



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Charles R. Spies, Esq.  
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Washington, DC 20004  
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**JUN 19 2018**

RE: MUR 7411  
(formerly Pre-MUR 605 and RR 17L-35)  
Mary Thomas for Congress and  
Roxane Nickeo in her official  
capacity as treasurer

Dear Mr. Spies:

On May 23, 2017, you notified the Federal Election Commission (the "Commission") that your client, Mary Thomas for Congress and Roxane Nickeo in her official capacity as treasurer (the "Committee"), may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 21, 2017, the Commission notified your client that it had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that your client may have violated the Act.

On June 7, 2018, the Commission found reason to believe your client violated 52 U.S.C. § 30116(f). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. 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

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to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

If you are interested in engaging in pre-probable cause conciliation, please contact Jonathan A. Peterson, the attorney assigned to this matter, at (202) 694-1525, (800) 424-9530, or [jpeterson@fec.gov](mailto:jpeterson@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](http://www.fec.gov/em/respondent_guide.pdf).

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<sup>1</sup> 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).

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We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter  
Chair

Enclosures  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Mary Thomas for Congress and  
4 Roxane Nickeo in her official  
5 capacity as treasurer

MUR: 7411

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7 **I. INTRODUCTION**

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9 This matter was generated by a *sua sponte* submission (the “Submission”) filed with the  
10 Federal Election Commission (“Commission”) by Mary Thomas for Congress and Roxane  
11 Nickeo, in her official capacity as treasurer (“Committee”), and information ascertained by the  
12 Commission in the normal course of carrying out its supervisory responsibilities.<sup>1</sup> The  
13 Submission states that the Committee accepted and failed to remedy excessive contributions  
14 designated for the 2016 Primary Election, and also failed to remedy contributions designated for  
15 the 2016 General Election.<sup>2</sup> The Reports Analysis Division (“RAD”) later referred the  
16 Committee to the Office of General Counsel for the same activity.<sup>3</sup> For the reasons set out  
17 below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30116(f)  
18 by accepting excessive contributions.

19 **II. FACTS**

20 Mary Thomas was a candidate in 2016 in Florida’s 2nd Congressional District. She lost  
21 the 2016 Primary Election on August 30, 2016.<sup>4</sup> On April 17, 2017, RAD sent the Committee a  
22 Request for Additional Information (“RFAI”) regarding its Amended 2016 October Quarterly

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1 *See* 52 U.S.C. § 30109(a)(2).

2 Submission at 1-3 (May 23, 2017).

3 RR 17L-35 at 1-2 (Mary Thomas for Congress) (Sept. 19, 2017) (“Referral”).

4 *See* Submission at 2.

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1 Report.<sup>5</sup> The RFAI noted, among other items, that the Committee reported excessive primary  
2 election contributions totaling \$9,148 and unrefunded general election contributions totaling  
3 \$69,245.12.<sup>6</sup> The RFAI requested that the Committee take corrective action.<sup>7</sup>

4 On May 22, 2017, the Committee filed a response to the RFAI and a second Amended  
5 2016 October Quarterly Report.<sup>8</sup> These filings clarified the sources for \$6,998 of the primary  
6 contributions that the RFAI questioned as excessive, but did not address the unrefunded general  
7 election contributions.<sup>9</sup> The next day, the Committee filed the Submission, acknowledging that  
8 it received excessive primary and general election contributions.<sup>10</sup>

9 On September 19, 2017, RAD referred the Committee to this Office.<sup>11</sup> The Referral  
10 noted that while the Committee had clarified \$6,998 of the purported excessive primary  
11 contributions referenced in the RFAI, \$2,150 remained unrefunded.<sup>12</sup> RAD also referred the

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<sup>5</sup> RFAI at 1 (Mary Thomas for Congress) (Apr. 17, 2017).

<sup>6</sup> See RFAI at 1-4 & Attachments; see also Referral at 1-2, 4.

<sup>7</sup> See RFAI at 2-4.

<sup>8</sup> Miscellaneous Electronic Document (FEC Form 99) (Mary Thomas for Congress) (May 22, 2017), (“Response”); Amended 2016 October Quarterly Report (Mary Thomas for Congress) (May 22, 2017).

<sup>9</sup> See Referral at 2 & n.1; see also Response at 1-2.

<sup>10</sup> See Submission at 2-3.

<sup>11</sup> Referral at 1.

<sup>12</sup> *Id.* at 2. The Submission discloses slightly more unrefunded primary contributions than the Referral. According to the Submission, the Committee accepted excessive primary contributions totaling \$3,200, out of which it refunded \$150. Submission at 3. The difference relates to \$1,050 in excessive contributions from Anna Perry that RAD included in the RFAI, but not in the later Referral. RAD did not include Perry’s contributions in the Referral because the Committee’s second Amended 2016 October Quarterly Report clarified that Perry did not exceed her contribution limit. See Amended 2016 October Quarterly Report at 60 (May 22, 2017). As to the alleged \$150 refund, the Committee has not submitted any evidence to support it and has not disclosed it in its reports.

1 Committee for failing to refund \$69,245.12<sup>13</sup> in contributions designated for the 2016 General  
2 Election.<sup>14</sup>

### 3 III. LEGAL ANALYSIS

4 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits  
5 individuals from making a contribution to a candidate with respect to any election in excess of  
6 the legal limit, which was \$2,700 during the 2016 election cycle.<sup>15</sup> A primary election and  
7 general election are each considered a separate "election" under the Act, and the contribution  
8 limits are applied separately with respect to each election.<sup>16</sup> Candidates and political committees  
9 are prohibited from knowingly accepting excessive contributions.<sup>17</sup>

10 Commission regulations permit a candidate or his or her authorized committee to receive  
11 contributions for the general election prior to the primary election.<sup>18</sup> If, however, the candidate  
12 does not become a candidate in the general election, the committee must: (1) refund the  
13 contributions designated for the general election; (2) redesignate such contributions in  
14 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
15 accordance with 11 C.F.R. § 110.1(k)(3).<sup>19</sup> The committee must do so within 60 days of the date

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<sup>13</sup> The Committee filed an Amended 12-Day Pre-Primary Report, disclosing an additional \$400 general election contribution. *See* Referral at 4 n.2. According to the Referral, this contribution was not included in the referable amount because the Committee's amendment was received after RAD sent it the RFAI, which did not include the contribution in its chart of unrefunded general election contributions. *See id.* Including this \$400 contribution, the total amount of 2016 General Election contributions the Committee received is \$69,645.12.

<sup>14</sup> Referral at 2.

<sup>15</sup> *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

<sup>16</sup> 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); *see* 11 C.F.R. § 100.2(a)-(c).

<sup>17</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>18</sup> *See* 11 C.F.R. § 102.9(e)(l). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

<sup>19</sup> *Id.*; *see also* Advisory Op. 1992-15 (Russo for Congress Committee) at 2.

1 that the committee has actual notice of the need to redesignate, reattribute, or refund the  
2 contributions, such as the date the candidate loses the primary or withdraws from the race.<sup>20</sup>

3 The record establishes that the Committee accepted \$2,150 in excessive contributions  
4 designated for the 2016 Primary Election that were not refunded, reattributed, or redesignated.

5 The Committee also accepted contributions totaling \$69,645.12<sup>21</sup> that were designated for the  
6 2016 General Election that were not refunded, reattributed, or redesignated after Thomas lost the  
7 primary election. The Committee acknowledges that it accepted these contributions and does not  
8 dispute that it failed to comply with the procedures outlined in the regulations to remedy them.

9 The Committee states that the violations were due to its campaign manager's negligence and his  
10 failure to implement an effective accounting system.<sup>22</sup> Based on the foregoing, the Commission  
11 finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) by accepting excessive  
12 contributions.<sup>23</sup>

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<sup>20</sup> See Advisory Op. 2008-04 (Dodd for President) at 3; AO 1992-15 at 2, 3 n.2.

<sup>21</sup> See note 12.

<sup>22</sup> See Submission at 1-3.

<sup>23</sup> See, e.g., Factual & Legal Analysis ("F&LA") at 5, MUR 6956 (Espaillat for Congress) (finding reason to believe that the committee violated the Act because it accepted and failed to remedy \$15,790 in excessive primary contributions and also failed to remedy \$22,550 in designated general election contributions after the candidate lost the primary election); F&LA at 5-6, MUR 6727 (Friends of Weiner); F&LA at 6, MUR 6230 (Wynn for Congress); F&LA at 5-6, MUR 6235 (Cannon for Congress).