



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

February 8, 2021

Via Electronic Mail

Email: randy@sddp.org

Marcia Bunger
 Treasurer
 South Dakota Democratic Party
 PO Box 1485
 Sioux Falls, SD 57101

RE: MUR 7872
 South Dakota Democratic Party

Dear Ms. Bunger:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that South Dakota Democratic Party (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 January 12, 2021, 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. § 103.3(b). 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 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 resolve this matter at an early stage and without the need for

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).

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briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302 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,



Shana M. Broussard
Chair

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Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENTS: South Dakota Democratic Party and Marcia MUR 7872
4 Bunger in her official capacity as treasurer

I. INTRODUCTION

6 These matters arise from an audit of the South Dakota Democratic Party's ("SDDP" or
7 the "Committee") activity during the 2016 election cycle.¹ On September 3, 2019, the
8 Commission approved the Proposed Final Audit Report² regarding the Committee's 2016
9 activity and the Audit Division subsequently referred two findings to the Office of General
10 Counsel ("OGC") for possible enforcement action: (1) self-reported increased activity involving
11 \$2,500,147 in disbursements; and (2) accepting \$23,827 contributions from unregistered
12 organizations.³ In its Response, the Committee requests that no further action be taken in this
13 matter or, alternatively, that the matter be transferred to the Commission's Alternative Dispute
14 Resolution Office.⁴

15 For the reasons discussed below, the Commission finds reason to believe that the
16 Committee violated 52 U.S.C. § 30104(b) by misreporting disbursements during the 2016
17 election cycle; and finds reason to believe that the Committee violated 11 C.F.R. § 103.3(b) by
18 depositing funds into its federal account without examining the contributions to ascertain
19 whether they complied with the prohibitions and limitations of the Federal Election Campaign
20 Act of 1971, as amended (the "Act").

¹ Letter from Jeffrey S. Jordan, Supervisory Attorney, FEC, to Neil Reiff, Counsel for Respondent, Sandler Reiff Lamb Rosenstein & Birkenstock, P.C. (Sep. 19, 2019) ("Notification").

² Certification (Sep. 3, 2019).

³ Notification at 1.

⁴ Resp. at 1 (Oct. 21, 2019).

1 **II. FACTS**

2 The Committee is a state party committee of the Democratic Party.⁵ The Final Audit
3 Report on the Committee’s 2016 election cycle activity included two findings which were
4 referred to OGC for possible enforcement action.

5 First, the audit found that the Committee misstated its financial activity by failing to
6 report disbursements totaling \$2,500,147 on its original reports during the 2016 election cycle.⁶
7 This amount includes 15 disbursements to the Democratic National Committee, as well as
8 \$6,147 in additional increased activity comprising an unknown number of additional
9 disbursements reported on amended reports during 2015-2016.⁷ After the 2016 general election,
10 the Committee disclosed all of the increased activity on amended reports.⁸

11 Second, the audit found that the Committee accepted 31 contributions, totaling \$23,827,
12 from unregistered organizations without maintaining any records that the contributions were
13 made with funds subject to the prohibitions and limitations of the Act.⁹ The audit initially
14 identified \$67,182 in such contributions, but during the audit, the Committee sought, received,
15 and provided documentation from the contributors demonstrating that \$43,335 of the

⁵ SDDP Amend. Statement of Org. (Nov. 14, 2019).

⁶ Final Audit Report at 5.

⁷ Final Audit Report at 4. The Final Audit Report states that the total amount of understated disbursements included \$2,494,000 in transfers to the DNC, but did not include an itemized list of those transactions. After referring the allegations to OGC, Audit provided OGC with a spreadsheet itemizing the 15 disbursements to the DNC.

⁸ See SDDP Amend. 2016 Sept. Monthly Report at 224 (Jan. 31, 2017); SDDP Amend. 2016 Oct. Monthly Report at 296 (Jan. 31, 2017); SDDP Amend. 12-Day Pre-Gen. Report at 90 (Jan. 31, 2017); SDDP 30-Day Post-Gen. Report at 534-537 (Jan. 31, 2019) (disclosing the disbursements to the DNC listed in the table above). The additional \$6,147 in increased activity was identified by Audit based on comparing the disbursement summaries throughout the election cycle with the Committee’s bank accounts, but the Commission has not identified the itemized disbursements associated with this portion of the increased activity.

⁹ Final Audit Report at 4. With respect to the remaining \$23,827 in contributions included in the Notification, the Committee asserts that it is “is committed to demonstrating that these contributions derived from permissible funds and will continue to pursue certifications from those donors.” Resp. at 2.

1 contributions were made using permissible funds.¹⁰ The Final Audit Report notes that the
2 contributions for which the Committee submitted such documentation were excluded from the
3 amount in violation included in the Notification.¹¹ The contributions appear to be from various
4 state PACs, state candidate committees, and local party committees. As noted in the Final Audit
5 Report, South Dakota law allows these types of organization to accept funds that would be
6 impermissible under the Act.¹²

7 The Committee admits that it failed to report the \$2,500,147 in disbursements on its
8 original reports, citing accounting errors and other “procedural issues” with its disclosure report
9 preparation.¹³ The Committee notes that it disclosed the increased activity on amended reports
10 and asserts that all reporting omissions were corrected by January 31, 2017.¹⁴ The Committee
11 also acknowledged accepting the \$23,827 in contributions from unregistered organizations
12 without confirming that they were made using permissible funds, but notes that it provided
13 documentation during the audit process demonstrating that many similar contributions identified
14 during the audit were in fact made using permissible funds.¹⁵ The Committee asserts that it is
15 continuing to seek similar documentation for the remaining contributions included in the

¹⁰ Final Audit Report at 5-9.

¹¹ Final Audit Report at 8.

¹² Final Audit Report at 7. Although South Dakota law prohibits direct contributions to state candidates from corporations and labor organizations, this state’s law places no limits on contributions to candidate committees from state PACs, and it allows corporations and labor organizations to make unlimited contributions to state PACs. *See* S.D. CODIFIED LAWS § 12-27.

¹³ Resp. at 1-2; Final Audit Report at 4-5.

¹⁴ Resp. at 1.

¹⁵ Resp. at 2.

1 Notification and states that it “is confident that, once the process is completed, that it will be able
2 to demonstrate that most, if not all of these contributions, were made with permissible funds.”¹⁶

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(a). The available information indicates,
6 and the Committee acknowledges, that the Committee misreported disbursements totaling
7 \$2,500,147 on its original reports during the 2016 election cycle. Accordingly, the Commission
8 finds reason to believe that the Committee violated 52 U.S.C. § 30104(b).

9 The Act also prohibits political committees from accepting contributions that are not
10 subject to the prohibitions and limitations of the Act.¹⁷ Commission regulations require
11 committee treasurers to ensure that all contributions the committee receives are from permissible
12 sources and do not exceed contribution limits, and prohibited or excessive contributions must be
13 returned or refunded.¹⁸ Contributions which “present genuine questions as to whether they were
14 made by corporations, labor organizations, foreign nationals, or Federal contractors” must,
15 within 10 days, be either deposited into a campaign account or returned to the contributor.¹⁹ If
16 any such contribution is deposited, the treasurer “shall make his or her best efforts to determine
17 the legality of the contribution.”²⁰ The available information indicates, and the Committee
18 acknowledges, that at the time the Committee received and deposited these contributions, the
19 contributions were from unregistered organizations that may have raised impermissible funds,

¹⁶ Resp. at 2.

¹⁷ See 52 U.S.C. § 30116(f), 30118(a).

¹⁸ 11 C.F.R. §103.3(b).

¹⁹ 11 C.F.R. § 103.3(b)(1).

²⁰ *Id.*

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1 and the Committee did not have any records available to show that these contributions from
2 unregistered organizations were made with permissible funds.²¹ Accordingly, the Commission
3 finds reason to believe that the Committee violated 11 C.F.R. § 103.3(b).

²¹ As noted above, the Committee asserts that it is seeking such documentation, but as of the date of this report, none had been provided to the Commission. *See supra* note 16.