



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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818 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20006

**AUG 14 2018**

RE: MUR 7546 (correct case #7456)  
American Federation of Teachers,  
AFL-CIO Committee on  
Political Education and Loretta  
Johnson in her official capacity  
as treasurer

Dear Mr. Litchfield:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, the American Federation of Teachers, AFL-CIO Committee on Political Education and Loretta Johnson in her official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 31, 2018, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2) and (4). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's findings.

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 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 the Committee violated the law. Enclosed is a conciliation agreement for your consideration

If your client is interested in engaging in pre-probable cause conciliation, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302 or (800) 424-9530, or [rwolcott@fec.gov](mailto:rwolcott@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 60 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is 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).

Please note that the Committee has 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. In the meantime, 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

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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.<sup>5</sup>

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter  
Chair

Enclosures

1. Factual and Legal Analysis

<sup>5</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).

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** American Federation of Teachers, AFL-CIO                    **MUR 7546**  
Committee on Public Education and Loretta  
Johnson in her official capacity as treasurer

**I. INTRODUCTION**

These matters arise from internally-generated referrals of the American Federation of Teachers, AFL-CIO, Committee on Political Education and Loretta Johnson in her official capacity as treasurer (“the Committee” or “AFT-COPE”) for activity during the 2018 election cycles.

In RR 18L-15, RAD referred the Committee to OGC for failing to disclose \$114,750.68 in receipts on the Committee’s 2017 30-Day Post-Special Report.<sup>3</sup>

The Responses in matters acknowledge that the Committee failed to timely report its receipts and disbursements but contend that the Commission should take no further action in or RR 18L-15 based on a number of mitigating factors described below.

Because the Commission concludes that the Responses inadequately rebut the fact that the Committee failed to timely report its activities, the Commission finds reason to believe that the

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<sup>1</sup>  
<sup>2</sup>  
<sup>3</sup> See RR 18L-15 at 1 (Mar. 20, 2018) (“RAD Referral”).

1 Committee violated 52 U.S.C. § 30104(b)(2) and (4) by failing to timely report its receipts and  
2 disbursements.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. 2016 Election Cycle Activity**

5 1. Facts

6 The Committee is the separate segregated fund of the American Federation of Teachers,  
7 AFL-CIO (“AFT”).<sup>4</sup> In RAD noted the following apparent violations related to the  
8 Committee’s 2016 filings:<sup>5</sup>

- 9 • The Committee failed to report \$370,087.24 in receipts on its 2016 12-Day Pre-General  
10 Report.<sup>6</sup>
- 11 • The Committee failed to report \$364,479.31 in receipts on its 2016 30-Day Post-General  
12 Report.<sup>7</sup>
- 13 • The Committee failed to report \$128,500 in disbursements on its 2016 September  
14 Monthly Report.<sup>8</sup>
- 15 • The Committee failed to report \$103,307.79 in disbursements on its 2016 12-Day Pre-  
16 General Report.<sup>9</sup>

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4 See AFT-COPE Amended Statement of Organization (Feb. 13, 2018).

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6 Compare AFT-COPE 2016 12-Day Pre-General Report (filed Oct. 27, 2016) (disclosing \$7,890.75 in receipts), with AFT-COPE 2016 Amended 12-Day Pre-General Report (filed Jan. 31, 2017) (disclosing \$377,977.99 in receipts).

7 Compare AFT-COPE 2016 30-Day Post-General Report (filed Dec. 8, 2016) (disclosing \$67,878.32 in receipts), with AFT-COPE 2016 Amended 30-Day Post-General Report (filed Jan. 31, 2017) (disclosing \$432,357.63 in receipts).

8 Compare AFT-COPE 2016 September Monthly Report (filed Sep. 20, 2016) (disclosing \$248,500 in disbursements), with AFT-COPE 2016 Amended 2016 September Monthly Report (filed Jan. 8, 2017) (disclosing \$377,000 in disbursements).

9 Compare AFT-COPE 2016 12-Day Pre-General Report (filed Oct. 27, 2016) (disclosing \$780,007.60 in disbursements), with AFT-COPE 2016 Amended 12-Day Pre-General Report (filed Jan. 31, 2017) (disclosing \$883,315.39 in disbursements).

- 1       • The Committee failed to report \$105,000 in disbursements on its 2016 30-Day Post-  
2       General Report.<sup>10</sup>

3                   2.       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.<sup>11</sup> These reports must include, *inter alia*,  
6       the amount and nature of these receipts and disbursements.<sup>12</sup>

7               Here, the available information indicates that the Committee failed to disclose  
8       \$1,071,374.34 in total activity on its original 2016 September Monthly, 2016 12-Day Pre-  
9       General, and 2016 30-Day Post-General reports. The Committee subsequently disclosed the  
10       activity on amended reports.<sup>13</sup>

11              While not disputing the reporting errors, the Committee contends that the Commission  
12       should not take further action given several mitigating circumstances. For example, the  
13       Committee states that several key staff members left between August and October 2016 because  
14       of unforeseen retirements, resignations, and medical leaves of absence, and that their  
15       replacements were not adequately trained.<sup>14</sup> The Committee also states that it has taken specific  
16       corrective actions to improve the oversight, accuracy, and completeness of the Committee's  
17       future reporting and asserts that it demonstrated "best efforts" to comply with the Act.<sup>15</sup>

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<sup>10</sup>       Compare AFT-COPE 2016 30-Day Post-General Report (filed Dec. 8, 2016) (disclosing \$652,880.65 in disbursements), with AFT-COPE 2016 Amended 30-Day Post-General Report (filed Jan. 31, 2017) (disclosing \$757,880.65 in disbursements).

<sup>11</sup>       See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>12</sup>       See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

<sup>13</sup>       The amended 2016 September Monthly Report revealed \$128,500 in additional disbursements activity. The Amended 12-Day Pre-General Report revealed \$473,395.03 in total increased activity. *Id.* The Amended 30-Day Post-General Report revealed \$469,479.31 in total increased activity. *Id.*

<sup>14</sup>

<sup>15</sup>       *Id.* at 2-3 (citing 52 U.S.C. § 30102(i)).

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1 In addition, with respect to the late reporting of receipts totaling \$370,087 and \$364,479,  
2 the Committee argues that the delayed disclosures did not harm the public interest.<sup>16</sup> The  
3 Committee asserts that it had sufficient cash-on-hand of over \$8 million at the beginning of the  
4 reporting periods to make its disbursements and did not have to draw on those deposits to make  
5 its disbursements during the relevant reporting periods.<sup>17</sup>

6 Section 30102(i) of the Act provides that a committee's reports are considered to be in  
7 compliance with the Act when the committee's treasurer shows that "best efforts" were used to  
8 obtain, maintain, and submit information required by the Act.<sup>18</sup> Under the Commission's *Policy*  
9 *Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by*  
10 *the Federal Election Campaign Act*, the Commission determined that it would generally  
11 conclude that a committee exercised best efforts if the committee established, *inter alia*, that it  
12 had taken certain affirmative steps to maintain adequate records and make accurate reports, such  
13 as "training staff responsible for obtaining, maintaining, and submitting campaign finance  
14 information in the requirements of the Act" and taking prompt remedial action upon discovery of  
15 the committee's failure to properly file its reports.<sup>19</sup> In contrast, the policy statement states that  
16 the Commission will generally conclude that a committee has not met the best efforts standard if

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<sup>16</sup> *Id.* at 4-5.

<sup>17</sup> *Id.*

<sup>18</sup> 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7.

<sup>19</sup> 72 Fed. Reg. 31,438, 31,440 (Jun. 7, 2007). The Commission also generally requires the committee to show that: (1) at the time of its failure, the committee took relevant precautions such as double checking recordkeeping entries, regular reconciliation of committee records with bank statements, and regular backup of all electronic files; (2) the failure was a result of reasonably unforeseen circumstances beyond the control of the committee, such as a failure of Commission computers or Commission-provided software; severe weather or other disaster-related incidents; a widespread disruption of information transmission over the Internet not caused by any failure of the committee's computer systems or Internet service provider; or delivery failures caused by mail/courier services such as U.S. Postal Service or Federal Express. *Id.*

1 the committee's failure to obtain, maintain, or submit the required information or report is due to,  
2 *inter alia*, the unavailability, inexperience, illness, negligence, or error of committee staff.<sup>20</sup>

3 Based on the Commission's guidance, the Committee fails to establish that it exercised  
4 best efforts. Although the Committee took prompt corrective actions when it discovered the  
5 various reporting failures,<sup>21</sup> the Committee admits that the reporting errors were caused by  
6 inexperienced, inadequately trained committee staff members — circumstances that the policy  
7 statement specifically lists as generally insufficient to support a best efforts defense.

8 Further, whether the Committee had excess cash on hand to make its disbursements  
9 during the reporting period does not relieve it of its duty to accurately and timely disclose all of  
10 the relevant receipts and disbursements. Here, the Committee failed to timely disclose almost \$1  
11 million in receipts and disbursements on its 2016 Pre-General and 30-Day Post General Reports,  
12 and the public was deprived of critical information regarding the Committee's activities until  
13 months after the 2016 elections.

14 Under these circumstances, the Commission finds reason to believe that the Committee  
15 violated 52 U.S.C. § 30104(b)(2) and (4) by failing to report \$1,071,374.34 in receipts and  
16 disbursements on its original 2016 September Monthly, 2016 12-Day Pre-General, and 2016 30-  
17 Day Post-General Reports.

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<sup>20</sup> *Id.* The Commission has previously rejected similar best efforts claims where respondents identified staff error, rather than some unforeseen circumstances, as the cause of respondents' reporting failures. *See, e.g.*, RR 12L-82 (Ron Paul 2012 Presidential Campaign Committee) (finding reason to believe that respondents failed to report a \$500,000 contribution and rejecting a best efforts defense which did not point to any unforeseen circumstances and relied in part on a claim that committee staff misunderstood the relevant reporting requirement).

<sup>21</sup> *See* MUR 6508 (Republican National Committee), Factual and Legal Analysis 5-6 (rejecting the application of the best efforts defense where the respondent took remedial action but did not show that it employed trained staff or that reporting failures were result of unforeseen circumstances).

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1           **B.     2018 Election Cycle Activity**

2                   1.     Facts

3           In RR 18L-55, RAD referred the Committee for failing to timely disclose \$114,750.68 on  
4 its 2017 30-Day Post-Special Report.<sup>22</sup> On May 11, 2017, the Committee submitted its 2017  
5 30-Day Post-Special Report, disclosing \$1,247,608.54 in unitemized contributions from  
6 individuals on Line 11(a)(ii).<sup>23</sup> On June 10, 2017, the Committee filed two Amended 2017 30-  
7 Day Post-Special Reports.<sup>24</sup> The first amended report disclosed no change in receipts from the  
8 original report; the second amended report disclosed \$1,362,359.22 in receipts on Line 11(a)(ii),  
9 an increase of \$114,750.68 from the original report.<sup>25</sup>

10           According to the Response, the increased activity consisted of contributions made via  
11 employer-administered payroll deductions from AFT members in various local affiliate  
12 organizations received and forwarded to AFT-COPE by various collecting agents.<sup>26</sup> These  
13 receipts included \$54,138 transferred to the Committee in three transactions on April 26 and 28,  
14 2017, and \$60,612 transferred to the Committee earlier that month.<sup>27</sup> Although the Committee  
15 received these transfers, they were not recorded in the Committee's accounting system, which  
16 caused them to be omitted from the Committee's original 2017 30-Day Post-Special Report.<sup>28</sup>

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<sup>22</sup> RAD Referral at 1.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2-3.

<sup>26</sup> RR 18L-15 Resp. at 2-3 ("RAD Referral Resp.").

<sup>27</sup> *Id.* at 2-4.

<sup>28</sup> See RAD Referral Resp. at 2; Committee's Third Amended 2017 30-Day Post-Special Report at 3 (filed Sep. 14, 2017) (including a memo entry responding to a Request for Additional Information sent by the Commission on Aug. 10, 2017, stating: "In response to the letter we received referenced 'AMENDED 30-DAY POST-GENERAL REPORT (2/01/2016 -5/1/2017), RECEIVED 08/10/2017', \$114,750.68 of unitemized contributions were not recorded in our accounting system. Therefore the items were not reported in our initial filing. As soon as we became aware of the items we uploaded the amended report").

1                   2.    Legal Analysis

2                   The Committee failed to disclose \$114,750.68 in receipts on its original 2017 30-Day  
3 Post-Special Report as required by 52 U.S.C. § 30104(b)(2). The Committee does not deny  
4 failing to report the activity on its original report and admits that \$60,612 of the alleged amount  
5 in violation was required to have been included.<sup>29</sup> It argues, however, that \$54,138 of the  
6 apparent amount in violation should not be considered because the Committee could have chosen  
7 to delay depositing the contributions for up to 10 days under 11 C.F.R. § 103.3(a)<sup>30</sup> and then  
8 disclosed them on the Committee's next regular report.<sup>31</sup> The Committee contends that had the  
9 Committee availed itself of this 10-day delay, \$54,138.68 of the additional receipts — received  
10 in three transactions on April 26 and 28 — could have been deposited on or after May 2 and  
11 included on the Committee's next scheduled report — a 2017 Pre-Run-Off Report due on June 8,  
12 2017.<sup>32</sup> Thus, they argue, because the Committee *could have* delayed depositing the transfers, its  
13 failure to timely report the additional receipts of \$54,138 on the 2017 30-Day Post-Special  
14 Report does not violate the Act.<sup>33</sup>

15                   This argument is unpersuasive. Although the Committee could have used the full 10  
16 days to review and deposit the relevant contributions under section 103.3(a), the Committee did  
17 not do so, and in fact deposited the entire \$114,750.68 during the reporting period at issue.<sup>34</sup>

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<sup>29</sup>        *Id.* at 4.

<sup>30</sup>        This regulation requires political committee treasurers to either deposit or return all receipts within 10 days of receipt.

<sup>31</sup>        RAD Referral Resp. at 2.

<sup>32</sup>        *Id.*

<sup>33</sup>        *Id.*

<sup>34</sup>        The Committee does not assert that the funds were not deposited into the Committee's account, but rather that the funds "were not recorded in [the Committee's] accounting system." *See supra* note 28.

