

LAW OFFICES  
**TRISTER, ROSS, SCHADLER & GOLD, PLLC**

1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR

WASHINGTON, D.C. 20009

PHONE: (202) 328-1666

FAX: (202) 328-9162

www.tristerross.com

MICHAEL B. TRISTER  
GAIL E. ROSS  
B. HOLLY SCHADLER  
LAURENCE E. GOLD

KAREN A. POST  
Senior Counsel

ALLEN H. MATTISON†  
REA L. HOLMES‡

†ALSO ADMITTED IN MARYLAND  
‡ALSO ADMITTED IN WISCONSIN

ALEXANDER W. DEMOTS  
Of Counsel

July 19, 2011

Krista J. Roche  
Assistant Director  
Alternative Dispute Resolution  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: ADR 569, National Nurses United for Patient Protection  
(FEC ID C00490375)**

Dear Ms. Roche:

I am writing on behalf of National Nurses United for Patient Protection (“the Committee”) to state its position in this matter and to propose terms of settlement, as you have requested.

The facts of this matter are straightforward and largely reflected in the Commission’s public record, including the Committee’s brief explanation in its March 16, 2011 letter to the Reports Analysis Division (“RAD”) sent in response in response to RAD’s February 11 inquiry concerning the Committee’s December 2, 2010, 30-Day Post-General Report.

On October 14, 2010, the Committee filed its Form 1, Statement of Organization, with a letter notifying the Commission that the Committee intended to make independent expenditures in accordance with *SpeechNow.org v. FEC*, 599 F. 3d 686 (D.C. Cir. 2010) (*en banc*), and to raise funds accordingly. The Committee promptly undertook, and timely and accurately reported, such expenditures in connection with the imminent general election, as follows:

October 22: 24-hr Schedule E reporting independent expenditures opposing House candidates Tim Walberg and Jeff Perry totaling \$30,040.50

October 30: 24-hr Schedule E reporting independent expenditures supporting House candidates Patrick Murphy, Colleen Hanabusa and Ami Bera totaling \$22,962.07

October 31: 24-hr Schedule E reporting independent expenditures supporting House candidates Patrick Murphy, Gary Peters, Colleen Hanabusa, Ami Bera and Phil Hare totaling \$34,409.49

11190291807

October 31 was the Sunday before the November 2 general election. On October 31, the Committee disseminated independent expenditures supporting House candidates Patrick Murphy, Gary Peters, Colleen Hanabusa, Ami Bera and Phil Hare totaling \$34,409.49, a commensurate continuation of advertising that had begun the day before. However, the Committee misunderstood when the 24-hour Schedule E reporting requirement at 11 C.F.R. § 104.4(c) ended, believing that the final such report was due on the Sunday rather than the Monday before the Tuesday election. As a result of that misunderstanding, the Committee filed no Schedule E Report on November 1, and instead first reported its October 31 independent expenditures on Schedule E of its December 2 30-Day Post-General Report.

That filing prompted RAD's February 11 inquiry, which in turn prompted the Committee to consult with legal counsel about the reporting obligations raised by that letter. The Committee then ascertained the nature of its filing error, forthrightly responded to RAD about it on March 16 and filed the missing 24-hour schedule E report on that date. The Committee explained that its error was inadvertent and its consequent failure to file unintentional, and requested that the matter either not be referred for enforcement or, if it were, that it be referred to the Alternative Dispute Resolution Office ("ADR"). We appreciate that the matter has been referred to ADR and that ADR seeks an expeditious resolution.

The Committee proposes to enter into a "Negotiated Settlement" agreement with the Commission that is consistent with customary such agreements, and so would include provisions explaining the Commission's ADR authority; the Committee's voluntary entry into the agreement; the nature of RAD's referral to ADR; the applicable reporting requirements under the Federal Election Campaign Act ("the Act"); that the Committee swears to the accuracy of the information it provides; the Commission's option to initiate a civil action in the event the Committee fails to comply with the agreement; the immediate effectiveness of the agreement; the Committee's prompt compliance with its terms; and the conclusiveness of the agreement. The Committee proposes that the agreement acknowledge the violation and its inadvertence, include a brief factual recitation of how it occurred, and acknowledge the Committee's otherwise timely and accurate Schedule E filings during the immediate pre-election period.

The Committee further offers to pay a civil penalty and to take specific compliance actions. Specifically, we believe a civil penalty of \$1,000 would be appropriate, and that it would be appropriate for compliance staff of the Committee's empaneled organization, National Nurses United ("NNU"), which wholly administers the Committee, to (1) participate in a telephonic training with Commission staff that is specifically tailored to its type of political committee, and (2) view the Commission's web-based compliance videos at <http://www.fec.gov/info/elearning.shtml> that are pertinent to the Committee.

We propose these penalty and remedial steps for the following reasons. First, the Committee's reporting error was inadvertent and based entirely on a misunderstanding of the applicable requirement. The Committee consulted with legal counsel in establishing itself in the first place and demonstrated immediate diligence in filing Schedule E, including three separate reports on October 22, 30 and 31 disclosing \$87,412.06 of independent expenditures. But the Committee was newly formed and its committed organization, NNU, which previously and

11190291808

concurrently sponsored political committees that make contributions and adhere to the longstanding source restrictions and amount limitations of the Act, had limited experience making independent expenditures. Second, the Committee fully reported its October 31 independent expenditures on its 30-Day Post-General Report and, when RAD alerted the Committee to its reporting error, the Committee investigated, responded forthrightly and filed the missing report.

Third, while we do not suggest that the failure to file any report is unimportant, the report that should have been filed on November 1 was identical to the report that was filed the day before, so the Committee did provide timely public notice of the essential fact that it was undertaking particular independent expenditures supporting five specific candidates on the eve of the election. Fourth, the proposed penalty amount is consistent with penalties imposed through the ADR process in similar cases, and the Committee is not asserting that there should be no such penalty at all. Finally, the Committee's compliance personnel work at NNU's office in Oakland, CA. We understand that the Commission has previously undertaken telephonic trainings as part of the resolution of ADR matters, and the Commission's addition over time of compliance materials on its website warrants resolving such matters with a respondent's commitment to avail itself of them as part of the resolution of a reporting violation that could be prevented through such educational measures.

I hope that this proposal and its explanation are helpful and will provide the basis for a prompt negotiated settlement. I look forward to our scheduled telephone conversation about this matter on July 26 at 10:00 AM. I am also generally available this week and Monday, July 25, to discuss this matter if that would be convenient for you. Thank you for your consideration.

Yours truly,



Laurence E. Gold

Counsel to National Nurses United  
for Patient Protection

cc: Carolyn Hietemaki, Treasurer  
Michael Lighty, Assistant Treasurer