

*State of South Carolina*  
*State Ethics Commission*

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VICTOR K. LI, VICE CHAIR  
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ASHLEIGH R. WILSON

201 EXECUTIVE CENTER DRIVE, SUITE 150  
COLUMBIA, S.C. 29210

MEGHAN L. WALKER  
EXECUTIVE DIRECTOR

May 17, 2019

**RECEIVED**

MAY 20 2019

HOUSE ETHICS  
COMMITTEE

South Carolina House of Representatives  
Attn: Representative Murrell Smith  
Chairman, House Legislative Ethics Committee  
519B Blatt Building  
Columbia, SC 29201

RE: COMPLAINT C2019-011 In the Matter of David Mack, III

Dear Representative Smith:

Pursuant to S.C. Code Ann. § 8-13-540(B)(6), the State Ethics Commission hereby provides you with its recommendations in the above-referenced Complaints. Please note that the attached bank account documents relate to both Complaints.

Sincerely,

A handwritten signature in cursive script that reads "Meghan Walker".

Meghan L. Walker  
Executive Director

**State Ethics Commission—Recommendation to House Legislative Ethics Committee**  
**In the Matter of David Mack, III**

**COMPLAINANT INFORMATION**

<b>Name</b>	SC House Legislative Ethics Committee
<b>Address</b>	519 B Blatt Building Columbia, SC 29201
<b>Telephone Number</b>	803-734-3114
<b>Email</b>	None

**RESPONDENT INFORMATION**

<b>Name</b>	David Mack, III
<b>Address</b>	4340 Evanston Blvd. Charleston, SC 29418
<b>Telephone Number</b>	843-760-0198
<b>Email</b>	None
<b>Attorney Information</b>	Michael Burchstead Collins and Lacy, PC 803-255-0445 mburchstead@collinsandlacy.com
<b>Confidentiality Waived</b>	No

**COMPLAINT INFORMATION**

<b>Complaint No.</b>	C2019-011
<b>Complaint Received</b>	July 27, 2018
<b>Facts Sufficient Determination</b>	July 30, 2018
<b>Facts Sufficient Determination Made By</b>	State Ethics Commission

**COMMISSION RECOMMENDATION**

The State Ethics Commission recommends the House Legislative Ethics Committee find probable cause is present and charge Respondent with one count of violation of § 8-13-1302(A) for failure to maintain and preserve campaign account records.

J. David Weeks  
Vice-Chairman

Michael A. Pitts  
Chairman

Chandra E. Dillard  
Secretary

Beth E. Bernstein  
Heather Ammons Crawford  
Gregory "Greg" Delleney, Jr.  
John Richard C. King

Dennis Carroll Moss  
G. Murrell Smith, Jr.  
Leonidas E. "Leon" Stavrinakis

Jane O. Shuler  
Counsel

## House Legislative Ethics Committee



Lynne Short  
Executive Assistant

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2018 JUL 27 AM 9:38  
STATE ETHICS  
COMMISSION

P.O. BOX 11867  
519 BLATT BUILDING  
COLUMBIA, SC 29211  
TELEPHONE: 803-734-3114  
FAX: 803-734-8795

July 26, 2018

### CONFIDENTIAL

Meghan Walker, Executive Director  
South Carolina State Ethics Commission  
201 Executive Center Drive, Suite 150  
Columbia, South Carolina 29210

Dear Ms. Walker,

Pursuant to the S.C. Code Ann. Section 5-13-530(2)-(3) and upon majority vote, the House Ethics Committee (Committee) has identified a potential violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991 from the random audit of Rep. David Mack's campaign bank account records and campaign disclosure reports encompassing a one year period, which cannot be explained. Thus, the Committee is referring to the State Ethics Commission for investigation into the matters described in the attached Complaint form, Supplemental Sheet, and Exhibits A-B.

Sincerely,

Handwritten signature of Jane O. Shuler in cursive.

Jane O. Shuler  
Counsel, House Ethics Committee

Cc: Rep. David Mack  
4340 Evanston Blvd.  
North Charleston, S.C. 29418

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STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

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2018 JUL 27 AM 5:20

FOR COMMISSION USE ONLY:

CASE NUMBER

C2017-011

COMPLAINT FORM

COMPLAINANT: S.C. House Legislative Ethics Committee  
ADDRESS: 519 Blatt Bldg., Columbia, SC  
TELEPHONE NUMBER: 803-734-3114  
TITLE: House Ethics Committee  
RESPONDENT: David J. Mack, III  
ADDRESS: 4340 Evanston Blvd., North Charleston, SC 29418  
TELEPHONE NUMBER: (717) 843-760-0198  
TITLE: House Member

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered.) (If additional space is needed, attach supplemental sheets).

See attached Supplemental Sheet.

All investigations, inquiries, hearings, and accompanying documents must remain confidential until a finding of probable cause or dismissal unless the respondent waives the right to confidentiality. The willful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year. Section 8-13-320(10)(g).

STATE OF SOUTH CAROLINA  
COUNTY OF Richland

Personally appeared before me \_\_\_\_\_ who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires \_\_\_\_\_

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192  
FAXED COPIES WILL NOT BE ACCEPTED

SEC-7 (Revised 2/2018)

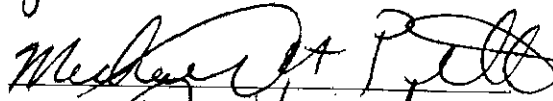
Supplemental Sheet to Complaint  
Complainant: S.C. House Legislative Ethics Committee (HEC)  
Respondent: Rep. David J. Mack, III (Rep. Mack)  
July 25, 2018

As background, the House of Representatives retained an outside accounting firm, J. W. Hunt and Company, LLP (J.W. Hunt) in 2016 to conduct random audits. On June 27, 2017, Rep. Mack's name, as well as the names of nine other Members and one candidate, was randomly selected for a one-year audit of his campaign bank account records compared to his Campaign Disclosure (CD) reports. J.W. Hunt issued Rep. Mack's Final Audit Report on February 27, 2018. (See Exhibit A). J.W. Hunt made five findings. All of the findings have been corrected except for one finding noted within Finding 2016-4.

Thus, the HEC has identified a potential violation resulting from the random audit of Rep. Mack's campaign bank account records and campaign disclosure reports encompassing a one year period, which cannot be explained. Specifically, a cash savings withdrawal on July 6, 2016 was made by David Mack, III, in the amount of \$1,506.01, which was not reported on his October 2016 CD report, and was reflected as a "check paid on his account" as noted on his July 14, 2016 campaign bank account statement. (See Exhibit B). Therefore, the HEC is referring the Committee's complaint to the State Ethics Commission regarding Rep. Mack's audit for the Commission's investigation as to whether a violation of Section 8-13-100 *et seq* of the Ethics, Government Accountability, and Campaign Reform Act of 1991 occurred.

AND IT IS SO ORDERED, this 25th day of July, 2018, by the following members of the House Ethics Committee:

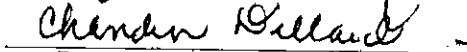
Rep. Michael A. Pitts, Chairman



Rep. J. David Weeks, Vice-Chairman



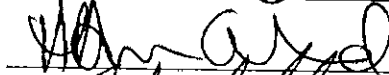
Rep. Chandra E. Dillard, Secretary



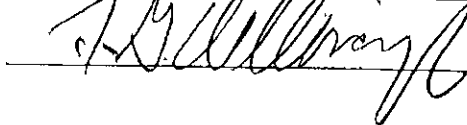
Rep. Beth E. Bernstein



Rep. Heather Ammons Crawford



Rep. F. Gregory "Greg" Delleney, Jr.



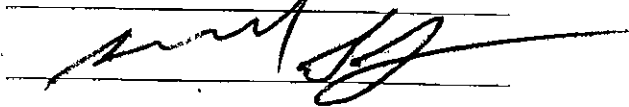
Rep. John Richard C. King



Rep. Dennis C. Moss



Rep. G. Murrell Smith, Jr.



Rep. Leonidas E. "Leon" Stavrinakis

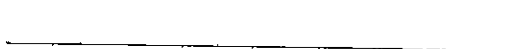


Exhibit A

**REPRESENTATIVE DAVID J. MACK, III  
EXAMINATION OF CAMPAIGN ACCOUNTS**

Independent Accountant's Report  
For the Period From  
January 1, 2016 – March 31, 2017



**REPRESENTATIVE DAVID J. MACK, III  
EXAMINATION OF CAMPAIGN ACCOUNTS**

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# J. W. Hunt and Company

Certified Public Accountants

## INDEPENDENT ACCOUNTANT'S REPORT

Representative David J. Mack, III and  
South Carolina House of Representatives Ethics Committee  
Columbia, South Carolina

We have examined Representative David J. Mack, III's (Rep. Mack) campaign disclosure reports for the period from January 1, 2016 to March 31, 2017 for compliance with the South Carolina House of Representatives Ethics Guidelines (Guidelines). Rep. Mack is responsible for compliance with the Guidelines. Our responsibility is to express an opinion on Rep. Mack's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether Rep. Mack complied, in all material respects, with the Guidelines. An examination involves performing procedures to obtain evidence about whether Rep. Mack complied with the Guidelines. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we have obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on Rep. Mack's compliance with the Guidelines.

Our examination disclosed material noncompliance with the Guidelines applicable to Rep. Mack for the period from January 1, 2016 to March 31, 2017 as further described in the accompanying statement of findings.

In our opinion, except for the material noncompliance described in the preceding paragraph, Rep. Mack complied, in all material respects, with the aforementioned Guidelines for the period from January 1, 2016 to March 31, 2017.

This report is intended solely for the information and use of Rep. Mack and the South Carolina House of Representatives Ethics Committee and is not intended to be and should not be used by anyone other than these specified parties.

*J. W. Hunt and Company*

February 22, 2018

## STATEMENT OF PROCEDURES

1. Create a spreadsheet listing every contribution and expenditure listed on the campaign disclosure reports. Columns in the spreadsheet should be titled *Amount, Type/Date, Campaign Bank Account Name, Amount, Type, and Match.*
2. Agree each contribution and expenditure to campaign bank account statements.
3. Verify that each contribution received did not exceed the contribution limit during the election cycle.
4. If applicable, review amortization schedules for commercial loans and determine propriety of principal and interest amounts.
5. Verify on the State Ethics Commission's web site that any contributions made by a Lobbyist Principal or a Political Action Committee match the contributions reported in the campaign disclosure reports.

## STATEMENT OF FINDINGS

### Finding 2016-1:

Condition and criteria:

According to the Guidelines, all of the Candidate's or House Member's campaign bank account activity must be reported in the campaign disclosure report.

The balance forward from the Member's campaign disclosure report for the quarter ended December 31, 2015 differed from his bank account balance at that date after considering items that cleared the campaign bank account in the following quarter. This caused each successive quarterly campaign disclosure report to differ from the bank statement by this amount.

Amount in question: \$53.32

Cause: Unknown

Effect: The ending balances reported in the Member's campaign disclosure reports do not reconcile to the campaign bank account statements.

Recommendation: The Member should review his campaign disclosure reports for periods prior to December 31, 2015 in order to determine the cause of the difference and make a correcting entry on his next quarterly campaign disclosure report in order to resolve the amount in question.

### Finding 2016-2:

Condition and criteria:

S.C. Code Ann. Section 8-13-1312 states, in part, that "All contributions received by the candidate or committee, directly or indirectly, must be deposited in the campaign account by the candidate or committee within ten days after receipt."

During our examination, we noted eight (8) contributions that were deposited more than ten (10) days after the Member reported the contribution in his campaign disclosure report.

Amount in question: \$2,325.00

Cause: Unknown

Effect: Certain contributions were not deposited timely into the Member's campaign bank account.

Recommendation: The Member should review his procedures for depositing campaign contributions and make changes necessary to ensure that all contributions received are deposited in accordance with the Guidelines.

**Finding 2016-3:**

Condition and criteria: The Guidelines require campaign disclosure reports to detail campaign contributions and expenditures to include the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

During our examination, we noted eighteen (18) transactions (contributions and expenditures) that cleared the campaign bank account, but were not reported in the appropriate campaign disclosure report. Additionally, one (1) transaction was included in the campaign disclosure report that did not clear the campaign bank account.

Amount in question: \$1,919.59

Cause: Unknown

Effect: The Member's campaign disclosure reports do not accurately reflect the activity in the Member's campaign bank account.

Recommendation: The Member should amend the applicable campaign disclosure reports in order to reflect the expenditures in the proper periods and for the correct amounts.

**Finding 2016-4:**

Condition and criteria:

S.C. Code Ann. Section 8-13-1348 states, in part, that "An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by (a) a written instrument; (b) debit card; or (c) online transfers."

During our examination, we noted six (6) expenditures from the Member's campaign bank account that were made by either a bank counter check that was subsequently cashed or by a bank withdrawal request form. Each of these transactions exceeded twenty-five dollars (\$25.00). In addition, two (2) of the expenditures were not included by the Member in his campaign disclosure reports (See Finding 2016-3).

Amount in question: \$6,761.21

Cause: Unknown

Effect: Expenditures were made from the Member's campaign bank account in violation of S.C. Code Ann. Section 8-13-1348.

Recommendation: The Member should address this finding directly with Counsel to the House Ethics Committee within ten (10) of the date of this report in order to determine the appropriate action required to cure this violation.

**Finding 2016-5:**

Condition and criteria:

The Guidelines require campaign disclosure reports to detail campaign contributions and expenditures to include the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

During our examination, we discovered one (1) transaction that was reported in the campaign disclosure report in the period before it was charged to the campaign bank account. As a result, this transaction is considered to be reported in the incorrect period under the Guidelines.

Amount in question: \$12.00

Cause: Unknown

Effect: The Member's campaign disclosure report for the applicable quarter did not reflect the actual campaign bank account balance.

Recommendation: The Member should be more cognizant of transaction dates in the future to ensure that campaign bank account transactions are recorded in the proper campaign disclosure report.

## REPRESENTATIVE DAVID J. MACK, III SCHEDULE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Report Cycle: April 2016		Total Available to Campaign (Disclosure)		Total Expenditures		Net Available		Report		Comments	
Date	Type	Amount	Description	Date	Type/Check Number	Amount	Match	Report	Match	Comments	Amount
Recording fees (receipt period)											
1/25/2016	Salvage Law Firm	500.00		1/9/2016	Deposit	330.00	Yes				296.00
1/26/2016	Time Warner Cable SC PAC	200.00		2/2/2016	Aggregate Deposit	4,433.00	Yes			(3,950.00)	
1/27/2016	Dorritson PAC SC	600.00		2/4/2016	Aggregate Deposit	1,000.00	Yes			(800.00)	PAC - Reported
1/28/2016	Geoffrey A. Raymond	250.00		2/5/2016	Aggregate Deposit	-	-			300.00	PAC - Reported
1/28/2016	Matthew M. Marney	250.00		2/5/2016	Aggregate Deposit	-	-			250.00	
1/28/2016	Dorothy Jenkins	50.00		2/1/2016	Aggregate Deposit	-	-			50.00	
1/28/2016	Arantxa G. Garay	50.00		2/1/2016	Aggregate Deposit	-	-			50.00	
1/28/2016	Infinity Eye Care, LLC	50.00		2/1/2016	Aggregate Deposit	-	-			50.00	
1/28/2016	Daniel Wilson	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Lectra, LLC Dale Hill Eye Care	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Dr. Michael A. Campbell	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Logan Hill Jr.	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	A. Victor Bond	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	George E. Toppel	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	George E. Toppel	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Daniel P. Mack	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	James H. Milligan	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Paula G. McCardell	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Walker Gooden	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Kath B. Baskin	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Abraham P. Cook	100.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	The Stansbury Law Firm, LLP	250.00		2/1/2016	Aggregate Deposit	-	-			250.00	
1/28/2016	Joyce Law Firm, LLP	250.00		2/1/2016	Aggregate Deposit	-	-			250.00	
1/28/2016	Karolyn Services, LLC	250.00		2/1/2016	Aggregate Deposit	-	-			250.00	
1/28/2016	SC Ophthalmic Physicians	600.00		2/1/2016	Aggregate Deposit	-	-			600.00	
1/28/2016	Genesis Fitzharris	15.00		2/1/2016	Aggregate Deposit	-	-			500.00	PAC - Reported
1/28/2016	Rory S. Mack	100.00		2/1/2016	Aggregate Deposit	-	-			15.00	
1/28/2016	Erin M. Jenkins	25.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/28/2016	Oliver W. Addison	25.00		2/1/2016	Aggregate Deposit	-	-			25.00	
1/28/2016	Charles Scarborough	25.00		2/1/2016	Aggregate Deposit	-	-			25.00	
1/28/2016	Misty S. White	25.00		2/1/2016	Aggregate Deposit	-	-			25.00	
1/28/2016	Preston Tyree, LLC	25.00		2/1/2016	Aggregate Deposit	-	-			25.00	
1/28/2016	SC AFL-CIO PAC	40.00		2/1/2016	Aggregate Deposit	-	-			40.00	
1/28/2016	Synology Desktop	50.00		2/1/2016	Aggregate Deposit	-	-			50.00	PAC - Reported
1/31/2016	Alvin Townsend	200.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/31/2016	Richard Brown	200.00		2/1/2016	Aggregate Deposit	-	-			100.00	
1/31/2016	Wilmer Nelson Jr.	75.00		2/1/2016	Aggregate Deposit	-	-			75.00	
2/1/2016	Gwendolyn M. Jordan	75.00		2/1/2016	Aggregate Deposit	-	-			75.00	
2/1/2016	Scott Carolina State Farm Agents	50.00		2/4/2016	Aggregate Deposit	-	-			50.00	
2/1/2016	Bruce Burrows	-		2/29/2016	Aggregate Deposit	500.00	No			-	Pending 2016-2 / Pending 2016-3
2/1/2016	Rev. Clyde Carlin	-		2/29/2016	Aggregate Deposit	300.00	No			-	Pending 2016-2 / Pending 2016-3
2/1/2016	Adrian M. Green	350.00		2/29/2016	Aggregate Deposit	629.00	Yes			(279.00)	Pending 2016-2
2/2/2016	Clyde R. Buzze	50.00		2/29/2016	Aggregate Deposit	-	-			50.00	Pending 2016-2
2/4/2016	Leticia Nelson	25.00		2/29/2016	Aggregate Deposit	-	-			25.00	Pending 2016-2
2/4/2016	John P. Brown	100.00		2/29/2016	Aggregate Deposit	-	-			100.00	Pending 2016-2
2/4/2016	John P. Brown	100.00		2/29/2016	Aggregate Deposit	-	-			100.00	Pending 2016-2
				3/8/2016	Aggregate Deposit	1,049.16	No			-	Pending 2016-3
		<b>Total</b>	<b>5,280.00</b>			<b>Total</b>	<b>5,280.00</b>				

**REPRESENTATIVE DAVID J. MACK, III  
SCHEDULE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES**

Contributions				Bank Statements				Balance		Comments	
Date	Type	Description	Amount	Date	Type/Check Number	Amount	Match	Report	Issue	Comments	
1/14/2016	First Citizens Bank	Maint emove fee	8.00	1/14/2016	Fee	8.00	Yes				
2/2/2016	Krisman Broadcasting	Political Education	4,160.00	2/2/2016	Check #90	4,160.00	Yes				
2/6/2016	Rudis Howard	Campaign web/Purchaser	-	2/9/2016	Check #91	250.00	No			Missing 2016-3	
2/9/2016	Therese Peak	Catering for fundraiser	-	2/9/2016	Check #87	336.00	No			Missing 2016-3	
2/11/2016	First Citizens Bank	Maintenance fee	8.00	2/11/2016	Fee	8.00	Yes				
2/29/2016	Harland Clark	Check order	-	2/29/2016	Draft	12.54	No			Missing 2016-3	
3/24/2016	Krisman Broadcasting	Political Education	-	3/27/2016	Check #88	1,046.00	No			Missing 2016-3	
5/11/2016	First Citizens Bank	Maintenance fee	8.00				No			Missing 2016-3	
<b>Total</b>			<b>4,168.00</b>	<b>Total</b>			<b>5,820.54</b>	<b>Balance</b>		<b>2,319.97</b> / <b>2,578.81</b>	

Contributions				Bank Statements				Balance		Comments	
Date	Type	Description	Amount	Date	Type/Check Number	Amount	Match	Report	Issue	Comments	
3/22/2016	Document 388 3407375669		1,000.00	4/23/2016	Aggregate Deposit	3,250.00	Yes				
4/16/2016	SC Central Assoc SC Dist PAC		300.00	4/18/2016	Deposit	300.00	Yes			(2,250.00) Missing 2016-2	
4/23/2016	Madura Woods Federal PAC Fund		500.00	4/23/2016	Aggregate Deposit	-	-			PAC - Reported	
4/23/2016	Madura Woods Federal PAC Fund		500.00	4/23/2016	Aggregate Deposit	-	-			500.00 PAC - Not Reported	
4/23/2016	SCANA Employee PAC		350.00	4/23/2016	Aggregate Deposit	-	-			250.00 PAC - Reported	
4/23/2016	SCANA Employee PAC		1,000.00	4/23/2016	Aggregate Deposit	-	-			800.00 PAC - Not Reported	
5/24/2016	SC Insurer's Guild PAC		500.00	4/23/2016	Aggregate Deposit	-	-			500.00 PAC - Reported	
5/24/2016	Nelson Mullis Riley & Scarborough WataLocal PAC		250.00	4/24/2016	Deposit	250.00	Yes			PAC - Reported	
6/9/2016	Duke Energy Corporation PAC		500.00	6/7/2016	Aggregate Deposit	750.00	Yes			(250.00) PAC - Not Reported	
6/9/2016	Friends of Carol Burnett PAC		250.00	6/7/2016	Aggregate Deposit	-	-			250.00 PAC - Not Reported	
6/23/2016	Walt Fergo & Co SC Employees Geod Govt. Fund		300.00	6/23/2016	Aggregate Deposit	1,800.00	Yes			(1,500.00) PAC - Not Reported	
6/23/2016	Verizon F. Duxler		300.00	6/23/2016	Aggregate Deposit	-	-			300.00 PAC - Reported	
6/23/2016	Independent Consumer Finance PAC		1,000.00	6/23/2016	Aggregate Deposit	-	-			1,000.00 PAC - Reported	
<b>Total</b>			<b>6,260.00</b>	<b>Total</b>			<b>4,250.00</b>	<b>Balance</b>		<b>3,411.97</b> / <b>3,446.81</b>	

Expenses				Bank Statements				Balance		Comments	
Date	Type	Description	Amount	Date	Type/Check Number	Amount	Match	Report	Issue	Comments	
3/29/2016	SOUTH Carolina Democratic Party	Filing fee	-	6/9/2016	Check 1061	204.00	No			Missing 2016-3	
4/8/2016	Krisman Broadcasting	Outrigger service usage fee	1.00	6/9/2016	Fee	1.00	Yes			Missing 2016-3	
4/8/2016	Krisman Broadcasting	Political education	2,010.00	4/8/2016	Cashed Counter Check	2,010.00	Yes			Missing 2016-4	
4/15/2016	First Citizens Bank	Outrigger service usage fee	1.00	4/15/2016	Fee	1.00	Yes			Missing 2016-3	
4/15/2016	Krisman Broadcasting	Political education & copyright service	530.00	4/15/2016	Cashed Counter Check	530.00	Yes			Missing 2016-3	
5/6/2016	SC Coalition for Water Participation	Purchased table for contracts	200.00	5/6/2016	Check #82	200.00	Yes			Missing 2016-3	
5/11/2016	Krisman Broadcasting	Political education program	1,560.00	5/11/2016	Check #84	1,560.00	Yes			Missing 2016-4	
5/26/2016	Kabirya Institute	Political work, organized fundraiser	150.00	5/26/2016	Check #85	150.00	Yes				
5/26/2016	SOUTH Carolina Legislative Black Caucus SCBC	SCBC Galt program	550.00	6/7/2016	Check #85	550.00	Yes				
6/10/2016	USP	PO Box Rental	248.00	6/10/2016	Check #87	248.00	Yes				
6/13/2016	First Citizens Bank	Bank service charge	8.00	6/13/2016	Fee	8.00	Yes				
<b>Total</b>			<b>5,258.00</b>	<b>Total</b>			<b>6,486.00</b>	<b>Balance</b>		<b>3,411.97</b> / <b>3,446.81</b>	



**REPRESENTATIVE DAVID J. MACK, III  
SCHEDULE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES**

Per Candidate Committee Disclosure				Bank Statements				Balance		Comments	
Date	Type	Description	Amount	Date	Type/Check Number	Amount	Match	Report	Bank		Comments
<b>Report Date: October 2016</b>											
<b>Contributions</b>											
None											
			<b>Total</b>	9/9/2016	Deposit	\$ 1,000.00	No				Filing 2016-3
				9/14/2016	Deposit	900.00	No				Filing 2016-3
			<b>Total</b>			<b>\$ 1,900.00</b>					
<b>Expenses</b>											
7/9/2016	David J. Mack III			7/9/2016	Withdrawal	\$ 1,506.01	No				Filing 2016-3
7/29/2016	David J. Mack III	Registration for Southern Legislative Conference reimbursement	375.00	7/29/2016	Withdrawal/Power Order	375.00	Yes				Filing 2016-4
8/4/2016	Wilmer Broadcasting	Political education program	1,040.00	8/4/2016	Withdrawal	1,040.00	Yes				Filing 2016-3
8/19/2016	Check, Twin Seafood Cafe	District voter registration drive	-	8/22/2016	Check 808	250.00	No				Filing 2016-3
8/16/2016	David Mack		-	8/16/2016	Withdrawal	1,170.26	No				Filing 2016-3
8/14/2016	First Citizens Bank	Bank monthly maintenance fee	12.00	8/14/2016	Fee	12.00	Yes				Filing 2016-3
8/19/2016	Deborah Colby Democratic Party driver	Sponsor for the annual Political dinner	500.00	8/19/2016	Check 808	500.00	Yes				Filing 2016-3
10/1/2016	First Citizens Bank	Bank Monthly Maintenance Fee	12.00	10/1/2016	Fee	12.00	Yes				Filing 2016-3
			<b>Total</b>			<b>\$ 4,865.27</b>		Balance	\$ 1,471.97	\$ 95.70	1,371.17

Per Candidate Committee Disclosure				Bank Statements				Balance		Comments	
Date	Type	Description	Amount	Date	Type/Check Number	Amount	Match	Report	Bank		Comments
<b>Report Date: January 2017</b>											
<b>Contributions</b>											
10/21/2016	Trucking Industry Non-Partisan PAC		250.00	10/21/2016	Deposit	250.00	Yes				
11/1/2016	Carwest Corporation		500.00	11/1/2016	Aggregate Deposit	1,250.00	Yes				PAC - Reported
11/1/2016	Branch Banking & Trust Company SC PAC		500.00	11/1/2016	Aggregate Deposit	-				(250.00)	PAC - Reported
11/1/2016	Phenix of Farm Bureau PAC		250.00	11/1/2016	Aggregate Deposit	-				250.00	PAC - Not Reported
11/1/2016	Carwest PAC Inc		1,000.00	11/1/2016	Deposit	1,000.00	Yes				PAC - Not Reported
11/18/2016	Trucking Industry Non-Partisan PAC		250.00	11/18/2016	Deposit	250.00	Yes				PAC - Not Reported
			<b>Total</b>			<b>\$ 2,750.00</b>					
<b>Expenses</b>											
11/16/2016	First Citizens Bank	Bank monthly maintenance fee	12.00	11/16/2016	Fee	12.00	Yes				
11/15/2016	Kelown Broadcasting	Political education program	700.00	11/15/2016	Check 811	700.00	Yes				
			<b>Total</b>			<b>\$ 712.00</b>		Balance	\$ 1,471.97	\$ 1,133.70	1,371.17

Per Candidate Committee Disclosure				Bank Statements				Balance		Comments	
Date	Type	Description	Amount	Date	Type/Check Number	Amount	Match	Report	Bank		Comments
<b>Report Date: April 2017</b>											
<b>Contributions</b>											
3/13/2017	Property Casualty Interest Political Account		500.00	3/13/2017	Aggregate Deposit	750.00	Yes			(250.00)	PAC - Not Reported
3/13/2017	SC Optometric Physicians - SCOPFAC		250.00	3/13/2017	Aggregate Deposit	-				250.00	PAC - Reported
			<b>Total</b>			<b>\$ 750.00</b>					
<b>Expenses</b>											
1/10/2017	Kelown Broadcasting	Political education and forum	1,400.00	1/10/2017	Check 814	1,400.00	Yes				Filing 2016-4
1/19/2017	Check #9A	Constituents recognition and lunch at Capital	505.00	1/19/2017	Withdrawal	505.00	Yes				Filing 2016-3
12/4/2016	Phenix Wheatley Library and Social Club	Monetary gift - celebration	-	2/15/2017	Fee	12.00	No				Filing 2016-3
3/13/2017	Center for Haiti Property preservation	Community Banquet	100.00	3/9/2017	Check 813	100.00	Yes				Filing 2016-3
3/13/2017	South Carolina Legislative Black Caucus	Dues	-	3/13/2017	Fee	12.00	No				Filing 2016-3
3/13/2017	Ar. In. A. Nubshel	Printing	-	3/22/2017	Check 818	300.00	No				Filing 2016-3
3/13/2017			-	3/27/2017	Check 819	65.00	No				Filing 2016-3
			<b>Total</b>			<b>\$ 2,082.00</b>		Balance	\$ 2,251.97	\$ 309.70	1,866.27

Finding 2016-4.

7-6-16 David J. Mack, III

Withdrawal \$ 1,506.01

No Match

David Mack III

HARLAND CLARK 1-800-657-2928 50268712 070 0706/14

Name (Print)

\*

Account No.

[Redacted Account Number]

Date

7/6/16

\$

1506.01

### Savings Withdrawal

I WISH TO WITHDRAW FROM MY SAVINGS ACCOUNT

Fifteen Hundred Six & 01/100 Dollars

OFFICIAL RECEIPT ISSUED UPON COMPLETION OF TRANSACTION

NON NEGOTIABLE



First Citizens Bank

Signature

David J. Mack III

[Redacted]

Exhibit B

Branch: 097  
Seq: 5  
Batch: 002641  
Date: 07/06/16

Seq: 00005 07/06/16 Batch 2, 641

Account Number	Posting Date	Amount	Serial Number	Source	Type	Status	Sequence Number
[Redacted]	2016-07-06	\$1,506.01	878508	Check	Debit	Posted	000000006700085067



Central Bank Operations - DA002  
 P.O. Box 27131  
 Raleigh, NC 27611-7131

ZE  
 210

20313  
 DOROTHY P MACK  
 DAVID J MACK III SHERYL S MACK  
 FOR DAVID J MACK III CAMPAIGN  
 4340 EVANSTON BLVD  
 NORTH CHARLESTON SC 29418-5773

Your Account(s) At A Glance  
 Checking Balance 1,954.90+

Statement Period: June 14, 2016 Thru July 14, 2016

Account Number: [REDACTED]



Select Checking

Account Number: [REDACTED]

Enclosures In Statement: 0

Beginning Balance	1,680.91+	Statement Period Days	31
1 Deposits	1,800.00+	Average Ledger Balance	2,501.00+
0 Other Credits	0.00		
1 Checks	1,506.01-		
0 Other Debits	0.00		
Monthly Service Charge	0.00		
<b>Ending Balance</b>	<b>1,954.90+</b>		

Deposits To Your Account

Date	Description	Amount
06-23	Customer Deposit	1,800.00
Total		1,800.00

Checks Paid From Your Account

Check No.	Date	Amount
978508	07-06	1,506.01

\*Prior Check Number(s) Not Included or Out of Sequence. *Finding 2016-4*

	Total Statement Cycle	Total Year-To-Date
Total Overdraft Fees	0.00	0.00
Total Insufficient Funds Fees	0.00	0.00

Daily Balance Summary

Date	Balance	Date	Balance
06-23	3,480.91+	07-06	1,954.90+



Direct Customer Inquiry Calls To  
 FIRST CITIZENS DIRECT  
 Telephone Banking At 1-888-323-4732.

SOUTH CAROLINA

**State Ethics Commission**

Public Disclosure and Accountability Reporting System

**Individual Reports****Candidate Campaign Disclosure**

2016, October 10th Report

**Candidate:** Mack, David J III**Position Sought:** State House Representative**District/Locale:** 109**Election Type:** General**Election Date:** 11/08/2016**Filing Type:** Original**Filing Date:** 10/24/2016**Demographic Information**

Mack, David J III

4340 Evanston Boulevard

North Charleston, SC 29418

843.760.0198

Charleston County

**Report Type**

2016, October 10th

**Contributions**

Contributions	This Period	Election Cycle
A. Candidates: Personal Funds	\$0.00	\$250.00
B1. Individual Contributions or other (+)	\$0.00	\$16,230.00
B2. Loans (+)	\$0.00	\$0.00
C. In-Kind Contributions (+)	\$0.00	\$0.00
D. Total Contributions (=)	\$0.00	\$16,480.00

**Expenditures**

Expenditures	This Period	Election Cycle
A. In-Kind Expenditures	\$0.00	\$0.00
B. Expenditures (+)	\$1,939.00	\$15,065.00
C. Total Expenditures (=)	\$1,939.00	\$15,065.00

Balance of Contributions	This Period
A. Contributions on Hand (Beginning this Period)	\$3,411.97
B. Total Contributions (This Period) (+)	\$0.00
C. Total Expenditures (This Period) (-)	\$1,939.00
D. Contributions On Hand (Period End) (=)	\$1,472.97

Loans	
Loan Balance:	\$0.00

\*\*\* No Contributions Reported. \*\*\*

### Expenditures

Date	Vendor	Address	Description	Amount
10/14/2016	First Citizens Bank - Central Bank Operations	PO Box 27131 Raleigh, NC 27611	Bank Monthly Maintenance Fee,	\$12.00
09/19/2016	Dorchester County Democratic Party Dinner	116 W 2nd N, Street Summerville, SC 29483	Sponsor for the annual Political Dinner.	\$500.00
09/14/2016	First Citizens Bank - Central Bank Operations	PO Box 27131 Raleigh, NC 27611	Bank Monthly Maintenance Fee.	\$12.00
08/04/2016	Kirkman Broadcasting	60 Markfield Drive Charleston, SC 29407	Political education program.	\$1,040.00
07/28/2016	David J. Mack, III	4340 Evanston Boulevard Charleston, SC 29418	Registration fee for Southern Legislative Conference reimbursement.	\$375.00
Total				\$1,939.00

\*\*\* No Loans Reported. \*\*\*

\*\*\* No Loan Repayments Reported. \*\*\*

\*\*\* No Assets Purchased or Received Reported. \*\*\*

\*\*\* No Disposition of Assets Reported. \*\*\*

NAME (Print) David Mack III

ACCOUNT NO. [REDACTED]

DATE 7/6/16

AMOUNT \$ 1506.01

**Savings Withdrawal**  
WISH TO WITHDRAW FROM MY SAVINGS ACCOUNT

Fifteen Hundred Six + 01/100 Dollars

OFFICIAL RECEIPT SUBJECT TO ALL COMPLIANCE REQUIREMENTS

**First Citizens Bank**

NON NEGOTIABLE

[Signature]  
Signature

Serial	44 TRRT	Option 4 Account	Tran Code	Amount
<u>[REDACTED]</u>	50090100	<u>[REDACTED]</u>		0000150601

Branch: 097  
 Seq: 5  
 Batch: 002641  
 Date: 07/06/16

Seq: 00005 07/06/16 Batch 2, 001



Michael R. Burchstead | D: 803.265.0446 | E: mburchstead@collinsandlacy.com

April 29, 2019

South Carolina State Ethics Commission  
C/o Courtney Laster, General Counsel  
201 Executive Center Drive, Suite 150  
Columbia, SC 29210

RE: Ethics Commission Complaint C2019-009

Dear Commissioners:

On behalf of Respondent Representative David Mack III ("Respondent"), please allow this to serve as a supplemental response to the above-referenced South Carolina State Ethics Commission ("Commission") complaint.<sup>1</sup> In summary, Respondent acknowledges being sloppy with his recordkeeping and handling of campaign money, among other things, but wishes to emphasize that he never converted campaign funds to personal use. Respondent also believes that through personal contributions to his campaign, he was entitled to personal reimbursement from campaign funds in any event.

## DISCUSSION

### Background on Audit/Scope of Response

As you are aware, this complaint arose after Respondent was unable to explain this alleged cash withdrawal to the satisfaction of the HEC following a random audit ("Audit")<sup>2</sup> conducted by outside accounting firm, J.W. Hunt and Company. Initially, Respondent believes the only matter before the Commission is the withdrawal for \$1,506.01, as nothing else is included in the HEC complaint.<sup>3</sup> The Audit was conducted in accordance with S.C. Code § 8-13-530(1), through which the Legislative Ethics Committees reserved exclusive jurisdiction in several respects, including to:

---

<sup>1</sup> Thank you for the consideration in granting Respondent's continuance request at the last Commission meeting.

<sup>2</sup> The Audit covered the period from January 1, 2016 to March 31, 2017.

<sup>3</sup> The only provision in S.C. Code Ann. § 8-13-540 which authorizes the Commission to investigate matters outside the four corners of a complaint is if the Commission opens a complaint on its own Motion. While venturing into other areas is permitted by S.C. Code Regs. 52-705(C)(2), the regulations were enacted well before Act 282 of 2016 and also "a regulation may not alter or add to the terms of a statute." Sanford v. South Carolina State Ethics Com'n, 385 S.C. 483 (2009).

[A]scertain whether [one of its members] has failed to comply fully and accurately with the disclosure requirements of this chapter, which may include...an audit of filed reports and applicable campaign bank statements, and to promptly notify the person to file the necessary notices and reports to satisfy the requirements of this chapter.

The Audit contained five separate findings, numbered as 2016-1 through 2016-5. Audit Finding 2016-4 revealed six instances of questionable expenditures from Respondent's campaign bank account. Five of these six expenditures were substantiated to the satisfaction of the HEC, and as to these the HEC appears to have concluded that Respondent "satisf[ie]d the requirements of this chapter," S.C. Code § 8-13-530(1). Therefore, these five expenditures were not included as part of the HEC's complaint. Audit Findings 2016-1, 2016-2, 2016-3, and 2016-5 only revealed several "errors or omissions on campaign reports" which are "inadvertent and unintentional" and which may, at most, be considered technical violations under S.C. Code § 8-13-1372(A). Under S.C. Code § 8-13-530(6), the Legislative Ethics Committees reserved exclusive province over technical violations, and S.C. Code § 8-13-540(B)(2)(b) requires that any technical violation must be referred back to the HEC for disposition. So Audit Findings 2016-1, 2016-2, 2016-3, and 2016-5 were excluded from the HEC complaint as well.

#### Response

Below Respondent will offer explanations for the state of his reports, and legal justifications for why certain actions do not violate the Ethics Act. These are not intended as an excuse. Respondent admits to being careless and inattentive to the finer points of the campaign finance requirements in the Ethics Act. He further admits to sloppy recordkeeping and exacerbating a bad situation by not responding with sufficient promptness to the House Ethics Committee's audit. Going beyond any alleged violation of the Ethics Act, he further recognizes the appearance of the situation. In short, Respondent recognizes that he brought this situation on himself. This is true both as to the questionable expenditure in the HEC complaint and the other issues that arose in the Audit. Respondent states that his wife had always handled his campaign finances, but she had become ill around this time period. The issues arose when he started handling these matters himself. Respondent began to use cashier's checks because he did not have access to checks. Since these issues arose with the HEC, Respondent has hired a person to file his campaign finance reports and ensure compliance with all appropriate laws.

Respondent acknowledges that on July 6, 2016, he withdrew \$1,506.01 from his campaign bank account, but denies what the form First Citizens withdrawal form appears to indicate, which is that this was a "Savings Withdrawal." Regardless of what withdrawal form he was asked to fill out, Respondent simply asked for the two cashier's checks, both of which are payable to himself in the amounts of \$902.81 and \$603.20. These were to be used for official legislative travel. S.C. Code § 8-13-1348 provides in relevant part:

(C)(1) An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by:

- (a) a written instrument;
- (b) debit card; or
- (c) online transfers.



The campaign account must contain the name of the candidate..., and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8-13-1308.

The first implication from the Audit Finding and the complaint is that Respondent's manner of withdrawing money from the account by a cashier's check payable to himself was improper. While admitting that the circumstances of the transaction created an appearance of impropriety, Respondent was not trying to hide anything by the use of cashier's checks. To the contrary, his name was printed as the payee. More critically, the undersigned can find no authority under South Carolina law which states a cashier's check would not be considered a "written instrument." The term "written instrument" is not defined and does not appear elsewhere in the Ethics Act and does not appear to be defined elsewhere under South Carolina law. Under federal campaign finance law, there is a very expansive definition of "written instrument." 11 C.F.R. § 9034.2 concerns matchable contributions to the Presidential Election Campaign Fund and states:

(b) For purposes of this section, the term written instrument means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; any similar negotiable instrument; or, for contributions by credit or debit card, a paper record, or an electronic record that can be reproduced on paper, of the transaction. For purposes of this section, the term written instrument also means, in the case of a contribution by a credit card or debit card, either a transaction slip or other writing signed by the cardholder, or in the case of such a contribution made over the Internet, an electronic record of the transaction created and transmitted by the cardholder.

In sum, despite the admitted appearance of the situation, it is at least an open question as to whether the use of a cashier's check violates the Ethics Act.

Moving from the question of form to the propriety of where the money went, S.C. Code § 8-13-1348(A) provides in relevant part:

(A) No candidate... may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to... an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

The second implication from the Audit Finding and the complaint is that Respondent violated S.C. Code § 8-13-1348(A) through his spending of the campaign money. However, Respondent in good faith was intending the money to be used "to defray any ordinary expenses incurred in connection with [his] elective office" as permitted by this statute. The withdrawal of \$603.20 represents the exact amount of a personal expenditure Respondent made on or about July 3, 2016, for a flight on American Airlines to the Southern Legislative Conference in Lexington, KY, which was to leave July 9, a trip for which he could have properly expended campaign funds. Unfortunately, through his own recordkeeping challenges and the passage of time, Respondent has found it difficult to locate sufficient financial records to prove the \$902.81 was used on an expenditure related to the

campaign or office, Respondent is informed and believes that this money, like the \$603.20, was attributable to his travel to the Southern Legislative Conference and an appropriate expenditure of the campaign. Even assuming the Commission makes a negative inference about the lack of explanation, Respondent still believes he would be entitled to a personal reimbursement for contributions to his own campaign, whether direct contributions or from expenditures which could be considered in-kind (such as the American Airlines ticket).

Under South Carolina law, when a candidate contributes to his campaign, loans the campaign money, or spends personal money on campaign-related expenses, he is entitled to reimbursement. "A loan is considered a contribution from the maker or guarantors of the loan..." S.C. Code Ann. § 8-13-1326(A). "A candidate for an elective office which is not statewide "must not be repaid, for a loan made to the candidate, more than [\$10,000] after the election." § 8-13-1328(B).

In light of this authority, Respondent would note that on March 11, 2014, he made a \$2,500 personal contribution to his campaign. See April 10, 2014 CDR, Amendment 1. On July 9, 2014, Respondent made a partial reimbursement to himself from this \$2,500 contribution, in the amount of \$1,200. See July 10, 2014 CDR. On August 26, 2015, Respondent made a \$200 personal contribution to his campaign See October 10, 2015 CDR. There are other instances in which Respondent made personal contributions to his campaign or otherwise made a reimbursable personal expense for campaign or office-related items. There do not appear to be any instances after July 9, 2014, of Respondent receiving a reimbursement. Even taking these three transactions together, and ignoring all else like the American Airlines flight, Respondent would be entitled to \$1,500 in reimbursement.

An example of how the Commission has treated reimbursement of personal contributions in the past in State Ethics Commission v. Tripp Newsome, Complaint C2013-118 (May 21, 2014). Newsome was charged with a variety of nondisclosure violations, and in the course of investigating his campaign the Commission determined that he has reimbursed himself \$1,470 to close his account, but he only contributed \$1,223.50 to his campaign. It is notable that Newsome was not even charged with S.C. Code § 8-13-1348, but only with the nondisclosure violations. The remedy for this in the Decision and Order was that Newsome was to pay the difference into the Children's Trust Fund. In contrast, Respondent in this instance was entitled to personal reimbursement in excess of the withdrawals.

In summary, Respondent acknowledges non-compliance with the campaign finance provisions of the Ethics Act in several respects, but he denies using campaign funds for personal expenses. Further, Respondent believes that he was entitled to reimbursement of personal contributions to his campaign under the law.

Thank you for the opportunity to provide this response on behalf of my client.

Very best regards,

/s/

Michael R. Burchstead



Michael R. Burchstead | D: 803.255.0445 | E: mburchstead@collinsandlacy.com

May 20, 2019

**CONFIDENTIAL COMMUNICATION**  
**VIA EMAIL TO JaneShuler@schouse.gov**

Representative G. Murrell Smith, Jr.  
Chairman, South Carolina House of Representatives Ethics Committee  
525 Blatt House Office Building  
Columbia 29201

RE: SC State Ethics Commission Complaint C2019-011

*Murrell*  
Dear Chairman Smith:

As I believe you are aware, I represent Representative David Mack III ("Respondent") in connection with the above-captioned SC State Ethics Commission ("Ethics Commission") complaint matter, which was opened based on a complaint filed<sup>1</sup> by the House Ethics Committee after it conducted a random audit of the campaign disclosure reports of Respondent and other House Members.

I understand that the Ethics Commission has recommended that the House Ethics Committee find probable cause that Respondent violated one count of S.C. Code § 8-13-1302(A) for failing to maintain adequate records related to a withdrawal from his campaign account. Please know that Respondent admits to violating S.C. Code § 8-13-1302(A) through incomplete and sloppy recordkeeping, which led to an inability to adequately explain certain travel-related campaign expenditures. Respondent further acknowledges that he exacerbated an already bad situation by failing to respond with sufficient promptness to the House Ethics Committee's audit. In short, Respondent fully understands that he brought this situation on himself.

As mitigation and not as an excuse, Respondent states that his wife had always handled his campaign finances, but she became ill around the time period of the highlighted expenditures. The issues raised in the audit began to surface when Respondent started handling these matters himself. Since the issues arose, Respondent has hired a person to file his campaign finance reports, maintain appropriate records, and assist him with ensuring compliance with all appropriate laws.

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<sup>1</sup> See S.C. Code § 8-13-540(A)(2).

Michael R. Burchstead | D: 803.255.0445 | E: mburchstead@collinsandlacy.com

Because Respondent accepts the recommendation of the Ethics Commission that he violated S.C. Code § 8-13-1302(A), he does not wish to convene a public hearing on this matter. He respectfully requests that the House Ethics Committee concur with the Ethics Commission recommendation and work with the undersigned counsel in negotiating an appropriate resolution to this matter.

Please do not hesitate to contact me if you have any questions.

Very best regards,



Michael R. Burchstead

CC:  
The Honorable David Mack III  
Jane O. Shuler, Esq.  
Julia Jones Foster, Esq.

J. David Weeks  
Vice-Chairman

G. Murrell Smith, Jr.  
Chairman

Beth E. Bernstein  
Secretary

Heather Ammons Crawford  
Wallace H. "Jay" Jordan, Jr.  
John Richard C. King

Peter M. McCoy, Jr.  
Dennis C. Moss  
J. Todd Rutherford  
Leonidas E. "Leon" Stavrinakis

Jane O. Shuler  
Chief Legal Counsel

## House Legislative Ethics Committee



Julia J. Foster  
Assistant Legal Counsel

Lynne Short  
Executive Assistant

P.O. BOX 11867  
519 BLATT BUILDING  
COLUMBIA, SC 29211  
TELEPHONE: 803-734-3114  
FAX: 803-734-8795

### HOUSE ETHICS COMMITTEE MAY 22, 2019 ADVISORY OPINION IN THE MATTER OF DAVID MACK, III COMPLAINT NO. C2019-011

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**Complainant:** SC House Legislative Ethics  
Committee  
**Address:** 519 Blatt Building  
Columbia, South Carolina 29201  
**Telephone:** 803-734-3114

**Respondent:** David Mack, III  
**Address:** 4340 Evanston Blvd.  
Charleston, South Carolina 29418  
**Telephone Number:** 843-760-0198  
**Attorney Information:** Michael Burchstead  
Collins and Lacy, PC  
mburchstead@collinsandlacy.com

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This is in response to the State Ethics Commission's (herein "SEC") Recommendation and Investigative Report (herein "Report") dated May 17, 2019. The House Legislative Ethics Committee (herein "Committee") met on May 22, 2019 and responds as follows.

#### BACKGROUND

Initially, the House of Representatives retained an outside accounting firm, J. W. Hunt and Company, LLP (J.W. Hunt) in 2016 to conduct random audits. On June 27, 2017, Respondent's name, as well as the names of nine other Members and one candidate, was randomly selected for a one-year audit of his campaign bank account records compared to his Campaign Disclosure (CD) reports. J.W. Hunt issued Respondent's Final Audit Report on February 27, 2018. J.W. Hunt made five findings. All of the findings have been corrected except for one finding noted within Finding 2016-4.

Thus, the HEC identified a potential violation resulting from the random audit of Respondent's campaign bank account records and campaign disclosure reports encompassing a one-year period, which could not be explained. Specifically, a cash savings withdrawal on July 6, 2016 was made by Respondent, in the amount of \$1,506.01, which was not reported on his October 2016 CD report, and was reflected as a "check paid on his account" as noted on his July 14, 2016

campaign bank account statement.. On July 26, 2018, the HEC referred the Committee's complaint to the State Ethics Commission regarding Respondent's audit for the Commission's investigation as to whether a violation of Section 8-13-100 et seq of the Ethics, Government Accountability, and Campaign Reform Act of 1991 occurred.

On May 16, 2019, the SEC having met considered and duly investigated the Complaint against Respondent, issued a recommendation to Committee for a finding of probable cause. Specifically, the SEC charged Respondent with one count of violation of Section 8-13-1302(A) for failure to maintain and preserve campaign account records.

On May 22, 2019, the Committee met to consider, inter alia, this matter.

### **FINDINGS**

Upon review of the SEC's recommendation and relevant evidence, the Committee makes the following findings:

S.C. Code Ann. Section 8-13-1302 provides:

(A) A candidate, committee, or ballot measure committee must maintain and preserve an account of:

- (1) the total amount of contributions accepted by the candidate, committee, or ballot measure committee;
- (2) the name and address of each person making a contribution and the amount and date of receipt of each contribution;
- (3) the total amount of expenditures made by or on behalf of the candidate, committee, or ballot measure committee;
- (4) the name and address of each person to whom an expenditure is made including the date, amount, purpose, and beneficiary of the expenditure;
- (5) all receipted bills, canceled checks, or other proof of payment for each expenditure; and
- (6) the occupation of each person making a contribution.

(B) The candidate, committee, or ballot measure committee must maintain and preserve all receipted bills and accounts required by this article for four years.

S.C. Code Ann. Section 8-13-1302.

The SEC commented that Respondent was at all times relevant a public official serving as a State House of Representative for District 109 and was represented by attorney Michael Burchstead in this matter. As noted in the Audit report, Finding 2016-4, on July 6, 2016, a cash savings withdrawal was made by Respondent for \$1,506.01 from his First Citizen's campaign account. The SEC then subpoenaed bank records from Respondent's personnel accounts, which indicated that Respondent converted the cash withdrawal of \$1,506.01 into two First Citizen's cashier's checks payable to himself. The SEC noted that one cashier's check for \$902.81 was deposited via ATM into his personal Wells Fargo account. The other cashier's check for \$603.20 was deposited via ATM into Respondent's personal Bank of America account.

The SEC stated that Respondent acknowledged in his written response making the \$1,506.01 withdrawal and the conversion into the two cashier's checks payable to himself. Respondent explained in his written response that the \$603.20 expenditure made on July 3, 2016, would have been consistent with a flight on American Airlines to the Southern Legislative Conference in Kentucky. Bank records from a SEC subpoena indicated that \$603.20 occurred twice as an expense from each of Respondent's personal bank accounts for airline tickets on July 3, 2016, from American Airlines. Respondent also acknowledged that he was unable to "locate sufficient financial records" regarding \$902.81 as an expenditure related to his campaign or office. The SEC reported that bank records from their subpoena indicated an expense for \$902.81 on July 1, 2016, was for "ARES Hotels and Tickets CA" which Respondent believed was "attributable to his travel". The SEC checked the the Southern Legislative Conference website, which indicated that a "70th Annual Meeting" convened the week of July 9-13, 2016. However, Respondent failed to provide any documentation to support that the withdrawal of \$1,506.01 from his campaign account was reimbursement for expenditures associated with his campaign or his office. Thus, the SEC found a "one count of violation of Section 8-13- 1302 (A) (3) for Respondent's failure to maintain records for expenditures from his campaign account; specifically, Respondent's withdrawal of \$1,506.01 on July 6, 2016, from his campaign account that was converted into two cashier's checks payable to himself and subsequently deposited into his personal bank accounts." May 17, 2019 SEC Probable Cause Finding regarding David Mack, III.

### CONCLUSION

Accordingly, the Committee hereby **CONCURS** with the finding of probable cause by the SEC regarding the one count of violation of Section 8-13-1302(A) for Respondent's failure to maintain and preserve campaign account records.

The Committee further **FINDS** that Respondent engaged in incomplete and sloppy recordkeeping, which lead to an inability to explain adequately certain travel-related campaign expenditures. See May 20, 2019 letter from Respondent's attorney. The Committee **CAUTIONS** Respondent that he should not make cash withdrawals from his campaign account in excess of \$25.00 as this violates Section 8-13-1348. The better and required practice for Respondent is to pay his campaign and office-related expenditures from his campaign account in the form of a written instrument (a campaign bank account check), a campaign bank account debit card, or an on-line transfer. Further, the Committee **NOTES** that there are no findings to suggest that Respondent engaged in intentional misconduct nor did Respondent attempt to procure any personal gains.

The Committee additionally **FINDS** that Respondent must pay a penalty of \$100.00 within thirty (30) days of the date of this Advisory Opinion.

The Committee **ORDERS** Respondent to submit campaign bank account records to the House Ethics Committee with the July 2019 and October 2019 quarterly campaign disclosure filing for an audit by HEC staff.

Finally, the Committee **CAUTIONS** Respondent that he should maintain detailed receipts for each campaign expenditure.

AND IT IS SO ORDERED, this 22nd day of May, 2019, by the following members of the House Ethics Committee:

Rep. G. Murrell Smith, Jr, Chairman

Rep. J. David Weeks, Vice-Chairman

Rep. Beth E. Bernstein, Secretary

Rep. Heather Ammons Crawford

Rep. Wallace "Jay" Jordan, Jr.

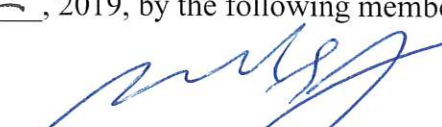




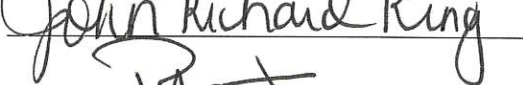

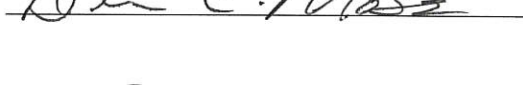

Rep. John Richard C. King

Rep. Peter M. McCoy, Jr.

Rep. Dennis C. Moss

Rep. J. Todd Rutherford

Rep. Leonidas E. "Leon" Stavrinakis

  
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