

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE #3721



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
APR 10 2019

2019 APR 10 AM 11:24

SENSITIVE

April 10, 2019

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: *KDR* *BH*
Kristin D. Roser/Ben Holly
Reports Analysis Division
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2018 Year-End Report (Monthly Filers) for the Administrative Fine Program

Attached is a list of political committees and their treasurers who failed to file the 2018 Year-End Report in accordance with 52 U.S.C. § 30104(a). The Year-End Report was due on January 31, 2019.

The committees listed on the attached RTB Circulation Report either failed to file the report or filed the report more than thirty (30) days after the due date (considered a non-filed report). In accordance with the schedule of civil money penalties for reports at 11 C.F.R. 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers, in their official capacity, listed on the RTB Circulation Report violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

Federal Election Commission
Reason to Believe Circulation Report
2018 YEAR-END MONTHLY Not Election Sensitive 01/31/2019 H_S_P_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
3720	C00581199	JILL STEIN FOR PRESIDENT	JILL STEIN	STEVEN WELZER	\$4,226,431	12	3/27/2019	55 (Not Filed*)	\$80,844	\$20,344
3721	C00160937	SOUTH DAKOTA DEMOCRATIC PARTY		BILL NIBBELINK	\$1,969,456	0		Not Filed	\$85,628 (est)	\$5,086

* The committee filed their report more than thirty (30) days after the due date; therefore, the report is considered not filed.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Reason To Believe Recommendation - 2018)
 Year-End Report (Monthly Filers) for the)
 Administrative Fine Program:)
 JILL STEIN FOR PRESIDENT, and) AF# 3720
 WELZER, STEVEN as treasurer;)
 SOUTH DAKOTA DEMOCRATIC) AF# 3721
 PARTY, and NIBBELINK, BILL MR. as)
 treasurer;)

CERTIFICATION

I, Laura E. Sinram, Deputy Secretary of the Federal Election Commission, do hereby certify that on April 17, 2019 the Commission took the following actions on the Reason To Believe Recommendation - 2018 Year-End Report (Monthly Filers) for the Administrative Fine Program as recommended in the Reports Analysis Division's Memorandum dated April 10, 2019, on the following committees:

AF#3720 Decided by a vote of 4-0 to: (1) find reason to believe that JILL STEIN FOR PRESIDENT, and WELZER, STEVEN in his official capacity as treasurer violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#3721 Decided by a vote of 4-0 to: (1) find reason to believe that SOUTH DAKOTA DEMOCRATIC PARTY, and NIBBELINK, BILL MR. in his official capacity as treasurer violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the

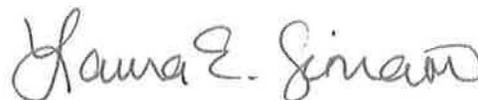
Federal Election Commission
Certification for Administrative Fines
April 17, 2019

Page 2

appropriate letter. Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

4/18/19

Date

Laura E. Sinram
Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 18, 2019

Bill Nibbelink, in official capacity as Treasurer
South Dakota Democratic Party
P.O. Box 1485
Sioux Falls, SD 57101

C00160937
AF#: 3721

Dear Mr. Nibbelink:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a Year-End Report of Receipts and Disbursements every calendar year. This report, covering the period November 27, 2018 through December 31, 2018, shall be filed no later than January 31, 2019. 52 U.S.C. § 30104(a). Because records at the Federal Election Commission ("FEC") indicate that you did not file this report within thirty (30) days of the due date, the report is considered not filed for the purpose of calculating the civil money penalty. You should file this report if you have not already done so.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109(a)(4). On April 17, 2019, the FEC found that there is reason to believe ("RTB") that South Dakota Democratic Party and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before January 31, 2019. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$5,086. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. *See* <https://www.fec.gov/af/pay.shtml> 11 CFR § 111.34. Your payment of \$5,086 is due within forty (40) days of the finding, or by May 27, 2019, and is based on these factors:

Sensitivity of Report: Not Election Sensitive
Level of Activity: \$85,628
Number of Days Late: Not Filed
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review, 1050 First Street, NE, Washington, DC 20002. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or May 27, 2019. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that South Dakota Democratic Party and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate

action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

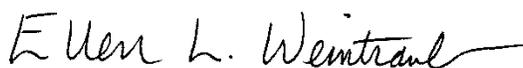
5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including making a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <https://www.fec.gov/af/pay.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Ben Holly in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Ellen L. Weintraub
Chair

ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$5,086 for the 2018 Year-End Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
P.O. Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: South Dakota Democratic Party

FEC ID#: C00160937

AF#: 3721

PAYMENT DUE DATE: May 27, 2019

PAYMENT AMOUNT DUE: \$5,086

RECEIVED

By Office of the Commission Secretary at 12:32 pm, Jun 12, 2020



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

June 12, 2020

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: Kristin D. Roser/Ben Holly *KDR BH*
Reports Analysis Division
Compliance Branch

SUBJECT: Withdrawal and Resubmission of Final Determination Recommendation for the 2018 Year-End Report (Monthly Filers) for the Administrative Fine Program

We are withdrawing the document circulated to the Commission on November 26, 2019 in order to reflect updates disclosed in filings received by the Commission after the initial submission of this recommendation. On June 10, 2020, South Dakota Democratic Party (AF 3721) filed an Amended 2018 Year-End Report that disclosed a level of activity higher than previously reported. The circulation report has been updated to reflect the level of activity and final civil money penalty amounts disclosed on the most recent filings.

Attached are two lists of political committees and their treasurers against which the Commission has found reason to believe (RTB) and assessed proposed civil money penalties calculated at RTB for failure to file or failure to timely file the 2018 Year-End Report. The first list represents a committee that has paid the civil money penalty and the second list represents a committee that has not paid the civil money penalty. The committee that has not paid has been given at least forty (40) days from the date of the Commission's RTB finding to remit payment.

In accordance with 11 CFR § 111.34 and 11 CFR § 111.40, the Commission shall send a final determination notice to those respondents that have either paid or not paid the civil money penalty.

For your information, one (1) committee disclosed a change in treasurer after the RTB finding. An overview of this case has been provided below.

South Dakota Democratic Party (AF 3721) filed an Amended Statement of Organization after the RTB finding designating Marcia Bunger as Treasurer.

RAD Recommendation

- (1) Make a final determination that the political committees and their treasurers, in their official capacity, listed on the attached reports violated 52 U.S.C. § 30104(a) and assess the final civil money penalties so indicated.
- (2) Send the appropriate letters.

Federal Election Commission
FD Circulation Report Fine Paid
2018 YEAR-END MONTHLY Not Election Sensitive 01/31/2019 H_S_P_UNAUTH

AF#	Committee Name	Committee ID	Treasurer	Receipt Date	Days Late	LOA	PV	RTB Date	RTB Penalty	Final Money Penalty	Date Paid	Amount Paid
3721	SOUTH DAKOTA DEMOCRATIC PARTY	C00160937	MARCIA BUNGER	05/03/2019	Not Filed*	\$95,186	0	04/17/2019	\$5,086	\$5,086	5/28/2019	\$5,086

* The committee filed their report more than thirty (30) days after the report due date; therefore, per 11 C.F.R. 111.43(e), the report is considered to be not filed.

Federal Election Commission
FD Circulation Report Fine Not Paid
2018 YEAR-END MONTHLY Not Election Sensitive 01/31/2019 H_S_P_UNAUTH

AF#	Committee Name	Candidate Name	Committee ID	Treasurer	Receipt Date	Days Late	LOA	PV	RTB Date	RTB Penalty	Days Since RTB	FD Penalty
3720	JILL STEIN FOR PRESIDENT	JILL STEIN	C00581199	STEVEN WELZER	03/27/2019	Not Filed*	\$80,844	12	04/17/2019	\$20,344	222	\$20,344

* The committee filed their report more than thirty (30) days after the report due date; therefore, per 11 C.F.R. 111.43(e), the report is considered to be not filed.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) AF 3721
 Withdrawal and Resubmission of Final)
 Determination Recommendation for the)
 2018 Year-End Report (Monthly Filers))
 for the Administrative Fine Program:)
 South Dakota Democratic Party and)
 Marcia Bunger in her official capacity as)
 treasurer)

CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 29, 2020, the Commission decided by a vote of 4-0 to take the following actions, as recommended in the Reports Analysis Division’s Memorandum dated June 12, 2020, in AF# 3721:

1. Make a final determination that South Dakota Democratic Party and Marcia Bunger in her official capacity as treasurer, violated 52 U.S.C § 30104(a) and assess the final civil money penalty in the amount of \$5,086.
2. Send the appropriate letter.

Commissioners Hunter, Trainor, Walther, and Weintraub voted affirmatively for the decision.


 July 29, 2020

 Date

Attest:
Laura Sinram
 Digitally signed by Laura Sinram
 Date: 2020.07.29 18:50:35 -04'00'

 Laura E. Sinram
 Acting Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AF

August 3, 2020

Marcia Bunger, in official capacity as Treasurer
South Dakota Democratic Party
P.O. Box 1485
Sioux Falls, SD 57101

C00160937

AF#: 3721

Dear Ms. Bunger,

On April 17, 2019, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that South Dakota Democratic Party and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) for filing late or failing to file the 2018 Year-End Report. By letter dated April 18, 2019, the Commission notified you of the RTB finding and the civil money penalty calculated at the RTB stage totaling \$5,086 in accordance with the schedule of penalties at 11 CFR § 111.43.

On May 28, 2019, the FEC received payment of the civil money penalty calculated at the RTB stage. The FEC made a final determination on June 29, 2020 that South Dakota Democratic Party and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a), assessed a civil money penalty in the amount of \$5,086 in accordance with 11 CFR § 111.43, and voted to close the file.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 CFR §§ 111.42(b) and 111.20(c), the file will be placed on the public record within thirty (30) days from the date of this notification.

If you have any questions regarding this matter, please contact Jamie Sikorsky on our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

Sincerely,

A handwritten signature in black ink that reads "J.E. Trainor, III". The signature is written in a cursive style.

James E. "Trey" Trainor III
Chair

THIS IS THE END OF ADMINISTRATIVE FINE CASE #3721