



FEDERAL ELECTION COMMISSION
Washington, DC

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Nicole Rodden for Congress, Inc.)	MUR 7652
and Paul Kilgore in his official capacity as Treasurer)	
Nicole Rodden)	
Robert Rodden)	

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR III**

This Matter involved allegations that Robert Rodden, the husband of 2020 Georgia congressional candidate Nicole Rodden, made an impermissible excessive contribution to his wife’s campaign committee (the “Committee”) in the form of a \$100,000 loan, and that the Committee accepted the loan and failed to properly report it in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

By way of background, the Committee initially listed the loan as made by Mr. Rodden on its original July 2019 quarterly report to the Commission.¹ After the Committee filed that report, the Commission’s Reports Analysis Division (“RAD”) sent the Committee a Request for Additional Information (“RFAI”) questioning the loan as an apparent excessive contribution from Mr. Rodden.² In its timely response to the RFAI, which was signed by and submitted through counsel, the Committee explained that the loan “was actually made almost entirely from personal funds of the candidate Nicole Rodden” and provided a detailed accounting of the source of the loan funds, down to the cent.³ Shortly thereafter, the Committee filed an amended July 2019 quarterly report disclosing that Ms. Rodden loaned her campaign \$98,511.71 from her personal funds, and her husband directly contributed the remaining \$1,488.29.⁴

¹ Nicole Rodden for Congress, Inc., 2019 July Quarterly Report at 31, 37 (July 15, 2019).

² Letter from Jessica Grainger, RAD, to Paul Kilgore, Treasurer, Nicole Rodden for Congress, Inc. (Aug. 27, 2019).

³ Email from Douglas Chalmers, Jr., Chalmers & Adams, LLC, to Jessica Grainger, RAD (Sept. 25, 2019) (“RFAI Resp.”).

⁴ Nicole Rodden for Congress, Inc., Amend. 2019 July Quarterly Report at 30, 32, 38 (Oct. 1, 2019).

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Two weeks later, the Commission received the Complaint in this matter, which relied on the original July 2019 report in alleging that Mr. Rodden was the source of the loan.⁵ In their responses to the Complaint, Ms. Rodden, Mr. Rodden, and the Committee attached and incorporated the Committee's RFAI response.⁶

Our Office of General Counsel ("OGC") recommended that the Commission find reason to believe that Mr. Rodden made, and the Committee accepted and failed to report, excessive contributions in violation of 52 U.S.C. § 30116 and § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d). These recommendations were primarily based on OGC's comparison of the Committee's RFAI and Complaint responses with Ms. Rodden's candidate financial disclosure report, which she filed with the House Ethics Committee on the same day the Committee responded to the RFAI from the Commission.

We declined to approve OGC's recommendations because we believe the Committee's RFAI and Complaint responses—which were drafted, signed, and submitted by competent counsel—sufficiently address the Complaint's allegations, and that the information contained in Ms. Rodden's candidate financial disclosure report does not itself raise a reasonable inference that a violation of the Act occurred.

I. APPLICABLE LAW

The Act prohibits persons from making contributions to any candidate or authorized committee with respect to any election which, in the aggregate, exceed the Act's contribution limit, which was set at \$2,800 for the 2020 election cycle.⁷ Moreover, no candidate or political committee shall "knowingly accept" a contribution that exceeds the applicable contribution limit.⁸ 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."⁹

Federal candidates have the First Amendment right, however, to spend unlimited amounts of their personal funds on their own campaigns.¹⁰ "Personal funds" are defined as

⁵ Compl. at 2.

⁶ Robert Rodden Resp. at 1 (Nov. 5, 2019); Nicole Rodden and Committee Resp. at 1–2 (Nov. 24, 2019).

⁷ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2,504, 2,506 (Feb. 7, 2019).

⁸ 52 U.S.C. § 30116(f).

⁹ 52 U.S.C. § 30101(8)(A)(i).

¹⁰ 11 C.F.R. § 110.10; *see Buckley v. Valeo*, 424 U.S. 51, 52, 54 (1976) ("The ceiling on personal expenditures by candidates on their own behalf ... imposes a substantial restraint on the ability of persons to engage in protected First Amendment expression. ... [The governmental] interest in equalizing the relative financial resources of candidates competing for elective office ... is clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights."); *see also Davis v. Fed. Election Comm'n*, 554 U.S. 724 (2008) (holding that the "Millionaire's Amendment" to

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(a) amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest; and (b) income received during the current election cycle of the candidate, including a salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; and gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle.¹¹

Contributions made by a candidate's immediate family members or his or her spouse are treated the same way as any other third-party contribution and are subject to per-election amount limitations. When a candidate uses personal funds derived from assets that are jointly owned with his or her spouse, the amount is limited to "the candidate's share of the asset under the instrument of conveyance or ownership." If the instrument is silent, the Commission presumes that the candidate holds a one-half ownership interest.¹²

II. ANALYSIS

In our view, the Committee's RFAI response—which was drafted and signed by counsel and provided a high level of detail about the source of the loan funds—sufficiently countered the allegations in the Complaint. Moreover, we disagree with OGC's apparent view that amending a report in response to an RFAI evinces a lack of candor with respect to the Commission, and therefore that the Committee's original July 2019 quarterly report should be given greater weight than the amended July 2019 quarterly report.

We have a duty to credit respondents who adequately address the allegations made against them, especially when that response is prepared, signed, and submitted by experienced counsel, as was the case here. We have no cause for questioning the candor of Respondents' counsel, and the filed response is not so ambiguous or lacking in detail as to raise any serious credibility concerns or material gaps in the record. In such circumstances, we could find reason to believe only if significant additional, un rebutted evidence was available to contradict the response.

OGC attempted to provide such evidence, relying heavily upon candidate Rodden's 2019 House candidate financial disclosure in an effort to gain insight into her personal finances at the time the loan was made. After a cursory review of her reportable income (a minimal amount in 2018, and none in 2019) and reported personal assets (a USAA subscriber's account and an investment in Victory Foods Holdings stock),¹³ OGC's analysis

the Act contained in the Bipartisan Campaign Reform Act of 2002 unconstitutionally infringed on self-funded candidates' First Amendment rights).

¹¹ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

¹² 52 U.S.C. § 30101(26)(C); *see also* 11 C.F.R. § 100.33(c).

¹³ Candidate Financial Report: Nicole Rodden (filed Sept. 25, 2019), *available at* https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2019/10029442.pdf.

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essentially ignores the Committee’s response to the RFAI and Complaint and concludes that Rodden’s financial disclosure “raises questions” about the source of the loan.¹⁴

We do not believe these “questions” are sufficient to cast doubt on Respondents’ granular response. Notably, these financial disclosure forms do not account for certain types of income, including income received from the government—which, as a military veteran and former reservist,¹⁵ Rodden may have been entitled to.¹⁶ Nor do they account for bank or investment accounts that are valued at less than \$1,000 at the end of a reporting period, or that generate less than \$200 during a reporting period.¹⁷

As the Committee explained in its response to the RFAI, on or about June 18, 2019, candidate Rodden reportedly transferred the bulk of the \$100,000 loan—\$88,719.53—from a personal account held only in her name to another account held jointly with her husband.¹⁸ Given that this transfer occurred more than three months prior to the filing of the financial disclosure with the House of Representatives on September 25, 2019, Respondents’ claim is entirely consistent with the record. Given Rodden’s comparatively modest means, such a transfer likely involved closing out an account before the end of the reporting period. After all, the transfer of such an arbitrary sum likely reflects the entire value of an account, as opposed to the direction of a lump sum toward Rodden’s own campaign. Moreover, with average interest rates for savings and interest checking accounts resting between .06% and .10% throughout calendar years 2018 and 2019,¹⁹ it is reasonable to believe the account generated less than \$200 in unearned income between the beginning of 2018 and the time of

¹⁴ First Gen. Counsel’s Rept. at 8, MUR 7652 (Nicole Rodden for Congress, *et al.*).

¹⁵ The Rodden campaign, and media reports contemporaneous with her candidacy, identified Rodden as a Merchant Marine and Navy Reserve veteran. *See, e.g., Georgia 6th: Military vet promises to bring new perspective to GOP race*, ATLANTA JOURNAL-CONSTITUTION (May 28, 2019), available at <https://www.ajc.com/news/state--regional-govt--politics/georgia-6th-military-vet-promises-bring-new-perspective-gop-race/rNashOyo9dfmRHx6ALXhWM/>.

¹⁶ *Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports, Calendar Year 2019* at 30, U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ETHICS, available at <https://ethics.house.gov/sites/ethics.house.gov/files/documents/CY%202019%20Instruction%20Guide%20for%20Financial%20Disclosure%20Statements%20and%20PTRs%20%281%29.pdf> (“You do not have to report the following on Schedule C, regardless of the amount: ...Income from any other current U.S. government employment, including military pay such as from the National Guard or Reserve.”).

¹⁷ *Id.* at 14 (“You are required to disclose the following on Schedule A: ... Assets (real and personal property) held for investment or the production of income valued at more than \$1,000 at the close of the reporting period; and ... [u]nearned income that exceeds \$200 during the reporting period.”)

¹⁸ RFAI Resp. The Committee also explained that \$9,792.18 of the remaining balance of the loan was derived from the candidate’s half of the funds held in a joint account in the name of Ms. Rodden and her husband, and the last \$1,488.29 was attributable to a personal contribution from Mr. Rodden that fell within the legal limits.

¹⁹ *National Rates and Rate Caps – Previous Rates for 2018 and 2019*, FED. DEPOSIT INSURANCE CORP., available at <https://www.fdic.gov/resources/bankers/national-rates/previous-rates.html>.

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the transfer in mid-2019.²⁰ In short, the response is not inconsistent with OGC's proffered evidence.

We further note that while the Supreme Court has upheld the constitutionality of the Act's limits on family member contributions, the Court also explained that the potential for actual or apparent corruption resulting from family member contributions is diminished, compared to contributions from other third parties.²¹ The Commission's prior treatment of contributions from family members has also lacked consistency. Prior Commissioners have characterized this approach as "arbitrary and capricious" and inconsistent with Supreme Court precedent and have suggested that "the corruption potential of [family gifts] is so insignificant as to make penalties for them unnecessary."²²

We acknowledge that family member contributions to a federal candidate are subject to the Act's limits, but we also believe, as have other Commissioners, that the Commission should account for this diminished potential for corruption in its decision to proceed with enforcement or engage in an invasive investigation into the personal finances of candidates and their families.²³ Moreover, responses through counsel that provide specific, creditable rebuttals to allegations set forth in a complaint should be given at least as much weight as the complaint itself, and should be credited where the Commission has no contradictory information that undermines the respondent's asserted defense.

²⁰ An account with a .10% APY containing \$89,000 would earn \$178.09 in interest over a two-year period.

²¹ *Buckley v. Valeo*, 424 U.S. 1, 53 (1976) ("The prevention of actual and apparent corruption of the political process does not support the limitation on the candidate's expenditure of his own personal funds Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.").

²² See Statement of Reasons of Vice Chair Matthew S. Petersen and Comm'r Caroline C. Hunter at 4-6, MUR 5724 (Jim Feldkamp for Congress, *et al.*) (declining to find probable cause in matter involving candidate who received a monetary gift from his mother, and comparing to MUR 5321 (Mary Robert, *et al.*) (Commission declined to seek civil penalties in matter involving gifts of stock between parent and candidate/adult child) and MUR 5138 (Ferguson for Congress, *et al.*) (Commission approved \$210,000 penalty in matter where candidate received \$1 million family trust bequest)).

²³ See, e.g., Statement of Reasons of Commissioners Bradley A. Smith and Michael E. Toner at 3, MUR 5138 (Ferguson for Congress, *et al.*) (dissenting from Commission's decision to levy a \$210,000 civil penalty given "the Supreme Court's admonition in *Buckley* that contributions from family members do not have the same potential for actual or apparent corruption as other kinds of contributions"); Statement of Reasons of Comm'rs Bradley A. Smith and Michael E. Toner at 4, MUR 5321 (Mary Robert, *et al.*) (declining to support conciliation and compulsory process in a matter involving gifts of stock between parents and adult children); Statement of Reasons of Vice Chair Matthew S. Petersen and Comm'r Caroline C. Hunter at 4, MUR 6848 (Friends of George Demos, *et al.*) (declining to find probable cause in matter involving transfers of funds between spouses).

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III. CONCLUSION

For the reasons set forth herein, we declined to approve OGC's recommendation to find reason to believe that Robert Rodden made, and the Committee accepted and failed to report, excessive contributions in violation of 52 U.S.C. § 30116 and § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d).

November 18, 2021
Date



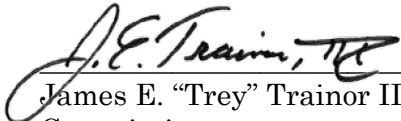
Allen Dickerson
Vice Chair

November 18, 2021
Date



Sean J. Cooksey
Commissioner

November 18, 2021
Date



James E. "Trey" Trainor III
Commissioner