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By Office of the Commission Secretary at 11:13 am, Mar 27, 2023

FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463**SENSITIVE**

March 27, 2023

**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  
*KDR*

BY: Kristin D. Roser  
Compliance Branch

SUBJECT: Reason to Believe Recommendation -  
Failure to File 48-Hour Notices under the Administrative Fine Program

Attached is the name of a principal campaign committee that has failed to file 48-hour notices with the Commission for contributions of \$1,000.00 or more received from the close of books for the 12-Day Pre-General Report up to 48 hours before the November 8, 2022 General Election in accordance with 52 U.S.C. § 30104(a) and 11 CFR. § 104.5(f). The committee, Friends of Jim Clyburn, represents a candidate who won the General Election. The committee is being referred for failing to file 48-hour notices for contributions totaling \$51,500.00.

A 48-hour notice is required to report all contributions of a \$1,000.00 or more, to any authorized committee of a candidate, including contributions from the candidate, loans from the candidate and other non-bank sources and endorsements or guarantees of loans from banks, as per 11 CFR § 104.5(f).

We have attached an information sheet which includes the contributor name, date of receipt and amount of the contributions for which a 48-hour notice was not filed.

In accordance with the schedule of civil money penalties outlined within 11 CFR § 111.44, this committee should be assessed the civil money penalty so indicated.

#### Recommendation

1. Find reason to believe that Friends of Jim Clyburn and James Bennett, in their official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$5,322 be assessed.
2. Send the appropriate letter.

#### Attachments

**Contributions for Which a 48-Hour Notice Was Not Received****AF 4561****Committee ID: C00255562****Committee Name: Friends of Jim Clyburn****Report Type: 30-Day Post-General (10/20/2022 – 11/28/2022)****48-Hour Reporting Period: 10/20/2022 – 11/5/2022**

<b>CONTRIBUTOR</b>	<b>DATE</b>	<b>AMOUNT</b>
ADAMS, CHRISTINE <sup>1</sup>	10/30/2022	\$1,000.00
ASPENGER, JAMES <sup>2</sup>	10/30/2022	\$1,000.00
AMAZON.COM SERVICES, INC. SEPARATE SEGREGATED FUND (AMAZON PAC)	11/1/2022	\$2,000.00
AMERICAN BANKERS ASSOCIATION PAC (BANKPAC)	11/1/2022	\$5,000.00
AMERICAN COUNCIL OF ENGINEERING COMPANIES (ACEC/PAC)	11/1/2022	\$5,000.00
AMERICAN PUBLIC POWER ASSOCIATION, PUBLIC OWNERSHIP OF ELECTRIC RESOURCES PAC	11/1/2022	\$1,000.00
AMERICAN SOCIETY OF ANESTHESIOLOGISTS POLITICAL ACTION COMMITTEE	11/1/2022	\$2,000.00
BAKERY, CONFECTIONERY WORKERS INTERNATIONAL UNION	11/1/2022	\$1,000.00
BOILMAKERS-BLACKSMITHS LEGISLATIVE EDUCATION-ACTION PROGRAM CAMPAIGN ASSISTANCE FUND	11/1/2022	\$2,500.00
BOULE' 1904 PAC	11/1/2022	\$2,000.00
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS POLITICAL ACTION COMMITTEE <sup>3</sup>	11/1/2022	\$5,000.00
INVESCO HOLDING COMPANY (US), INC. POLITICAL ACTION COMMITTEE	11/1/2022	\$5,000.00
POLITICAL ACTION COMMITTEE OF THE AMERICAN ASSOCIATION OF ORTHOPAEDIC SURGEONS	11/1/2022	\$2,500.00

<sup>1</sup> This contribution was earmarked through ActBlue and was received by the conduit on 10/30/2022.

<sup>2</sup> This contribution was earmarked through ActBlue and was received by the conduit on 10/30/2022.

<sup>3</sup> This contribution was inadvertently excluded from the [RFAI](#) sent on the Amended 30-Day Post-General Report, received 12/29/2022.

RESCARE, INC. DBA BRIGHTSPRING HEALTH SERVICES LEGACY FUND (BRIGHTSPRING LEGACY FUND)	11/1/2022	\$3,500.00
SAMSUNG ELECTRONICS AMERICA INC POLITICAL ACTION COMMITTEE	11/1/2022	\$3,000.00
TE CONNECTIVITY CORPORATION POLITICAL ACTION COMMITTEE TEPAC	11/1/2022	\$2,500.00
TWDC ENTERPRISES 18 CORP. EMPLOYEES PAC AKA 'THE WALT DISNEY COMPANY EMPLOYEES PAC' OR 'DI	11/1/2022	\$2,500.00
WESTROCK POLITICAL ACTION COMMITTEE	11/1/2022	\$5,000.00
	<b>TOTAL</b>	<b>\$51,500.00</b>

**Proposed Civil Money Penalty: \$5,322** ((1 Notice Not Filed at \$172) + (10% of the Overall Contributions Not Reported))

Federal Election Commission  
Reason to Believe Circulation Report  
48-Hour Notification Report

3/27/2023 8:04 AM

AF#	Committee ID	Committee Name	State	Election	Candidate Name	Treasurer	Prev Violations	Notices Not Filed	LOA	Penalty
4561	C00255562	FRIENDS OF JIM CLYBURN	SC	2022	JAMES E. CLYBURN	JAMES BENNETT	0	1	\$51,500	\$5,322

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 4561  
 Reason to Believe Recommendation - )  
 Failure to File 48-Hour Notices under the )  
 Administrative Fine Program: Friends of )  
 Jim Clyburn and James Bennett, in their )  
 official capacity as treasurer )

CERTIFICATION

I, Vicktoria J. Allen, Deputy Secretary of the Federal Election Commission, do hereby certify that on March 29, 2023, the Commission decided by a vote of 6-0 to take the following actions in AF 4561:

1. Find reason to believe that Friends of Jim Clyburn and James Bennett, in their official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$5,322 be assessed.
2. Send the appropriate letter.

Commissioners Broussard, Cooksey, Dickerson, Lindenbaum, Trainor, and Weintraub voted affirmatively for the decision.

Attest:



**Vicktoria J Allen** Digitally signed by Vicktoria J Allen  
Date: 2023.03.30 09:27:46 -04'00'

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Vicktoria J. Allen  
 Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AF

March 30, 2023

James Bennett, in official capacity as Treasurer  
Friends of Jim Clyburn  
Post Office Box 12567  
Columbia, SC 29211

C00255562

AF#: 4561  
FINE: \$5,322

Dear James Bennett,

The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101, et seq. ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing the Federal Election Commission (the "Commission" or "FEC") and the Secretary of State, as appropriate, of any contribution of \$1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election. 52 U.S.C. § 30104(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* These notification requirements are in addition to all other reporting requirements. 52 U.S.C. § 30104(a). Our records indicate that Friends of Jim Clyburn did not submit 48-Hour Notices for contributions of \$1,000 or more, received between October 20, 2022 and November 5, 2022, totaling \$51,500, as required by 52 U.S.C. § 30104(a)(6)(A). Attachment 1.

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 March 29, 2023, the Commission found that there is Reason to Believe ("RTB") that Friends of Jim Clyburn and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file the 48-Hour Notices. Based on the Commission's schedule of civil money penalties at 11 C.F.R. § 111.44, the amount of your civil money penalty calculated at the RTB stage is \$5,322. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-111.55. Attachment 2. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. The amount of the civil money penalty is \$172 for each non-filed notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each prior violation. Send your payment of \$5,322 within forty (40) days of

FRIENDS OF JIM CLYBURN

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the finding, or by May 8, 2023.

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 decide to challenge the RTB finding and/or calculated civil money penalty, you must email a written response to the FEC's Office of Administrative Review at [administrativefines@fec.gov](mailto:administrativefines@fec.gov). 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 8, 2023. 11 C.F.R. § 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 C.F.R. § 111.36(c).

The FEC will only consider challenges that are based on at least one of three factors: (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 C.F.R. § 111.35(b). 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 C.F.R. § 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 C.F.R. § 111.35(d).

If you fail to timely raise a factual argument in your challenge to the RTB finding, your right to present such an argument in an appeal to the U.S. District Court under 52 U.S.C. § 30109 shall be deemed waived. 11 C.F.R. § 111.38.

It should also be noted that, all challenges to an RTB finding and/or calculated civil money penalty should be converted to PDF (Portable Document Format) and emailed to [administrativefines@fec.gov](mailto:administrativefines@fec.gov). The Commission encourages the use of electronic



## FRIENDS OF JIM CLYBURN

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signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted challenges will be deemed received on the date they are electronically received by staff.

In addition, 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 challenging the RTB finding and/or calculated civil money penalty, the FEC will conclude that the factual allegations are true and make a final determination that Friends of Jim Clyburn 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 Commission 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 C.F.R. § 111.51(a)(2).

**3. If You Choose to Pay the Civil Money Penalty**

If you decide to pay the calculated civil money penalty, please follow the payment instructions below. Upon receipt of your payment, the FEC will send you a final determination letter.

You may remit payment by Automated Clearinghouse ("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 <http://www.fec.gov/af/pay.shtml> to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details at the top of this letter to complete the required fields.

**NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS****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

FRIENDS OF JIM CLYBURN

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the Commission assesses upon making a final determination.

### **Settlement Offers**

Any offer to settle or compromise a debt owed to the Commission will be rejected. This includes 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. 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 C.F.R. § 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 <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Jacqueline Gausepohl 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,



Dara Lindenbaum  
Chair

**Contributions for Which a 48-Hour Notice Was Not Received**

**AF 4561**

**Committee ID: C00255562**

**Committee Name: Friends of Jim Clyburn**

**Report Type: 30-Day Post-General (10/20/2022 – 11/28/2022)**

**48-Hour Reporting Period: 10/20/2022 – 11/5/2022**

<b>CONTRIBUTOR</b>	<b>DATE</b>	<b>AMOUNT</b>
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	<b>TOTAL</b>	<b>\$51,500.00</b>

**Proposed Civil Money Penalty: \$5,322** ((1 Notice Not Filed at \$172) + (10% of the Overall Contributions Not Reported))



FEDERAL ELECTION COMMISSION  
1050 First Street, NE  
Washington, DC 20463

**STATEMENT OF DESIGNATION OF COUNSEL**

Provide one form for each Respondent/Witness

E-MAIL: [cela@fec.gov](mailto:cela@fec.gov)

AR/MUR/RR/P-MUR# AF# 4561

Name of Counsel: Brian G. Svoboda

Firm: Perkins Coie LLP

Address: 700 13th Street, NW Suite 800

Washington, DC 20005

Office#: (202) 434-1654 Fax#: (202) 654-9150

Mobile#: \_\_\_\_\_

E-mail: BSvoboda@perkinscoie.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

05.04.2023

Date

James Bennett  
(Signature - Respondent/Agent/Treasurer)

Treasurer

Title

James Bennett

(Name - Please Print)

Friends of Jim Clyburn and James Bennett, in his official capacity as Treasurer

**RESPONDENT:**

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: PO Box 12567  
(Please Print)

Columbia, SC 29211

Home#: \_\_\_\_\_ Mobile#: \_\_\_\_\_

Office#: \_\_\_\_\_ Fax#: \_\_\_\_\_

E-mail: \_\_\_\_\_

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

May 8, 2023

Brian G. Svoboda  
BSvoboda@perkinscoie.com  
D. +1.202.434.1654  
F. +1.202.654.9150The Honorable Dara Lindenbaum  
Chair  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463**Re: AF# 4561**  
**Friends of Jim Clyburn and James Bennett, in his official capacity as Treasurer**

Dear Chair Lindenbaum:

We write as counsel to Friends of Jim Clyburn and James Bennett, in his official capacity as Treasurer (collectively, the “Committee”). A copy of a Statement of Designation of Counsel, executed by Mr. Bennett on behalf of the Committee, accompanies this letter. We submit this response to the administrative fine notice in the above-referenced matter. We respectfully request that the Federal Election Commission (the “Commission”) terminate the proceedings in AF# 4561 and close the file. Alternatively, we request that the Commission correct the penalty amount.

This matter involves the non-filing of 48-Hour Notices for contributions received on two days—October 30, 2022, and November 1, 2022—when the Committee’s long-time compliance vendor—Whitney Wyatt Burns—was gravely ill and died less than five weeks later. The Committee and its treasurer had long engaged Ms. Burns, who was one of the most experienced and respected in the field,<sup>1</sup> to prepare and file its Commission reports.<sup>2</sup> However, Ms. Burns fell ill in fall 2022 and died on December 9, 2022.<sup>3</sup> After Ms. Burns passed away, the Commission found reason to believe that the Committee did not submit 48-Hour Notices for two contributions received on October 30, 2022, and for sixteen contributions received on November 1, 2022.<sup>4</sup>

The Commission’s reason to believe finding overstates the amount of the violation. It alleges that the Committee failed to file a 48-Hour Notice for a \$2,500 contribution received on November 1, 2022, from the “Boilmakers-Blacksmiths [sic] Legislative Education-Action Program Campaign Assistance Fund.” However, the Committee did, in fact, file a 48-Hour Notice with respect to

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<sup>1</sup> See, e.g., [Comment on FR notice 2008-13 by Whitney W. Burns \(fec.gov\)](#).

<sup>2</sup> See [PAGE BY PAGE REPORT DISPLAY FOR 202212299574243539 \(Page 283 of 341\) \(fec.gov\)](#).

<sup>3</sup> See, e.g., [Whitney Wyatt Burns | Facebook](#).

<sup>4</sup> See 52 U.S.C. § 30104(a)(6)(A); see also March 30, 2023 Letter from the Federal Election Commission in Administrative Fine Matter # 4561.

The Honorable Dara Lindenbaum, Chair  
 Federal Election Commission  
 May 8, 2023  
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this contribution. Specifically, the Committee filed a 48-Hour Notice showing the November 1, 2022 receipt of a \$2,500 contribution from the International Brotherhood of Boilermakers Campaign Assistance Fund.<sup>5</sup> In its turn, the International Brotherhood of Boilermakers Campaign Assistance Fund filed a Post-General Report disclosing a contribution to the Committee in this same amount.<sup>6</sup> However, on its Post-General Report, the Committee appears to have confused the donor with the similarly-named Boilermakers Blacksmiths Forgers and Helpers of American Local 169 Boilermakers PAC, reporting the November 1, 2022 receipt of a \$2,500 contribution from that entity.<sup>7</sup> That other PAC, in turn, disclosed no contribution to the Committee on its own Post-General Report.<sup>8</sup> Thus, the amount of the asserted violation appears overstated by \$2,500 and should be adjusted.<sup>9</sup>

Moreover, by engaging one of the nation's most experienced and well-regarded compliance professionals to prepare and file its reports, the Committee used "best efforts" to file in a timely manner, and Ms. Burns' condition represented a reasonably unforeseen circumstance beyond its control.<sup>10</sup>

The Commission provides no exhaustive list of the circumstances that are either in or out of a filer's control. Examples of circumstances that will be considered reasonably unforeseen and beyond the respondent's control include, but are not limited to: (1) certain failures of Commission computers or Commission-provided software; (2) widespread disruptions of information transmissions over the Internet not caused by failures of Commission or respondent systems or Internet service providers; and (3) severe weather or other disaster-related incidents.<sup>11</sup> Examples of circumstances that will not be considered reasonably unforeseen, or beyond a respondent's control, include: (i) negligence; (ii) delays caused by vendors or contractors; (iii) treasurer and staff illness, inexperience or unavailability; (iv) respondent computer, software, or Internet service provider failures; (v) failure to know filing dates; and (vi) failure to use filing software properly.<sup>12</sup>

<sup>5</sup> See 48-Hour Notice of Contributions/Loans Received (filed by Friends of Jim Clyburn on November 2, 2022), <https://docquery.fec.gov/pdf/448/202211029546698448/202211029546698448.pdf>.

<sup>6</sup> See Post-General 2022 Report at 62 (filed by International Brotherhood of Boilermakers Campaign Assistance Fund on December 7, 2022), <https://docquery.fec.gov/pdf/279/202212079547202279/202212079547202279.pdf>.

<sup>7</sup> See Post-General 2022 Report at 76 (filed by Friends of Jim Clyburn on December 9, 2022), <https://docquery.fec.gov/pdf/221/202212099557520221/202212099557520221.pdf>; Amended Post-General 2022 Report at 76 (filed by Friends of Jim Clyburn on December 29, 2022), <https://docquery.fec.gov/pdf/198/202212299574244198/202212299574244198.pdf>.

<sup>8</sup> See Post-General 2022 Report (filed by Boilermakers Blacksmiths Forgers and Helpers of American Local 169 Boilermakers PAC on December 7, 2022), <https://docquery.fec.gov/pdf/571/202212079547229571/202212079547229571.pdf>.

<sup>9</sup> See 11 C.F.R. § 111.35(b)(1) (permitting challenge of fine when "the committee timely filed the report in accordance with 11 C.F.R. § 100.19").

<sup>10</sup> See *id.* § 111.35(b)(3).

<sup>11</sup> *Id.* § 111.35(c).

<sup>12</sup> *Id.* § 111.35(d).

The Honorable Dara Lindenbaum, Chair  
Federal Election Commission  
May 8, 2023  
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In a matter closely analogous to this one, where the grave illness of an individual besides the treasurer impeded the filing of an election-sensitive report, the Commission terminated the administrative fine proceeding, and even refunded an already-paid fine.<sup>13</sup> In AF# 4086, involving the Nevada County Republican Party, the Commission found reason to believe that the respondent failed timely to file its 2020 Post-General Report.<sup>14</sup> The respondent's chair replied in an unsworn letter that its treasurer was unable to file the reports because her spouse "was stricken with Covid-19, diagnosed positive on November 9, [and] hospitalized and quarantined until his death on December 26, 2020."<sup>15</sup> While the reviewing officer contended that the county party did not show that the circumstances directly prevented the filing of the report, and recommended imposition of the penalty, the Commission ultimately agreed with the Nevada County Republican Party and voted 5-1 to terminate the administrative fine proceeding and refund the fine.<sup>16</sup>

The same outcome is warranted here. Like the grave illness and unfortunate death of the treasurer's spouse in AF# 4086, Ms. Burns' illness and death—happening, as they did, in the days immediately surrounding the general election—was a "reasonably unforeseen circumstance." As a committee vendor, Ms. Burns, who was facing physical limitations beyond her control, did not "cause" the delay any more than the Nevada County treasurer did.<sup>17</sup> Ms. Burns was no less unavailable than the Nevada County treasurer in AF# 4086, nor was she even the Committee's treasurer nor properly a member of its staff.<sup>18</sup>

The whole point of the "best efforts" provision and the administrative fine regulations is to ensure that filing committees and their treasurers act responsibly to ensure that the public record is complete. The Commission judged that a grave illness proximate to the filing officer on the eve of an election is not sufficient cause to fault a committee for failing to use best efforts. It should reach the same result here, where the respondent hired one of the very best and diligent report preparers in the regulated community, and entrusted her with its filing obligations, only to have her fall unexpectedly ill at what proved to be the very end of her life, when she was not fully able to perform her duties.

Thus, the Commission should close AF# 4561 and take no further action pursuant to 11 C.F.R. § 111.35(b)(3). Alternatively, the Commission should reduce the administrative fine pursuant to 11 C.F.R. § 111.35(b)(1), to account for the fact that one of the disputed reports was, indeed, filed.

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<sup>13</sup> See Final Determination Recommendation, AF# 4086, available at [https://www.fec.gov/files/legal/admin\\_fines/4086/4086\\_02.pdf](https://www.fec.gov/files/legal/admin_fines/4086/4086_02.pdf).

<sup>14</sup> See *id.* at 19.

<sup>15</sup> See *id.* at 19.

<sup>16</sup> *Id.*

<sup>17</sup> See 11 C.F.R. § 111.37.

<sup>18</sup> See *id.* § 111.37(d)(3).



The Honorable Dara Lindenbaum, Chair  
Federal Election Commission  
May 8, 2023  
Page 4

We appreciate the Commission's consideration of this response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Chad B. Henry".

Brian G. Svoboda

Chad B. Henry

Counsel to Friends of Jim Clyburn and James Bennett, in his official capacity as Treasurer



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 29, 2023

## **REVIEWING OFFICER RECOMMENDATION OFFICE OF ADMINISTRATIVE REVIEW (“OAR”)**

AF# 4561 – Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer (C00255562)

### **Summary of Recommendation**

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$5,072 civil money penalty.

### **Reason-to-Believe Background**

In connection with the 2022 General Election held on November 8, 2022, the respondents were required to file 48-Hour Notices of Contributions/Loans (“48-Hour Notices”) for contributions of \$1,000 or more received between October 20, 2022 and November 5, 2022.

On March 29, 2023, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file a 48-Hour Notice for 18 contributions totaling \$51,500 and made a preliminary determination that the civil money penalty was \$5,322 based on the schedule of penalties at 11 C.F.R. § 111.44. A letter was sent to the respondents’ email address of record from the Reports Analysis Division (“RAD”) on March 30, 2023 to notify them of the Commission’s RTB finding and civil money penalty.

### **Legal Requirements**

The Federal Election Campaign Act (“Act”) requires that the principal campaign committee of a candidate notify the Commission, in writing, of any contribution of \$1,000 or more received after the 20<sup>th</sup> day but more than 48 hours before an election. The principal campaign committee must notify the Commission within 48 hours of receipt of the contribution. The 48-hour notification shall be in addition to all other reporting requirements under the Act. 52 U.S.C. § 30104(a)(6)(A) and 11 C.F.R. § 104.5(f). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

## Summary of Respondents' Challenge

On May 8, 2023, the Commission received the written response (“challenge”) from counsel requesting the Commission terminate the proceedings and close the file because the Committee demonstrated best efforts to file and experienced a reasonably unforeseen circumstance. Counsel explains the Committee’s long-time compliance vendor, Ms. Whitney Burns, was gravely ill during the 48-Hour Notice period and passed away five weeks later. Counsel further states:

Moreover, by engaging one of the nation’s most experienced and well-regarded compliance professionals to prepare and file its reports, the Committee used “best efforts” to file in a timely manner, and Ms. Burns’ condition represented a reasonably unforeseen circumstance beyond its control.

Counsel notes that the Commission does not provide an exhaustive list of circumstances that will or will not be considered out of the respondents’ control. Further, counsel refers to the Commission’s decision to terminate the proceedings in a prior similar matter and states the same decision should be made here.<sup>1</sup>

Alternatively, counsel requests that the Commission recalculate the civil money penalty to remove a single \$2,500 contribution in question. Counsel explains that the Committee incorrectly disclosed the name of the contributor on its 2022 Post-General Report, making it appear as if the corresponding 48-Hour Notice was not filed. The Committee incorrectly disclosed the contributor as Boilermakers Blacksmiths Forgers and Helpers of American Local 169 Boilermakers PAC instead of International Brotherhood of Boilermakers Campaign Assistance Fund. The Committee appropriately filed the 48-Hour Notice for the \$2,500 contribution from International Brotherhood of Boilermakers Campaign Assistance Fund. Counsel states the violation amount should be reduced by \$2,500.

## Analysis

Counsel indicates the 48-Hour Notices were not timely filed because the Committee’s compliance vendor was unavailable due to serious illness, which ultimately resulted in her death. The Reviewing Officer is sympathetic to the circumstances presented and recognizes these circumstances may have impacted the Committee’s ability to comply with reporting requirements. The Reviewing Officer also recognizes the Committee’s long-standing engagement with Ms. Burns, which counsel contends shows the Committee’s best efforts to timely file reports.<sup>2</sup>

The “best efforts” defense is a two-part test: the respondents used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control, and they filed the report no later than 24 hours after the end of these circumstances. The Commission states in its *Explanation and Justification for Revised 11 CFR § 111.35(b)(3)* –

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<sup>1</sup> See [AF# 4086](#).

<sup>2</sup> While the respondents do not indicate they were unaware of 48-Hour Notice filing requirements, the Reviewing Officer confirms the Commission appropriately notified the Committee of its requirement to file 48-Hour Notices in connection with the 2022 General Election. See Attachment 3.

“Best Efforts” Defense, 72 Fed. Reg. 14662, 14664-14666 (Mar. 29, 2007) that respondents must show

...that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report...[T]his rule requires a strict causal relationship between the circumstances described in the challenge...and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. (emphasis included)

The Committee did not demonstrate that the circumstances directly *prevented* the respondents from filing the report. Nor did the respondents demonstrate that they filed the report no later than 24 hours after the end of a circumstance considered to be unforeseen and beyond the respondents' control. Therefore, a “best efforts” defense does not succeed in this matter.

While sympathetic to the circumstances, the Reviewing Officer notes that a committee's treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d). Moreover, illness and unavailability of committee staff and delays caused by vendors are specifically included at 11 C.F.R. § 111.35(d) as an example of a circumstance that will not be considered reasonably unforeseen and beyond the respondents' control. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a).

With respect to the amount in violation, the Committee states that the reason to believe finding overstates the amount in violation by \$2,500 as the November 1, 2022 contribution of \$2,500 from Boilermakers Blacksmiths Forgers and Helpers of American Local 169 Boilermakers PAC was incorrectly disclosed on its 2022 Post-General Report. On June 20, 2023, the Committee filed an Amended 2022 Post-General Report to correctly disclose the contributor's name as International Brotherhood of Boilermakers Campaign Assistance Fund.<sup>3</sup> Based on this additional explanation and correction of the record, the Reviewing Officer confirms the Committee timely filed a 48-Hour Notice for this contribution on November 2, 2022<sup>4</sup>, and \$2,500 should be removed from the calculation of the civil money penalty. *See* Attachment 2.

The Committee still failed to timely file 48-Hour Notices for 17 contributions totaling \$49,000. *See* Attachment 2. The civil money penalty calculation for 48-Hour Notices is contained at 11 C.F.R. § 111.44. The calculation is \$172 plus 10% of the amount of the contributions not reported on *each* 48-Hour Notice, plus 25% for each previous violation. The number of missing notices should be calculated by determining the minimum number of notices the Committee could have filed to cover the contributions in question. The minimum number of 48-Hour Notices the Committee could have filed to cover the contributions in question equals 1. Thus, the amount of the civil money penalty is [(\$172 x 1 missing notice) + (.10 x \$49,000 in total contributions)] or \$5,072.

<sup>3</sup> See <https://docquery.fec.gov/pdf/280/202306209582310280/202306209582310280.pdf>

<sup>4</sup> See <https://docquery.fec.gov/pdf/448/202211029546698448/202211029546698448.pdf>

The Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$5,072 civil money penalty (reduced from the RTB civil money penalty of \$5,322).

### **OAR Recommendations**

1. Adopt the Reviewing Officer recommendation for AF# 4561 involving Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 4561 that Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$5,072 civil money penalty (reduced from the RTB civil money penalty of \$5,322); and
3. Send the appropriate letter.

### **Attachments**

Attachment 1 –

Attachment 2 – OAR’s Chart of Contributions for Which a 48-Hour Notice Was Not Received

Attachment 3 –

Attachment 4 – Declaration from RAD

Attachment 5 – Declaration from OAR

**OAR's Chart of Contributions for Which a 48-Hour Notice Was Not Received**

CONTRIBUTIONS INCLUDED IN RTB FINDING			COMMITTEE'S RESPONSE	OAR FD RECOMMENDATION	
CONTRIBUTOR	RECEIPT DATE	AMOUNT		ACTION	VIOLATION AMOUNT
ADAMS, CHRISTINE	10/30/2022	\$1,000.00	None	Include	\$1,000.00
ASPENGER, JAMES	10/30/2022	\$1,000.00	None	Include	\$1,000.00
AMAZON.COM SERVICES, INC. SEPARATE SEGREGATED FUND (AMAZON PAC)	11/1/2022	\$2,000.00	None	Include	\$2,000.00
AMERICAN BANKERS ASSOCIATION PAC (BANKPAC)	11/1/2022	\$5,000.00	None	Include	\$5,000.00
AMERICAN COUNCIL OF ENGINEERING COMPANIES (ACEC/PAC)	11/1/2022	\$5,000.00	None	Include	\$5,000.00
AMERICAN PUBLIC POWER ASSOCIATION, PUBLIC OWNERSHIP OF ELECTRIC	11/1/2022	\$1,000.00	None	Include	\$1,000.00
AMERICAN SOCIETY OF ANESTHESIOLOGISTS POLITICAL ACTION COMMITTEE	11/1/2022	\$2,000.00	None	Include	\$2,000.00
BAKERY, CONFECTIONERY WORKERS INTERNATIONAL UNION	11/1/2022	\$1,000.00	None	Include	\$1,000.00
BOILMAKERS-BLACKSMITHS LEGISLATIVE EDUCATION-ACTION PROGRAM CAMPAIGN ASSISTANCE FUND	11/1/2022	\$2,500.00	Amendment filed to correctly disclose name of contributor as International Brotherhood of Boilermakers Campaign Assistance Fund. 48-Hour Notice timely filed on 11/2/22.	Remove	
BOULE' 1904 PAC	11/1/2022	\$2,000.00	None	Include	\$2,000.00
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS POLITICAL ACTION COMMITTEE	11/1/2022	\$5,000.00	None	Include	\$5,000.00
INVESCO HOLDING COMPANY (US), INC. POLITICAL ACTION COMMITTEE	11/1/2022	\$5,000.00	None	Include	\$5,000.00

**OAR's Chart of Contributions for Which a 48-Hour Notice Was Not Received**

POLITICAL ACTION COMMITTEE OF THE AMERICAN ASSOCIATION OF ORTHOPAEDIC	11/1/2022	\$2,500.00	None	Include	\$2,500.00
RESCARE, INC. DBA BRIGHTSPRING HEALTH SERVICES LEGACY FUND	11/1/2022	\$3,500.00	None	Include	\$3,500.00
SAMSUNG ELECTRONICS AMERICA INC POLITICAL ACTION COMMITTEE	11/1/2022	\$3,000.00	None	Include	\$3,000.00
TE CONNECTIVITY CORPORATION POLITICAL ACTION COMMITTEE TEPAC	11/1/2022	\$2,500.00	None	Include	\$2,500.00
TWDC ENTERPRISES 18 CORP. EMPLOYEES PAC AKA 'THE WALT DISNEY COMPANY	11/1/2022	\$2,500.00	None	Include	\$2,500.00
WESTROCK POLITICAL ACTION COMMITTEE	11/1/2022	\$5,000.00	None	Include	\$5,000.00
<b>RTB Violation Total</b>		<b>\$51,500</b>		<b>FD Violation Total</b>	<b>\$49,000</b>

**Recommended FD Civil Money Penalty: \$5,072**

[( \$172 x 1 missing notice) + (.10 x \$49,000 in total contributions)]

**DECLARATION OF KRISTIN D. ROSER**

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission (“Commission”). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Friends of Jim Clyburn:
  - A) Request for Additional Information for the Amended 2022 30-Day Post-General Report, dated January 4, 2023, referencing missing 48-Hour Notices (sent via electronic mail to: info@clyburnforcongress.com);
  - B) Reason-to-Believe Letter, dated March 30, 2023, referencing the missing 48-Hour Notices (sent via electronic mail to: info@clyburnforcongress.com and emailed to gary.h.stevens@gmail.com on April 5, 2023, per the Committee's request).
4. I hereby certify that I have searched the Commission’s public records and find that Friends of Jim Clyburn has not yet filed the missing 48-Hour Notices with the Commission. However, the Committee filed a Form 99 (Miscellaneous Electronic Submission) on March 1, 2023 in response to the Request for Additional Information referencing the Amended 2022 30-Day Post-General Report, dated January 4, 2023.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed on the 25<sup>th</sup> day of May, 2023.

*Kristin D. Roser*

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Kristin D. Roser  
Chief, Compliance Branch  
Reports Analysis Division  
Federal Election Commission





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RQ-2

January 4, 2023

JAMES BENNETT, TREASURER  
FRIENDS OF JIM CLYBURN  
POST OFFICE BOX 12567  
COLUMBIA, SC 29211

**Response Due Date**  
**02/08/2023**

IDENTIFICATION NUMBER: C00255562

REFERENCE: AMENDED 30 DAY POST-GENERAL REPORT (10/20/2022 -  
11/28/2022), RECEIVED 12/29/2022

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 2 item(s):

1. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions (to include loans, in-kind contributions, and advances) received by your committee after the close of books for the 12-Day Pre-General Report (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. (11 CFR § 104.5(f))

If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information.

2. Your committee filed 48-hour notices reporting the following "last minute" contributions (see attached). However, these contributions do not appear on Schedule A of this report. Please amend your report to include these contributions or provide an explanation of these apparent discrepancies. (11 CFR § 104.3(a)(4)(i))

## FRIENDS OF JIM CLYBURN

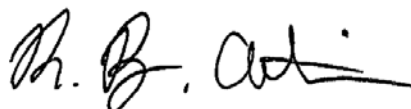
Page 2 of 2

- For your information and consideration when preparing future filings, all contributions and transfers to political committees should be reported on Line 21 of the Detailed Summary Page and itemized on a separate Schedule B. (11 CFR § 104.3(b)(2))
- Please be advised that the FEC Committee ID numbers for the following contributions from political committees appear to be incorrect: Amalgamated Clothing & Textile Workers Union (C70000732). Use of incorrect FEC Committee ID numbers may create difficulty in identifying the contributing committee for the public record. (11 CFR § 104.3(a)(4))

**Please note, you will not receive an additional notice from the Commission on this matter.** Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. For information about the report review process or specific filing information for your committee type, please visit [www.fec.gov/help-candidates-and-committees](http://www.fec.gov/help-candidates-and-committees). For more information about Requests for Additional Information (RAI), why you received a letter, and how to respond, please visit [www.fec.gov/help-candidates-and-committees/request-additional-information](http://www.fec.gov/help-candidates-and-committees/request-additional-information). Should you have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1196.

Sincerely,



Bradley Austin

Sr. Campaign Finance &amp; Reviewing Analyst

436

**Missing 48-Hour Notices**  
**Friends of Jim Clyburn (C00255562)**

<b>Contributor Name</b>	<b>Date</b>	<b>Amount</b>	<b>Election</b>
Singh, Gururaj	10/24/22	\$2,900.00	G2022
Adams, Christine	10/30/22	\$1,000.00	G2022
Aspenger, James	10/30/22	\$1,000.00	G2022
Amalgamated Clothing & Textile Workers Union	11/1/22	\$2,500.00	G2022
Amazon.Com Services, Inc. Separate Segregated Fund (Amazon PAC)	11/1/22	\$2,000.00	G2022
American Bankers Association Pac (BANKPAC)	11/1/22	\$5,000.00	G2022
American Council Of Engineering Companies (ACEC/PAC)	11/1/22	\$5,000.00	G2022
American Public Power Association, Public Ownership Of Electric Resources PAC	11/1/22	\$1,000.00	G2022
American Society Of Anesthesiologists Political Action Committee	11/1/22	\$2,000.00	G2022
Bakery, Confectionery Workers International Union	11/1/22	\$1,000.00	G2022
BHFS-E, PC PAC (Brownstein Hyatt Farber Schreck Political Action Committee)	11/1/22	\$2,000.00	G2022
Boilmakers-Blacksmiths Legislative Education-Action Program Campaign Assistance Fund	11/1/22	\$2,500.00	G2022
Boule' 1904 PAC	11/1/22	\$2,000.00	G2022
Invesco Holding Company (US), Inc. Political Action Committee	11/1/22	\$5,000.00	G2022
Political Action Committee Of The American Association Of Orthopaedic Surgeons	11/1/22	\$2,500.00	G2022
Rescare, Inc. DBA Brightspring Health Services Legacy Fund (Brightspring Legacy Fund)	11/1/22	\$3,500.00	G2022
Samsung Electronics America Inc Political Action Committee	11/1/22	\$3,000.00	G2022
TE Connectivity Corporation Political Action Committee TEPAC	11/1/22	\$2,500.00	G2022
TWDC Enterprises 18 Corp. Employees PAC AKA 'The Walt Disney Company Employees Pac' Or 'Di	11/1/22	\$2,500.00	G2022
Westrock Political Action Committee	11/1/22	\$5,000.00	G2022

**Incorrectly Reported Receipts on 48-Hour Notices  
Friends of Jim Clyburn (C00255562)**

**48-Hour Notices Filed/Contributions Not Disclosed on Schedule A**

<b>Contributor Name</b>	<b>Date</b>	<b>Amount</b>
Anderson, Lakeitha	11/3/22	\$2,000.00
Singh, Nishad T.	10/24/22	\$2,900.00
National Council Of Textile Organizations Inc Political Action Committee	11/4/22	\$2,500.00

**DECLARATION OF RHIANNON MAGRUDER**

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission (“Commission”). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The principal campaign committee of a candidate must file notifications disclosing contributions of \$1,000 or more which are received after the 20<sup>th</sup> day but more than 48 hours before an election. These notifications (also called 48-Hour Notices) must be filed with the Commission within 48 hours of the committee’s receipt of the contribution(s).
- 3) I hereby certify that I have searched the Commission’s public records and find that Friends of Jim Clyburn did not file the required 48-Hour Notices for the contributions included in the Reviewing Officer’s Recommendation dated June 29, 2023.
- 4) I hereby certify that I have searched the Commission’s public records and that the documents identified herein are the true and accurate copies of:
  - a) 48-Hour Notice filed by Friends of Jim Clyburn on November 2, 2022.
- 5) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 29<sup>th</sup> day of June, 2023.

*Rhiannon Magruder*

Rhiannon Magruder  
Reviewing Officer  
Office of Administrative Review  
Federal Election Commission

# 48-HOUR NOTICE OF CONTRIBUTIONS/LOANS RECEIVED

(See Reverse Side for Instructions)

To be used to report all contributions (including loans) of \$1000 or more, received within 20 days of the election.

<b>1. NAME OF COMMITTEE IN FULL</b> FRIENDS OF JIM CLYBURN			
ADDRESS (number and street) POST OFFICE BOX 12567			
CITY COLUMBIA	STATE SC	ZIP CODE 29211	
<b>2. NAME OF CANDIDATE</b> CLYBURN, JAMES E., , ,		<b>3. OFFICE SOUGHT</b> (State and District) House SC 06	
		<b>4. FEC IDENTIFICATION NUMBER</b> C00255562	
<b>5. IS THIS AN AMENDMENT?</b> <input checked="" type="checkbox"/> NO, THIS IS A NEW FILING <input type="checkbox"/> YES, IT AMENDS THE NOTICE FILED ON _____ / _____ / _____			
<b>A. FULL NAME</b> Morgan Sandoz, Beverly, , ,		Name of Employer	Date (month, day, year)
MAILING ADDRESS 1 S. Orange Grove # 7		Transaction ID : F6.4429	Amount 1000.00
CITY Pasadena	STATE CA	ZIP CODE 91105	Occupation
<b>B. FULL NAME</b> INTERNATIONAL BROTHERHOOD OF BOILERMAKERS CAMPAIGN ASSISTANCE FUND		Name of Employer	Date (month, day, year)
MAILING ADDRESS 753 STATE AVE. SUITE 565		Transaction ID : F6.4432	Amount 2500.00
CITY KANSAS CITY	STATE KS	ZIP CODE 66101	Occupation
<b>C. FULL NAME</b>		Name of Employer	Date (month, day, year)
MAILING ADDRESS			Amount
CITY	STATE	ZIP CODE	Occupation
<b>D. FULL NAME</b>		Name of Employer	Date (month, day, year)
MAILING ADDRESS			Amount
CITY	STATE	ZIP CODE	Occupation
<b>E. FULL NAME</b>		Name of Employer	Date (month, day, year)
MAILING ADDRESS			Amount
CITY	STATE	ZIP CODE	Occupation
<b>SIGNATURE (optional)</b> Bennett, James, A., ,		DATE 11/02/2022	<b>For further information contact:</b> Federal Election Commission 999 E Street, NW, Washington, DC 20463 Toll Free 800-424-9530, Local 202-694-1100
[Electronically Filed]			

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Any information copied from reports and statements filed under the Federal Election Campaign Act may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes other than using the name and address of any political committee to solicit contributions from such committee.

FEC FORM 6

(Revised 03/2016)



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 29, 2023

Brian G. Svoboda  
Chad B. Henry  
Perkins Coie  
700 13<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005-3960

Friends of Jim Clyburn  
C00255562  
AF# 4561

Dear Counsel:

On March 29, 2023, the Federal Election Commission (“the Commission”) found reason to believe (“RTB”) that Friends of Jim Clyburn and Chris Rosenthal, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for eighteen contributions totaling \$51,500. The Commission also made a preliminary determination that the civil money penalty was \$5,322 based on the schedule of penalties at 11 C.F.R. § 111.44.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination and assess a reduced penalty. A copy of the Reviewing Officer’s recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Please note, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and emailed to the Commission Secretary at [secretary@fec.gov](mailto:secretary@fec.gov). The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted responses will be deemed received on the date it is electronically received by staff. Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer’s recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1158 if you have any questions.

Sincerely,

*Rhiannon Magruder*

Rhiannon Magruder  
Reviewing Officer  
Office of Administrative Review



**RECEIVED**

By Office of the Commission Secretary at 9:44 am, Jul 11, 2023

July 10, 2023

Brian G. Svoboda  
BSvoboda@perkinscoie.com  
D. +1.202.434.1654  
F. +1.202.654.9150**VIA ELECTRONIC MAIL**The Honorable Dara Lindenbaum  
Attn: Ms. Laura E. Sinram, Secretary  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463  
[secretary@fec.gov](mailto:secretary@fec.gov)**Re: AF# 4561**  
**Friends of Jim Clyburn and James Bennett, in his official capacity as treasurer**

Dear Chair Lindenbaum:

We write in response to the Reviewing Officer Recommendation in AF# 4561. We agree with the Recommendation's proposed downward adjustment of the civil penalty, if one is indeed imposed. We also appreciate the Recommendation's repeated expressions of sympathy for the circumstances caused by the passing of the Committee's longtime outside compliance vendor, Whitney Wyatt Burns,<sup>1</sup> and its recognition of "the Committee's long-standing engagement with Ms. Burns."<sup>2</sup> However, the Recommendation does not address the arguments made by the Committee's challenge, and so the Commission should not adopt it.

As the Recommendation noted, we cited in our challenge the Commission's action in AF# 4086, which involved the Nevada County Republican Party. The Commission rejected the reviewing officer's recommendation in that matter and directed the refund of an already-paid fine.<sup>3</sup> The facts in AF# 4086 are very much like those here: the illness and subsequent death of an individual, who was neither the treasurer nor an employee, resulted in a report's non-filing. Almost word for word, the reviewing officer's recommendation in AF# 4086 was identical to the recommendation here.<sup>4</sup> Each expressed sympathy for the circumstances, and recognized other extenuating circumstances, but then cited the Explanation and Justification for the "best efforts" defense and—in identical language—contends that the committee "did not demonstrate that the

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<sup>1</sup> See Reviewing Officer Recommendation, AF# 4561, at 2-3.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> See AF# 4086.

<sup>4</sup> Compare Reviewing Officer Recommendation, AF# 4086, at 2-3, [https://www.fec.gov/files/legal/admin\\_fines/4086/4086\\_02.pdf](https://www.fec.gov/files/legal/admin_fines/4086/4086_02.pdf), and Reviewing Officer Recommendation, AF# 4561, at 2-3.

The Honorable Dara Lindenbaum  
Federal Election Commission  
July 10, 2023  
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circumstances directly *prevented* the respondents from filing the report.”<sup>5</sup> Still, the Commission rejected the recommendation in AF# 4086, and the Reviewing Officer nonetheless makes the same recommendation again here.

The Committee made several arguments for the availability of the “best efforts” defense, and the Recommendation engaged none of them. We argued that the illness and death of the treasurer’s spouse in AF# 4086 and Ms. Burns in this matter were both reasonably unforeseen circumstances. We argued that that Ms. Burns did not “cause” the non-filing any more than the Nevada County Treasurer in AF# 4086 did. Finally, we argued that Ms. Burns, like the treasurer’s spouse in AF# 4086, was neither the treasurer nor a proper member of the Committee’s staff. The Recommendation addressed none of these arguments and offered no basis to distinguish this matter from AF# 4086. Rather, the Recommendation simply made the same arguments that the Commission considered and rejected in AF# 4086, in virtually identical language.

The respondent in AF# 4086 was a “small rural county committee,” and this may well have informed the Commission’s consideration of its challenge.<sup>6</sup> However, it is not equitable considerations that drive the acceptance or rejection of an administrative fine challenge, but the objective question of whether the respondent made “best efforts.” The question is what the respondent could or should have done differently, and whether the rules’ plain language directly preclude the challenge.

Here, the Committee acted reasonably and diligently in entrusting its filings to Ms. Burns. Her decline and ultimate death in the weeks surrounding the election—when the demand for compliance services is at its highest, and the supply of available, competent help, in a highly specialized field, is at its very lowest—left the Committee with no clear alternative way by which it might have filed the disputed reports. Moreover, a close and careful reading of section 111.35(d)’s list of non-extenuating circumstances shows that none precisely applies here. Because the Committee used best efforts in a highly unusual set of circumstances, and because the rules do not preclude the challenge, the Commission should reject the Recommendation, as it did in AF# 4086.

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<sup>5</sup> Reviewing Officer Recommendation, AF# 4086, at 2, [https://www.fec.gov/files/legal/admin\\_fines/4086/4086\\_02.pdf](https://www.fec.gov/files/legal/admin_fines/4086/4086_02.pdf).

<sup>6</sup> *Id.* at 2 (ellipses omitted).

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We appreciate the Commission's consideration of our response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Chad B. Henry".

Brian G. Svoboda  
Chad B. Henry  
Counsel to Friends of Jim Clyburn and James Bennett, in his official capacity as treasurer



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

SENSITIVE

August 2, 2023

**MEMORANDUM**

To: The Commission

Through: Alec Palmer AP by *KAH*  
Staff Director

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

Rhiannon Magruder *RM*  
Reviewing Officer  
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 4561 – Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer (C00255562)

On March 29, 2023, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file a 48-Hour Notice for 18 contributions, totaling \$51,500, and made a preliminary determination that the civil money penalty was \$5,322 based on the schedule of penalties at 11 C.F.R. § 111.44. On May 8, 2023, the Commission received their written response (“challenge”). After reviewing the challenge, the Reviewing Officer Recommendation (“ROR”) dated June 30, 2023 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference.

Counsel indicated the 48-Hour Notices were not timely filed because the Committee’s compliance vendor, Ms. Whitney Burns, was unavailable due to serious illness, which ultimately resulted in her death. The Reviewing Officer was sympathetic to the circumstances presented and recognized these circumstances may have impacted the Committee’s ability to comply with reporting requirements. The Reviewing Officer also recognized the Committee’s long-standing engagement with Ms. Burns, which counsel contends shows the Committee’s best efforts to timely file reports. The Reviewing Officer determined the “best efforts” defense did not succeed in this matter. While sympathetic to the circumstances, the Reviewing Officer noted that a committee’s treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d). Moreover, illness and unavailability of committee staff and delays caused by vendors are specifically included at 11 C.F.R. § 111.35(d) as an example of a circumstance that will not be considered reasonably unforeseen and beyond the respondents’ control. Therefore,

the Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a). *See* ROR.

The Reviewing Officer also considered the Committee's contention that the reason to believe finding overstated the amount in violation by \$2,500. Based on the additional explanation provided in the challenge and corresponding correction disclosed on the Amended 2022 Post-General Report, the Reviewing Officer confirmed a \$2,500 contribution should be removed from the calculation of the civil money penalty. The Committee still failed to timely file 48-Hour Notices for 17 contributions totaling \$49,000, which could have been filed on a single notice. Thus, the Reviewing Officer calculated the amount of the civil money penalty to be [(\$172 x 1 missing notice) + (.10 x \$49,000 in total contributions)] or \$5,072. *See* ROR.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). On July 11, 2023, the Commission received a response from counsel. Counsel agrees with the "...downward adjustment of the civil penalty, if one is indeed imposed." While appreciative of the Reviewing Officer's expressions of sympathy for the circumstances presented, counsel reiterates the Recommendation should not be adopted as it does not align with the Commission's decision in a similarly situated matter. *See* Attachment 1.

The Reviewing Officer considered the response, and the Reviewing Officer's recommendations are unchanged. The Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$5,072 civil money penalty (reduced from the RTB civil money penalty of \$5,322).

### **OAR Recommendations**

1. Adopt the Reviewing Officer recommendation for AF# 4561 involving Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 4561 that Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$5,072 civil money penalty (reduced from the RTB civil money penalty of \$5,322); and
3. Send the appropriate letter.

## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 4561  
 Final Determination Recommendation: )  
 Friends of Jim Clyburn and James )  
 Bennett, in their official capacity as )  
 Treasurer (C00255562) )

CERTIFICATION

I, Vicktoria J. Allen, recording secretary of the Federal Election Commission executive session, do hereby certify that on August 29, 2023, the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 1-5 to:

Terminate the proceedings.

Commissioner Weintraub voted affirmatively for the motion. Commissioners Broussard, Cooksey, Dickerson, Lindenbaum, and Trainor dissented.

2. Decided by a vote of 5-1 to:

- a. Adopt the Reviewing Officer recommendation for AF# 4561 involving Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, in making the final determination.
- b. Make a final determination in AF# 4561 that Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$5,072 civil money penalty (reduced from the RTB civil money penalty of \$5,322).
- c. Send the appropriate letter.

Commissioners Broussard, Cooksey, Dickerson, Lindenbaum, and Trainor voted affirmatively for the decision. Commissioner Weintraub dissented.

Federal Election Commission  
Certification for AF 4561  
August 29, 2023

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Attest:

**Vicktoria J  
Allen**

Digitally signed by Vicktoria J  
Allen  
Date: 2023.08.31 13:54:35  
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Vicktoria J. Allen  
Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 5, 2023

Brian G. Svoboda  
Chad B. Henry  
PerkinsCoie  
700 13<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005-3960

Friends of Jim Clyburn  
C00255562  
AF# 4561

Dear Counsel:

On March 29, 2023, the Federal Election Commission (the “Commission” or “FEC”) found reason to believe (“RTB”) that Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file 48-Hour Notices for contributions totaling \$51,500. By letter dated March 30, 2023, the Commission sent notification of the RTB finding that included a civil money penalty calculated at \$5,322 in accordance with the schedule of penalties at 11 C.F.R. § 111.44. On May 8, 2023, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission’s RTB finding with its supporting documentation and your written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a reduced civil money penalty in the amount of \$5,072 in accordance with 11 C.F.R. § 111.44. The Reviewing Officer Recommendation was sent to you on June 29, 2023.

On August 29, 2023, the Commission adopted the Reviewing Officer’s recommendation and made a final determination that Friends of Jim Clyburn and James Bennett, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assessed a civil money penalty in the amount of \$5,072 (reduced from the RTB civil money penalty of \$5,322). A copy of the Final Determination Recommendation is attached.



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

**1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty**

If you choose to appeal the final determination, you must submit a written petition requesting that the final determination be modified or set aside. This request must be made within thirty (30) days of receipt of this letter and sent to the U.S. District Court for the district in which the committee or you reside or transact business. *See* 52 U.S.C. § 30109(a)(4)(C)(iii). If you did not timely raise a factual argument in a challenge to the Commission’s RTB finding, your right to present such an argument in an appeal to the U.S. District Court under 52 U.S.C. § 30109 shall be deemed waived. 11 C.F.R. § 111.38.

**2. If You Choose to Not Pay the Civil Money Penalty and to Not Appeal**

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 (“DCIA”), 31 U.S.C. § 3701, *et seq.* If you do not pay this debt within thirty (30) days and do not appeal the Commission’s final determination to the U.S. District Court (see above), the Commission will transfer the debt to the U.S. Department of the Treasury (“Treasury”) for collection. Treasury will contact you to request payment within five (5) days of the receiving the debt. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury’s attempts fail, Treasury will refer the debt to a private collection agency. If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken by Treasury to enforce recovery of a delinquent debt may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

**3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the civil money penalty, please follow the payment instructions below. You should make payment within thirty (30) days of receipt of this letter.

You may remit payment by Automated Clearinghouse (“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.shtm](http://www.fec.gov/af/pay.shtm) to be directed to Pay.gov’s Administrative Fine Program Payment form. Please use the details above to complete the required fields.

**NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS****Partial Payments**

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

**Settlement Offers**

Any offer to settle or compromise a debt owed to the Commission will be rejected. This includes a payment in an amount less than the 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. 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 assessed 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.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 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 Rhiannon Magruder on our toll-free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Dara Lindenbaum  
Chair