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July 2, 2015

VIA EMAIL

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Mary Beth deBeau
999 E Street, NW
Washington, DC 20463

Re: RR 15L-16 – David Vitter for U.S. Senate and William Vanderbrook, as Treasurer

Dear Ms. deBeau:

Please find attached the response of our clients, David Vitter for U.S. Senate, and William Vanderbrook, as Treasurer, to Mr. Jeff S. Jordan's May 28, 2015 letter regarding the above-referenced matter.

Cordially,

Donald F. McGahn II

RESPONSE OF DAVID VITTER FOR U.S. SENATE AND WILLIAM VANDERBROOK AS TREASURER

David Vitter for U.S. Senate (the "Committee") and Mr. William Vanderbrook, in his capacity as Treasurer, through counsel, hereby respond to the notification of a Reports Analysis Division referral captioned RR15L-16. The referred matter results from a crime perpetrated against the Committee, which was investigated by the Federal Bureau of Investigation and prosecuted by the Department of Justice. The Committee is a victim of a crime; has worked with Reports Analysis Division staff to disclose the crime, a resulting restitution payment, and all information in connection with the crime that is within the power of the Committee to receive; and did not engage in any activity that constitutes a violation of the Federal Election Campaign Act or Commission precedents. The Committee has been as transparent as it can be, and remains cooperative with the Commission. Accordingly, an enforcement or alternative dispute resolution matter need not be initiated where the Committee is named as a Respondent.

INTRODUCTION

The Committee was the victim of embezzlement. In late 2014, the Committee learned that a subcontractor, of a mail vendor embezzled funds intended for the Committee. After the Federal Bureau of Investigation ("FBI") and Department of Justice ("DOJ") investigated and prosecuted the individual responsible for the crime, the Committee received $14,420.00 in partial restitution of the diverted funds at the direction of the United States District Court.

The Committee disclosed that unauthorized criminal activity had occurred and disclosed a partial restitution payment to the Commission in its amended 2014 Year-End Report. The

Committee fully cooperated with RAD staff to attempt to account for the unauthorized activity that had occurred by the mail vendor's subcontractor. At the time the partial restitution was received received and disclosed, the Committee was not in possession of further information despite requesting additional information from the FBI about the perpetrator, the full scope of the stolen funds, or the identity of the donors whose funds were diverted from the Committee. After receiving some of this information from the FBI and receiving permission to disclose the information publicly, the Committee amended its 2014 Year-End Report to disclose additional details of the embezzlement.

The stolen contributions were embezzled from an escrow account used by a mail vendor to process contributions received in response to direct mailings for the campaign. The account enabled the vendor to draw on the funds received in response to previous direct mail solicitations to meet the Committee's ongoing expenses for subsequent mailings. At no point did the Committee have direct access to the account or to the contributions that were intended for the Committee in response to direct mail solicitations. As the Commission has recognized, use of such an account to store funds received and used subsequently by third party vendors is a permitted, longstanding, and common practice. *See* Advisory Opinions 1994-33 (VITEL); 1995-36 (Campaign Advantage); 1999-22 (Aristotle Publishing); 2004-19 (Dollar Vote). The Committee, having no direct control over the account, could not compile or access a list of diverted funds and was not made privy to any list of affected contributions. Indeed, the affected account is still frozen by law enforcement authorities and cannot be accessed by the Committee.

To date, despite the Committee's requests for additional information, the FBI has not provided the Committee with a list of affected contributions. Accordingly, the Committee is simply

unable to disclose such information to the Commission at this time. The Committee continues to work with law enforcement authorities and intends to disclose information about affected contributions once the FBI reveals this information and authorizes its disclosure. Additionally, the Committee will continue to report to the Commission any additional restitution payments received as a result of the criminal prosecution.

Currently, there are no factual or legal bases for the Commission to find reason to believe the Committee has violated the Act, and the Committee has taken all possible steps to cooperate with the Commission in resolving this matter. Accordingly, there is no need to open a MUR as to the Committee.

ANALYSIS

The Commission has recognized that, in situations where inaccurate reporting stems from the embezzlement of funds from a committee, a "committee is not automatically liable when an agent embezzles money and files inaccurate reports." MUR 5721 (Lockheed Martin Employees' PAC), Statement of Reasons ("SOR") of Chairman Michael E. Toner and Commissioner David M. Mason at 2 ("there is something odd about penalizing the principal for inaccurate reporting resulting from the embezzlement [of an agent]"); *see also* Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16695 (April 5, 2007). In the past, the Commission has not penalized committees who were victims of similar embezzlement crimes outside of their control even when their own appointed accounting or compliance employees were responsible for the misappropriation of funds. *See, e.g.*, MURs 4389 and 4652 (Orange County Democratic Cent. Comm.), SOR of Commissioners Scott E. Thomas, Lee Ann Elliott, David M. Mason, Danny Lee McDonald & Karl J. Sandstrom at 2 (voting unanimously to close the file because the embezzlement

violated the Committee's guidelines and "perhaps most importantly, it appears [the embezzler's] actions were not only taken without the knowledge or approval of anyone else associated with the Committee, but they were actively concealed from such persons"); *see also* MUR 6162 (Sohn) / ADR 511 (Shays); AO 2005-04 (Boehner).

In the rare instance when the Commission has penalized a Committee for an embezzlement, it has generally involved staff directly employed by the Committee who have been inadequately supervised by the Committee or situations where the Committee failed to have control mechanisms to prevent misappropriation. *See* MUR 5610 (Dole); MUR 5721 (Lockheed PAC). There is no evidence of such a lack of control here—the embezzlement did not occur under the nose of the Committee, or by Committee staff, or because the Committee failed to have adequate internal controls over its funds. In fact, the Committee's treasurer is a full-time Certified Public Accountant.

This embezzlement did not occur because a single staffer was given too much control over the entire operation or because of lax supervision of a staffer. Rather, the embezzlement occurred prior to the Committee coming into possession of the funds. The Committee employed and relied upon a well-established professional mail vendor and caging operation to process the contributions, report the contributions to the Committee, and use the funds from the account only for authorized purposes. The Committee received regular information from the mail vendor in order to meet its best efforts and reporting requirements. Such a direct mail caging operation is indistinguishable from countless others in the industry, using standard and Commission-approved practices. That a number of Committees were reportedly also victims of this crime only underscores the fact that it was not the fault of any one of the Committees affected.

Unlike instances where the Commission has found reason to believe or otherwise imposed a penalty on a victim committee, here it was unreasonable, inattentive or negligent action or inaction of any of the Committees that led to the vulnerability. The Commission has not penalized similarly situated Committees. *See, e.g.*, ADRs 511 (Shays); 683 & 685 (Feinstein); 682 & 684 (Los Angeles County Democratic Central Committee). Further, the Commission has not even opened a MUR is other similar cases. Henri E. Cauvin, "Political Fundraiser Admits Embezzling," *Washington Post*, Feb. 15, 2005, B02 (fundraiser embezzled $360,000 from DSCC, with no resulting MUR or penalty); 2007 2nd Quarter Report of Stephen Lynch for Congress (reporting "repayment of misappropriated funds" with no resulting MUR).

Here, not only was the embezzlement activity not authorized or within the control of the Committee, but also the funds were stolen by an individual who worked for the professional direct mail caging operation the mail vendor hired to ensure compliance. In other words, the perpetrator was a sub-contractor selected by the mail vendor. The contributions were embezzled from the escrow account prior to the funds reaching the Committee's direct control or access; they never entered the domain of the Committee account. Upon learning of the embezzlement, the Committee has continued to take every step possible to provide information, amend reports and cooperate with the Committee and prosecuting agencies.

CONCLUSION

For all the reasons stated above, there is no need to open a MUR that names the Committee as a Respondent. In similar cases, the Commission did not open a MUR naming a victim of embezzlement, and here there is no reason to believe that the Committee violated the Act. The

Committee appreciates the Commission's efforts to pay special attention to acts of embezzlement against committees and sustain accurate reporting of campaign contributions, but there are no additional actions the Committee can take at this time or until the FBI releases additional information to the Committee. Accordingly, David Vitter for U.S. Senate and Mr. Vanderbrook, in his capacity as treasurer of the Committee, respectfully request that the Commission close the file and take no further action.

Respectfully Submitted,

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