

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **AR: 19-03**

4 DATE OF REFERRAL: September 6, 2019

5 DATE OF NOTIFICATION: September 9, 2019

6 LAST RESPONSE RECEIVED: October 28, 2019

7 DATE ACTIVATED: November 1, 2019

8 EARLIEST SOL: February 4, 2020

9 LATEST SOL: February 2, 2022

10 ELECTION CYCLE: 2016

11 **SOURCE:**

12 Internally Generated

13 **RESPONDENTS:**

14 Ambulatory Surgery Center Association PAC and
15 John Greenwich in his official capacity as
16 treasurer

17 **RELEVANT STATUTES
18 AND REGULATIONS:**

19 52 U.S.C. § 30102(h)(1)

20 52 U.S.C. § 30104(b)

21 52 U.S.C. § 30118(a)

22 11 C.F.R. § 103.3(a)

23 11 C.F.R. § 104.3

24 11 C.F.R. § 104.11

25 **INTERNAL REPORTS CHECKED:**

26 Audit Documents

27 Disclosure reports

28 **FEDERAL AGENCIES CHECKED:**

29 None

30 **I. INTRODUCTION**

31 The Audit Division referred Ambulatory Surgery Center Association PAC (“ASCAPAC”
32 or “the Committee”), which is the separate segregated fund of The Ambulatory Surgery Center
33 Association, to the Office of the General Counsel for violations of the Federal Election
34 Campaign Act of 1971, as amended (the “Act”) discovered during an audit of the Committee’s
35 activities during the 2016 election cycle.¹

¹ Audit Referral AR 19-03 (Sept. 6, 2019).

1 On August 22, 2019, the Commission approved the Proposed Final Audit Report finding
2 that the Committee improperly accepted \$80,028 in prohibited contributions, failed to properly
3 disclose \$187,623 in receipts, and made untimely deposits of \$84,333 in receipts.² In response
4 to the notification of the Audit Referral, the Committee asserted that the Commission should take
5 no further action because the violations were inadvertent and it had taken appropriate corrective
6 action.³ The Committee also asserted, as they did during the Commission's audit, that the
7 amounts in violation were lower than the amounts set forth by the audit findings.⁴

8 Based on the available information, and consistent with the audit findings, we
9 recommend that the Commission open a matter under review ("MUR") and find reason to
10 believe that the Ambulatory Surgery Center Association PAC and John Greenwich in his official
11 capacity as treasurer violated 52 U.S.C. § 30118(a) by accepting prohibited corporate
12 contributions; 52 U.S.C. § 30104(b) by failing to properly report receipts; and 52 U.S.C.
13 § 30102(h)(1) and 11 C.F.R. § 103.3(a) by failing to timely deposit contributions. Additionally,
14 we recommend that the Commission enter into pre-probable cause conciliation ("PPCC") with
15 the Committee

² Final Audit Report of the Commission on the Ambulatory Surgery Center Association PAC (ASCAPAC) at 3-5. The finding regarding the Committee's failure to make timely deposits met the criteria for referral to the Alternative Dispute Resolution Office, but in the interest of efficiency, and pursuant to Commission policy, that finding was included with the findings that met the criteria for referral to the Office of the General Counsel. *See* 2015-2016 Unauthorized Materiality Thresholds at 3.

³ ASCAPAC Resp. at 1 (Oct. 29, 2019).

⁴ *Id.* at 2.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 ASCAPAC registered with the Commission on May 25, 2006, as the separate segregated
3 fund of the Ambulatory Surgical Center Association.⁵ John Greenwich is the Committee's
4 treasurer. During the 2016 election cycle, ASCAPAC had receipts of \$374,329.73 and
5 disbursements of \$289,757.66.

6 **A. There is Reason to Believe that ASCAPAC Accepted Prohibited Contributions**

7 In general, a political committee may not accept a contribution from a corporation.⁶ A
8 limited liability company ("LLC") that has elected to be treated as a corporation by the Internal
9 Revenue Service, or has publicly traded shares, is considered to be a corporation and may not
10 make contributions.⁷ A contribution from an LLC that is treated as a partnership by the Internal
11 Revenue Service is considered a contribution from the partnership.⁸ As a partnership
12 contribution, the contribution is apportioned among the partners according to instructions
13 from the partnership.⁹ No portion of a contribution may be made by a partner that is a

⁵ The Committee initially registered as the connected organization of FASA, Inc., and was known as the FASA Inc. PAC. On January 9, 2008, the Committee amended its Statement of Organization with its new name and the new name of its connected organization.

⁶ 52 U.S.C. §§ 30118(a). Political committees that refrain from making contributions to candidates and restrict their activity to making independent expenditures ("IEOPCs," or "independent expenditure only political committees") may accept contributions from corporations and labor organizations. *See* Advisory Opinion 2010-11 (Commonsense Ten) at 3 (in which the Commission determined that "corporations, labor organizations and political committees . . . may make unlimited contributions to [political committees] that make only independent expenditures.").

⁷ *See* 11 C.F.R. § 110.1(g)(3).

⁸ 11 C.F.R. § 110.1(g)(2).

⁹ *See* 11 C.F.R. § 110.1(e)(1)-(2).

1 corporation.¹⁰ A partnership in which each partner is a corporation may not make contributions
2 at all.¹¹

3 The Commission's audit initially determined that the committee received 102
4 contributions totaling \$93,023 from apparent prohibited sources, including corporations and
5 various types of LLCs.¹² The Committee was given the opportunity to demonstrate that these
6 apparent prohibited sources, including the LLCs, were in fact eligible to make contributions.¹³
7 Following consideration of the materials submitted the Committee, the Audit Division staff
8 determined that some of the LLCs were eligible contributors, and the Commission approved a
9 finding that ASCAPAC received contributions totaling \$80,028 from prohibited sources.¹⁴

10 In response to both the Draft Final Audit Report and the notification of the referral, the
11 Committee argued that it accepted the contributions in good faith and any violation was
12 inadvertent.¹⁵ The Committee pointed out that it took corrective action by refunding the full
13 amount of the LLC contributions, totaling \$80,028, and that the Commission should therefore
14 take no further action in this matter.¹⁶ The Committee also restated its claim previously argued
15 during the audit phase that it believed that \$40,398 of the contributions at issue were legal

¹⁰ 11 C.F.R. § 110.1(e)(2)(ii).

¹¹ See Advisory Opinion 2001-07 at 8 (Nuclear Management Company PAC) ("NMC PAC") (concluding that LLC treated as partnership and wholly owned by corporations may not contribute to nonconnected political committee).

¹² Audit Referral AR 19-03 at 3.

¹³ *Id.* at 3-9.

¹⁴ *Id.* at 10.

¹⁵ ASCAPAC Resp. at 2.

¹⁶ *Id.*

1 because the LLC contributors did not file tax returns as corporations.¹⁷ But the submission did
2 not provide any new documentation to support its claim or address the corporate status of the
3 partners in these partnerships.¹⁸

4 The Commission's audit determined that ASCAPAC accepted \$80,028 in corporate
5 contributions and no new information has been provided to demonstrate that this finding was
6 incorrect. In fact, the respondent has refunded the subject contributions.¹⁹ Therefore, we
7 recommend that the Commission find reason to believe that ASCAPAC violated 52 U.S.C.
8 § 30118(a) by accepting prohibited contributions.

9 **B. There is Reason to Believe that ASCAPAC Failed to Properly Disclose Receipts**

10 The Act requires committee treasurers to file reports of receipts and disbursements in
11 accordance with the provisions of 52 U.S.C. § 30104(b). For each itemized contribution, the
12 committee must provide the following information:

- 13 • The contributor's full name and address (including zip code);
- 14 • The contributor's occupation and the name of his or her employer (for individual
15 contributors);
- 16 • The date of receipt (the date the committee received the contribution);
- 17 • The amount of the contribution; and
- 18 • The calendar year-to-date total of all contributions from the same individual.²⁰

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1.

²⁰ 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).

1 During audit fieldwork, Audit staff initially identified 124 contributions totaling
2 \$193,623 that were incorrectly disclosed or missing the required disclosure information.²¹ The
3 errors in reporting these contributions included:²²

- 4 • 58 contributions that incorrectly disclosed contributors' names;
- 5 • 42 contributions that incorrectly disclosed contribution dates;
- 6 • 53 contributions that incorrectly disclosed partnership attributions.²³

7 Based on the documentation submitted by ASCAPAC, the Audit staff agreed that two
8 contributions totaling \$5,000 were correctly disclosed.²⁴ Following consideration of all of the
9 materials submitted the Committee, the Commission approved a finding that ASCAPAC failed
10 to correctly disclose contributions totaling \$187,623 on its disclosure reports.²⁵

11 ASCAPAC states that it has updated its policies and procedures, created new compliance
12 and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions
13 and contracted with an outside vendor to ensure compliance with FEC regulations.²⁶ However,
14 while ASCAPAC did amend its disclosure reports to correct the reporting for \$67,508 in
15 improperly reported contributions, it did not comply with the Interim Audit Report
16 recommendation to amend its disclosure reports as to an additional \$120,115 in contributions.²⁷

²¹ Audit Referral AR 19-03 at 11.

²² *Id.* at 12.

²³ Some of the 124 misreported contributions contained multiple errors of different types.

²⁴ Audit Referral AR 19-03 at 12.

²⁵ *Id.* at 14.

²⁶ ASCAPAC Resp. at 3.

²⁷ Audit Referral AR 19-03 at 11.

1 In response to the notification of the audit referral, ASCAPAC argued only the disclosure
2 shortcomings were inadvertent errors and the staff made good faith efforts to collect and report
3 the requisite data.²⁸ ASCAPAC made similar arguments during the audit process. The number
4 and different types of errors and the lack of complete corrective action suggests that the
5 Commission should pursue this matter. Therefore, we recommend that the Commission find
6 reason to believe that ASCAPAC violated 52 U.S.C. § 30104(b) by failing to correctly disclose
7 contributions totaling \$187,623.

8 **C. There is Reason to Believe that ASCAPAC Failed to Timely Deposit Receipts**

9 A political committee must designate one or more State Banks, federally chartered
10 depository institutions, or federally insured depository institutions, as its campaign depository or
11 depositories. *See* 52 U.S.C. § 30102(h)(1). A contribution received by a political committee
12 must be deposited in an account at a committee's campaign depository within ten (10) days of
13 the committee treasurer's receipt of that contribution. 11 C.F.R. § 103.3(a).

14 The Audit staff determined that ASCAPAC did not deposit 106 contributions totaling
15 \$84,333 within 10 days of receipt.²⁹ This amount represented 23 percent of ASCAPAC's
16 receipts from individuals.³⁰ Specifically, the audit determined that the untimely deposits were
17 made between 14 and 74 days after the date of the actual contribution.³¹ In response to the
18 Interim and Draft Final Audit Reports, ASCAPAC indicated that it was working to improve its
19 compliance, but did not provide any information to challenge the audit determination regarding

²⁸ ASCAPAC Resp. at 3.

²⁹ Audit Referral AR 19-03 at 15.

³⁰ *Id.*

³¹ *Id.* at 16.

1 its untimely deposits.³² The Commission approved a Final Audit Report finding that
2 ASCAPAC untimely deposited contributions totaling \$84,333.³³

3 In response to notification of the referral, ASCAPAC again maintained that it was its
4 policy and practice to deposit contributions within ten days of receipt.³⁴ ASCAPAC also
5 maintained that some portion of the untimely deposits identified during the audit were timely
6 deposited within ten days from the date of the actual receipt (as opposed to the date the check
7 was written), but that the Committee failed to maintain records that could prove the actual date
8 of receipt.³⁵ In any event, the Committee maintained that any untimely deposits were
9 inadvertent technical errors and did not warrant further Commission action.³⁶

10 ASCAPAC has taken corrective action with its deposit procedures, but it nevertheless
11 failed to timely deposit 23 percent of its receipts from individual contributors during the audit
12 period. Further, ASCAPAC's contention that some of the deposits were incorrectly identified as
13 untimely due to misdated checks or delays in mailing is not credible. A large portion of the
14 deposits (65 contributions) were made well after the check dates (between 20 and 74 days) and in
15 any event ASCAPAC has submitted no documentation supporting this claim.

³² ASCAPAC stated that its policy was to deposit all checks within ten days of receipt, and that it has worked with its credit card vendor to ensure the timely transfer of contributions. ASCAPAC also stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of more recent contributions, and contracted with an outside vendor to ensure compliance with FEC regulations.

³³ Audit Referral AR 19-03 at 17.

³⁴ ASCAPAC Resp. at 3.

³⁵ *Id.*

³⁶ *Id.*

1 Accordingly, we recommend that the Commission find reason to believe that ASCAPAC
2 violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3(a) by failing to timely deposit \$84,333
3 in receipts.³⁷

4 **III. CONCILIATION**

5 Based on the record established by the audit, we recommend that the Commission enter
6 into pre-probable cause conciliation with the Ambulatory Surgery Center Association PAC and
7 John Greenwich in his official capacity as treasurer. Attached is a proposed conciliation
8 agreement that recites the pertinent facts, contains an admission of the violations, a prohibition
9 against future violations, requirements to amend reports and refund prohibited contributions,

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³⁷ See MUR 7456, American Federation of Teachers, et al; *see also* MUR 6121, Advanced Medical Technology Association.

³⁸ See MUR 6121, Advanced Medical Technology Association, et al., First General Counsel's Report at 14.

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6 **IV. RECOMMENDATIONS**

- 7 1. Open a Matter Under Review in AR 19-03;
- 8 2. Find reason to believe that Ambulatory Surgery Center Association PAC and
9 John Greenwich, in his official capacity as treasurer, violated 52 U.S.C.
10 § 30118(a) by accepting prohibited corporate contributions;
- 11 3. Find reason to believe that Ambulatory Surgery Center Association PAC and
12 John Greenwich in his official capacity as treasurer violated 52 U.S.C.
13 § 30104(b) by failing to properly report receipts;
- 14 4. Find reason to believe that Ambulatory Surgery Center Association PAC and
15 John Greenwich in his official capacity as treasurer violated 52 U.S.C.
16 § 30102(h)(1) and 11 C.F.R. § 103.3(a) by failing to timely deposit contributions;
- 17 5. Approve the attached Factual and Legal Analysis;
- 18 6. Enter into pre-probable cause conciliation with Ambulatory Surgery Center
19 Association PAC and John Greenwich in his official capacity as treasurer;

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1 7. Approve the attached proposed conciliation agreement; and

2 8. Approve the appropriate letter.

3 Lisa Stevenson
4 Acting General Counsel

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6 Charles Kitcher
7 Acting Associate General Counsel for Enforcement

8
9
10 Feb. 28, 2020

11 Date

Peter G. Blumberg

Peter G. Blumberg
Acting Deputy Associate General Counsel for
Enforcement

14
15 Mark Shonkwiler by *PGB*

16 _____
17 Mark Shonkwiler
18 Assistant General Counsel

19
20 *Anthony T. Buckley*
21 _____
22 Anthony T. Buckley
23 Attorney

24
25
26 Attachments

- 27 1. Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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7 **RESPONDENTS:** Ambulatory Surgery Center Association **MUR:** ____
8 PAC (ASCAPAC) and John Greenwich
9 in his official capacity as treasurer

I. INTRODUCTION

12 This matter was generated based on information ascertained by the Federal Election
13 Commission ("the Commission") in the normal course of carrying out its supervisory
14 responsibilities.¹ The Audit Division of the Federal Election Commission ("Commission")
15 referred Ambulatory Surgery Center Association PAC ("ASCAPAC" or "the Committee"),
16 which is the separate segregated fund of The Ambulatory Surgery Center Association, to the
17 Commission's Office of the General Counsel for apparent violations of the Federal Election
18 Campaign Act of 1971, as amended (the "Act") stemming from a Commission audit of the
19 Committee's 2015-2016 activities. On August 22, 2019, the Commission approved the Proposed
20 Final Audit Report finding that the Committee had improperly accepted \$80,028 in prohibited
21 contributions, failed to properly disclose \$187,623 in receipts, and made untimely deposits of
22 \$84,333 in receipts.

23 Based on available information, the Commission finds reason to believe that ASCAPAC
24 violated 52 U.S.C. §§ 30118(a), 30104(b), 30102(h)(1) and 11 C.F.R. § 103.3(a).

¹ See 52 U.S.C. § 30109(a)(2).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 ASCAPAC registered with the Commission on May 25, 2006, as the separate segregated
4 fund of The Ambulatory Surgical Center Association. John Greenwich is the Committee's
5 treasurer. During the 2016 election cycle, ASCAPAC had receipts of \$374,329.73 and
6 disbursements of \$289,757.66.

7 **B. Analysis**

8 1. Acceptance of Prohibited Contributions

9 In general, a political committee may not accept a contribution from a corporation.² A
10 limited liability company ("LLC") that has elected to be treated as a corporation by the Internal
11 Revenue Service, or has publicly traded shares, is considered to be a corporation and may not
12 make contributions.³ A contribution from an LLC that is treated as a partnership by the Internal
13 Revenue Service is considered a contribution from the partnership.⁴ As a partnership
14 contribution, the contribution is apportioned among the partners according to instructions from

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4 contributions totaling \$93,023 from apparent prohibited sources, including corporations and
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6 apparent prohibited sources, including the LLCs, were in fact eligible to make contributions.⁹
7 Following consideration of the materials submitted the Committee, the Audit Division staff
8 determined that some of the LLCs were eligible contributors, and the Commission approved a
9 finding that ASCAPAC received contributions totaling \$80,028 from prohibited sources.¹⁰

10 In response to both the Draft Final Audit Report and the notification of the referral, the
11 Committee argued that it accepted the contributions in good faith and any violation was
12 inadvertent.¹¹ The Committee pointed out that it took corrective action by refunding the full
13 amount of the LLC contributions, totaling \$80,028, and that the Commission should therefore
14 take no further action in this matter.¹² The Committee also restated its claim previously argued

⁵ See 11 C.F.R. § 110.1(e)(1)-(2).

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1 during the audit phase that it believed that \$40,398 of the contributions at issue were legal
2 because the LLC contributors did not file tax returns as corporations.¹³ But the submission did
3 not provide any new documentation to support its claim or address the corporate status of the
4 partners in these partnerships.¹⁴

5 The Commission's audit determined that ASCAPAC accepted \$80,028 in corporate
6 contributions and no new information has been provided to demonstrate that this finding was
7 incorrect. In fact, the respondent has refunded the subject contributions.¹⁵ Accordingly, the
8 Commission finds reason to believe that ASCAPAC and John Greenwich in his official capacity
9 as treasurer, violated 52 U.S.C. § 30118(a) by accepting prohibited contributions.

10 2. Failure to Properly Disclose Contributions

11 The Act requires committee treasurers to file reports of receipts and disbursements in
12 accordance with the provisions of 52 U.S.C. § 30104(b). For each itemized contribution, the
13 committee must provide the following information:

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¹³ *Id.*

¹⁴ *Id.*

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2 \$193,623 that were incorrectly disclosed or missing the required disclosure information.¹⁷ The
3 errors in reporting these contributions included:¹⁸

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12 and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions
13 and contracted with an outside vendor to ensure compliance with FEC regulations.²² However,
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15 improperly reported contributions, it did not comply with the Interim Audit Report
16 recommendation to amend its disclosure reports as to an additional \$120,115 in contributions.²³

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4 and different types of errors and the lack of complete corrective action suggests that the
5 Commission should pursue this matter. Accordingly, the Commission finds reason to believe
6 that ASCAPAC and John Greenwich in his official capacity as treasurer, violated 52 U.S.C.
7 § 30104(b) by failing to correctly disclose contributions totaling \$187,623.

8 3. Failure to Timely Deposit Receipts

9 A political committee must designate one or more State Banks, federally chartered
10 depository institutions, or federally insured depository institutions, as its campaign depository or
11 depositories. *See* 52 U.S.C. § 30102(h)(1). A contribution received by a political committee
12 must be deposited in an account at a committee's campaign depository within ten (10) days of
13 the committee treasurer's receipt of that contribution. 11 C.F.R. § 103.3(a).

14 The Audit staff determined that ASCAPAC did not deposit 106 contributions totaling
15 \$84,333 within 10 days of receipt.²⁵ This amount represented 23 percent of ASCAPAC's
16 receipts from individuals.²⁶ Specifically, the audit determined that the untimely deposits were
17 made between 14 and 74 days after the date of the actual contribution.²⁷ In response to the
18 Interim and Draft Final Audit Reports, ASCAPAC indicated that it was working to improve its

²⁴ ASCAPAC Resp. at 3.

²⁵ Audit Referral AR 19-03 at 15.

²⁶ *Id.*

²⁷ *Id.* at 16.

1 compliance, but did not provide any information to challenge the audit determination regarding
2 its untimely deposits.²⁸ The Commission approved a Final Audit Report finding that
3 ASCAPAC untimely deposited contributions totaling \$84,333.²⁹

4 In response to notification of the referral, ASCAPAC again maintained that it was its
5 policy and practice to deposit contributions within ten days of receipt.³⁰ ASCAPAC also
6 maintained that some portion of the untimely deposits identified during the audit were timely
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12 failed to timely deposit 23 percent of its receipts from individual contributors during the audit
13 period. Further, ASCAPAC's contention that some of the deposits were incorrectly identified as
14 untimely due to misdated checks or delays in mailing is not credible. A large portion of the
15 deposits (65 contributions) were made well after the check dates (between 20 and 74 days) and in
16 any event ASCAPAC has submitted no documentation supporting this claim.

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²⁹ Audit Referral AR 19-03 at 17.

³⁰ ASCAPAC Resp. at 3.

³¹ *Id.*

³² *Id.*

MUR (Ambulatory Surgery Center Association PAC (ASCAPAC))

Factual and Legal Analysis

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- 1 Accordingly, the Commission finds reason to believe that ASCAPAC and John
- 2 Greenwich in his official capacity as treasurer, violated 52 U.S.C. § 30102(h)(1) and 11 C.F.R.
- 3 § 103.3(a) by failing to timely deposit \$84,333 in receipts.