

September 27, 2019

VIA EMAIL

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Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Christal Dennis, Paralegal
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Re: RR 19L-14

Dear Mr. Jordan:

We write as counsel to DNC Services Corp./Dem. Nat'l Committee (the "Committee") and William Q. Derrough in his official capacity as Treasurer of the Committee (collectively, "the Respondents") in response to the above-referenced referral, RR 19L-14. This referral stems from the Committee's amendment of its 2017 Year-End Report to update its disclosure of its December 2017 debts and obligations. As explained in its response to a November 29, 2018 Request for Additional Information ("RFAI"), when the Committee discovered on its own initiative that its 2017 Year-End Report should have reflected additional incurred and outstanding debts, it took prompt action to ensure complete reporting. Additionally, as further explained in its response to the RFAI, because the Committee takes seriously its duty to accurately disclose its finances to the public, it has implemented a streamlined and improved accounts payable system, which includes a new software program and invoice processing vendor, to ensure that the technical difficulties that led to the omissions in its 2017 Year-End Report will not be repeated. Due to the prompt remedial steps the Committee has taken to correct the public record and ensure that its reports are accurate going forward, the fact that the amendment concerned a relatively small portion of the Committee's overall activity, and the inadvertent and technical nature of the Committee's omissions, the Commission should take no further action on this referral and close this file.

FACTUAL BACKGROUND

On January 30, 2018, the Committee submitted a 7,150-page Year-End Report disclosing its financial activity in December 2017.¹ On Line 10 of the report, the Committee disclosed \$6,107,821.95 in outstanding debts and obligations.² This debt total represented hundreds of

¹ DNC Services Corp./Dem. Nat'l Committee, 2017 Year-End Report (Jan. 30, 2018).

² *Id.* at 2.

past-due invoices from dozens of vendors. These past-due invoices were but a small fraction of the thousands of transactions the Committee reported that month.

On March 19, 2018, the Committee amended its 2017 Year-End Report to disclose an updated beginning cash balance to account for a few additional disbursements that had been made prior to December 2017.³ At that time, the Committee was just beginning its annual external financial statement audit conducted by an independent CPA and was not yet aware of the extent to which some of its debts had not been reflected in its 2017 Year-End Report. Therefore, the Committee's amendment did not update its debt entries.

A few months later, in the summer of 2018, the Committee completed its audit. The results of the audit indicated that the Committee's accounts payable system may not have been accurately reflecting all of its past-due invoices, and therefore, that a portion of its debts may not have been properly reflected on its 2017 Year-End Report. Upon this discovery, the Committee worked diligently to ensure that it publicly disclosed all Committee debts from December 2017. When it had completed its review, it promptly updated the public record by amending its 2017 Year-End Report on September 10, 2018. The amended report disclosed \$7,139,327.74 in outstanding debts and obligations and \$6,095,302.03 in newly incurred obligations over the course of the reporting period.⁴

When the Reports Analysis Division ("RAD") sent the Committee an RFAI in response to the Committee's amendment, the Committee explained that on top of amending its report when it discovered that its previously-reported debt total required updating, it had implemented new internal procedures to ensure complete reporting of future debts. In this response, Respondents present additional detail regarding the remedial measures taken and the circumstances that prompted them.

A. The Total Amount of Newly Reported Incurred Debt

RAD alleges in its referral that \$1,704,513.33 of the Committee's reported debt in its second amended report "was disclosed as newly incurred debt for the reporting period that was *not disclosed in the original report.*"⁵ This is not strictly correct. Furthermore, minor issues can create seemingly large numerical amendments because they can require double reporting of previously disclosed expenditures.

The Committee disputes the allegation that the entirety of the \$1,704,513.33 amount was not disclosed in its original report; significant portions of this incurred debt were already paid off, were properly reported, and were thus already part of the public record. Rather than considering outstanding debt, the more relevant number, RAD calculated its figure by comparing the "Amount Incurred This Period" reported for each vendor in the original report with the amount reported in the second amendment.⁶ However, when taking into account the expenditures the

³ DNC Services Corp./Dem. Nat'l Committee, 1st Amended 2017 Year-End Report (Mar. 19, 2018).

⁴ DNC Services Corp./Dem. Nat'l Committee, 2d Amended 2017 Year-End Report at 2, 7120–40 (Sept. 10, 2018).

⁵ See Reports Analysis Division Referral to Office of General Counsel at 1 ("Referral"), RR 19L-14 (July 2, 2019) (emphasis added).

⁶ See Referral, Attachment 2.

Committee had already reported in Schedule B of its original 2017 Year-End Report and the first amendment thereto, \$297,963.63 of the amount highlighted by RAD had actually been publicly disclosed already. This is because \$297,963.63 of the \$1,704,513.33 increase was paid off in December 2017 and had already been reported as operating expenditures in Schedule B of the Committee's original report. In particular, the Committee had already reported \$20,227.86 in payments to ADP, LLC; \$125,000 in payments to Bully Pulpit Interactive LLC; \$150,000 in payments to NGP VAN, Inc.; \$318.59 in payments to PDQ Printing of Las Vegas; \$1,500 in payments to Revolution Messaging LLC; and \$917.18 in payments to Starbucks in Schedule B, a total of \$297,963.63 in expenditures.⁷

The Committee did not report any obligations incurred to these six vendors in Schedule D of its original 2017 Year-End Report because a few invoices from each of these vendors had not been properly reflected in the Committee's accounts payable system, and therefore, the accounts payable system indicated that all past-due invoices from these vendors had been paid off before year's end. Because the system indicated that all of these vendors' invoices had already been paid, the Committee was not aware of its need to report the amount of obligations it had incurred to these vendors in Schedule D when it filed its 2017 Year-End Report. In other words, a very small oversight may appear more significant because payments already made and correctly reported by the Committee would need to be listed again on a different portion of the report.

Once the Committee discovered that these past-due invoices had not been properly reflected in the Committee's accounts payable system and that the Committee did owe an outstanding balance to each of these vendors, the Committee promptly amended its report to add each of these vendors to Schedule D. This, along with its other amendments to the report, allowed the Committee to accurately report the total amount of obligations it had incurred in December 2017, including the obligations that it had already accurately reported being paid off in Schedule B. Once amended, the report reflected \$1,406,549.70 in total obligations incurred in December 2017 that had not yet been reported in any schedule of its 2017 Year-End Report.

B. The Committee's Prior Accounts Payable System

In 2017, the Committee used two computer software systems to manage its accounts payable and disbursements. Quick Base served as the Committee's senior staff approval and invoice repository system and Navision served as the Committee's general ledger and Federal Election Commission ("FEC" or "Commission") reporting system. Because these systems were not electronically integrated, invoice data needed to be manually input into each system, as did any corrections that needed to be made to the original data. Ultimately, the functioning of these systems accounted for a substantial portion of the amended debt at issue in this referral.

Navision can be difficult to navigate for those without extensive experience with the program. For example, special attention is necessary to ensure that an invoice's due date is logged correctly, and if there is an issue, it is exceedingly difficult to identify the problem from the system. The "posting date" of an invoice reflected in the system affects when a financial obligation is listed as "debt" on the Committee's FEC reports. However, in some cases, due to

⁷ 2017 Year-End Report at 6691–92, 6696–97, 6775–76 (ADP LLC); 6758 (Bully Pulpit Interactive); 6999 (NGP VAN); 7058 (PDQ Printing of Las Vegas); 6763 (Revolution Messaging); 6954 (Starbucks).

complexities with the software and a new staff member's unfamiliarity with the program, the dates that entries were created were listed as "posting dates" rather than the appropriate date from the invoice. If the entry date did not match the date from the invoice, the invoice might be reflected as a debt before or after it should have been reflected as such in the Committee's general ledger, causing the debt to be reported too early or too late on the Committee's FEC reports. When such an error was caught in the database system, a senior staff member would work to correct the date in the system. However, the program's method to void and correct invoices added problems by incorporating terms not normally used in accounts payable programs or in the accounting industry.

Glitches regarding the dating and correcting of invoice entries led to errors in which several invoices were incorrectly dated and then the process to correct the dates of the entries could in turn result in an invoice being voided or reversed multiple times. Ultimately, certain invoices due before the end of 2017 were inadvertently eliminated and then reposted with due dates in 2018, causing them to be omitted from the Committee's 2017 Year-End Report. Based on the Committee's records from that time, it appears that these technical issues with the software led to the erroneous voiding of approximately 35 invoices representing approximately \$400,000 of the Committee's \$1,406,549.70 in previously unreported newly-incurred obligations.

As discussed below in greater detail, the Committee has now transitioned to new systems and procedures for all the central aspects of its accounting and reporting software to make sure it avoids similar issues going forward.

C. Missing Invoices

Another cause of the underreporting of a portion of the Committee's debt appears to be the Committee's lack of records indicating that it had received certain invoices. The Committee has not been able to locate any records of receiving, before it filed its original 2017 Year-End Report, \$1,047,643.38 worth of invoices that it now knows, through communications with its vendors, had become due prior to December 31, 2017. Because the Committee cannot currently locate any record of receiving these invoices before it filed its original 2017 Year-End Report, the Committee is unable to verify whether the Committee ever received these invoices in the first place.

D. The Committee's New Accounts Payable System

Once the Committee discovered the errors arising from its invoice repository and accounts payable systems in the summer of 2018, it switched to a well-known integrated general ledger system called Sage Intacct. Additionally, the Committee engaged Anybill to process invoices and payments on the Committee's behalf to ensure that all invoices are properly recorded and reported going forward.

Under this new system, vendors and Committee staff are instructed to send all invoices to Anybill for processing so that no invoices are lost during the accounts payable process. Anybill staff enter each invoice into the system within 48 hours of receipt, ensuring timely and consistent data entry. Anybill then requires that all invoices be reviewed and approved by Committee senior

staff. Once a relevant department head or other senior staff member has approved an invoice, the invoice is electronically transmitted from Anybill to Intacct, establishing the invoice in the Committee's general ledger and then as debt if it is not paid.

The Anybill-Intacct system provides superior awareness of the status of invoices. For example, the Anybill website allows Committee staff to track the life of an invoice. They can see which invoices have not yet been processed, and once an invoice has been approved for payment by the appropriate Committee staff member, Anybill automatically processes the payment of the invoice. Though this is rarely needed, this system also allows staff to easily answer vendor inquiries about late payments to ensure that due payments are being processed in a straightforward and timely manner.

Since the Committee implemented this system in 2018, the processing of invoices has become much easier, leading to more accurate records.

LEGAL ANALYSIS

Under the Federal Election Campaign Act (the "Act") and Commission regulations, political committees are required to continuously report outstanding debts and obligations owed by the committee until such time as the debt or obligation is extinguished.⁸ When a debt is disputed, a political committee is required to disclose any amount the committee admits it owes and the amount the creditor claims is owed until the dispute is resolved.⁹ However, as previously acknowledged by Commissioner Lee Goodman, "[d]ebt reporting has proven to be one of the most vexing reporting schemes for political committees and the Commission."¹⁰ This can be especially true for committees with high volumes of activity. It is frequently not clear what, when, or how debt is to be reported, and the FEC Commissioners themselves cannot agree.¹¹

As a matter of practice, the Commission often exercises prosecutorial discretion and declines to pursue committees for the misreporting of debt when the error was inadvertent and the committees have taken remedial steps to ensure that such misreporting does not occur again.¹² Indeed, the Commission has dismissed debt reporting enforcement actions even when no remedial actions have been taken when the misreporting was unintentional.¹³

⁸ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

⁹ 11 C.F.R. § 116.10(a).

¹⁰ *See, e.g.*, Statement of Reasons of Comm'r Lee E. Goodman at 3, MUR 6732 (North Carolina Democratic Party) ("Debt reporting has proven to be one of the most vexing reporting schemes for political committees and the Commission.")

¹¹ *See* Certification in MUR 6732 (indicating that three Commissioners voted not to approve a Factual and Legal Analysis finding that the North Carolina Democratic Party had underreported over a million dollars in debt in violation of 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) because it did not report as debts open invoices that were not yet due).

¹² *See* MURs 6572, 6606, 6676 (Tarkanian for Congress) (dismissing allegations of misreported debt due to in part to remedial actions taken by respondent); MUR 6712 (Kreegel for Congress) (dismissal of failure to disclose disputed debt; reports amended after complaint filed).

¹³ *See, e.g.*, MUR 6525 (Friends of Christine O'Donnell) (dismissal of failure to disclose total amount of outstanding debt; record does not indicate that any remedial steps were taken prior to dismissal).

While the Commission has pursued penalties against political committees for their misreporting of debt, such penalties are often modest. For example, pursuant to a conciliation agreement in one enforcement action, a candidate committee settled for \$14,500 in penalties after the committee amended its report to add \$571,042.05 in new debts.¹⁴ Similarly, pursuant to a conciliation agreement in another enforcement action, a multi-candidate committee paid only \$24,000 in penalties for its failure to disclose \$671,498 in debts over the course of an election cycle—comprising most of its debts in that cycle—as well as several other violations of the Act.¹⁵ These conciliation agreements are consistent with other, similar matters.¹⁶

Complimenting the Commission’s longstanding practice of exercising prosecutorial discretion towards committees that have inadvertently misreported their debts, or at most pursuing or agreeing to modest penalties, federal courts have emphasized that the circumstances surrounding reporting errors on campaign finance reports should be taken into account when penalties are calculated. For example, courts have often relied on the four *Furgatch* factors when determining an appropriate penalty in Commission enforcement litigation: (1) the demonstration of good or bad faith by the defendant; (2) any injury to the public caused by the defendant’s actions; (3) the defendant’s ability to pay; and (4) the necessity of vindicating the agency’s authority.¹⁷ The use of these factors has led some courts to not assess any penalties where a committee’s alleged violations “were not deliberate violations of the federal election laws.”¹⁸ Further, courts have found that when “any injury to the public is remote and circumscribed,” the assessment of a large penalty may be “inappropriate.”¹⁹

Here, the Committee has acted in good faith to accurately report its debt throughout this process. First, the errors the Committee made in its reports were inadvertent, largely arising from the complexities of a dysfunctional system, and were corrected as soon as the Committee, of its own accord, conducted an internal review of its records. Indeed, it was the Committee’s own actions to correct the public record that alerted RAD to the Committee’s errors in the first place.²⁰ Second, the Committee took steps to overhaul its accounts payable and reporting systems to ensure that similar mistakes do not occur in the future. This includes the implementation of a streamlined process in which invoices are sent to a single repository, quickly input into an integrated system, and then can be tracked by the Committee. And third, the Committee has promptly responded to all inquiries from RAD and the Office of General Counsel regarding the amendment to its report.

¹⁴ See Conciliation Agreement in MUR 6943 (Republican Party of Orange County).

¹⁵ See Conciliation Agreement in MUR 6177 (21st Century Democrats)

¹⁶ See, e.g., Conciliation Agreement in MUR 6965 (Warriors of Liberty) (\$7,150 penalty after committee amended report to add \$592,541 in additional receipts, disbursements, and debts); cf. Conciliation Agreement in MURs 7001,7002, 7003,7009, and 7455 (Ted Cruz for Senate) (\$35,000 penalty after committee misreported the source of \$1,064,000 in bank loans).

¹⁷ See *FEC v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989) (citing *United States v. Danube Carpet Mills, Inc.*, 737 F.2d 988, 993 (11th Cir. 1984)).

¹⁸ *FEC v. Friends of Jane Harman*, 59 F. Supp. 2d 1046, 1057, 1059 (C.D. Cal. 1999) (holding that a civil penalty was not warranted where there were no “deliberate or serious violations” of federal election law and where there was no evidence of bad faith).

¹⁹ *Id.*

²⁰ See, e.g., *FEC v. Kalogianis*, No. 8:06-cv-68-T-23EAJ, 2007 WL 4247795 at *6 (M.D. Fl. Nov. 30, 2007) (explaining that when a defendants’ initial and volitional disclosures alerted to the Commission to potential violations of the Act, the defendants’ conduct “evinced no bad faith”).

There was also no real harm to the public in this case. Payments to the Committee's vendors, vendors who were generally known to be vendors of the Committee, were included in the Committee's reports in the normal course and the number of invoices not reflected on the report in question amounts to a small portion of the Committee's overall activity. Further, the short period of time that the full amount of the Committee's debts was not disclosed occurred during a period of time that was about the most distant from an election as possible. As the Committee has diligently worked to correct its errors and has cooperated fully with Commission attorneys at every step of this process, there is no need to vindicate the Commission's authority here by taking any further action on this matter or pursuing a large penalty.

For the foregoing reasons, the Commission should decline to take any further action on this referral and close its file. Please do not hesitate to contact us if you have any further questions regarding this matter.

Very truly yours,



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