



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jack Graham for U.S. Senate
Cheryl S. Klein, Treasurer
1873 S. Bellaire Street, Suite 908
Denver, CO 80222-4356

JUN - 8 2018

RE: MUR 7398
Jack Graham for U.S. Senate and
Cheryl S. Klein in her official
capacity as treasurer

Dear Ms. Klein:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Jack Graham for U.S. Senate (the "Committee") and you in your official capacity as treasurer may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 12, 2017, the Commission notified you that the Committee was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On May 22, 2018, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In addition, 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. 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 matter to be made public. 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.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

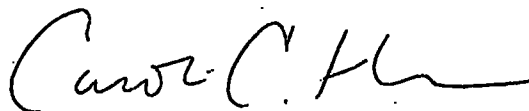
If you are interested in engaging in pre-probable cause conciliation, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1577 or (800) 424-9530 or by email at nmueller@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

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.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,



Caroline Hunter
Chair

Enclosures

Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Jack Graham for U.S. Senate **MUR: 7398**
5 and Cheryl S. Klein in her official
6 capacity as treasurer
7

8 **I. INTRODUCTION**

9 This matter was generated based on information ascertained by the Federal Election
10 Commission ("Commission") in the normal course of carrying out its supervisory
11 responsibilities.¹ The Reports Analysis Division ("RAD") referred Jack Graham for U.S. Senate
12 and Cheryl S. Klein in her official capacity as treasurer ("Committee") to the Office of General
13 Counsel ("OGC") for failing to disclose disbursements totaling \$252,571 on its original 2016 12-
14 Day Pre-Primary Report. The Committee acknowledges the inaccurate reporting but states that it
15 has not violated the Federal Election Campaign Act of 1971, as amended (the "Act"), because it
16 filed reports on time and filed amendments to correct mistakes when the mistakes were found.²
17 For the reasons set forth below, the Commission finds reason to believe that the Committee
18 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b).

19 **II. FACTS**

20 The Committee is the principal campaign committee of John Collins Graham, who was
21 an unsuccessful candidate in the Republican Primary for the U.S. Senate seat from Colorado in
22 2016.³ On June 13, 2016, the Committee filed its original 2016 12-Day Pre-Primary Report
23 covering the period from April 1, 2016, through June 8, 2016, which disclosed \$683,817 in

¹ See 52 U.S.C. § 30109(a)(2).

² Jack Graham for U.S. Senate Resp. (Feb. 3, 2017).

³ See Jack Graham for U.S. Senate, Statement of Organization (Jan. 29, 2016),
<http://docquery.fec.gov/pdf/011/201602040200058011/201602040200058011.pdf>.

1 disbursements.⁴ On July 16, 2016, the Committee filed an Amended 2016 12-Day Pre-Primary
2 Report that disclosed \$936,388 in disbursements, an increase of \$252,571 over the original
3 amount reported.⁵

4 On October 5, 2016, RAD sent the Committee a Request for Additional Information
5 (“RFAI”) seeking clarification regarding the substantial increase in disbursements disclosed on
6 the Amended 2016 12-Day Pre-Primary Report.⁶ On November 3, 2016, the Committee filed a
7 Miscellaneous Report (“Form 99”) in response to the RFAI explaining that in the course of
8 reviewing reporting data, the Committee found several disbursement entries that were improperly
9 coded in its internal database.⁷

10 RAD referred the Committee to OGC, which notified the Committee of the referral. The
11 Committee’s response acknowledges the inaccurate reporting but states that it has not violated
12 the Act because it filed reports on time and filed amendments to correct mistakes when the
13 mistakes were found.⁸ The Committee filed a supplemental response in which it repeats the
14 explanation it previously offered.⁹ The Committee further asserts that the “compressed time-
15 frame” between when the mistakes occurred and when the report was due “gave us little lee-way

⁴ Referral at 1 (Jan. 10, 2017).

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

⁸ Jack Graham for U.S. Senate Resp.

⁹ Jack Graham for U.S. Senate Supp. Resp. at 1-2 (Aug. 7, 2017) (“Supp. Resp.”). For instance, the Committee stated that when entering a \$250,754 payment for TV advertising into their internal database, the operator pressed “P” intending to select Subtype “Payment” but instead selected Subtype “Presidential Library” as the category of the disbursement. *Id.* at 2-3. This error caused the \$250,754 disbursement not to appear in the report pulled from the Committee’s software that was used to create its 12-Day Pre-Primary Report. *Id.* The mistake was later found after the Committee did a broader data pull that included all Subtypes. *Id.* at 3. Once the Committee discovered the mistake, it amended its report to the Commission. The Committee has provided a copy of the internal report that helped identify the mistake. *Id.*, Appendix D.

1 to find and correct the discrepancy;" the inaccurate report had no effect of the outcome of the
2 election; and there was no intent to advantage the campaign by misreporting disbursements.¹⁰

3 **III. LEGAL ANALYSIS**

4 The Act requires committee treasurers to file reports of receipts and disbursements in
5 accordance with the provisions of 52 U.S.C. § 30104.¹¹ These reports must include, *inter alia*,
6 the total amount of disbursements.¹²

7 Here, the Committee did not comply with the Act's reporting requirements when it failed
8 to disclose disbursements totaling \$252,571 on its original 2016 12-Day Pre-Primary Report, an
9 election-sensitive report.¹³ The Committee's explanations for their inaccurate reporting are
10 unavailing. The Committee is ultimately responsible for filing accurate reports with the
11 Commission. Its lack of bad faith is not germane here as the Commission is not making a
12 knowing and willful finding.¹⁴ Further, its other arguments, such as the fact that the error did not
13 have an effect on the election, do not excuse the violation.

14 Accordingly, the Commission finds reason to believe that the Committee violated
15 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b).

¹⁰ Supp. Resp. at 1-2.

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

¹² 52 U.S.C. § 30104(b)(4); 11 C.F.R. § 104.3(b).

¹³ Election-sensitive reports include pre-election reports for primary, general, and special elections. 11 C.F.R. § 111.43(d)(1).

¹⁴ See Factual & Legal Analysis at 5, MUR 7043 (Put Alaska First); Factual & Legal Analysis at 4, MUR 6966 (Democratic Party of Wisconsin).