

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 18L-13
DATE REFERRED: February 26, 2018
DATE OF NOTIFICATION: February 28, 2018
RESPONSE RECEIVED: None received
DATE ACTIVATED: April 5, 2018

EXPIRATION OF SOL: September 16, 2020
ELECTION CYCLE: 2016

14 COMPLAINANT:

Internally Generated

16 RESPONDENTS:

Americans Socially United and Cary L. Peterson in
his official capacity as treasurer

19 **RELEVANT STATUTES AND**
20 **REGULATIONS:**

52 U.S.C. § 30102(c), (d)
52 U.S.C. § 30104(a), (b)
11 C.F.R. § 102.9(a), (b)
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3(a), (b)
11 C.F.R. § 104.14(d)

27 **INTERNAL REPORTS CHECKED:** Disclosure Reports

29 FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

33 The Reports Analysis Division (“RAD”) referred Americans Socially United and Cary L.
34 Peterson in his official capacity as treasurer (the “Committee” or “ASU”) to the Office of
35 General Counsel for violations of the reporting provisions of the Federal Election Campaign Act
36 of 1971, as amended (the “Act”), regarding approximately \$200,000 in reporting discrepancies
37 on ASU’s 2015 Mid-Year Report. These violations include failing to disclose contributions that
38 ASU reported refunding, disclosing a negative cash-on-hand balance, and failing to itemize
39 disbursements properly.

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1 ASU is also the respondent in MUR 6997, which also involves 2016 cycle activity. On
 2 April 24, 2018, the Commission found reason to believe that ASU fraudulently misrepresented
 3 itself as speaking on behalf of Presidential candidate Bernie Sanders for the purpose of soliciting
 4 contributions, and an investigation is now underway.¹

5 As set forth below, we recommend that the Commission open a matter under review, find
 6 reason to believe that ASU and Peterson, in his official and personal capacities, violated
 7 52 U.S.C. § 30104(b), authorize the use of compulsory process, and merge this matter with
 8 MUR 6997.

9 **II. FACTUAL BACKGROUND**

10 ASU is an unauthorized committee, which filed its first Statement of Organization with
 11 the Commission in February 2015.² Cary L. Peterson is the committee's treasurer.³ As of the
 12 date of this General Counsel's Report, ASU has only filed one disclosure report with the
 13 Commission: its 2015 Mid-Year Report.⁴

14 On July 28, 2016, RAD sent ASU a Request for Additional Information ("RFAI")
 15 concerning its 2015 Mid-Year Report requesting clarification regarding: (1) the source of funds
 16 for its initial cash-on-hand balance; (2) the disclosure of a negative ending cash-on-hand balance;

¹ Certification ¶ 1, MUR 6997 (April 25, 2018).

² See Statement of Org. (Feb. 11, 2015). ASU's first four Statements of Organization listed different committee names that used the name of 2016 presidential candidate Bernie Sanders in some form, but ultimately, the committee changed its name to "Americans Socially United" in response to a Request for Additional Information ("RFAI"). See RFAI (May 19, 2015); Statement of Org. (June 18, 2015).

³ Peterson recently faced criminal charges for securities fraud. See Factual and Legal Analysis ("F&LA") at 2, note 4, MUR 6997. On May 23, 2018, Peterson was convicted "for orchestrating a multi-million securities fraud scheme using false reports with the [SEC]." See *Microcap Company CEO Convicted of Securities Fraud for Falsely Claiming Millions in Revenue From Contracts with Foreign Countries*, DOJ Press Release (May 24, 2018), <https://www.justice.gov/usao-nj/pr/microcap-company-ceo-convicted-securities-fraud-falsely-claiming-millions-revenue>. A sentencing date has been set for September 26, 2018.

⁴ See 2015 Mid-Year Report, Americans Socially United (Sept. 16, 2015).

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1 (3) the failure to disclose identification information for contributions; (4) the failure to disclose
 2 addresses and adequate purposes for disbursements; and (5) the failure to disclose the original
 3 receipt of contributions that were reported as refunds.⁵ In response, Peterson filed an FEC Form
 4 99 attributing the errors to “financial updates and accounting errors as a result [of] technical
 5 issues [with the] filing software” and because the committee’s “receipts, deposits and records
 6 were stolen and compromised by a third party.”⁶

7 According to RAD, Peterson had contacted that office on various dates in 2015, 2016,
 8 and 2017.⁷ In July 2016, Peterson stated that he was unable to access the data necessary to file
 9 ASU’s reports because the FBI had seized the Committee’s data.”⁸ He also explained that ASU
 10 had a negative cash-on-hand balance because it had received prohibited contributions that had to
 11 be returned to donors, which left the committee with insufficient funds to pay certain invoices.⁹
 12 Peterson added that as a result of the refunds, he paid some vendor invoices with a personal
 13 credit card.¹⁰ He also stated that he had contacted ASU’s bank to obtain records so that it could
 14 file disclosure reports, but he never did file any additional reports.¹¹ On August 16, 2017,
 15 Peterson sent an e-mail to RAD stating that his firm no longer represented ASU but that he

⁵ RFAI, Americans Socially United (July 28, 2016),
<http://docquery.fec.gov/pdf/087/201607280300053087/201607280300053087.pdf>.

⁶ See Miscellaneous Text (FEC Form 99) (Oct. 15, 2016), Americans Socially United,
<http://docquery.fec.gov/pdf/421/201610159032826421/201610159032826421.pdf>.

⁷ Referral at Attach. 2.

⁸ Referral at Attach. 2 (July 12, 2016 communication log entry). He also stated that the committee’s financial data had been compromised by unknown sources and then later stated that the committee’s computers had been hacked. *Id.* at Attach. 2 (July 12, 2016 and Aug. 8, 2017 communication log entries)

⁹ See *id.* at Attach. 2 (July 21, 2016 communication log entry).

¹⁰ *Id.*

¹¹ *Id.* at Attach. 2 (July 20, 2016 communication log entry).

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1 would be “glad to communicate with your office on a resolution that is suitable to close this
 2 outstanding matter that took place while we were active with them.”¹² To date, ASU has not
 3 filed an amended Statement of Organization replacing Peterson as treasurer.¹³

4 RAD referred ASU pursuant to the 2015-2016 RAD Review and Referral
 5 Procedures for failing to provide supporting schedules and properly itemize disbursements on its
 6 single report filed with the Commission.¹⁴ According to the Referral, ASU’s 2015 Mid-Year
 7 report: (1) failed to disclose the source of funds for its initial cash-on-hand balance of \$2,820;
 8 (2) disclosed a negative ending cash-on-hand balance of \$49,748.51; (3) failed to disclose the
 9 original receipt of contributions totaling \$79,316 that were reported as having been refunded to
 10 individuals; and (4) failed to properly itemize disbursements totaling \$70,535.75.¹⁵ The
 11 Committee, through Peterson, was notified of the Referral, but did not file a response.¹⁶

¹² *Id.* at Attach. 2 (Aug. 16, 2017 communication log entry); *see also id.* at Attach. 2 (Aug. 10, 2017 communication log entry) (quoting from another e-mail in which Peterson refers to ASU as his “former client”).

¹³ Peterson was not only ASU’s treasurer, but it appears he also created and ran the fundraising operations of the organization. For instance, a Google Profile article that Peterson links to from his Facebook page refers to Peterson as “chief director” of Ready for Bernie Sanders and ASU. *See Cary Lee Peterson: Google Wiki Profile* (last accessed May 24, 2018), <https://sites.google.com/site/caryleepetersonprofilearticle/>. Additionally, in a web interview he talked about raising funds for “our group.” *See Part 2- David De Livera at New World Order Politics Interviews Cary Lee Peterson, NEW WORLD ORDER POLITICS CHANNEL, YOUTUBE* (Sept. 22, 2016), <https://www.youtube.com/watch?v=LTdY-dPig54>.

¹⁴ *See RAD Review and Referral Procedures for the 2015-2016 Election Cycle (“RAD Procedures”)* at 60-75.

¹⁵

¹⁶ Notification Ltr., RR 18L-13, Americans Socially United (Feb. 28, 2018).

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1 In addition to MUR 6997, ASU has been involved in three Administrative Fines cases for
 2 its failure to file regular reports with the Commission.¹⁷

3 **III. LEGAL ANALYSIS**

4 The Act and Commission regulations require committee treasurers to file reports of
 5 receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104 and
 6 11 C.F.R. § 104.¹⁸ They also require treasurers to be responsible for the accuracy of the
 7 information contained in committee disclosure reports as well as the timely and complete filing
 8 of those reports.¹⁹ Those reports must include, *inter alia*, the amount of cash on hand at the
 9 beginning and end of a reporting period, the total amount of receipts and disbursements and
 10 further breakdowns of itemized and unitemized contributions and disbursements.²⁰ Committees
 11 must also identify each person who contributed in excess of \$200 within the calendar year and
 12 the name and address of each person who has received any disbursement in an aggregate amount
 13 or value in excess of \$200 within the calendar year, together with the date, amount, and purpose
 14 of any such disbursement.²¹

¹⁷ The Commission had assessed \$25,506 in civil penalties against ASU under the Administrative Fines Program for the failure to file its 2015 Year-End, 2016 April Quarterly, and 2016 July Quarterly Reports, but later made a final determination not to assess a penalty for its failure to file the 2016 July Quarterly Report. *See* Certification (Mar. 31, 2016), AF # 3038 (\$7,150 fine for failure to file 2015 Year-End Report); Certification (June 17, 2016), AF # 3057 (\$7,150 fine for failure to file 2016 April Quarterly Report); Certification (Sept. 16, 2016), AF # 3117 (\$11,106 fine for failure to file 2016 July Quarterly Report); Certification (Jan. 30, 2017) and Ltr. to Peterson (Jan. 30, 2017) AF # 3117 (Commission voted not to impose any penalty for the July Quarterly in light of ASU's representations that the committee was no longer active). The penalties for two of those cases, AF # 3038 and 3057, remain unpaid and have been sent to the Department of Treasury for collection.

¹⁸ 52 U.S.C. § 30104(a); 11 C.F.R. § 104.1(a).

¹⁹ 52 U.S.C. § 30104(a); 11 C.F.R. § 104.14(d).

²⁰ *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a)(1), (2), and (4), (b)(1) and (3).

²¹ *See* 52 U.S.C. § 30104(b)(3) and (5), (6)(B); 11 C.F.R. § 104.3(a)(4), (b)(3).

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1 In addition, a treasurer must keep an account of all contributions received, as well as the
2 name and address of every person who makes a contribution in excess of \$50, together with the
3 date and amount of such contribution.²² A treasurer must also keep an account of the name and
4 address of any person to whom a disbursement is made, together with the date, amount and
5 purpose of the disbursement, and must keep a receipt or other record for each disbursement in
6 excess of \$200 by or on behalf of the committee.²³

7 In light of the legal obligations for committee treasurers under the Act, including keeping
8 an account of receipts and disbursements, preserving all records of receipts and disbursements,
9 filing reports of receipts and disbursements with the Commission, and signing each report, the
10 Commission may proceed against a treasurer in both their official and personal capacities for
11 failing to fulfill their responsibilities under the Act and Commission regulations.²⁴ The
12 Commission will pursue treasurers in their personal capacity when “the treasurer had knowledge
13 that his or her conduct violated a duty imposed by law” or “where the treasurer recklessly failed
14 to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or
15 herself of the operative facts giving rise to the violation.”²⁵ Therefore, in making its findings the

²² 52 U.S.C. § 30102(c)(1)-(4); 11 C.F.R. § 102.9(a).

²³ 52 U.S.C. § 30102(c)(5), (d); 11C.F.R § 102.9(b).

²⁴ *See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3, 5 (Jan. 3, 2005) (“Treasurer Policy”).

²⁵ Treasurer Policy, 70 Fed. Reg. at 5.

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1 Commission will examine the “available information (or inferences fairly derived therefrom)” to
2 determine whether the treasurer acted with the requisite state of mind.²⁶

3 Here, ASU’s 2015 Mid-Year Report did not disclose the source of its initial cash-on-hand
4 balance. Similarly, Peterson’s explanation to RAD for ASU’s negative ending cash-on-hand
5 balance was insufficient; Peterson failed to specify which contributions were purportedly
6 prohibited and had to be refunded, and likewise, did not provide details about the vendor
7 invoices that he paid using a personal credit card. Additionally, although ASU reported refunds
8 made to individuals totaling \$79,316, it failed to disclose its initial receipt of those funds.

9 Finally, the Mid-Year Report failed to properly itemize \$70,535.73 in disbursements by failing to
10 disclose addresses and adequate purposes. Therefore, there is reason to believe that ASU and
11 Peterson in his official capacity as treasurer violated 52 U.S.C. § 30104(b) by filing an inaccurate
12 report with the Commission.

13 Further, Peterson acted recklessly in fulfilling his duties to file complete and accurate
14 reports with the Commission. In MUR 6997, the Commission considered the fact that ASU had
15 filed only one disclosure report to be probative of ASU’s intent to deceive the public “because
16 ASU has failed to disclose how it spends the contributions it receives.”²⁷ The Commission

²⁶ *Id.* at 5 (explaining that if at any time during the enforcement proceedings “the Commission is persuaded that the treasurer did not act with the requisite state of mind, subsequent findings against the treasurer will only be made in his or her official capacity”). *Compare* MUR 5453 (Giordano), Factual and Legal Analysis for Thomas Ariola (finding former deputy treasurer personally liable at the reason to believe stage for non-knowing and willful violations because he failed to fulfill his duties under the Act and the Commission’s regulations by signing disclosures that contained apparent excessive and prohibited contributions, failed to include contributor information, and failed to refund the illegal contributions; after an investigation revealing additional information, the Commission accepted a conciliation agreement with Ariola for knowing and willful violations in his personal capacity), *with* MUR 5646 (Burchfield), Factual and Legal Analysis for John Buchalski (finding reason to believe that treasurer violated the reporting and recordkeeping provisions in his personal capacity because of the reckless failure to perform his duties by signing reports he acknowledged were incomplete, but later took no further action after an investigation revealed details that another respondent completed the inaccurate disclosure reports).

²⁷ F&LA at 8-9, MUR 6997 (Americans Socially United).

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1 may—and should—also infer that Peterson's failure to include the source of its funds and to
2 properly disclose the entities who received disbursements in ASU's only report is additional
3 proof of Peterson's intent to mislead the public and hide ASU's activities.²⁸ In fact, Peterson's
4 own statements to RAD indicate that he had some knowledge of the Act's reporting
5 requirements. He appeared to recognize that ASU had received prohibited contributions and
6 understood the need to refund them, but still did not disclose all of those contributions to the
7 Commission, or specify which vendors he purportedly paid using a personal credit card.²⁹
8 Peterson's attempts to shift the blame for his inability to access records to third parties are also
9 contradicted by his claims that he was obtaining ASU's bank records directly from the
10 committee's banks in order to amend and file disclosure reports.³⁰

11 Other available information further supports an inference that Peterson was aware of his
12 duties as ASU's treasurer and recklessly ignored them. Peterson contacted RAD even before
13 filing the 2015 Mid-Year Report, but he failed to amend that report despite being alerted to
14 errors. In addition, Peterson is the named treasurer of at least eight other political committees

²⁸ Treasurer Policy, 70 Fed. Reg. at 5.

²⁹ *Supra* at p. 3.

³⁰ *Id.*

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1 registered with the Commission.³¹ Peterson's disregard for his reporting obligations, despite his
 2 apparent awareness of them, supports a conclusion that he was at least reckless in fulfilling his
 3 duties as treasurer.

4 Peterson's attempt to distance himself from ASU by referring to the committee as a
 5 "former client" in e-mails to RAD is unavailing. Publicly available information indicates that
 6 Peterson founded ASU and was the public face of the committee and its fundraising activities,
 7 and he likely has intimate knowledge of ASU's activities and finances.³²

8 Accordingly, we recommend that the Commission find reason to believe that Peterson, in
 9 his personal capacity, violated 52 U.S.C. § 30104(b) by filing an inaccurate disclosure report
 10 with the Commission.³³ In addition, we recommend that the Commission merge this referral
 11 with MUR 6997 because the activities in the two cases overlap. Finally, the Commission
 12 approved the use of compulsory process in MUR 6997, and we recommend it do so in this case
 13 as well.

³¹ Those committees include the following: Alliance Against Disabled Inmate Abuse, American Friends for Micronesia, Congressional Committee on Cuban Affairs, Congressional Committee on Eurasian Affairs, Congressional Committee on Law Enforcement and Public Safety, Congressional Task Force on Human Trafficking, Every Vote Counts Restoring America Super PAC, and Independent National Alliance. *See* F&LA at note 4. Peterson is also listed as a designated agent for Democrats Socially United. *See* Statements of Organization, Democrats Socially United (June 16, 2016 and Oct. 15, 2016). FEC records show that RAD sent RFAIs to Peterson concerning his failure to file reports for those committees. In an e-mail submitted in connection with one of the committees, Peterson explained that the committee was "formed . . . to support independent federal election candidates for 2016 elections," but the managing committee members "decided to discontinue activities . . . because of a transition of interest to another PAC that was already active that supported similar political issues." *See* Miscellaneous Report to FEC, Independent National Alliance Committee (Jan. 15, 2018), <http://docquery.fec.gov/pdf/526/201801170300185526/201801170300185526.pdf>. It appears that Peterson did not respond to any other RFAIs sent in connection with any of the other committees.

³² *See supra* note 13.

³³ Peterson was previously given notice of the Complaint in his official capacity as treasurer. *See* Notification Ltr., RR 18L-13, Americans Socially United (Feb. 28, 2018).

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1 **IV. PROPOSED INVESTIGATION**

2 The investigation will seek to obtain information and documents to determine the full
3 scope and nature of the reporting violations in this matter, including whether the evidence
4 supports personal liability for the treasurer. To the extent that Peterson fails or refuses to
5 cooperate with the investigation, we intend to seek appropriate subpoenas. In light of Peterson's
6 likely incarceration and his claim that the FBI seized ASU's records, we intend to seek ASU's
7 records directly from the committee's banks and its other vendors.

8 **V. RECOMMENDATIONS**

9 1. Open a MUR;
10 2. Find reason to believe that Americans Socially United and Cary L. Peterson in his
11 official capacity as treasurer violated 52 U.S.C. § 30104(b);
12 3. Find reason to believe that Cary L. Peterson, in his personal capacity, violated
13 52 U.S.C. § 30104(b);
14 4. Merge this matter with MUR 6997;
15 5. Approve the attached Factual and Legal Analysis;
16 6. Approve the use of compulsory process; and

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6 Kathleen M. Guith
7 Associate General Counsel

10
11 6.28.18
12 Date
13

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