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December 29, 2017

Jeff S. Jordan
Assistant General Counsel
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

Subject: American Federation of Teachers, AFL-CIO, Committee on Political Education ("AFT COPE") FEC ID C00028860 and Lorretta Johnson, Treasurer; FEC letter dated November 17, 2017

Dear Mr. Jordan:

Our firm represents AFT COPE and its treasurer, Lorretta Johnson, with respect to the subject matter, and I am primary counsel. The American Federation of Teachers, AFL-CIO ("AFT"), is the connected organization of AFT COPE, its separate segregated fund.

The November 17 letter sets forth eight issues that have been referred to your office as possible violations by AFT COPE of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Federal Election Commission ("FEC") regulations. The letter offers our clients an opportunity to submit comments and documentation to demonstrate that no enforcement action should be taken by the FEC in this matter.

Our comments will address, in turn, each of the eight cited issues. Initially, however, we wish to apprise the Office of General Counsel and the Commission of highly relevant and significant circumstances that transpired with respect to key AFT personnel during the time frames of this matter—August through December 2016.

In this period there were tremendous changes in the AFT accounting department, including employees who left AFT due to retirement, resignation and leaves of absence due to serious medical issues. Unfortunately this included personnel who had vital responsibility for preparing and filing FEC reports. Moreover, because the departures happened quickly and were not foreseeable, the training by departing staff to AFT personnel who were newly assigned to these functions did not happen in the way it should. (As listed below, AFT has made several changes to correct this situation.)

For example, a key AFT employee with extensive knowledge of FEC reporting rules, who had assumed responsibility for many FEC compliance-related functions for over 30 years, had to greatly reduce her work hours in 2016

Additionally, three senior/management level accounting staff (with FEC reporting responsibility) separated from AFT between August and October 2016. As a result, one AFT employee was promoted in September, in part to assume responsibility for FEC report preparation and filing duties. This individual performed the FEC filings, currently under review, with minimal direction and training. The employee was unaware that all AFT COPE transactions had not been recorded in the accounting system at the time of the original FEC filings. The delayed recordation of certain electronic receipts in the AFT COPE accounting systems was also due to the aforementioned staffing challenges and, in turn, contributed to the inadvertent omission of these transactions from the original reports.

In short, the personnel changes and staffing constraints AFT experienced in the latter months of 2016 were highly significant factors in the FEC reporting deficiencies cited in the subject letter. Notwithstanding these challenges, all omissions in FEC filings were reported immediately upon discovery through amended reports. AFT's intent is and has always been to fully disclose all transactions as required by FEC regulations and to do so in a timely manner. Although the AFT accounting department found itself under extreme staffing pressures during major FEC reporting periods in 2016, AFT management believes that its staff exerted their "best efforts" to file FEC reports timely and completely. Your office will recall that an FEC report filed by a political committee "shall be considered in compliance with" the Act when the committee shows that "best efforts" were used to obtain the mandated information and include same in any report required by the Act. 52 U.S.C. §30102(i).

Several corrective actions have been taken to ensure proper oversight, accuracy, and completeness for all future FEC filings. Following are examples of the steps AFT has taken thus far:

1. AFT staff from both the political and accounting departments, as well as AFT's recently hired Chief Financial Officer, have attended the FEC training for Labor Union PACs. Namely, the FEC Regional Conference in Chicago, Illinois on August 30-31, 2017.
2. A new position of Senior Political Accountant was created and approved in order to have a staff person dedicated to this area of work. This position was posted in fall 2017 and is currently in the final selection stage.
3. Staff in both the political and accounting departments now have appropriate bank account access and can view and properly record electronic funds transfers more timely.
4. AFT has replaced their customized FEC reporting tool with a new application with implementation currently underway. Features that will enhance and improve current reporting hurdles include daily downloads from the FEC website for candidate and committee details, better integration with the accounting system, and fail stop features to prevent incorrect reporting.
5. AFT accounting staff have been made aware regarding the adverse impact delays in recording certain bank transactions can have on FEC regulatory compliance,

and deadlines have been imposed to ensure all AFT COPE transactions are recorded within five business days.

6. AFT COPE will resume filing monthly FEC reports during the 2018 federal election year, and all FEC filings will be reviewed by the political department prior to submission.

These steps demonstrate AFT's commitment to complying with the Act and FEC regulations. AFT including AFT COPE take this responsibility very seriously and request that the Office of General Counsel and the Commission consider all of the circumstances outlined above and recognize them as unforeseeable hardships that the organization has been quick to address and remedy. The following pages provide specific responses to each of the eight issues cited in the November 17 letter.

1. 2016 Amended October Monthly Report: Line 23 of the Detailed Summary Page disclosed \$849,320.11. Schedule B supporting Line 23 disclosed \$854,320.11 in disbursements, creating a \$5,000.00 discrepancy.

2. 2016 Amended 30-Day Post General Report: Line 23 of the Detailed Summary Page disclosed \$219,000.00. Schedule B supporting Line 23 disclosed \$224,000.00 in disbursements, creating a \$5,000.00 discrepancy.

Each of these \$5,000 disbursement discrepancies resulted from the voiding of two AFT COPE contribution checks that were originally drawn to two different recipients. The checks were never deposited by the payees, and in one instance the check was returned. (The other check was issued with the wrong payee name and was voided before issuing a separate check.)¹ An inexperienced AFT staff person contacted the RAD analyst assigned to AFT COPE regarding item #1 and used his best efforts to follow her instructions for amending the FEC report to fully disclose the check void transaction. He followed those same instructions, without making a separate contact to RAD staff, when amending the FEC report regarding item #2 since the circumstances were very similar. The AFT staff person did not understand that the negative entries, once made in the upload file, would not also be itemized as negative expenditures on Schedule B, line 23, for each voided check. Amendments to these reports have been drafted and will be submitted within the next 30 days.

3. 2016 Amended September Monthly Report: The Committee's report disclosed additional disbursements totaling \$128,500.00 on Schedule B supporting Line 29, resulting in an increase of more than 5% and \$10,000.00 over the original report.

The actual amount of disbursements cited above should be \$125,000, not \$128,500. (The \$3,500 difference was later adjusted in amendments 1 and 2 to the September monthly report, and apparently resulted from errant accounting entries for a contribution check that was prepared but never issued.) The single transaction of \$125,000 was a contribution made via wire transfer

¹ AFT COPE's check for \$5,000 to the Randy Perkins for Congress committee, FEC ID C00592261, was returned by the candidate. AFT COPE's \$5,000 check to the wrong payee (Congressional Progressive Caucus PAC, FEC ID C 00466201) was never cashed, and a separate \$5,000 check was issued to the intended payee, Progressive Action PAC (FEC ID C00513176).

to a non-federal political organization in Florida, line 29, Schedule B. The belated disclosure of this transaction occurred because of the difficulty encountered by AFT staff in timely accessing and recording vital bank account data into the FEC filing software used by AFT COPE. See comments below about wire transfers, issues 4 and 5, Schedule B disbursements.

4. 2016 Amended Pre-General Report: The Committee's report disclosed additional receipts totaling \$370,087.24 on Schedule A supporting Line 11(a)(ii) and additional disbursements totaling \$103,307.79 on Schedule B supporting Line 29, resulting in an increase of more than 5% and \$10,000.00 over the original report.

5. 2016 Amended 30-Day Post General Report: The Committee's report disclosed additional receipts totaling \$364,479.31 on Schedule A supporting Line 11(a)(ii) and additional disbursements totaling \$105,000.00 on Schedule B supporting Lines 23 and 29, resulting in an increase of more than 5% and \$10,000.00 over the original report.

With regard to the Schedule A receipts in issue 4, the oversight in filing this un-itemized receipt total in an amendment, instead of in the original pre-general report, resulted from the inexperience and lack of in-house training of the AFT employee who had lead responsibility for FEC report preparation. Furthermore, this employee was not instructed to verify that all AFT COPE bank account deposit transaction data had been entered into the accounting system prior to completing the FEC report, and instead relied in good faith on the FEC-filer software used to prepare the reports. Again, once the belated completion of bank reconciliations during December 2016 and January 2017 indicated that deposits had been missed, amended reports were filed immediately. Given the priority that the FEC accords to the pre-general election report filing, this oversight appears significant on its face.

Notwithstanding, we offer a perspective for consideration by your office and the Commission. The cash position of AFT COPE, as of the due date of the pre-general election report, was at such a high level that the failure to timely disclose the lump sum receipt of \$370,087 was immaterial in terms of serving the highly-valued public interest to obtain "full disclosure" of campaign funding before a general election. As of October 19, 2016, AFT COPE correctly disclosed in its original pre-general election report that it had received \$4,514,262 of contributions in CY 2016; AFT COPE also reported \$4,289,022 in cash on hand as of January 1, 2016.² Therefore, when required to disclose its contributions to Federal candidates and committees in its pre-general election report, AFT COPE had available cash of \$8,703,284, and the sources of available cash had already been fully disclosed in prior reports. Given that its disbursements (including substantial non-federal election contributions) to date in 2016 were

² AFT COPE relies almost entirely on low amounts of individual voluntary contributions by AFT members in local affiliates scattered throughout the United States. These voluntary contributions are received and forwarded to AFT COPE pursuant to the FEC's collecting agent regulations and the procedures permitted therein. 11 CFR 102.6(b)[local unit of labor union qualifies as collecting agent for separate segregated fund of its parent national union]. The primary method of collection is through employer-administered, voluntary payroll deduction at the typical levels of \$2-\$7 from each contributor per pay period (26 per CY). For 2016, AFT COPE reported receipt of \$6,036,090 in un-itemized contributions and \$129,159 of itemized contributions.

\$5,411,406 there was obviously no need for AFT COPE to draw down from the \$370,087 that it failed to include its original pre-election report. AFT COPE's net cash available after these disbursements was \$3,291,878 (\$8,703,284 minus \$5,411,406). See 11 CFR 104.12 [first funds received are first funds expended].

In short: "no harm, no foul." AFT COPE's financial status on October 19, 2016, was such that no breach or "violation" of the public interest could have occurred by reason of the public's lack of access, before the general election, to the fact that AFT COPE had inadvertently omitted \$370,087 in un-itemized contributions from its original pre-election FEC report. (This amount was later disclosed in an amended pre-general election report.)

With regard to the Schedule A receipts in issue 5 (\$364,479), the above cash flow analysis also applies, but obviously with different amounts. AFT COPE was not dependent on the \$364,479 to finance the disbursements it made in the period covered by the post-general election report. In addition, the post-general election report is not an "election sensitive" report. 11 CFR 111.43(d)(1). Corrective amendments to the post-general election report were filed on January 31, 2017; the original report was timely filed on December 8, 2016.

With regard to the Schedule B disbursements cited in issues 4 (\$103,307.79) and 5 (\$105,000), we offer several comments.³ First, all of the five disbursement transactions within the totals cited were wire transfer payments made from October 7 through November 4, 2016. AFT personnel with very limited experience in FEC compliance chores were challenged with respect to the processing of each accounting record for each wire transfer. There were inordinate delays in getting access to bank records that were vital to the timely preparation and filing of FEC reports. Once AFT managers became aware of the delays, job functions were modified to give additional AFT employees instant on-line access to bank account records for wire transfer transactions by AFT COPE.

Secondly, two of the wire transactions were contributions to a federal candidate's campaign committee (in-kind \$3,307.79), and a "super PAC" federal committee restricted to independent expenditures only (\$50,000).⁴ Although AFT COPE did not timely report the making of these contributions, they were reported timely by each donee committee.⁵ AFT COPE reported these contributions in amended reports filed respectively on October 31, 2016, and January 31, 2017.

Thirdly, three of the five wire transactions were contributions to non-federal candidates in Oregon (\$60,000) and a non-federal political organization in Florida (\$100,000). Although the Act and Commission regulations do require some disclosure of "Other Disbursements," these

³ The actual total of disbursements cited in issue 5 should be \$110,000, not \$105,000. An accounting adjustment was made for a negative expenditure entry of \$5,000 that is explained in our response to issue 2 above.

⁴ The in-kind contribution to the federal candidate's committee was mistakenly reported on line 21(b) as an operating expenditure, instead of on line 23 as a contribution. An amendment has been prepared and will be filed within the next 30 days.

⁵ AFT COPE's in kind contribution of \$3,307.79 to the Hillary For America presidential campaign committee, FEC ID C00575795, was reported by that committee in its pre-general election report filed on 10/27/2016. AFT COPE's contribution of \$50,000 to LIFT, a federal "super PAC," FEC ID C00625525, was reported by LIFT in its 30 day post-general election report filed on 12/06/2016, page 16/28.

reported transactions are outside the purview of the FEC's enforcement authority as to contribution limits and lawful sources of campaign contributions in federal elections.⁶ Furthermore, even the itemized disclosure of each State and local election contribution is beyond the FEC's mission given its view that:

Federal campaign finance law covers three broad subjects: [p]ublic disclosure of funds raised and spent to influence federal elections, [r]estrictions on contributions and expenditures made to influence federal elections, [and public financing of presidential elections.] [emphasis added] <https://www.fec.gov/about/mission-and-history/>

Lastly, we note that the total Schedule B disbursements covered in issues 3 through 5 is \$338,307.79 and \$285,000 of this total was for non-federal election purposes. That calculates as 84% non-federal.

6. 2016 Amended October Monthly Report: Schedule B supporting Line 23 failed to disclose the office sought, state, and district for contributions to thirty-six (36) federal candidates totaling \$148,320.11

7. 2016 Amended 30-Day Post General Report: Schedule B supporting Line 23 failed to disclose the office sought, state, and district for contributions to seventeen (17) federal candidates totaling \$54,500.00.

The primary cause for these omissions was the frequency in which candidate and committee information was automatically downloaded from the FEC website. AFT COPE disbursements are tracked in a customized reporting database used by AFT staff to prepare the FEC reporting import file. With this limitation, often times candidate and committee information had to be manually entered in the customized application by AFT staff in the political department using a "dummy" identification number. The AFT accounting staff person responsible for filing the FEC reports was not initially aware that these "dummy" identification numbers created a technical issue for the customized reporting tool, in that it did not automatically load all of the related description fields.

The Act itself does not require the cited candidate contribution details, but Commission regulations added them. 52 U.S.C. §30104(b)(6)(B) [reporting committee must disclose date, amount, name and address of each committee to which reporting committee makes a contribution]; 11 CFR 104.3(b)(3)(v) [candidate name, office sought, State and Congressional District, if applicable, should also be provided]. The incomplete information disclosed in the original reports did comply with the Act's core provisions by listing the date, amount, name and address for each candidate committee contribution that AFT COPE made.

With FEC compliance training and more experience for key AFT personnel, FEC reports filed by AFT COPE in 2017 have already improved greatly in providing full information for AFT COPE's contributions and, together with enhancements to its FEC filing software, that positive trend should continue into 2018.

⁶ We are aware that the Act prohibits contributions from national banks, corporations chartered by Congress, and foreign nationals in any United States election to public office. Those prohibitions are not implicated here.

8. 2016 Amended October Monthly Report: Schedule B supporting Line 29 failed to disclose an adequate purpose of disbursement to one (1) vendor totaling \$20,671.50.

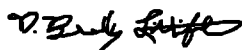
This disbursement transaction was not routine for AFT COPE in that it was made to reimburse the travel related expenses of AFT officials who attended the DNC national presidential nominating convention in 2016 as delegates and members of DNC standing committees. AFT initially paid these expenses and then was promptly reimbursed by AFT COPE since they pertained to a federal election. A better purpose description would have been: "Reimbursement for DNC convention travel expenses of AFT officials." An FEC report amendment has been drafted for this transaction and will be submitted in the next 30 days.

In conclusion, AFT COPE and its treasurer, Lorretta Johnson, confidently expect that the Office of General Counsel and the Commission will carefully and thoroughly review our letter. Thereafter, we are hopeful that the Commission will take no further action with respect to all eight listed issues and provide written notice to this office that the file on this matter is closed. Here in summary are the reasons no further action is warranted:

- AFT-COPE's delayed disclosure of lump sum un-itemized contribution receipts did not adversely impact the public interest in full disclosure of campaign finance activity in that AFT COPE had large cash reserves available (and previously reported to the FEC) when it made campaign contributions to federal candidates and federal committees in the pre-and post-election periods, just before and after the 2016 general elections. Issues 4 and 5.
- AFT COPE's delayed disclosure of disbursements made entirely with wire transfers were, in very large part (84%), contributions to non-federal candidates and committees; those (16%) contributions made to federal candidates and committees were timely and fully reported by the recipients. Issues 3, 4, and 5.
- AFT COPE's partial omissions of full details on some of its contributions to candidates for the U.S. House of Representatives were inadvertent, and its FEC reports did, in all cases, include the key contribution information required by the Act. Issues 6 and 7.
- Transaction reporting errors for two voided AFT COPE contribution checks, and an inadequate description of purpose for a single expenditure (not a candidate contribution) were of only nominal significance; corrective amendments by AFT COPE are pending. Issues 1, 2, and 8.

Respectfully submitted,

OLDAKER & WILLISON, LLP



N. Bradley Litchfield, AFT COPE counsel