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FIRST GENERAL COUNSEL'S REPORT

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RAD REFERRAL: 11L-06
DATE REFERRED: March 16, 2011
DATE OF NOTIFICATION: March 22, 2011
DATE OF LAST RESPONSE: May 2, 2011
DATE ACTIVATED: May 27, 2011

EXPIRATION OF SOL: August 12-19, 2015

SOURCE:

RAD Referral

RESPONDENTS:

Service Employees International Union Committee
on Political Education (SEIU COPE) and Gerald
Hudson, in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATION:**

2 U.S.C. § 431(17)
2 U.S.C. § 434(g)
11 C.F.R. § 104.4(c)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred SEIU COPE and Gerald Hudson, in his official capacity as treasurer, (the "Committee" or "Respondents") to the Office of General Counsel for failing to file four 24-Hour Reports of independent expenditures totaling \$119,624.44, disclosed on Schedule E of the 2010 September Monthly Report. In its response to the notice of referral, the Committee acknowledged the errors, asserted that its failure to file the reports was inadvertent, and indicated that it had taken remedial measures to prevent a recurrence of the errors. We recommend that the Commission open a matter under review, find

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reason to believe that SEIU COPE and Gerald Hudson, in his official capacity as treasurer, violated 2 U.S.C. § 434(g),

II. FACTUAL AND LEGAL ANALYSIS

An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate, and is not coordinated with a candidate, candidate's committee, party committee or their agents. 2 U.S.C. § 431(17). A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of an election, shall file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1)(A); 11 C.F.R. § 104.4(c). The reports, known as 24-Hour Notices, must be filed within 24 hours "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). The Committee shall file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. 2 U.S.C. § 434(g)(1)(B).

On September 20, 2010, the Committee filed its 2010 September Monthly Report, which included a Schedule E disclosing four independent expenditures, totaling \$119,624.44, in opposition to a federal candidate in the Florida primary election field on August 24, 2010. The expenditures, each in the amount of \$29,906.11 paid to 4900 Group LLC, were made on August 11, 2010 for mailings distributed on August 11, 13, 16, and 18, 2010. However, the Committee failed to file the four required 24-Hour Notices for these independent expenditures within 24 hours of the date of the distribution of the mailings. *See* RAD Referral, Attachment 2. On October 21, 2010, the Committee amended the 2010 September Monthly Report -- the

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1 amendment did not include any changes to the independent expenditure transactions disclosed on
2 the original report.

3 On November 30, 2010, RAD sent a Request for Additional Information ("RFAI") to the
4 Committee concerning the Amended 2010 September Monthly Report in which it notified the
5 Committee that the report's Schedule E listed "last minute" independent expenditures that were
6 not disclosed on 24-Hour Notices of Independent Expenditures, identified the specific
7 expenditures, and sought a response. On December 28, 2010, the Committee filed a
8 Miscellaneous Electronic Submission (FEC Form 99) in response to the RFAI, in which it
9 acknowledged that it had failed to file 24-Hour Notices for four independent expenditures
10 disclosed on its 2010 September Monthly Report. The FEC Form 99 stated that due to a
11 communication failure, the staff preparing the reports was unaware of these expenditures until
12 after the primary election and thus no 24-Hour Notices were filed. It further stated that once the
13 error was detected, the Committee implemented new procedures to prevent a recurrence of the
14 problem. On February 2, 2011, RAD notified the Committee by telephone that the missing
15 notices were referable, and on March 16, 2011, RAD referred its findings to OGC.

16 On March 22, 2011, this Office notified the Committee of the referral in accordance with
17 the Commission's policy regarding notification in non-complaint generated matters. 74 Fed.
18 Reg. 38617 (August 4, 2009). In its response to the notification, the Committee acknowledged
19 its failure to file the 24-Hour notices, and reiterated that the omission was inadvertent, resulting
20 from a communication failure between the staff who published the ads and the staff who
21 prepared the reports. The Committee stated that it became aware of the omission when it
22 prepared its 2010 September Monthly Report and that it properly reported the expenditures on
23 that report. In addition, it explained that it has implemented a record-keeping system to track

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1 independent expenditures to prevent a recurrence of the reporting problem. Finally, the
2 Committee requested that the Commission take into account the Committee's "strong record of
3 compliance" with the 24- and 48-hour reporting rules, noting that the four omitted reports reflect
4 only 2% of the \$10.5 million in total independent expenditures spent during the 2010 election
5 cycle.

6 The Committee's failure to file the four 24-Hour Notices of Independent Expenditures
7 totaling \$119,624.44 is a violation of the Act's reporting requirements. The Committee should
8 have filed the Notices within 24 hours of the date it "publicly distributed" the mailers. 11 C.F.R.
9 § 104.4(c). Because the Committee failed to file the notices with the Commission, we
10 recommend that the Commission find reason to believe that SEIU COPE and Gerald Hudson, in
11 his official capacity as treasurer, violated 2 U.S.C. § 434(g).

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IV. RECOMMENDATIONS

1. Open a Matter Under Review;
2. Find reason to believe that Service Employees International Union Committee on Political Education and Gerald Hudson, in his official capacity as treasurer, violated 2 U.S.C. § 434(g);
3.
4. Approve the attached Factual and Legal Analysis; and
5. Approve the appropriate letter.

Christopher Hughey
Acting General Counsel

7-15-11
Date

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