



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SEP 06 2019

Ohio Democratic Party
ATTN: N. Zachary West, General Counsel
340 East Fulton Street
Columbus, OH 43215

RE: MUR 7214

Dear Sir:

This letter is in reference to the complaint you filed with the Federal Election Commission ("Commission") on February 8, 2017, concerning the Ohio Republican Party State Central & Executive Committee and Tracey Winbush in her official capacity as treasurer ("ORP"). The Commission, on March 7, 2019, found that there was reason to believe ORP violated 52 U.S.C. § 30125(b), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and conducted an investigation. After that investigation was completed, the Commission entered into a conciliation agreement with ORP and, accordingly, closed the file in this matter on August 20, 2019.

Documents related to the case will be placed on the public record within 30 days. See *Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the agreement with ORP is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Saurav Ghosh

Saurav Ghosh
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Ohio Republican Party) **MUR 7214**
State Central & Executive)
Committee and David Johnson)
in his official capacity as)
treasurer, *et al.*)

CONCILIATION AGREEMENT

This matter was initiated by a Complaint filed with the Federal Election Commission ("Commission") by the Ohio Democratic Party. The Commission found reason to believe that the Ohio Republican Party State Central & Executive Committee and Tracey Winbush in her official capacity as treasurer ("Respondents" or "ORP") violated 52 U.S.C. § 30125(b).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. ORP is a state committee of a political party that registered its federal account with the Commission. Tracey Winbush was ORP's treasurer from May 19, 2016, to June 15, 2018. David Johnson is ORP's current treasurer.

2. ORP maintains nonfederal state accounts that include the Ohio Republican State Central & Executive Committee State Account, the Ohio Republican State Central & Executive Committee Restricted Fund, and the Ray C. Bliss Building Trust Fund (collectively, the "state accounts").

3. Under the Federal Election Campaign Act of 1971, as amended (the "Act"), any expenditure or disbursement for "federal election activity" by a state committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by such committee) must be made from federal funds or, in some cases, a mixture of federal and "Levin" funds. 52 U.S.C. § 30125(b)(1); *see also* 11 C.F.R. § 300.32(a)(2).

4. A state party committee may not allocate costs for federal election activity between federal and nonfederal accounts. 11 C.F.R. § 106.7(e)(3).

5. "Federal election activity" includes, among other things, "voter identification activity" conducted in connection with an election in which one or more federal candidates appear on the ballot. 52 U.S.C. § 30101(20)(A)(ii); 11 C.F.R. § 100.24(b)(2).

6. "Voter identification activity" means "acquiring information about potential voters, including, but not limited to, obtaining voter lists and creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates." 11 C.F.R. § 100.24(a)(4). Commission regulations provide that "[t]he date a voter list is acquired shall govern whether a State . . . party committee has obtained a voter list within the meaning of this section." *Id.*

7. The Commission has explained that state committees "should use the date the information was purchased, rather than the date the information was used, to determine

whether the acquisition of a voter list falls within the FEA timeframes.” Definition of Federal Election Activity, 71 Fed. Reg. 8926, 8930 (Feb. 22, 2006).

8. The period when activity is deemed “[i]n connection with an election in which a candidate for Federal office appears on the ballot” — *i.e.*, the “FEA period” — includes “[t]he period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law.” 11 C.F.R. § 100.24(a)(1)(i). Ohio’s 2014 FEA period for voter identification activity ran from February 5, 2014, to November 4, 2014. Federal Election Activity Dates for 2014, *available at* https://transition.fec.gov/info/charts_fea_dates_2014.shtml.

9. On November 1, 2013, former ORP Chairman Matt Borges, on behalf of ORP, entered into a contract with a company, FactGem, under which ORP agreed to pay FactGem \$50,000 per month for the development of “Project Ruby” and the use of FactGem’s other software products. “Project Ruby” was a proposed software database of voter information that could be used to drive voter turnout, which FactGem would create by enhancing existing voter lists with publicly available information. The other FactGem software products purchased by ORP could also be used for voter identification.

10. ORP used FactGem’s software products in connection with elections in which there were federal candidates on the ballot.

11. Under the terms of ORP’s contract with FactGem, ORP and the state accounts disbursed a total of \$600,000 to FactGem, of which \$82,500 consisted of federal funds — *i.e.*, funds subject to the limitations, source prohibitions, and reporting requirements of the Act — and \$517,500 consisted of nonfederal funds — *i.e.*, funds that are not subject to the limitations, source prohibitions, and reporting requirements of the Act. Of the \$600,000 paid

under the contract, ORP and the state accounts disbursed \$567,500 to FactGem during Ohio's 2014 "FEA period," *i.e.*, between February 5, 2014, and November 4, 2014, of which \$77,625 consisted of federal funds, and \$489,875 consisted of nonfederal funds.

12. "Project Ruby" and other FactGem products that ORP purchased in 2014 were "voter identification activity" because they involved "acquiring information about potential voters" by creating or enhancing voter lists.

13. By making disbursements to FactGem during the FEA period — *i.e.*, in connection with an election in which one or more federal candidates appear on the ballot — for the use of FactGem's products and the development of Project Ruby, ORP and the state accounts made disbursements for federal election activity.

14. Respondents contend that in an effort to avoid similar issues in the future, ORP replaced Matt Borges as Chairman; retained legal counsel to advise ORP on compliance matters at both the state and Federal level; required all disbursements to be approved by the Executive Director, the Accounting Director, an outside compliance firm, and legal counsel; implemented robust recordkeeping and document retention policies; and implemented disciplinary procedures applicable to any employee who fails to adhere to the policies and procedures implemented by ORP leadership.

V. Respondents violated 52 U.S.C. § 30125(b) by disbursing \$489,875 in nonfederal funds for federal election activity.

VI. 1. Respondents will pay a civil penalty to the Commission in the amount of one hundred thousand dollars (\$100,000), pursuant to 52 U.S.C. § 30109(a)(5)(A). Respondents will pay at least \$50,000 of the civil penalty to the Commission within thirty (30) days from the date this agreement becomes effective, and will pay the balance of the civil penalty to the

Commission within ninety (90) days from the date this agreement becomes effective, and will notify the Commission of its compliance with these payment requirements.

2. Respondents will transfer \$489,875 from ORP's federal account to ORP's nonfederal account within twenty-four (24) months from the date this agreement becomes effective. Respondents will transfer at least one-eighth (1/8) of the \$489,875, or \$61,234.37, from ORP's federal account to ORP's nonfederal account every three (3) months until the entire \$489,875 is transferred, and will notify the Commission of its compliance with these payment requirements.

3. Respondents will cease and desist from committing violations of 52 U.S.C. § 30125(b).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

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X. This agreement shall not be read to waive Respondents' right or ability to assert, without prejudice, any arguments or defenses in any future proceedings that are unrelated to the terms of this agreement and the violations of law described herein.

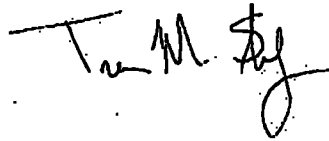
FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher
Charles Kitcher
Acting Associate General Counsel for Enforcement

August 21, 2019
Date

FOR THE RESPONDENTS:



Trevor M. Stanley
Counsel for Respondents

August 9, 2019
Date

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