

Justine di Giovanni

From: Justine di Giovanni
Sent: Tuesday, February 16, 2021 10:25 AM
To: Neil P. Reiff
Cc: Claudio Pavia
Subject: FEC MUR 7877 (AR 19-12) (Tennessee Democratic Party)
Attachments: MUR 7877 (Tennessee Democratic Party) Notification Letter.pdf

Good morning, Mr. Reiff,

Attached please find notification of a Commission vote finding reason to believe that your client, Tennessee Democratic Party, violated certain provisions of the Federal Election Campaign Act and Commission regulations. Also attached is a copy of the factual and legal analysis that formed the basis for the Commission's determination, as well as a conciliation agreement for your review.

Please let me know if you have questions on the attached. We look forward to discussing this matter with you further.

Regards,
Justine

Justine A. di Giovanni
Federal Election Commission
Office of General Counsel – Enforcement
(202) 694-1574

FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 16, 2021

Neil P. Reiff, Esq.
Sandler Reiff Lamb Rosenstein & Birkenstock, PC
1090 Vermont Ave. NW, Suite 750
Washington, DC 20005
reiff@sandlerreiff.com

RE: MUR 7877 (AR 19-12)
Tennessee Democratic Party

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting your client, the Tennessee Democratic Party and Carol V. Abney in her official capacity as treasurer (the “Committee”), may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). On October 9, 2019, the Commission notified your client of a referral to the Office of General Counsel alleging violations of the Act. A copy of the referral, numbered AR 19-12, was forwarded to your client at that time. On January 28, 2021, the Commission opened a matter under review and found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2), (3)(A), (4), a provision of the Act, and 11 C.F.R. §§ 102.17(c)(8)(i)(B), 106.7(d)(1) of the Commission’s regulations. 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 your client 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. 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 your client wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding

Neil P. Reiff, Esq.
 MUR 7877 (Tennessee Democratic Party)
 Page 2

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

Enclosed is a conciliation agreement for your consideration, which includes a _____ civil penalty. The basis of the Commission's civil penalty calculation is set forth below.

The Commission calculated the civil penalty for the Committee's reporting violations under 52 U.S.C. § 30104(b) as follows:

If your client is interested in engaging in pre-probable cause conciliation, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@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

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).

Neil P. Reiff, Esq.
MUR 7877 (Tennessee Democratic Party)
Page 3

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.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Tennessee Democratic Party and Carol V. Abney
in her official capacity as treasurer

MUR: 7877

I. INTRODUCTION

6 This matter arises from an audit of the Tennessee Democratic Party (“TDP”) relating to
7 its activity during the 2016 election cycle. On September 4, 2019, the Commission approved the
8 Proposed Final Audit Report, and the Final Audit Report (“FAR”) was released on September
9 16, 2019.¹ The Audit Division referred four findings from the FAR to the Office of General
10 Counsel (“OGC”) for possible enforcement action:

- (1)(A) Misstatement of \$148,395 in receipts and \$147,409 in disbursements (amended reports before the audit notification);
- (1)(B) Misstatement of \$1,362,191 in receipts and \$1,377,720 in disbursements (original reports);
- (2) Receipt of \$166,450 in excessive contributions;
- (3) Failure to itemize memo contributions from joint fundraising activity above the \$200 threshold, totaling \$1,509,766; and
- (4) Failure to maintain payroll logs, totaling \$409,900.²

19 TDP filed a Response disagreeing with the Commission's application of the law regarding
20 excessive contributions.

21 As explained below, the Commission finds reason to believe that TDP violated:

²² (1) 52 U.S.C. § 30104(b)(2), (4) by failing to report total receipts and disbursements;

¹ Certification (Sept. 4, 2019), A17-23 (TDP); FEC, FAR of the Commission on the Tennessee Democratic Party (January 1, 2015- December 31, 2016) (Sept. 16, 2019).

2 *See* FAR at 1.

MUR 7877 (Tennessee Democratic Party)

Factual & Legal Analysis

Page 2 of 4

1 (2) 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize
 2 contributions; and (3) 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 TDP is a state party committee of the Democratic Party.³ As mentioned above, the FAR
 5 included four findings that were referred to OGC for possible enforcement action.

6 **A. Reporting Violations**

7 1. Misstatement of Total Receipts and Disbursements

8 The Act requires committee treasurers to accurately disclose total receipts and
 9 disbursements.⁴ In its original reports, TDP understated receipts by \$1,362,191 and understated
 10 disbursements by \$1,377,720, totaling \$2,739,911.⁵ Before the audit notification letter, TDP
 11 amended its reports to correct some of the misstatements, but continued to understate receipts by
 12 \$148,395 and understate disbursements by \$147,409, totaling \$295,804.⁶ In response to the
 13 Interim Audit Report, on March 26, 2019, TDP amended its reports to correct the remaining
 14 misstatements.⁷ The vast majority of TDP’s misstatements relate to transfers from the Hillary
 15 Victory Fund (“HVF”) and Tennessee State Party Victory Fund (“TVF”) arising from joint
 16 fundraising activity, and matching transfers of those same proceeds from TDP to the Democratic

³ FEC Form 1, TDP Amended Statement of Org. at 2 (Feb. 25, 2019).

⁴ 52 U.S.C. § 30104(b)(2), (4); *see also* 11 C.F.R. § 104.3.

⁵ FAR at 8-9.

⁶ *Id.* at 6-8.

⁷ *Id.* at 7.

MUR 7877 (Tennessee Democratic Party)

Factual & Legal Analysis

Page 3 of 4

1 National Committee and several state party committees (\$2,518,400 out of the aggregate

2 \$2,739,911 in misstatements).⁸

3 Therefore, the Commission finds reason to believe that TDP violated 52 U.S.C.

4 § 30104(b)(2), (4) by failing to report total receipts and disbursements.

5 **2. Failure to Itemize Contributions**

6 The Act requires political committees to report the identification of each person whose
 7 aggregate contributions exceed \$200 within the calendar year (or election cycle, in the case of an
 8 authorized committee), along with the date and amount of any such contributions.⁹ With respect
 9 to joint fundraisers, each participating committee shall report its share of the net proceeds as a
 10 transfer-in from the fundraising representative and shall also properly itemize its share of gross
 11 receipts as contributions from the original contributors.¹⁰

12 TDP disclosed \$3,113,531 in net proceeds from joint fundraising activity with HVF

13 (\$3,021,100) and TVF (\$92,431).¹¹ However, TDP failed to itemize \$1,509,766 in contributions
 14 that exceeded the \$200 itemization threshold—\$1,423,722 from HVF and \$86,044 from TVF.¹²

15 In response to the Interim Audit Report, TDP filed amended reports itemizing the contributions,

⁸ See FEC Form 3X, TDP Amended 12-Day Pre-General Report (Mar. 26, 2019); FEC Form 3X, TDP Amended 30-Day Post-General Report (Mar. 26, 2019). There have been several other matters involving similar joint fundraising transfers from HVF to state party committees followed by transfers to the Democratic National Committee. See, e.g., MUR 7304 (HVF, *et al.*); MUR 7331 (HVF, *et al.*); MUR 7598 (Democratic Party of South Carolina); MUR 7599 (Nevada State Democratic Party); MUR 7600 (Utah State Democratic Committee); RR 17L-48R (Mississippi Democratic Party); RR 18L-19 (Massachusetts Democratic State Committee); RR 18L-21 (Idaho State Democratic Party).

⁹ 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a)(4)(i). For contributions by individuals, “identification” consists of name, mailing address, occupation, and employer. 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

¹⁰ 11 C.F.R. § 102.17(c)(8)(i)(B).

¹¹ FAR at 13-14. The HVF funds were subsequently transferred in large part by TDP to the DNC.

¹² *Id.*

MUR 7877 (Tennessee Democratic Party)

Factual & Legal Analysis

Page 4 of 4

1 though it failed to properly report a gross, unitemized \$78,999 joint fundraising contribution
 2 from TVF.¹³

3 Therefore, the Commission finds reason to believe that TDP violated 52 U.S.C.
 4 § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize receipts received via
 5 joint fundraising transfers.

6 **B. Failure to Maintain Monthly Payroll Logs**

7 Commission regulations provide that salaries, wages, and fringe benefits paid to state,
 8 district, or local party committee employees who spend 25 percent or less of their compensated
 9 time in a given month on federal election activity or activity in connection with a federal election
 10 may be allocated as administrative costs, *i.e.*, may be paid with a combination of funds from the
 11 committee's federal and non-federal accounts.¹⁴ Those employees who spend more than 25
 12 percent of their compensated time on federal election activities may be paid only from a federal
 13 account.¹⁵ Commission regulations also provide that, when allocating salary, wage, and fringe
 14 benefit payments, political party committees shall "keep a monthly log of the percentage of time
 15 each employee spends in connection with a Federal election."¹⁶

16 TDP allocated \$409,900 in payroll across 2015 and 2016 between federal and non-federal
 17 funds but failed to maintain the required monthly payroll logs.¹⁷ Therefore, the Commission
 18 finds reason to believe that TDP violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly
 19 payroll logs.

¹³ *Id.* at 14 n.10.

¹⁴ 11 C.F.R. § 106.7(c)(1), (d)(1)(i), (d)(2).

¹⁵ *Id.* § 106.7(d)(1)(ii), (d)(2).

¹⁶ *Id.* § 106.7(d)(1).

¹⁷ FAR at 14. Following the Interim Audit Report, TDP states that it implemented procedures to track employees' time as required by the Commission regulations. *Id.* at 16.