



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN 14 2019

BY UPS and USPS

Lindsey Workman, Treasurer

Jackson, OH 45640

RE: MURs 7321, 7335, 7359, and 7473
Keep El Paso Honest

Dear Ms. Workman:

On February 6, 2018, March 5, 2018, April 10, 2018, and August 13, 2018, the Federal Election Commission (the "Commission") notified Keep El Paso Honest and you, in your official capacity as treasurer (the "Committee") of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaints were forwarded to you at that time.

Upon review of the allegations contained in the complaints, the Commission, on June 3, 2019, found that there is reason to believe the Committee violated 52 U.S.C. § 30104(a), (b), and (g), and 11 C.F.R. §§ 104.4 and 109.10(d) by failing to file reports of receipts and disbursements and independent expenditures with the Commission. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

The Committee and you, as treasurer, may submit any factual or legal materials that you believe is relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed questions and requests for documents should be submitted to the Office of the General Counsel within 30 days of your receipt of this notification. Any additional materials or statements you wish to submit should accompany the response to the order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating

Lindsey Workman
MURs 7321, 7335, 7359, and 7473
Page 2

the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

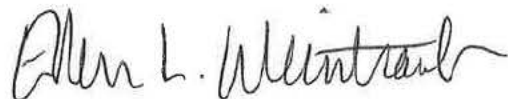
If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent(s).

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. Please respond to Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1513 within 10 days of your receipt of this letter if you intend to submit documents and answers to the enclosed questions. If you have any questions, please contact us.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Questions and Requests for Documents
Factual and Legal Analysis

Please provide detailed answers to the following questions. The questions pertain to the Committee's activities from its inception to the present day.

1. Describe the creation, organization, and operation of the independent expenditure-only committee, Keep El Paso Honest (the "Committee"), that registered with the Federal Election Commission (the "Commission") on November 11, 2017.
 - a. Name each individual involved in the creation or operation of the Committee. Describe the Committee's structure, as well as each individual's role in the creation or operation of the Committee.
 - b. Name each individual that was or is involved in the operations of the Committee. Describe each individual's role in the operation of the Committee.
 - c. Describe your own role in the creation, organization, and operation of the Committee.
 - d. Submit all documents related to the Committee's creation, organization, and operation.
2. Describe all funds raised on behalf of the Committee.
 - a. Describe the Committee's fundraising efforts and identify all individuals that participated in these efforts.
 - b. Identify all Committee receipts since its inception. This includes the date of the receipt, the donor that contributed, lent, or otherwise provided funds to the Committee, and the date of the subsequent deposit of each receipt.
 - c. Identify who received these contributions and describe how they were handled after receipt.
 - d. Describe your own role in raising funds for the Committee.
 - e. Submit all documents and records related to any and all funds raised on behalf of the Committee and to all funds utilized by the Committee.
3. Describe all expenditures made by the Committee.
 - a. Name each individual that participated in determining how Committee funds were raised or spent, and describe how those individuals made those determinations.
 - b. Describe the process for utilizing Committee funds, and identify all individuals that had access to Committee funds.
 - c. Describe all disbursements made by the Committee, including the date the disbursement was made, the recipient of the funds, and the purpose of the disbursement.
 - d. Describe your own role in spending Committee funds.
 - e. Submit all documents and records relating to any and all disbursements made by the Committee.

4. Name all banks and accounts used by the Committee for the receipt and deposit of Committee funds and the disbursement of Committee funds.
 - a. Name the individual or individuals that opened the account. Provide the date that the account or accounts were opened.
 - b. Name all individuals named as a signatory on any account, and any other individual that had access to Committee funds.
 - c. Provide monthly statements of these accounts for the relevant period—from the Committee's inception to the present date.
 - d. Describe your own access to the accounts at issue.
 - e. Submit all documents and records related to the Committee's accounts, deposits, withdrawals, and disbursements.
5. For all television advertisements funded by the Committee, provide the following information:
 - a. Describe the development of the advertisements.
 - b. Name any vendor used to create and distribute television advertisements.
 - c. Describe the television advertisements, including whether the ad advocated for or against any federal candidate, and provide video footage of all television advertisements created, funded, and distributed by the Committee.
 - d. Describe your own role in the creation and distribution of television advertisements funded by the Committee.
 - e. Submit any and all documents related to the creation and distribution of television advertisements funded by the Committee, including but not limited to vendor contracts, scripts, broadcast schedules, and invoices.
6. For all other advertisements or communications, including but not limited to billboards, fliers, and YouTube videos, provide the following information:
 - a. Describe the development of the advertisements or communications.
 - b. Name any vendor used to create and distribute these advertisements or communications.
 - c. Describe the advertisements or communications, including whether the advertisement or communication advocated for or against any federal candidate, and provide copies or footage of all advertisements or communications created, funded, and distributed by the Committee.
 - d. Describe your own role in the creation and distribution of any and all other advertisements or communications funded by the Committee.
 - e. Submit any and all documents related to the creation and distribution of these advertisements funded by the Committee, including but not limited to vendor contracts, mockups, and invoices.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5 **RESPONDENTS:** Keep El Paso Honest and **MURs:** 7321, 7335, 7359 and 7473
6 Lindsey Workman
7 in her official capacity as treasurer
8

9 **I. INTRODUCTION**

10 This matter was generated by complaints filed with the Federal Election Commission (the
11 “Commission”) by Susannah Boyd, Veronica Escobar, Jason Chapman, and Margaret Christ,
12 Campaign Legal Center. *See* 52 U.S.C. § 30109(a)(1). The Complaints in these matters allege
13 violations of the reporting requirements of the Federal Election Campaign Act of 1971, as
14 amended (the “Act”), by Keep El Paso Honest and Lindsey Workman in her official capacity as
15 treasurer (the “Committee”) in connection with the Committee’s failure to file independent
16 expenditure reports and periodic disclosure reports with the Commission. The Committee did
17 not respond to notifications of these complaints.

18 Based on the information in the record, it appears that the Committee violated the Act’s
19 reporting requirements when it failed to file disclosure reports and reports of its independent
20 expenditures. Accordingly, the Commission finds reason to believe that the Committee violated
21 52 U.S.C. § 30104(a), (b), and (g) and 11 C.F.R. §§ 104.4 and 109.10(d).

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **A. Factual Background**

24 The Committee registered with the Commission as an independent expenditure-only
25 committee in late 2017.¹ Since its registration, the Committee has filed only one report with the

¹ FEC Form 1, *Statement of Organization*, Keep El Paso Honest at <http://docquery.fec.gov/pdf/374/201711079086615374/201711079086615374.pdf> (Nov. 11, 2017); *see also* FEC Form 99, *Miscellaneous Text*, Keep El Paso Honest at <http://docquery.fec.gov/pdf/747/201712139089185747/201712139089185747.pdf> (Dec. 13, 2017) (noting the Committee’s intention to raise unlimited funds for the purpose of making independent expenditures).

MURs 7321, 7335, 7359, and 7473 (Keep El Paso Honest)
Factual and Legal Analysis
Page 2 of 8

Commission—its 2017 Year-End Report, which disclosed a \$250 in-kind contribution and \$398 in disbursements for operating expenses, and showed a negative cash-on-hand balance.²

The Commission's Reports Analysis Division ("RAD") sent the Committee Requests for Additional Information ("RFAs") regarding its failure to file its 2018 April and July Quarterly Reports.³ The Committee did not respond to the RFAs, and did not respond to the notifications of the complaints in these matters.

1. MUR 7321

The MUR 7321 Complaint alleges that as of January 28, 2018, the Committee paid for over \$10,000 in broadcast advertising, thereby triggering the Act's independent expenditure reporting requirements, but failed to file reports of independent expenditures.⁴ Further, the Complaint asserts that as of February 14, 2018, the Committee had purchased advertising totaling \$20,245 from four separate television stations, but had not filed reports of independent expenditures.⁵

² FEC Form 3X, Keep El Paso Honest, 2017 Year-End Report of Receipts and Disbursements at <http://docquery.fec.gov/pdf/696/201802069094247696/201802069094247696.pdf> (Feb. 6, 2018).

³ RFAI referencing 2018 April Quarterly Report at <http://docquery.fec.gov/pdf/031/201805010300009031/201805010300009031.pdf> (May 1, 2018); RFAI referencing 2018 July Quarterly Report at <http://docquery.fec.gov/pdf/267/201808020300016267/201808020300016267.pdf> (Aug. 2, 2018).

⁴ MUR 7321 Compl. at 1 (Feb. 14, 2018). The Complaint, which was filed on Feb. 14, 2018, alleges that the Committee failed to file its 2017 Year-End Report with the Commission. As noted above, the Committee filed its 2017 Year-End Report on February 6, 2018.

⁵ *Id.* The Complaint includes copies of media invoices from the television stations which show the Committee purchased at least \$14,105 television advertising. *See* Compl. Attach. The Complaint does not explain the discrepancy between the \$20,245 total set forth in the text of the Complaint and the total set forth in the attachments.

1 **2. MUR 7335**

2 The MUR 7335 Complaint and its supplements allege that the Committee failed to file its
 3 2017 Year-End Report, 2018 12-Day Pre-Primary Report, and 2018 April Quarterly Report.⁶

4 This Complaint also contends that the Committee failed to disclose aggregate independent
 5 expenditures in excess of \$10,000, and that the Committee had purchased advertising totaling
 6 \$20,245 from four separate television stations, but had not filed the corresponding independent
 7 expenditure reports.⁷

8 The MUR 7335 Complaint also includes a news article in which “Committee
 9 spokesperson” Carlos Sierra reportedly says that the Committee raised about \$125,000 and spent
 10 over \$10,000.⁸ In response to a question about filing reports with the Commission, Sierra also
 11 declares “[m]y attorneys handle that” and “[t]hat’s not what I personally do. I just buy
 12 everything, design everything and run the PAC. I don’t do the filings, the reporting. That’s not
 13 what I do. My attorney can answer anything having to do with FEC and the filings.”⁹ The news
 14 article reports that the attorney identified by Sierra would not confirm that he represented the
 15 Committee.¹⁰ Another news article attached to the April 23, 2018, complaint supplement quotes
 16 Sierra as saying that “voters aren’t concerned with whether his PAC is following federal

⁶ MUR 7335 Compl. at 1 (Feb. 28, 2018); *see also* Compl. Suppls. (Apr. 2, 2018, and Apr. 28, 2018).

⁷ *Id.*

⁸ MUR 7335 Compl (attaching Madlin Mekelburg, *Anti-Escobar PAC Fails to Report Campaign Spending on Advertisements*, EL PASO TIMES (Feb. 16, 2018)). In the article, Sierra also mentions that he paid for a Committee website. *Id.* Attached to the Complaint were screenshots of the Committee’s website, which advocated for voters to “say yes” to candidate Dori Fenenbock and “say no” to candidate Veronica Escobar. *Id.*

⁹ *Id.*

¹⁰ *Id.*

guidelines.”¹¹ Sierra further states, “Since Jan. 1 . . . we have spent more than \$10,000.”¹² The article further asserts that the Committee “has aired television ads, sent flyers through the mail, and rented billboards in different parts of the city . . .”.¹³

3. MUR 7359

The MUR 7359 Complaint alleges that the Committee paid for billboards and television advertisements advocating against the election of Texas Congressional candidate Veronica Escobar, but did not disclose these expenditures in a Pre-Primary Report before the March 6, 2018, Texas primary.¹⁴ The Complaint also includes the media buy invoices, which indicate that the Committee purchased at least \$14,000 in advertising time.¹⁵ A supplement to the complaint includes printed Facebook pages, which include links to purported websites,¹⁶ and a post asking for “likes” from individuals that voted against Veronica Escobar.¹⁷

4. MUR 7473

The MUR 7473 Complaint alleges that the Committee made expenditures opposing Texas Congressional candidate Veronica Escobar in the March 2018 Texas primary, but did not

¹¹ MUR 7335 Supp. Compl.(Apr. 23, 2018) (attaching Madlin Mekelburg, *Congressional Candidate Veronica Escobar Files Complaint against Keep El Paso Honest PAC*, EL PASO TIMES (Feb. 26, 2018)).

¹² *Id.*

¹³ *Id.*

¹⁴ MUR 7359 Compl. at 1 (Apr. 4, 2018). The Complaint includes numerous invoices for television media buys. A supplement to the Complaint includes additional materials, including printed copies of the Committee’s Facebook page and an article that was included with the Complaint in MUR 7335.

¹⁵ *Id.* Most of the invoices appear to be the same invoices totaling just over \$14,000 that were attached to MUR 7321. There was an additional invoice for another television station.

¹⁶ MUR 7359 Supp. Compl. Attach. (July 13, 2018). The attached screenshot of the Facebook page includes links to both www.keeptexashonest.com and www.keeelpasohonest.com. *See id.* The supplement also includes February 16, 2018, El Paso Times article that was attached to a complaint supplement in MUR 7335.

¹⁷ *Id.*

1 disclose those expenditures.¹⁸ Specifically, the Complaint alleges that the Committee produced
 2 and published a 30-second YouTube video advertisement titled “Veronica Escobar: Bad for El
 3 Paso,” which contained a disclaimer noting that the Committee paid for the content.¹⁹ The
 4 Complaint also alleges that the Committee spent over \$17,900 for media buys for at least 17
 5 television advertisements between February 4, 2018, and March 6, 2018. The Complaint
 6 attached publicly available records from the Federal Communications Commission regarding the
 7 media buys.²⁰ The Complaint also cites a news article in which Sierra is quoted declaring that
 8 “we have spent more than \$10,000.” The same article reports that Sierra said the Committee
 9 raised approximately \$125,000 and that “about \$10,000 [is] from myself and the rest is El Paso
 10 donors.”²¹ The Complaint also alleges that the Committee funded billboards featuring an image
 11 of Escobar with the text “I doubled my salary and raised your taxes. We good?”²² Finally, the
 12 Complaint alleges that the Committee funded and mailed a “last-minute flier . . . urging

¹⁸ MUR 7473 Compl. at 2-9 (Aug. 9, 2018). The Complaint also notes that the *El Paso Times* reported that political consultant Carlos Sierra had set up the Committee to oppose Escobar. The same article reported that Sierra had also set up another political committee, Keep Texas Honest, for the same purpose. MUR 7473 Compl. at 2 (citing Aileen B. Flores, *Political Consultant Creates PAC Opposing Escobar's Congressional Bid*, EL PASO TIMES (Nov. 16, 2017), <https://www.elpasotimes.com/story/news/politics/2017/11/16/el-paso-political-consultant-says-hes-out-ensure-escobar-loses-congressional-race/868998001/>). Keep Texas Honest is registered with the Commission as an IE-only committee, but has filed no disclosure reports. None of the allegations in any of the complaints include expenditures made by Keep Texas Honest, so they are not named as respondents in these matters. See FEC Form 1, *Statement of Organization*, Keep Texas Honest at <http://docquery.fec.gov/pdf/726/201711059086608726/201711059086608726.pdf> (Nov. 5, 2017).

¹⁹ MUR 7473 Compl. (citing *Veronica Escobar: Bad for El Paso*, YOUTUBE (Jan. 18, 2018), <https://www.youtube.com/watch?v=FnEBNAGDYq0>).

²⁰ MUR 7473 Compl. at 3-5 and Attachs. A-C. The Complaint indicates, based on an additional filing that does not contain the Committee’s name, that the Committee may have made additional buys totaling \$7,700. *Id.* at 3 n.13.

²¹ MUR 7473 Compl. at 5 (citing Madlin Mekelburg, *Anti-Escobar PAC Fails to Report Campaign Spending on Advertisements*, EL PASO TIMES (Feb. 16, 2018)).

²² MUR 7473 Compl. (citing El Paso: *Someten Queja en Contra de Grupo Que Ataca A Veronica Escobar*, NOTICIAS YA (Feb. 27, 2018)).

Republicans to vote in the Democratic congressional primary against former County Judge Veronica Escobar.”²³ The Complaint alleges that despite making these expenditures, the Committee failed to file required independent expenditure reports and periodic disclosure reports with the Commission.²⁴

B. Legal Analysis

The Act requires committee treasurers to file reports in accordance with the provisions of 52 U.S.C. § 30104.²⁵ These reports must include, *inter alia*, the total amount of all receipts and disbursements, including the appropriate itemization, where required.²⁶

An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate, and is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents.²⁷ In addition to a political committee’s regular reporting obligations, when a committee makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before, the date of an election, the Act requires the Committee to file an additional report describing those expenditures within 24 hours.²⁸

²³ MUR 7473 Compl. at 6 and Attach. K; *see also id.* at 6 (citing Aaron Martinez, *PAC Urges Republicans to Vote Against Escobar in Democratic Primary to Force Runoff*, EL PASO TIMES (Mar. 3, 2018), <https://www.elpasotimes.com/story/news/2018/03/03/keep-el-paso-honest-urges-republicans-vote-against-escobar-democratic-primary-force-runoff/392264002/>).

²⁴ MUR 7473 Compl. at 6-7.

²⁵ *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²⁶ *See* 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

²⁷ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of “expressly advocating”).

²⁸ *See* 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d).

Further, a political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day, must file a report describing those expenditures within 48 hours.²⁹ These reports must be filed within 48 hours “following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated.”³⁰

The information in the record indicates that the Committee violated the Act’s reporting requirements by failing to file its 2018 Pre-Primary Report, 2018 April Quarterly Report, and 2018 July Quarterly Report. In addition, the record indicates that Committee may have failed to file reports of independent expenditures with the Commission after meeting the Act’s financial thresholds by funding at least \$20,000 in television advertisements.³¹ FCC filings indicate that the Committee purchased political advertising from the following four El Paso television stations prior to Texas’s March 2018 primary election: (1) \$3,360 at KVIA;³² (2) \$7,700 at KFOX;³³ (3) \$4,500 at KDBC;³⁴ and (4) \$7,075 at KTSM.³⁵ These advertisement may have constituted

²⁹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

³⁰ 11 C.F.R. § 104.4(b), (c).

³¹ The amounts disclosed by the television stations are just over \$2,000 more than alleged in the complaints. However, the invoices indicate that there may have been discounts based on volume purchases.

³² See MUR 7473 Compl. at 3-5; KVIA, FCC Disclosures, 2018 Political Files, Keep El Paso Honest Non-Candidate Issue Ads at <https://publicfiles.fcc.gov/tv-profile/kvia-tv/political-files/2018/non-candidate-issue-ads/keep-el-paso-honest/697946c8-da7b-9c80-6d94-47498f35fa70/>.

³³ See MUR 7473 Compl. at 3-5; KFOX, FCC Disclosures, 2018 Political Files, Keep El Paso Honest at <https://publicfiles.fcc.gov/tv-profile/kfox-tv/political-files/2018/non-candidate-issue-ads/b7db4df6-d0e4-a47e-bb52-24e26608a89b/>.

³⁴ See MUR 7473 Compl. at 3-5; KDBC, FCC Disclosures, 2018 Political Files, Keep El Paso Honest at <https://publicfiles.fcc.gov/tv-profile/kdbc-tv/political-files/2018/non-candidate-issue-ads/255e98a7-9d50-594b-7d45-17830553c464/>.

³⁵ See MUR 7473 Compl. at 3-5; KTSM, FCC Disclosures, 2018 Political Files, Keep El Paso Honest at <https://publicfiles.fcc.gov/tv-profile/ksm-tv/political-files/2018/non-candidate-issue-ads/29fd71fc-43ef-cfc8-3f25-2b1df8da96f/>.

MURs 7321, 7335, 7359, and 7473 (Keep El Paso Honest)

Factual and Legal Analysis

Page 8 of 8

1 independent expenditures. The record also indicates that the Committee funded flyers expressly
2 advocating against Veronica Escobar but did not file any reports of independent expenditures.³⁶
3 Further, the record indicates that a Committee representative acknowledged at least \$125,000 in
4 receipts, and stated that questions about unfiled disclosure reports should be addressed to the
5 Committee's attorney.³⁷ Accordingly, the Commission finds reason to believe that the
6 Committee violated 52 U.S.C. § 30104(a), (b), and (g), and 11 C.F.R. §§ 104.4 and 109.10.

³⁶ See *supra*, note 23.

³⁷ See *supra*, note 8, 9.