹ Under the Utah Republican Party Constitution, the Party has the authority
11 to nominate candidates through a nominating convention. *See* Utah Republican Party
12 Constitution art. XII, § 2A (“The Party shall nominate candidates for partisan offices by a
13 nominating convention and primary elections.”).² Accordingly, the Party’s nominating
14 convention qualifies as an election under 2 U.S.C. § 431(1).

15 Utah’s election cycle thus consists of three possible elections: a nominating convention,
16 a primary election, and a general election. Accordingly, individuals are permitted to contribute
17 up to \$2,500 to a candidate per election, or \$7,500 to a candidate over the election cycle. *See*
18 Advisory Op. 2004-20 at 5 (“The Commission recognizes that where, as here, state law gives
19 state party conventions the authority to nominate, not just endorse, a candidate, the need for

¹ The statute states, “[e]xcept for presidential candidates, if a registered political party does not wish to participate in the primary election, it shall submit the names of its county candidates to the county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May 30 of each even-numbered year.” *Id.*

² According to the Utah Republican Party website, a “State Nominating Convention” is a gathering of state delegates, elected at state-wide Caucuses, to elect the party’s nominees for partisan statewide offices, including the U.S. House of Representatives. *Convention: Frequently Asked Questions*, <http://utgop.org/inner.asp?z=5E5F5759> (last visited July 23, 2012).

1 separate contribution limits arises for candidates seeking nomination to Federal office during the
2 convention phase, and potentially, also during a primary election.”).

3 If the Contributors’ loans exceeded the contribution limits, they would have constituted
4 excessive contributions, regardless of whether or not they were repaid. However, the 2011 Year
5 End Report reveals that each Contributor made no more than \$2,500 in loans per election.
6 Therefore, none of the Contributors’ loans constitute excessive contributions.³ Accordingly, the
7 Commission finds no reason to believe that the Committee violated 2 U.S.C. § 441a(f) by
8 accepting excessive contributions.

9 3. Failure to Disclose Contributions

10 The Act requires political committees to report the amount of cash on hand at the
11 beginning of the reporting period, as well as to identify each person who makes aggregate
12 contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1), (3). Commission
13 regulations further clarify that committees that have cash on hand at the time of their registration
14 shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12.

15 Based on the Complaint and the Committee’s Response, it appears that the Committee
16 received three \$250 contributions – one \$250 contribution from each of Morzelewski, Lundell,
17 and Harker – through its online account during the exploratory stage. While the 2011 Year End
18 Report discloses a \$250 contribution from Lundell on December 5, 2011, it does not disclose any
19 contributions from either Morzelewski or Harker. It thus appears that the Committee has

³ Pursuant to 11 C.F.R. § 102.9(e)(3), “If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated . . . or reattributed . . . as appropriate.” Any such contributions not refunded, redesignated or reattributed become excessive contributions once the candidate is no longer a candidate in that election cycle. See e.g., MUR 6235 (Cannon for Congress), MUR 6230 (Wynn for Congress). Here, the Committee repaid all of the loans relating to the primary and general election prior to the nominating convention on April 21, 2012. See *supra* p. 5. Therefore, because they were proper when made, and repaid prior to the termination of Buck’s potential candidacy in the primary and general elections, the loans do not appear to constitute excessive contributions under either 2 U.S.C. § 441a(a) or 11 C.F.R. § 102.9(e)(3).

1 violated 2 U.S.C. § 434(b) by failing to report two \$250 contributions from Morzelewski and
2 Harker and, contrary to its representations, has not amended the report to correct the omissions.
3 However, due to the small amount in violation, the Commission exercised its prosecutorial
4 discretion and dismissed the allegation that the Committee violated 2 U.S.C. § 434(b)(1) and (3),
5 but sent a letter of caution to the Committee. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

6 4. Jason Buck

7 There is no information that Jason Buck violated the Act in his personal capacity.
8 Accordingly, the Commission found no reason to believe that he violated 2 U.S.C. §§ 434(b)(1),
9 (3), and (8); and 441a(a).