FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 25, 2021

**VIA ELECTRONIC MAIL ONLY**
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RE: MURs 7373 & 7388
Cynthia Dunbar
Dunbar for Congress, Inc. and
Elizabeth Curtis in her official capacity
as treasurer

Dear Messrs. Bopp and Gallant:

On April 27, 2018 and May 25, 2018, the Federal Election Commission (the "Commission") notified your clients, Cynthia Dunbar and Dunbar for Congress, Inc. and Elizabeth Curtis in her official capacity as treasurer (the "Committee"), of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 20, 2021, the Commission found, on the basis of the information in the complaints, and information provided by you, that there is no reason to believe that Dunbar and the Committee violated 52 U.S.C. § 30116(f) in connection with alleged excessive in-kind contributions in the form of office and meeting space or that they violated 52 U.S.C. §§ 30118(a) or 30119 in connection with alleged prohibited corporate and federal contractor contributions. The Commission also exercised its prosecutorial discretion and dismissed the allegation that Cynthia Dunbar violated 52 U.S.C. § 30102(e)(1) in connection with the alleged filing of a late statement of candidacy. Accordingly, the Commission closed its files in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen by APW

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Cynthia Dunbar
Dunbar for Congress, Inc. and Elizabeth Curtis in her official capacity as treasurer
R. Scott Sayre
Sayre Enterprises, Inc.
6th Congressional District Republican Federal Committee and Donna Moser in her official capacity as treasurer
J. Hudson McWilliams
Albert J. Tucker, III
Mary Sayre
Stonebridge Properties, LLC

**MURS**: 7373, 7386 and 7388

## I. INTRODUCTION

These complaints make allegations relating to the May 19, 2018, nominating convention conducted by the Sixth Congressional District of Virginia Republican Committee ("District Party"), a district party committee of the Republican Party of Virginia, to select a nominee to serve as the Republican candidate in Virginia's 6th Congressional District. The Complaints in MURs 7373 and 7388 allege that one of the candidates, Cynthia Dunbar, and her authorized committee, Dunbar for Congress, Inc. and Elizabeth Curtis in her official capacity as treasurer ("Dunbar Committee"), accepted excessive and prohibited contributions from Scott Sayre, the former chairman of the District Party, and his company, Sayre Enterprises, Inc., a federal contractor, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").[1] The Complaint in MUR 7373 also alleges that Dunbar filed her Statement of Candidacy six months late.[2]

[1] MUR 7373 Compl. at 2-5 (Apr. 24, 2018); MUR 7388 Compl. at 6-8 (May 18, 2018).

[2] MUR 7373 Compl. at 1, 3-5.

The Complaint in MUR 7386 alleges that the 6th Congressional District Republican Federal Committee ("6th District Committee"), the federal account of the District Party, failed to report any federal receipts or disbursements in the 2018 election cycle, including expenses for the convention and allocable administrative expenses such as the cost of office and meeting space used by the 6th District Committee.[3] It also alleges that the 6th District Committee has used federally impermissible funds to finance federal election-related activities, such as the convention, because it has conducted all of its activities through the non-federal account, which contains federally non-compliant funds.[4] Finally, the MUR 7388 Complaint alleges that the 6th District Committee, as well as Dunbar and her Committee, accepted prohibited in-kind contributions in the form of office and meeting space.[5]

As to Cynthia Dunbar, the Commission finds no reason to believe or dismisses as a matter of prosecutorial discretion the allegations relating to her.[6] The Commission also finds no reason to believe as to the excessive and prohibited contribution allegations relating to the Dunbar Committee and the 6th District Committee. The Commission further dismisses as a matter of prosecutorial discretion the reporting and allocation allegations relating to the 6th District Committee, and the allegation that the District Committee used federally impermissible funds to pay for activity in connection with a federal election, including allocable activity, and cautions the 6th District Committee.[7] Finally, the Commission finds no reason to believe that

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3 MUR 7386 Compl. ¶¶ 15-20 (May 17, 2018).

4 MUR 7386 Compl. ¶¶ 27-32.

5 MUR 7388 Compl. at 3-6.

6 *See Heckler v. Chaney*, 470 U.S. 821 (1985).

7 *Id*.

Scott Sayre, as well as Albert J. Tucker, III, and J. Hudson McWilliams, the 6th District Committee's former treasurers, violated the Act in connection with the reporting and allocation allegations relating to the 6th District Committee.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Allegations Relating to Cynthia Dunbar

Cynthia Dunbar filed a Statement of Candidacy with the Commission on November 9, 2017, designating Dunbar for Congress, Inc. and Elizabeth Curtis in her official capacity as treasurer as her principal campaign committee.[8] The Dunbar Committee's first report filed with the Commission disclosed that it received its first contribution of $500 on November 21, 2017, and made its first few disbursements on December 31, 2017, totaling $5,601.90.[9]

Scott Sayre served as Chairman of the District Party from 2016 through the nominating convention in 2018.[10] The District Party finances activity in connection with both federal and non-federal elections.[11]

#### 1. Alleged Prohibited Corporate and Federal Contractor Contributions in the Form of Payments to the Candidate

Under the Act, corporations are prohibited from contributing to candidates, including directly or indirectly paying for their services, and candidates and authorized committees are

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[8] *See* Statement of Candidacy (Nov. 20, 2017); Statement of Organization, Dunbar for Congress, Inc. (Nov. 20, 2017). Dunbar was defeated at the nomination convention. *See Sixth District GOP Website*, http://www.sixthdistrictgop.org/official-call-for-2018-convention/ (listing results of 2018 Sixth District Convention).

[9] 2017 Year-End Report, Dunbar for Congress (Jan. 30, 2018).

[10] MUR 7386 6th District Committee Resp. ("MUR 7386 6th Dist. Comm. Resp."), Declaration of Scott Sayre ¶ 3 ("Scott Sayre Decl.") (July 28, 2018).

[11] MUR 7386 6th Dist. Comm. Resp. at 2; *see* 11 C.F.R. § 102.5.

prohibited from knowingly receiving or accepting such contributions.[12] Federal contractors may not make contributions to candidates or political committees, and the Act also prohibits any person from knowingly soliciting any federal contractor contribution.[13] The term "contribution" includes "any gift, subscription, loan advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."[14]

Payments to candidates for employment, however, are not considered contributions when three conditions are met: (A) the compensation results from *bona fide* employment that is genuinely independent of the candidacy; (B) the compensation is exclusively in consideration of services provided by the employee as part of this employment; and (C) the compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.[15]

The Complaints in MURs 7373 and 7388 question payments that Sayre Enterprises, Inc., made to Dunbar. Sayre Enterprises is a manufacturing company incorporated in Virginia that produces military and outdoor products and is also a federal government contractor.[16] Dunbar listed the payments from Sayre Enterprises on her House Financial Disclosure Reports as

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12 *See* 52 U.S.C. §§ 30101(8)(A), 30118(a).

13 52 U.S.C. § 30119(a)(1)-(2); 11 C.F.R. § 115.2.

14 52 U.S.C. § 30101(8)(A)(i).

15 11 C.F.R. § 113.1(g)(6)(iii). *See, e.g.*, Factual and Legal Analysis at 5, MUR 7044 (Jodey Cook Arrington); Factual and Legal Analysis at 4-6, MUR 6855 (Justin Amash, *et al.*); Factual and Legal Analysis at 3-6, MUR 6853 (Wamp for Congress).

16 *See* MUR 7373 Compl. at 2; MUR 7388 Compl. at 2-3; https://www.sayreinc.com/default.asp. Sayre Enterprises has been active since 1994. Scott Sayre is the company's Director and CEO and Mary Sayre is its registered agent. *See* Commonwealth of Virginia State Corporation Commission, https://sccefile.scc.virginia.gov/Business/0429723. The company is also listed as a federal government contractor with the U.S. General Services Administration. *See Contractor Information*, GSAeLibrary, https://www.gsaelibrary.gsa.gov/ElibMain/contractorInfo.do?contractNumber=GS-07F-0262K&contractorName=SAYRE+ENTERPRISES%2C+INC&executeQuery=YES.

"Compensation in Excess of $5,000" for "research & development."[17] The Complaints allege that these payments were made in connection with Dunbar's campaign; they assert that Dunbar, as a "constitutional law attorney and former constitutional law professor," did not have the skills and expertise necessary to provide consulting services for Sayre Enterprises.[18]

Dunbar, the Dunbar Committee, Scott Sayre, and Sayre Enterprises assert that the compensation to Dunbar was for *bona fide* services that she provided through Dunbar's company, Educational Ventures, LLC, and the payments were independent of her candidacy.[19] Respondents state that Sayre Enterprises retained Educational Ventures "to develop a plan to market business consulting services focusing on online seminars, publishing, and online courses on running a business and acquiring and maintaining intellectual property rights."[20] The responses include copies of an "Independent Contractor Agreement" between Sayre Enterprises and Educational Ventures dated September 15, 2017, that called for a monthly retainer of $2,500 for research and business development in connection with developing seminars and course

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[17] *See* MUR 7373 Compl. at 5; MUR 7388 Compl. at 5, citing Schedule J, 2017 Financial Disclosure Report for Cynthia Dunbar (Mar. 11, 2018), http://clerk.house.gov/public_disc/financial-pdfs/2017/10019542.pdf; Schedule J, 2018 Financial Disclosure Report for Cynthia Dunbar (May 15, 2018), http://clerk house.gov/public_disc/financial-pdfs/2018/10023152.pdf.

[18] MUR 7373 Compl. at 5; MUR 7388 Compl. at 6-7.

[19] *See* MUR 7373 Response of Dunbar and Dunbar Committee ("MUR 7373 Dunbar Resp.") at 3-4 (June 14, 2018); MUR 7388 Response of Dunbar and Dunbar Committee ("MUR 7388 Dunbar Resp.") at 4 (June 27, 2018); *see also* MUR 7373 Response of Scott Sayre and Sayre Enterprises ("MUR 7373 Sayre Resp.") (June 14, 2018) (describing services provided by Educational Ventures); MUR 7388 Response of Sayre Enterprises ("MUR 7388 Sayre Resp.") (July 12, 2018) (attaching copy of independent contractor agreement with Educational Ventures). Dunbar founded Educational Ventures in 2015 as a limited liability company. *See* MUR 7373 Dunbar Resp. at 3; MUR 7388 Dunbar Resp. at 4; *Educational Ventures, LLC Listing, Business Entity Search*, Commonwealth of Virginia State Corp. Comm'n, https://sccefile.scc.virginia.gov/Business/S589719. Respondents explain that Educational Ventures is "an educational curriculum company with specific emphasis and experience with online and e-learning." MUR 7373 Dunbar Resp. at 3.

[20] MUR 7373 Dunbar Resp. at 3; MUR 7388 Dunbar Resp. at 4.

material.[21] The responses also provided copies of invoices showing that Educational Ventures charged a $75 hourly fee, and the table of contents and introduction for a "Sayre Enterprises, New Ventures Manual" that Educational Ventures produced under the contract.[22] A chart listing sample rates is also included with the responses to the Complaint and shows an average cost of $75-$200 per hour for similar consulting work.[23]

While the agreement between Sayre Enterprises and Educational Ventures for independent contractor services preceded Dunbar's Statement of Candidacy by only a few weeks,[24] the documents provided with the responses support the conclusion that the compensation that Sayre Enterprises paid to Dunbar was for *bona fide* consulting services that were independent of her candidacy, and there is no information that the payments exceeded the amount of compensation that would be paid to any other similarly qualified person for the same work over the same period of time. Further, we are not aware of information suggesting that Dunbar did not perform the services outlined in the contract. Therefore, Dunbar's compensation appears to satisfy the criteria set forth in 11 C.F.R. § 113.1(g)(6)(iii) and is not a contribution. Accordingly, the Commission finds no reason to believe that Scott Sayre or Sayre Enterprises made, and Dunbar or the Dunbar Committee accepted, prohibited corporate contributions or contributions from a federal contractor, in violation of 52 U.S.C. §§ 30118(a) or 30119.

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21 MUR 7373 Dunbar Resp., Ex. 1; MUR 7388 Dunbar Resp., Ex. 1.

22 MUR 7373 Dunbar Resp., Ex. 1-2, 4; MUR 7388 Dunbar Resp., Ex. 1-2, 4.

23 MUR 7373 Dunbar Resp. at 5 and Ex. 6 and MUR 7388 Dunbar Resp. at 6 and Ex. 6 (including chart from an article, *So You Want to be an E-learning Consultant*, available at https://elearnmag.acm.org/featured.cfm?aid=1331975).

24 September 15 and November 9, 2017, respectively.

2. Alleged Late Statement of Candidacy

Under the Act, an individual is deemed to be a "candidate" if: (a) such individual receives contributions or makes expenditures in excess of $5,000, or (b) such individual gives his or her consent to another person to receive contributions or make expenditures on behalf of such an individual and if such person has received such contributions or has made such expenditures in excess of $5,000.[25] Once an individual meets the $5,000 threshold, the candidate has fifteen days to designate a principal campaign committee by filing a Statement of Candidacy with the Commission.[26] The principal campaign committee must then file a Statement of Organization within ten days of its designation,[27] and must file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a) and (b).[28]

The Complaint in MUR 7373 alleges that Dunbar made the decision to become a candidate as early as May 2017, well before she announced her candidacy in November and, as a result, filed a late statement of candidacy with the Commission.[29] The Complaint notes that Dunbar declared her candidacy "mere hours" after Rep. Goodlatte announced his retirement on November 9, 2017.[30] The Complaint also includes a copy of an email dated May 10, 2017,

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25 52 U.S.C. § 30101(2).

26 *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

27 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

28 52 U.S.C. § 30104(a) and (b)(5). An individual who is testing the waters need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for federal office but must still disclose all funds raised and spent for testing-the-waters activities if the individual becomes a candidate. 11 C.F.R. §§ 100.72(a), 100.131(a). The Commission has established testing-the-waters exemptions that permit an individual to test the feasibility of a campaign for federal office without becoming a candidate under the Act. *Id.*; *see also* 11 C.F.R. §§ 100.72(b), 100.131(b) (setting forth a non-exhaustive list of activities that indicate that an individual is no longer testing the waters and has decided to become a candidate).

29 MUR 7373 Compl. at 1, 3.

30 *See id.;* Elena Schneider, *Goodlatte to Retire After 2018*, POLITICO (Nov. 11, 2017), https://www.politico.com/story/2017/11/09/goodlatte-to-retire-after-2018-244740.

which Sayre forwarded to Matt Tederick, who served as Dunbar's political director, attaching a campaign proposal from Mike Troxel of "Crux Consulting."[31] Sayre's email asks "[c]an you and the team consider this proposal for the campaign?"[32] The proposal titled "Crux Consulting Digital Management Proposal" listed its purpose as "Digital Targeting, Management, Integration, and Implementation for Voter Outreach," outlined action items related to voter outreach, and proposed a timeline that would begin in "May/June" 2017.[33] Another email dated May 30, 2017, was a message from the same consulting firm to Tederick, with Sayre on the cc line, recommending local candidates that Dunbar could endorse as part of a campaign strategy to obtain the support of convention delegates.[34] Dunbar did not address this allegation.

The Commission has found that individuals had not triggered candidacy where their decision to become a candidate was dependent on whether an incumbent would run again.[35] Nor is the Crux proposal conclusive of Dunbar's decision to become a candidate. The document was labeled a "proposal" and does not indicate that Dunbar had decided to run. Moreover, the Commission has considered the use of political consultants as a permissible testing the waters

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31 MUR 7373 Compl. at 3-4, Ex. 1. Crux Consulting, LLC ("Crux") is a limited liability company registered in Virginia and Stephen Michael Troxel is the company's registered agent. *See Crux Consulting, LLC Business Entity Details*, Commonwealth of Virginia State Corporation Commission, https://sccefile.scc.virginia.gov/Business/S448392. The company does not appear to have an active website, but according to publicly available information, the company specializes in campaign consulting. *See, e.g., Disbursements Data Search*, FEC Website, (showing disbursements to Crux from various political committees for campaign consulting since 2014).

32 MUR 7373 Compl. Ex. 1.

33 *Id*.

34 *Id*. Ex. 2.

35 *See, e.g.,* MUR 5930 (Kirk Schuring) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter, Donald F. McGahn, and Ellen L. Weintraub at 2 (where the individual conditioned his candidacy upon the incumbent's decision whether to run, "the individual cannot be said to have decided to run until the condition precedent occurs.").

activity.[36] The information on Dunbar's social media accounts does not show that she engaged in any fundraising or other campaign activities or carried out any of the activities listed in the Crux proposal, and we have not located public statements indicating that she had decided to become a candidate, or that she raised or spent funds in excess of the Act's thresholds for triggering candidacy at an earlier point.[37]

Even though Dunbar did not respond to the allegation, the information available does not give rise to a reasonable inference that Dunbar became a candidate at an earlier point. Therefore, the Commission dismisses as a matter of prosecutorial discretion the allegation that Dunbar violated 52 U.S.C. § 30102(e)(1).[38]

### B. Allegations Involving the 6th District Republican Federal Committee

The District Party finances its non-federal election activity through a non-federal account, the 6th Congressional District Republican Committee (the "non-federal account") and reports

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[36] *See, e.g.,* Factual and Legal Analysis at 10, MUR 6776 (Niger Innis) (stating that a campaign proposal alone would not be sufficient to conclude that Innis had decided to become a federal candidate at an earlier point).

[37] *See, e.g.,* @CynthiaDunbar, FACEBOOK, https://www facebook.com/CynthiaNDunbar/; @CynthiaNdunbar, TWITTER, https://twitter.com/CynthiaNDunbar; profdunbar, INSTAGRAM, https://www.instagram.com/profdunbar/. *Cf.* MUR 6533 (Perry Haney) (finding candidacy was triggered on a date earlier than reported on the Statement of Candidacy based on public statements he made, albeit not early enough to have required the committee to file its first disclosure report at an earlier date); MUR 6449 (Jon Bruning) (finding individual became a candidate earlier based on public statements referring to himself as a candidate and because of a solicitation); MUR 5693 (Paul Aronsohn) (finding candidate crossed the line into candidacy status based on the contents of a solicitation letter, albeit the letter was never sent to the general public).

[38] *See Heckler,* 470 U.S. 821. The Dunbar Committee's reports filed with the Commission for the 2018 election cycle disclose payments to a number of consultants and vendors, but no payments to Crux. To the extent the Crux proposal identified in the email applied to Dunbar, it may reflect work performed on her behalf and not paid for by the Dunbar Committee and thus possibly an undisclosed in-kind contribution. *See* 11 C.F.R § 100.52(d)(1) (the provision of any goods or services without charge is a contribution). However, because the circumstances of the Crux proposal are not clear and we are not aware of any other receipts or disbursements that the Dunbar Committee failed to disclose, the Commission makes no finding as to any possible unreported in-kind contribution here.

those activities to the Virginia Board of Elections.[39] The 6th District Committee is its federal account.

On January 6, 2018, then-District Party chairman Scott Sayre issued a call for a convention to select the Republican nominee for Virginia's 6th Congressional District in the U.S. House of Representatives, the first such convention to select a congressional nominee in the Congressional District in more than 25 years.[40] The 6th District Committee planned, organized, and held the nominating convention, and it held four candidate forums in January and February 2018 for individuals who intended to seek the Congressional nomination.[41] Planning for the convention took place at meetings held at the Stonebridge Center, an event facility owned by Stonebridge Properties, LLC ("Stonebridge").[42] On May 19, 2018, convention delegates selected Ben Cline as the Republican nominee for the 6th Congressional District from the eight candidates who sought the nomination.[43]

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[39] MUR 7386 6th Dist. Comm. Resp. at 2; Virginia Board of Elections 6th District Committee Index, http://cfreports.sbe.virginia.gov/Committee/Index/fb200e82-fd82-e111-9bed-984be103f032.

[40] MUR 7386 6th Dist. Comm. Resp., Scott Sayre Decl. ¶¶ 4-7; *Official Call, Sixth Congressional District Committee of the Republican Party of Virginia Convention*, http://www.sixthdistrictgop.org/wp-content/uploads/2018/01/2018-6th-District-Convention-Final-1_7_18.pdf ("Official Convention Call") (announcing convention to select a party Chairman, a candidate for Congress, and three other party positions) (cited in MUR 7386 Compl. at 2 n.4).

[41] MUR 7386 6th Dist. Comm. Resp., Scott Sayre Decl. ¶ 8, Declaration of J. Hudson McWilliams ¶ 10 ("McWilliams Decl.") (stating the forums were held at governmental and educational venues).

[42] *See* MUR 7386 6th Dist. Comm. Resp., Scott Sayre Decl. ¶¶ 10-11; MUR 7388 Compl., Ex. 2 (Minutes of the January 6, 2018 Sixth Congressional District Republican Committee Meeting); MUR 7388 Stonebridge Resp. (Oct. 17, 2018) at 3, Declaration of Mary Sayre ¶ 6-8 ("Mary Sayre Decl.").

[43] Amy Friedenberger, *Cline Named Republican Nominee for 6th District Congressional Seat*, THE ROANOKE TIMES (May 19, 2018), https://www.roanoke.com/news/politics/cline-named-republican-nominee-for-th-district-congressional-seat/article_779a18a8-e18f-57a5-8b1e-a6c9bb0d24a6.html. The delegates also selected a district party chair and three regional district party vice presidents from a field of seven individuals. Official Convention Call, *supra* note 38; MUR 7386 6th Dist. Comm. Suppl. Resp. (Mar. 29, 2019) at 3.

1. Alleged Failure by the 6th District Committee to Disclose Federal Election-Related and Allocable Activities and Alleged Use of Federally Non-Compliant Funds to Pay for Them

Under the Act, a political committee must file reports disclosing the total amount of receipts and disbursements, and the total receipts and disbursements in certain enumerated categories for each reporting period and calendar year.[44]

As a federal account of the District Party, only funds subject to the Act's prohibitions and limitations may be deposited into the 6th District Committee account, and all disbursements, contributions, expenditures and transfers in connection with any Federal election must be made from that federal account.[45] District party committees must allocate the expenses for administrative costs, including rent, utilities, postage, office supplies and equipment between their federal and non-federal accounts.[46] Administrative expenses are allocable based on a formula determined by the number and type of federal candidates on the ballot during an election cycle.[47] In the 2018 election cycle, state, local and district committees in Virginia were required to allocate at least 21% of administrative expenses to the federal account.[48] As a federal account, the 6th District Committee is required to pay the entire amount of an allocable expense, and the non-federal account must transfer funds into the 6th District Committee's account solely to cover

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44 52 U.S.C. § 30104(b).

45 11 C.F.R § 102.5(a)(ii); *see also* 52 U.S.C. §§ 30116(a)(1)(D), 30118(a).

46 *See* 11 C.F.R. § 106.7(b)(2) and (c)(2) (requiring allocation for rent payments for office meeting space).

47 *See* 11 C.F.R. § 106.7(c)(2).

48 11 C.F.R. § 106.7(d)(2)(iii) (requiring district party committees to allocate at least 21% of their administrative expenses to their federal account in even numbered years, and in the preceding year, in which a U.S. Senate candidate but not a Presidential candidate appears on the ballot). In 2018, Virginia held a U.S. Senate election.

the non-federal share of an allocable expense.[49] The 6th District Committee must report payments for allocable expenses and each transfer from a non-federal account.[50]

The 6th District Committee did not report any receipts or disbursements in the 2018 election cycle through June 30, 2018, despite planning and conducting activity in connection with the May 19, 2018, federal nominating convention to select the Republican nominee for Virginia's 6th Congressional District, and it failed to report allocable expenses.[51] Instead, the Committee conducted its activities relating and leading up to the nominating convention using the non-federal account, which is subject to Virginia state law.[52] The MUR 7386 Complaint alleges that the Committee thereby used federally non-compliant funds to finance those activities and for allocable activity, such as administrative expenses.

The 6th District Committee concedes that the non-federal account financed the nominating convention and related expenses but maintains that no impermissible funds were used as this account included mostly permissible funds.[53] Moreover, the Committee states that because it accurately reported all of its activity in its state reports in accordance with Virginia law, any reporting violation is *de minimis* because Virginia disclosure requirements are "nearly

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[49] 11 C.F.R. § 106.7(f)(1). Transfers from a non-federal account to cover its share of allocable expenses must also be made within a specific time frame. *See* 11 C.F.R. § 106.7(f)(2).

[50] *See generally* 11 C.F.R. § 104.17.

[51] *See* MUR 7386 Compl. at ¶ 13-14; 15-20*; see, e.g.,* 6th District Committee 2017 April Quarterly Report (Apr. 6, 2017), 2017 Year End Report (Jan. 13, 2018) and 2018 July Quarterly Report (July 13, 2018).

[52] *See, e.g.*, Non-Federal Account reports, 6th Congressional District Republican Committee, covering April 1, 2017 through June 30, 2017 (July 17, 2017), January 1, 2018 through March 31, 2018 (amended) (Apr. 25, 2018) and April 1, 2018 through June 30, 2018 (July 11, 2018), https://cfreports.elections.virginia.gov/Committee/Index/fb200e82-fd82-e111-9bed-984be103f032.

[53] MUR 7386 6th Dist. Comm. Resp. at 5-6 ("the vast majority of funds that were deposited in the non-federal account could have been designated . . . and used for the Federal account's purpose.").

identical" to the Act's reporting requirements.[54] The 6th District Committee's supplemental response asserts that it conducted a review of the non-federal account and concluded that it had sufficient federally compliant funds to cover the convention-related expenses paid from the account.[55] The Committee specifically identified among those federally permissible funds $40,000 in deposits comprised of the $5,000 filing fee paid by each of the eight individuals who sought the nomination for the 6th Congressional District seat at the convention.[56] It calculated the relevant convention-related expenses to be $42,542.18 and considers $22,674.98 (53.3%) of that amount as the allocable share for the 6th District Committee.[57]

We agree that there appears to have been sufficient federally compliant funds in the non-federal account to cover the federal expenses, although we differ with the 6th District Committee's calculations. A review of the non-federal account reports shows $43,680.56 in federal expenses, an amount that includes all expenses of the nominating convention, which constitutes an "election" under the Act,[58] and the candidate forum expenses, which involved only

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54 *Id.* at 3-4.

55 MUR 7386 6th Dist. Comm. Suppl. Resp. at 2-3. The 6th District Committee initially proposed to take corrective action that would include identifying, redesignating, and transferring federally-compliant funds from the non-federal account to the 6th District Committee account, re-paying vendors, and amending FEC reports. *See* MUR 7386 6th Dist. Comm. Resp. at 6-7. However, the committee later advised it would be unable to complete its corrective plan because it would not be able to transfer sufficient "re-designated" funds from the non-federal account or raise enough contributions to re-pay vendors for the convention-related expenses after paying recently-incurred legal expenses related to these matters and other costs. MUR 7386 6th Dist. Comm. Suppl. Resp. at 1-2, Declaration of Donna Moser ("Moser Decl.") ¶¶ 7-8, 14-16.

56 *Id.*, Moser Decl. ¶¶ 7, 11. The 6th District Committee did not specifically identify the other funds deposited into the non-federal account during the relevant period that it determined to be permissible. *See id.* at 3 n.4.

57 *Id.* at 3. The committee used a "funds received" allocation ratio to calculate this figure, a method for allocating the costs of fundraisers at which federal and non-federal funds are collected. *Id.*; *see* 11 C.F.R. § 106.7(d). The Committee applied this allocation method to the convention by using the ratio of candidates who sought the nomination for the Congressional seat (eight) to the total number of congressional candidates plus seven individuals who sought election to party positions (15) for a federal ratio of 8/15.

58 A convention or caucus of a political party is an election if the caucus or convention has the authority to select a nominee for federal office on behalf of the party. 52 U.S.C. § 30101(1)(B); 11 C.F.R. § 100.2(e).

the individuals seeking the Congressional nomination. The figure also includes allocable administrative expenses such as for office space, which the Committee's calculation does not appear to include. An analysis of receipts reported by the non-federal account during the cycle identified $83,263.02 in facially permissible contributions, including the $40,000 in filing fees paid by the eight candidates seeking the nomination as identified by the Committee. Therefore, the Commission dismisses as a matter of prosecutorial discretion the allegation that the 6th District Committee violated the Act or Commission regulations by using federally non-compliant funds to pay for federal activity, including the federal share of allocable activity.[59]

However, the 6th District Committee appears to have violated the Act and Commission regulations by failing to disclose activity related to a federal election and its allocable share of administrative expenses throughout the 2018 election cycle, and by failing to allocate and pay for administrative expenses through the federal account. Nevertheless, given the unique circumstances, the Commission exercises its prosecutorial discretion and dismisses the 6th District Committee's reporting and allocation violations, but cautions the 6th District Committee.[60]

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[59] *See Heckler,* 470 U.S. 821. The Complaint also alleges that the 6th District Committee solicited federally impermissible contributions through the District Party website because information about the nominating convention appeared on it and the site's donation link permitted corporate contributions and individual donations in any amount. MUR 7386 Compl. ¶¶ 21-26. The website donation portal was set up in early 2017, well before the Committee issued a call to hold a nominating convention for the congressional seat and so the donation pages did not contain language about federal law source restrictions and contribution limits. *See* MUR 7386 6th Dist. Comm. Resp., Declaration of Albert J. Tucker, III ¶ 12 ("Tucker Decl."). The Committee responds that all funds received during the cycle, including through the portal were deposited into the non-federal account. McWilliams Decl. ¶ 6, Tucker Decl. ¶ 12. Therefore, as the gravamen of this allegation appears to be that the Committee used federally non-compliant funds to pay for federal election-related activity, the Commission's dismissal encompasses this allegation.

[60] *See Heckler,* 470 U.S. 821. The 6th District Committee has had little involvement in federal elections in more than a decade. In the five election cycles preceding 2018, the 6th District Committee never reported more than $25,000 in receipts or more than $34,000 in disbursements. In addition, the nominating convention was the first such convention the Committee staged in 25 years.

Finally, the Complaint in MUR 7386 includes former District Party chairman Scott Sayre and former treasurers J. Hudson McWilliams and Albert J. Tucker, III, in its allegations against the 6th District Committee. The Commission finds no reason to believe that Sayre, McWilliams and Tucker, III, violated the Act as there is no information in the record supporting a conclusion that they have personal liability for the 6th District Committee's reporting and allocation violations.[61]

2. Alleged In-Kind Contributions in the Form of Office and Meeting Space

The Complaint in MUR 7388 alleges that Sayre Enterprises made in-kind contributions to the 6th District Committee, Dunbar, and the Dunbar Committee in the form of office and meeting space.[62] According to the Complaint, the 6th District Committee maintained its headquarters in the same building as Sayre Enterprises and never compensated Sayre Enterprises for use of the space.[63] The Complaint further alleges that Sayre Enterprises provided space to Dunbar and her campaign "for planning purposes."[64]

First, any in-kind contributions received by the committees in connection with the use of the space at the Stonebridge Center would be a contribution by Stonebridge, which owns the

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61 The Act places obligations for reporting on committee treasurers, *see, e.g.*, 52 U.S.C § 30104(a)(1); Scott Sayre was not the 6th District Committee's treasurer at any time. It does not appear from available information that either of the former treasurers' actions with respect to the allocation and reporting violations were knowing and willful or reckless. *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3-4 (Jan. 3, 2005).

62 MUR 7388 Compl. at 3-6. The Commission's regulations provide that anything of value includes all in-kind contributions, including the provision of goods or services without charge or at a charge less than the usual and normal charge for such goods or services, including facilities and equipment. 11 C.F.R. § 100.52(d)(1). *Compare* MUR 6463 (Antaramian) (providing committee with office space and related office services constituted undisclosed contribution to committee) *with* MURs 6783 and 6791 (Manju for Congress) (committee paid market rent for office space and reported it on its disclosure reports).

63 *Id.* at 4.

64 *Id.* at 5.

center, and not a contribution by Sayre Enterprises, which merely leases space there.[65] Next, Respondents explain that the 6th District Committee held meetings at the Stonebridge Center,[66] and that payments for use of the space for those meetings were disclosed on its state reports.[67] Indeed, the District Party's state reports reflect that it made payments to Stonebridge and also disclosed in-kind contributions from them,[68] but the 6th District Committee's reports filed with the Commission during the 2018 election cycle do not list any payments to, or any in-kind contributions from, Stonebridge. Stonebridge states that it provided meeting space to the 6th District Committee at "normal and customary rates" and provides copies of the relevant invoices.[69]

The amounts for office space and related expenses in the Stonebridge invoices and in the non-federal account state reports for the 2018 election cycle show the non-federal account paid $300 to Stonebridge and accepted $1,650 in in-kind contributions for meeting space and related

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[65] *See* MUR 7388 Sayre Resp. at 2, Mary Sayre Decl. ¶ 7. Mary Sayre states that Stonebridge "does not have publicly traded shares and files as a partnership under Internal Revenue Service rules." MUR 7388 6th Dist. Comm. Resp., Mary Sayre Decl. ¶ 6; Stonebridge Resp. at 2, Mary Sayre Decl. ¶¶ 3-5 (also noting that Stonebridge Properties, LLC, is not a federal contractor). As a limited liability company that elects to be treated as a partnership by the Internal Revenue Service, Stonebridge's provision of meeting space without payment would constitute an in-kind contribution subject to the Act's limitations and prohibitions. *See* 11 C.F.R. § 110.1(g)(2).

[66] The Stonebridge Center website describes its space as suitable for weddings, conferences, seminars, and corporate events of different sizes, but does not list any pricing or indicate whether it offers discounts or free meeting spaces. *See* https://stonebridgecenterva.com/meetingsevents (currently unavailable).

[67] MUR 7388 6th Dist. Comm. Resp. at 3-4. The 6th District Committee denies that it used the space as its headquarters. *Id.* at 4-5. Because an in-kind contribution of meeting space would have come from Stonebridge instead of Sayre Enterprises, this Office notified Stonebridge Properties, LLC and Mary Sayre of the Complaint in MUR 7388. *See* Ltrs. from Jeff Jordan, CELA, to Stonebridge Properties, LLC, and Mary Sayre as managing member (Sept. 28, 2018).

[68] *See Campaign Finance Reports*, 6th Congressional District Republican Committee, Virginia Dept. of Elections, http://cfreports.sbe.virginia.gov/Committee/Index/fb200e82-fd82-e111-9bed-984be103f032.

[69] Stonebridge Resp. at 4 and Attachs. (including invoices Stonebridge sent to the 6th District Committee from June 2016 through May 2018 for the use of meeting space and set-up costs for the Committee's monthly meetings). The invoices for the use of meeting space state "Contribution in kind," while the invoices for the meeting set-up, cleanup, and refreshments costs do not contain that statement. *Id.* at Attachs.

costs. However, the federal share of the in-kind contribution from Stonebridge would be significantly less than that,[70] and well below the $10,000 calendar year federal contribution limit.[71] The available information does not indicate that Dunbar or the Dunbar Committee similarly regularly used meeting space at Stonebridge. According to Dunbar, she operated her campaign out of her home and "met for campaign purposes in restaurants and private homes."[72]

Therefore, the Commission finds no reason to believe that Mary Sayre and Stonebridge made, and that the 6th District Committee received, excessive in-kind contributions in violation of 52 U.S.C. § 30116(a) and (f). The Commission further finds no reason to believe that Dunbar or the Dunbar Committee violated 52 U.S.C. § 30116(f). However, as discussed earlier, payments for the federal share of these administrative expenses should have been disclosed on the 6th District Committee's reports filed with the Commission, but the Commission exercises its prosecutorial discretion and dismisses these allegations.[73]

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[70] As noted *supra*, the 6th District Committee was responsible for 21% of administrative expenses.

[71] *See* 52 U.S.C. §§ 30116(a)(1)(D) (contribution limit), 30116(f) (prohibition on knowing receipt of contribution in excess of limits).

[72] MUR 7388 Dunbar Resp. at 1, 7.

[73] *See Heckler,* 470 U.S. 821.