

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

MUR 7321  
COMPLAINT DATE: 2/14/18  
NOTIFICATION DATE: 2/16/18  
RESPONSE RECEIVED: None  
ACTIVATION DATE: 5/29/18

**COMPLAINANT:**

Susannah Byrd

MUR 7335  
COMPLAINT DATE: 2/28/18  
SUPPLEMENT DATES: 4/2/18 and 4/23/18  
NOTIFICATION DATES: 3/15/18, 4/2/18, 4/23/18  
RESPONSE RECEIVED: None  
ACTIVATION DATE: 5/29/18

**COMPLAINANT:**

Veronica Escobar

MUR 7359  
COMPLAINT DATE: 4/4/18  
SUPPLEMENT DATE: 6/20/18  
NOTIFICATION DATES: 4/10/18, 7/13/18  
RESPONSE RECEIVED: None  
ACTIVATION DATE: 5/29/18

**COMPLAINANT:**

Jason Chapman

MUR 7473  
COMPLAINT DATE: 8/9/18  
NOTIFICATION DATE: 8/14/18  
RESPONSE RECEIVED: None  
ACTIVATION DATE: 8/13/18

**COMPLAINANT:**

Margaret Christ  
Campaign Legal Center

EXPIRATION OF STATUTE OF LIMITATIONS:  
1/15/22-7/15/23 (All cases)  
ELECTION CYCLE: 2018

**RESPONDENTS:**

Keep El Paso Honest and Lindsey Workman  
in her official capacity as treasurer

**RELEVANT STATUTES**

**AND REGULATIONS:**

52 U.S.C. § 30104(a)

52 U.S.C. § 30104(b)

52 U.S.C. § 30104(g)

11 C.F.R. § 104.4

11 C.F.R. § 109.10(d)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Complaints in these matters allege that Keep El Paso Honest and Lindsey Workman in her official capacity as treasurer (the “Committee”) violated the Federal Election Campaign Act of 1971, as amended (“Act”), by failing to file disclosure reports and reports of independent expenditures with the Commission. The Committee did not respond to any of the complaints.

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

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

The Committee registered with the Commission as an independent-expenditure-only committee in late 2017.<sup>1</sup> Since its registration, the Committee has filed only one report with the 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.<sup>2</sup>

<sup>1</sup> 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).

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

The Commission's Reports Analysis Division ("RAD") sent the Committee Requests for Additional Information ("RFAIs") regarding its failure to file its 2018 April and July Quarterly Reports.<sup>3</sup> The Committee did not respond to the RFAIs, 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.<sup>4</sup> 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.<sup>5</sup>

### 2. MUR 7335

The MUR 7335 Complaint and its supplements allege that the Committee failed to file its 2017 Year-End Report, 2018 12-Day Pre-Primary Report, and 2018 April Quarterly Report.<sup>6</sup> This Complaint also contends that the Committee failed to disclose aggregate independent expenditures in excess of \$10,000, and that the Committee had purchased advertising totaling

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<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> *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.

<sup>6</sup> MUR 7335 Compl. at 1 (Feb. 28, 2018). *See also* Compl. Suppls. (Apr. 2, 2018, and Apr. 28, 2018).

\$20,245 from four separate television stations, but had not filed the corresponding independent expenditure reports.<sup>7</sup>

The MUR 7335 Complaint also includes a news article that quotes “Committee spokesperson” Carlos Sierra stating that the Committee raised about \$125,000 and spent over \$10,000.<sup>8</sup> In response to a question about filing reports with the Commission, Sierra also declares “my attorneys handle that” and “that’s not what I personally do. I just buy everything, design everything and run the PAC. I don’t do the filings, the reporting. That’s not what I do. My attorney can answer anything having to do with FEC and the filings.”<sup>9</sup> The news article reports that the attorney identified by Sierra would not confirm that he represented the Committee.<sup>10</sup> Another news article attached to the April 23, 2018, complaint supplement quotes Sierra as saying that “voters aren’t concerned with whether his PAC is following federal guidelines.”<sup>11</sup> Sierra further states, “Since Jan. 1 . . . we have spent more than \$10,000.”<sup>12</sup> 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 . . .”<sup>13</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> 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. The website is no longer available, but is archived at <https://web.archive.org/web/20180119104150/http://www.keeptexashonest.com:80/>. The website is sparse, but indicates that the Committee supported candidate Dori Fenenbock and opposed candidate Veronica Escobar.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Madlin Mekelburg, *Congressional Candidate Veronica Escobar Files Complaint against Keep El Paso Honest PAC*, EL PASO TIMES (Feb. 26, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

### 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.<sup>14</sup> The Complaint also includes the media buy invoices, which indicate that the Committee purchased at least \$14,000 in advertising time.<sup>15</sup> A supplement to the complaint attaches printed Facebook pages, which include links to purported websites,<sup>16</sup> and a post asking for “likes” from individuals that voted against Veronica Escobar.<sup>17</sup>

### 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 disclose those expenditures.<sup>18</sup> Specifically, the Complaint alleges that the Committee produced and published a 30-second YouTube video advertisement titled “Veronica Escobar: Bad for El

<sup>14</sup> MUR 7359 Compl. at 1 (Apr. 4, 2018). The Complaint includes numerous invoices for television media buys. A supplement to the Complaint also includes an article that was attached to the Complaint in MUR 7335. *See supra* note 11.

<sup>15</sup> *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.

<sup>16</sup> MUR 7359 Supp. Compl. Attach. (July 13, 2018). The Facebook page includes links to both [www.keeptexashonest.com](http://www.keeptexashonest.com) and [www.keepelpasohonest.com](http://www.keepelpasohonest.com). *See* [www.facebook.com/keepelpasohonest](http://www.facebook.com/keepelpasohonest). The supplement also includes the February 16, 2018, El Paso Times article that was attached to a complaint supplement in MUR 7335.

<sup>17</sup> *See* [www.facebook.com/keepelpasohonest](http://www.facebook.com/keepelpasohonest).

<sup>18</sup> MUR 7473 Comp. 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. 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); *see also* 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/>.

1 Paso,” which contained a disclaimer noting that the Committee paid for the content.<sup>19</sup> The  
 2 Complaint also alleges that the Committee spent over \$17,900 for media buys for at least 17  
 3 television advertisements between February 4, 2018, and March 6, 2018. The Complaint  
 4 attached publicly available records from the Federal Communications Commission (“FCC”)  
 5 regarding the media buys.<sup>20</sup> The Complaint also cites a news article in which Sierra is quoted  
 6 declaring that the Committee has “spent more than \$10,000” and that “the Committee has raised  
 7 about \$125,000.” In the same article, Sierra refuses to define or name the Committee’s donors,  
 8 but admits that the Committee received “about \$10,000 from myself and the rest is [sic] El Paso  
 9 donors.”<sup>21</sup> The Complaint also alleges that the Committee funded billboards featuring an image  
 10 of Escobar with the text “I doubled my salary and raised your taxes. We good?”<sup>22</sup> Finally, the  
 11 Complaint alleges that the Committee funded and mailed a “last-minute flier . . . urging  
 12 Republicans to vote in the Democratic congressional primary against former County Judge  
 13 Veronica Escobar.”<sup>23</sup> The Complaint alleges that despite making these expenditures, the  
 14 Committee failed to file required independent expenditure reports and periodic disclosure reports  
 15 with the Commission.<sup>24</sup>

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

<sup>20</sup> 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.

<sup>21</sup> Madlin Mekelburg, *Congressional Candidate Veronica Escobar Files Complaint Against Keep El Paso Honest PAC*, EL PASO TIMES (Feb. 26, 2018).

<sup>22</sup> *See also* El Paso: *Someten Queja en Contra de Grupo Que Ataca A Veronica Escobar*, NOTICIAS YA (Feb. 27, 2018) (Spanish-speaking news outlet reporting on the billboards opposing Escobar).

<sup>23</sup> Compl. at 6 and Attach. K; *see also* 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/>.

<sup>24</sup> Compl. at 6-7.

## 1           **B. Legal Analysis**

2           The Act requires committee treasurers to file reports disclosing all receipts and  
 3           disbursements, in accordance with the provisions of 52 U.S.C. § 30104.<sup>25</sup> These reports must  
 4           include, *inter alia*, the amount and nature of these receipts and disbursements.<sup>26</sup>

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

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

17          Available information indicates that the Committee raised and spent funds to advocate for  
 18          and against candidates in the 2018 Texas primary, but violated the Act's reporting requirements

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<sup>25</sup>       See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

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

<sup>27</sup>       52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of "expressly advocating").

<sup>28</sup>       See 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d).

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

<sup>30</sup>       11 C.F.R. § 104.4(b), (c).

by failing to file its 2018 Pre-Primary Report, 2018 April Quarterly Report, and 2018 July Quarterly Report. In addition, the Committee 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. Publicly available information,<sup>31</sup> in the form of FCC filings available on the relevant media websites, confirms 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;<sup>32</sup> (2) \$7,700 at KFOX;<sup>33</sup> (3) \$4,500 at KDBC;<sup>34</sup> and (4) \$7,075 at KTSM.<sup>35</sup> News reports also indicate that the Committee funded flyers and billboards in opposition to candidate Veronica Escobar.<sup>36</sup> Further, news articles attached to three of the complaints indicate that a Committee representative acknowledged at least \$125,000 in receipts, and stated that questions about unfiled disclosure reports should be directed to the Committee's attorney.<sup>37</sup>

Accordingly, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(a), (b), and (g), and 11 C.F.R. §§ 104.4 and 109.10.

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<sup>31</sup> 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, and one Complaint alleges that there may be additional media buys for which the Committee is not disclosed as the purchaser. We would verify these amounts during an investigation.

<sup>32</sup> 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/>.

<sup>33</sup> 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/>.

<sup>34</sup> 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/>.

<sup>35</sup> 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-cfc8-3f25-2bf1df8da96f/>.

<sup>36</sup> *See supra*, notes 8 and 11.

<sup>37</sup> *Id.*

1    **III.    INVESTIGATION**

2            We propose an investigation to ascertain the Committee's financial activities, and to  
3    determine the amount of receipts and disbursements that should have been disclosed to the  
4    Commission, as well as when these transactions should have been reported. The Committee did  
5    not respond to the RFAs referencing its unfiled 2018 April and July Quarterly Reports or the  
6    notifications of the Complaints and supplements in these matters. Given this history, it appears  
7    unlikely that the Committee will respond to informal investigatory means. Thus, we recommend  
8    that the Commission authorize the use of compulsory process.<sup>38</sup>

9    **IV.    RECOMMENDATIONS**

- 10
- 11           1.    Find reason to believe that Keep El Paso Honest and Lindsey Workman in her  
12                official capacity as treasurer violated 52 U.S.C. § 30104(a), (b), and (g), and  
13                11 C.F.R. §§ 104.4 and 109.10(d);
- 14
- 15           2.    Approve the Factual and Legal Analysis;
- 16
- 17           3.    Approve the use of compulsory process; and

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<sup>38</sup>           We will try to obtain the information informally before resorting to compulsory process.

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4. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel



9.5.18  
Date

Stephen Gura  
Deputy Associate General Counsel



Mark Shonkwiler  
Assistant General Counsel



Wanda D. Brown  
Attorney