

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

AUDIT REFERRAL: AR 19-09R  
DATE COMPLAINT FILED: July 12, 2019  
DATE OF NOTIFICATIONS: October 4, 2019  
LAST RESPONSE RECEIVED: November 27, 2019  
DATE ACTIVATED: December 12, 2019  
EPS:  
EXPIRATION OF SOL: April 20, 2023  
– November 21, 2024  
ELECTION CYCLE: 2018

**SOURCE:** Internally Generated

**RESPONDENT:** Michigan Democratic State Central Committee and  
Traci Kornak in her official capacity as treasurer<sup>1</sup>

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30104(b)(3)(A)  
52 U.S.C. § 30116(f)  
11 C.F.R. § 102.5(a)  
11 C.F.R. § 102.17(c)(8)  
11 C.F.R. § 110.1(c)(5)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Reports Analysis Division (“RAD”) referred the Michigan Democratic State Central Committee and Traci Kornak in her official capacity as treasurer (“the Committee”) to the Audit Division for numerous apparent violations of the Federal Election Campaign Act of 1971, as amended (“the Act”) during the 2018 calendar year. First, RAD identified \$37,510 in excessive and prohibited contributions that the Committee appeared to have accepted. Second, RAD determined that the Committee failed to properly report \$78,000 in transfers from a joint

---

<sup>1</sup> Kornak has served as Treasurer since April 10, 2019; Sandy O’Brien served as Treasurer from February 20, 2017, through April 9, 2019.

1 fundraising committee. The Commission transferred the Referral to the Office of the General  
2 Counsel (“OGC”) on September 27, 2019.<sup>2</sup>

3 In its Response, the Committee acknowledges that it received the improper contributions  
4 but states that it refunded or otherwise remedied them. Further, the Committee states that it has  
5 amended its 2018 Post-General Report to include all memo entries for the joint fundraising  
6 activity.

7 Although the Committee’s remedial actions may mitigate the violations, they do not fully  
8 resolve them. We therefore recommend that the Commission open a matter under review  
9 (“MUR”) and find reason to believe that the Committee violated: (1) 52 U.S.C. § 30116(f) and  
10 11 C.F.R. § 110.1(c)(5) by accepting excessive contributions; and (2) 52 U.S.C.  
11 § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize contributions received  
12 through a joint fundraiser. We also recommend that the Commission authorize pre-probable  
13 cause conciliation. With respect to the allegation that the Committee accepted a \$5,000  
14 prohibited contribution in violation of 11 C.F.R. § 102.5(a), we recommend that the Commission  
15 exercise its prosecutorial discretion and dismiss the potential violation.

## 16 **II. FACTUAL BACKGROUND**

### 17 **A. Prohibited and Excessive Contributions**

18 The available information, which includes the Referral and the Committee’s Response,  
19 indicates that the Committee accepted the prohibited and excessive contributions as identified by  
20 RAD. The Committee does not deny that it accepted those contributions, although it argues that  
21 the prohibited contribution consisted of permissible funds; it remedied most of the contributions.

---

<sup>2</sup> Certification, RAD Audit Referrals (Sept. 27, 2019).

- 1 All of these contributions, and the Committee's remedial actions as to them, are summarized  
 2 below:

<b>Contributor</b>	<b>Amount in Violation</b>	<b>Amount Refunded or Remedied</b>	<b>Amount Not Remedied</b>
<i>Prohibited</i>			
UAW-V-CAP	\$5,000	\$5,000	\$0
<i>Excessive</i>			
Cynthia Ford	\$14,969.38	\$10,000	\$4,969.38
James Offield	\$15,000	\$10,000	\$5,000
Gretchen Driskell	\$10	\$0	\$10
Joshua Pokempner	\$5,000	\$5,000 <sup>3</sup>	\$0
Paul Zlotoff	\$5,000	\$5,000	\$0
Bryan Barnhill	\$2,500	\$2,500	\$0
<b>Total:</b>	<b>\$47,479.38</b>	<b>\$37,500</b>	<b>\$9,979.38</b>

- 3 As to the first contribution shown in the chart, RAD noted that the Committee reported  
 4 accepting what appears to be a prohibited \$5,000 contribution from UAW-V-CAP (UAW  
 5 Voluntary Community Action Program) in its 2018 April Monthly Report.<sup>4</sup> UAW-V-CAP is  
 6 both a state political action committee registered in Michigan<sup>5</sup> and a qualified political

<sup>3</sup> The Committee reported that it had refunded Pokempner \$5,000 on June 7, 2019. *See* 2019 July Monthly Report at 73 (July 19, 2019) ("2019 July Monthly Report"). We note that RAD's Request for Additional Information ("RFAI") states that Pokempner had made \$10,000 in excessive contributions, and the Committee's response states that it refunded \$10,000 to Pokempner. *See* Resp. at 2. In our analysis, we rely on the amount the Committee reported on its July 2019 monthly report; we will clarify any discrepancies during the conciliation process and, if appropriate, adjust the civil penalty amount.

<sup>4</sup> *See* AR 19-09R (incorporating Reports Analysis Audit Referral A19-11) at 2 ("AR 19-09R"); 2018 April Monthly Report at 118 (Apr. 20, 2018).

<sup>5</sup> UAW Michigan Voluntary Political Action Committee Statement of Organization, Mich. Dep't of State, <https://cfrsearch.nictusa.com/committees/508347> (last visited Apr. 10, 2020).

1 committee registered with the Commission for federal election activity.<sup>6</sup> RAD identified this  
2 contribution as an apparent prohibited contribution funded with non-federal funds because  
3 UAW-V-CAP's federal committee did not disclose the contribution in its FEC report for the  
4 same period.<sup>7</sup> Although the Committee maintains that the contribution was derived from  
5 permissible funds, it states that it refunded the \$5,000 on June 11, 2018.<sup>8</sup>

6 As further shown in the above chart, RAD identified \$32,510 in apparent excessive  
7 contributions the Committee accepted in its 2018 Post-General and Year-End Reports.<sup>9</sup> In  
8 amendments to its reports, the Committee reported an additional \$9,969.38 in excessive  
9 contributions from individuals who had already made excessive contributions in 2018.<sup>10</sup> Thus,  
10 the Committee reported in total \$42,479.38 in excessive contributions in 2018.

11 In response to the Requests for Additional Information ("RFAs") and the Referral  
12 notification, the Committee stated it refunded the \$5,000 UAW-V-CAP contribution and \$30,000  
13 in excessive contributions, and reattributed \$2,500 in excessive contributions.<sup>11</sup> However, it has  
14 not yet refunded \$9,979.38 in excessive contributions.

---

<sup>6</sup> UAW, *What Is V-Cap?* (June 2018), <https://uaw.org/wp-content/uploads/2017/09/PUB-C2015-What-is-V-CAP-REVISED-COVER-07312018-APPROVED-PR08062018.pdf> (last visited Mar. 17, 2020); Amended Statement of Organization, UAW-V-CAP (July 10, 2014, further amended July 12, 2018).

<sup>7</sup> AR 19-09R at 2.

<sup>8</sup> Resp. at 1 (Nov. 27, 2019); *see also* 2018 July Monthly Report at 142 (July 20, 2018) ("2018 July Monthly Report").

<sup>9</sup> AR 19-09R at 2.

<sup>10</sup> The Committee reported accepting an additional \$4,969.38 from Ford on October 16, 2018, Second Amended 2018 Post-General Report at 284 (Nov. 21, 2019) ("Second Amended 2018 Post-General Report"), and an additional \$5,000 from Offield on October 22, 2018, *id.* at 174.

<sup>11</sup> The Committee reported that it remedied the contributions as follows: \$5,000 to UAW-V-CAP on June 11, 2018, *see* 2018 July Monthly Report at 142; \$10,000 to Ford on November 7, 2019, *see* 2019 December Monthly Report at 138 (Dec. 18, 2019) ("2019 December Monthly Report"); \$10,000 to Offield on August 29, 2019, *see* 2019 September Monthly Report at 115 (Sept. 20, 2019); \$5,000 to Pokempner on June 7, 2019, *see* 2019 July Monthly Report at 73; \$5,000 to Zlotoff on November 7, 2019, *see* 2019 December Monthly Report at 140; \$2,500

1           **B.       Reporting of Joint Fundraising Transfers**

2           According to the Referral, the Committee failed to include sufficient memo entries on its  
3 disclosure reports to explain transfers received from a joint fundraising committee during the  
4 2018 calendar year.<sup>12</sup> Specifically, the Committee's 2018 Pre-General and Post-General  
5 Reports, disclosed \$78,000 in transfers received from the Slotkin Victory Fund, a joint  
6 fundraising committee, but provided no itemizations.<sup>13</sup> In amended reports filed on March 5,  
7 2019, and June 3, 2019, the Committee provided supporting itemized memo entries explaining  
8 \$52,600 in transfers, leaving \$25,400 unitemized.<sup>14</sup> After receiving the Notice in this matter, the  
9 Committee amended its 2018 Post-General Report on November 21, 2019, and appears to have  
10 included all required memo entries.<sup>15</sup>

11           **III.     LEGAL ANALYSIS**

12           **A.       Acceptance of Excessive Contributions**

13           The Act provides that no person shall make a contribution to a state party committee in  
14 any calendar year which, in the aggregate, exceeds \$10,000, and prohibits such committee from

---

from Barnhill to his wife, Rian English, on November 21, 2019, *see* Second Amended 2018 Post-General Report at 24, 73. The Committee stated in its response that it refunded \$10 to Gretchen Driskell, but it has yet to report this refund as required by 11 C.F.R. § 104.3(b)(3)(iv). Resp. at 2. We will clarify any discrepancies during the conciliation process.

<sup>12</sup> AR 19-09R at 3.

<sup>13</sup> *See* 2018 Pre-General Report at 133 (Oct. 26, 2018); 2018 Post-General Report at 264 (Dec. 6, 2018).

<sup>14</sup> *See* Amended 2018 Pre-General Report at 135-36 (Mar. 5, 2019); First Amended 2018 Post-General Report at 276-78 (June 3, 2019); *see also* AR 19-09R at 3.

<sup>15</sup> *See* Second Amended 2018 Post-General Report at 283-87; *see also* Resp. at 2 (“The MDP has amended its 2018 Post-General Report to include all memo entries for the Slotkin Victory Fund”). Based on its subsequent review of the Committee's Amended 2018 Post-General Report, RAD has determined that the Committee has satisfied the memo entry requirement.

1 knowingly accepting such contribution.<sup>16</sup> A committee may reattribute the excessive portion of a  
2 contribution to another individual whose name appears on the written instrument used to make  
3 the contribution.<sup>17</sup> However, the committee must, within 60 days of receipt of the contribution,  
4 notify the contributor of the reattribution and the option to request a refund.<sup>18</sup>

5 The Committee's 2018 Post-General and Year-End Reports reflect apparent excessive  
6 contributions from six individuals. The Committee does not dispute that it received those  
7 contributions. Thus, we recommend that the Commission find that there is reason to believe the  
8 Committee accepted excessive contributions in 2018 in violation of 52 U.S.C. § 30116(f) and  
9 11 C.F.R. § 110.1(c)(5).<sup>19</sup>

#### 10 **B. Acceptance of UAW-V-CAP Contribution**

11 Under the Act, federal accounts of state party committees may only accept contributions  
12 that comply with the limits and prohibitions of the Act.<sup>20</sup> Similarly, Commission regulations  
13 provide that the federal account of a state party may only accept contributions that comply with  
14 those limits and prohibitions.<sup>21</sup>

---

<sup>16</sup> 52 U.S.C. § 30116(a)(1)(D), (f). The Committee is a state committee of the Democratic Party.  
*See* Amended Statement of Organization, Michigan Democratic State Central Committee (Sept. 5, 2018).

<sup>17</sup> 11 C.F.R. § 110.1(k).

<sup>18</sup> *Id.* § 110.1(k)(3)(ii)(B).

<sup>19</sup> The RAD Referral, generated on July 12, 2019, initially identified \$37,510 in excessive and prohibited contributions. The Committee's amended filings included new excessive contributions and corrected previous excessive contribution attributions resulting in a new total amount in violation.

<sup>20</sup> *See, e.g.*, 52 U.S.C. §§ 30116(a) (establishing contribution limits); 30118(a) (prohibiting contributions by corporations); 30119 (prohibiting contributions by government contractors); 30121(a) (prohibiting contributions by foreign nationals).

<sup>21</sup> 11 C.F.R. § 102.5(a)(1)(i) (requiring State parties to establish separate Federal accounts and limiting deposits in such accounts to "[o]nly funds subject to the prohibitions and limitations of the Act") (citation omitted).

1           The Committee reported a \$5,000 contribution from UAW-V-CAP that appears to have  
2           been derived from the contributor's state committee account because its federal account did not  
3           report a corresponding contribution on the relevant FEC report. Since the state account is  
4           permitted to accept contributions that are not subject to the limits of the Act,<sup>22</sup> it appears that  
5           non-federal funds could have been used to make the contribution. However, a review of  
6           Michigan's state disclosure reports indicates that UAW-V-CAP accepts many small-dollar  
7           contributions from individuals,<sup>23</sup> and resolving this factual issue would require an analysis of the  
8           lengthy state disclosure reports. Given that the amount in violation is only \$5,000 and the  
9           Committee refunded the contribution, further investigation regarding this particular contribution  
10          does not appear to be an efficient use of Commission resources. Under these circumstances, we  
11          recommend that the Commission dismiss as a matter of prosecutorial discretion the allegation  
12          that the Committee accepted a prohibited contribution in violation of 11 C.F.R. § 102.5(a).<sup>24</sup>

### 13           **C.       Discrepancies in Reporting of Joint Fundraising Transfers**

14          The treasurer of a political committee is responsible for itemizing a contribution from an  
15          individual if the contribution exceeds \$200 per calendar year either by itself or when aggregated  
16          with other contributions from the same contributor.<sup>25</sup> Each participating committee in a joint

---

<sup>22</sup>       *PACs – Political Committee and Independent Committee – Recording and Reporting Contributions and other Receipts*, Mich. Bureau of Elections, <https://mertsplus.com/mertsuserguide/index.php?n=MANUALPAC.ContributionsAndOtherReceipts#pacconlmt> (last visited Apr. 10, 2020) (“PACs may receive unlimited contribution amounts from legal sources. Exceptions apply for Caucus Committees.”).

<sup>23</sup>       Contributions, UAW Michigan Voluntary Political Action Committee, 2018 Amended April Quarterly Report, Mich. Dep't of State, <https://cfrsearch.nictusa.com/documents/460837/details/filing/contributions?schedule=%2A&changes=0> (last visited Apr. 10, 2020).

<sup>24</sup>       *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>25</sup>       52 U.S.C. § 30104(b)(3)(A).

1 fundraiser must file a memo Schedule A itemizing its share of gross fundraising receipts as  
2 contributions from the original contributors to the extent required by 11 C.F.R. § 104.3(a).<sup>26</sup>

3 Here, the Committee originally disclosed \$78,000 in transfers received from the Slotkin  
4 Victory Fund during the 2018 calendar year but failed to itemize the contributions received  
5 through the transfers. In response to RFAIs, the Committee amended its reports to itemize  
6 \$52,600 of the contributions it received in connection with the joint fundraiser<sup>27</sup> and itemized the  
7 remainder after receiving the Notice.<sup>28</sup> Accordingly, we recommend that the Commission find  
8 reason to believe that the Committee violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R.  
9 § 102.17(c)(8)(i)(B).

10

11

12

13

14

15

---

<sup>26</sup> 11 C.F.R. § 102.17(c)(8)(i)(B). Itemization requires the amount of the contribution, the date of receipt, the full name and address of the contributor, the contributor's occupation and the name of his or her employer, and the calendar year-to-date total of all contributions from the same contributor. 11 C.F.R. § 104.3(a)(4)(i).

<sup>27</sup> See *supra* note 14.

<sup>28</sup> See *supra* note 15.



AR 19-09R (Michigan Democratic State Central Committee)

First General Counsel's Report

Page 9 of 10

1

2

3 **V. RECOMMENDATIONS**

4 1. Open a MUR in AR 19-09R;

5 2. Find reason to believe that Michigan Democratic State Central Committee and Traci  
6 Kornak in her official capacity as treasurer violated 52 U.S.C. § 30116(f) and  
7 11 C.F.R. § 110.1(c)(5) by accepting excessive contributions;

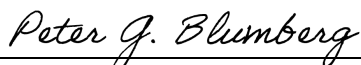
- 1           3. Find reason to believe that Michigan Democratic State Central Committee and Traci
- 2           Kornak in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(A) and
- 3           11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize contributions received through a
- 4           joint fundraising effort;
  
- 5           4. Dismiss the allegation that Michigan Democratic State Central Committee and Traci
- 6           Kornak in her official capacity as treasurer accepted a prohibited contribution in
- 7           violation of 11 C.F.R. § 102.5(a);
  
- 8           5. Approve the attached Factual and Legal Analysis;
  
- 9           6. Enter into pre-probable cause conciliation;
  
- 10          7. Approve the attached Conciliation Agreement; and
  
- 11          8. Approve the appropriate letters.


12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

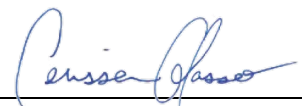
Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel  
For Enforcement

Date:       April 17, 2020

  
Peter Blumberg  
Acting Deputy Associate General  
Counsel for Enforcement

  
Jin Lee  
Acting Assistant General Counsel  
for Enforcement

  
Cerissa Cafasso  
Attorney

- Attachments
- 1. Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Michigan Democratic State Central Committee MUR \_\_\_\_  
and Traci Kornak in her official capacity as treasurer

**I. INTRODUCTION**

The Reports Analysis Division (“RAD”) referred the Michigan Democratic State Central Committee and Traci Kornak in her official capacity as treasurer (“the Committee”) to the Audit Division for numerous apparent violations of the Federal Election Campaign Act of 1971, as amended (“the Act”) during the 2018 calendar year. First, RAD identified \$37,510 in excessive and prohibited contributions that the Committee appeared to have accepted. Second, RAD determined that the Committee failed to properly report \$78,000 in transfers from a joint fundraising committee.

In its Response, the Committee acknowledges that it received the improper contributions but states that it refunded or otherwise remedied them. Further, the Committee states that it has amended its 2018 Post-General Report to include all memo entries for the joint fundraising activity.

Although the Committee’s remedial actions may mitigate the violations, they do not fully resolve them. The Commission, therefore, finds reason to believe that the Committee violated: (1) 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.1(c)(5) by accepting excessive contributions; and (2) 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize contributions received through a joint fundraiser. With respect to the allegation that the Committee accepted a \$5,000 prohibited contribution in violation of 11 C.F.R. § 102.5(a), the Commission exercises its prosecutorial discretion and dismisses the potential violation.

1 **II. FACTUAL BACKGROUND**

2 **A. Prohibited and Excessive Contributions**

3 The available information indicates that the Committee accepted the prohibited and  
 4 excessive contributions as identified by RAD. The Committee does not deny that it accepted  
 5 those contributions, although it argues that the prohibited contribution consisted of permissible  
 6 funds; it remedied most of the contributions. All of these contributions, and the Committee's  
 7 remedial actions as to them, are summarized below:

<b>Contributor</b>	<b>Amount in Violation</b>	<b>Amount Refunded or Remedied</b>	<b>Amount Not Remedied</b>
<i>Prohibited</i>			
UAW-V-CAP	\$5,000	\$5,000	\$0
<i>Excessive</i>			
Cynthia Ford	\$14,969.38	\$10,000	\$4,969.38
James Offield	\$15,000	\$10,000	\$5,000
Gretchen Driskell	\$10	\$0	\$10
Joshua Pokempner	\$5,000	\$5,000	\$0
Paul Zlotoff	\$5,000	\$5,000	\$0
Bryan Barnhill	\$2,500	\$2,500	\$0
<b>Total:</b>	<b>\$47,479.38</b>	<b>\$37,500</b>	<b>\$9,979.38</b>

8 As to the first contribution shown in the chart, RAD noted that the Committee reported  
 9 accepting what appears to be a prohibited \$5,000 contribution from UAW V-CAP (UAW  
 10 Voluntary Community Action Program) in its 2018 April Monthly Report.<sup>1</sup> UAW-V-CAP is

<sup>1</sup> See 2018 April Monthly Report at 118 (Apr. 20, 2018).

1 both a state political action committee registered in Michigan<sup>2</sup> and a qualified political  
2 committee registered with the Commission for federal election activity.<sup>3</sup> RAD identified this  
3 contribution as an apparent prohibited contribution funded with non-federal funds because  
4 UAW-V-CAP's federal committee did not disclose the contribution in its FEC report for the  
5 same period. Although the Committee maintains that the contribution was derived from  
6 permissible funds, it states that it refunded the \$5,000 on June 11, 2018.<sup>4</sup>

7 As further shown in the above chart, RAD identified \$32,510 in apparent excessive  
8 contributions the Committee accepted in its 2018 Post-General and Year-End Reports. In  
9 amendments to its reports, the Committee reported an additional \$9,969.38 in excessive  
10 contributions from individuals who had already made excessive contributions in 2018.<sup>5</sup> Thus,  
11 the Committee reported in total \$42,479.38 in excessive contributions in 2018.

12 In response to the Requests for Additional Information ("RFAIs") and the Referral  
13 notification, the Committee stated it refunded the \$5,000 UAW-V-CAP contribution and \$30,000  
14 in excessive contributions, and reattributed \$2,500 in excessive contributions.<sup>6</sup> However, it has  
15 not yet refunded \$9,979.38 in excessive contributions.

---

<sup>2</sup> UAW Michigan Voluntary Political Action Committee Statement of Organization, Mich. Dep't of State, <https://cfrsearch.nictusa.com/committees/508347> (last visited Apr. 10, 2020).

<sup>3</sup> UAW, *What Is V-Cap?* (June 2018), <https://uaw.org/wp-content/uploads/2017/09/PUB-C2015-What-is-V-CAP-REVISED-COVER-07312018-APPROVED-PR08062018.pdf> (last visited Mar. 17, 2020); Amended Statement of Organization, UAW-V-CAP (July 10, 2014, further amended July 12, 2018).

<sup>4</sup> Resp. at 1 (Nov. 27, 2019); *see also* 2018 July Monthly Report at 142 (July 20, 2018) ("2018 July Monthly Report").

<sup>5</sup> The Committee reported accepting an additional \$4,969.38 from Ford on October 16, 2018, Second Amended 2018 Post-General Report at 284 (Nov. 21, 2019) ("Second Amended 2018 Post-General Report"), and an additional \$5,000 from Offield on October 22, 2018, *id.* at 174.

<sup>6</sup> The Committee reported that it remedied the contributions as follows: \$5,000 to UAW-V-CAP on June 11, 2018, *see* 2018 July Monthly Report at 142; \$10,000 to Ford on November 7, 2019, *see* 2019 December Monthly Report at 138 (Dec. 18, 2019) ("2019 December Monthly Report"); \$10,000 to Offield on August 29, 2019, *see*

1           **B.       Reporting of Joint Fundraising Transfers**

2           The Committee failed to include sufficient memo entries on its disclosure reports to  
 3 explain transfers received from a joint fundraising committee during the 2018 calendar year.  
 4 Specifically, the Committee’s 2018 Pre-General and Post-General Reports, disclosed \$78,000 in  
 5 transfers received from the Slotkin Victory Fund, a joint fundraising committee, but provided no  
 6 itemizations.<sup>7</sup> In amended reports filed on March 5, 2019, and June 3, 2019, the Committee  
 7 provided supporting itemized memo entries explaining \$52,600 in transfers, leaving \$25,400  
 8 unitemized.<sup>8</sup> After receiving the Notice in this matter, the Committee amended its 2018 Post-  
 9 General Report on November 21, 2019, and appears to have included all required memo entries.<sup>9</sup>

10          **III.     LEGAL ANALYSIS**

11          **A.       Acceptance of Excessive Contributions**

12          The Act provides that no person shall make a contribution to a state party committee in  
 13 any calendar year which, in the aggregate, exceeds \$10,000, and prohibits such committee from  
 14 knowingly accepting such contribution.<sup>10</sup> A committee may reattribute the excessive portion of  
 15 a contribution to another individual whose name appears on the written instrument used to make

---

2019 September Monthly Report at 115 (Sept. 20, 2019); \$5,000 to Pokempner on June 7, 2019, *see* 2019 July Monthly Report at 73; \$5,000 to Zlotoff on November 7, 2019, *see* 2019 December Monthly Report at 140; \$2,500 from Barnhill to his wife, Rian English, on November 21, 2019, *see* Second Amended 2018 Post-General Report at 24, 73. The Committee stated in its response that it refunded \$10 to Gretchen Driskell, but it has yet to report this refund as required by 11 C.F.R. § 104.3(b)(3)(iv). Resp. at 2.

<sup>7</sup>           *See* 2018 Pre-General Report at 133 (Oct. 26, 2018); 2018 Post-General Report at 264 (Dec. 6, 2018).

<sup>8</sup>           *See* Amended 2018 Pre-General Report at 135-36 (Mar. 5, 2019); First Amended 2018 Post-General Report at 276-78 (June 3, 2019).

<sup>9</sup>           *See* Second Amended 2018 Post-General Report at 283-87; *see also* Resp. at 2 (“The MDP has amended its 2018 Post-General Report to include all memo entries for the Slotkin Victory Fund”).

<sup>10</sup>          52 U.S.C. § 30116(a)(1)(D), (f). The Committee is a state committee of the Democratic Party. *See* Amended Statement of Organization, Michigan Democratic State Central Committee (Sept. 5, 2018).

1 the contribution.<sup>11</sup> However, the committee must, within 60 days of receipt of the contribution,  
 2 notify the contributor of the reattribution and the option to request a refund.<sup>12</sup>

3 The Committee's 2018 Post-General and Year-End Reports reflect apparent excessive  
 4 contributions from six individuals. The Committee does not dispute that it received those  
 5 contributions. Thus, the Commission finds that there is reason to believe the Committee  
 6 accepted excessive contributions in 2018 in violation of 52 U.S.C. § 30116(f) and 11 C.F.R.  
 7 § 110.1(c)(5).<sup>13</sup>

### 8 **B. Acceptance of UAW-V-CAP Contribution**

9 Under the Act, federal accounts of state party committees may only accept contributions  
 10 that comply with the limits and prohibitions of the Act.<sup>14</sup> Similarly, Commission regulations  
 11 provide that the federal account of a state party may only accept contributions that comply with  
 12 those limits and prohibitions.<sup>15</sup>

13 The Committee reported a \$5,000 contribution from UAW-V-CAP that appears to have  
 14 been derived from the contributor's state committee account because its federal account did not  
 15 report a corresponding contribution on the relevant FEC report. Since the state account is

---

<sup>11</sup> 11 C.F.R. § 110.1(k).

<sup>12</sup> *Id.* § 110.1(k)(3)(ii)(B).

<sup>13</sup> RAD initially identified \$37,510 in excessive and prohibited contributions. The Committee's amended filings included new excessive contributions and corrected previous excessive contribution attributions resulting in a new total amount in violation.

<sup>14</sup> *See, e.g.*, 52 U.S.C. §§ 30116(a) (establishing contribution limits); 30118(a) (prohibiting contributions by corporations); 30119 (prohibiting contributions by government contractors); 30121(a) (prohibiting contributions by foreign nationals).

<sup>15</sup> 11 C.F.R. § 102.5(a)(1)(i) (requiring State parties to establish separate Federal accounts and limiting deposits in such accounts to "[o]nly funds subject to the prohibitions and limitations of the Act") (citation omitted).

1 permitted to accept contributions that are not subject to the limits of the Act,<sup>16</sup> it appears that  
2 non-federal funds could have been used to make the contribution. However, a review of  
3 Michigan’s state disclosure reports indicates that UAW-V-CAP accepts many small-dollar  
4 contributions from individuals,<sup>17</sup> and resolving this factual issue would require an analysis of the  
5 lengthy state disclosure reports. Given that the amount in violation is only \$5,000 and the  
6 Committee refunded the contribution, further investigation regarding this particular contribution  
7 does not appear to be an efficient use of Commission resources. Under these circumstances, the  
8 Commission dismisses as a matter of prosecutorial discretion the allegation that the Committee  
9 accepted a prohibited contribution in violation of 11 C.F.R. § 102.5(a).<sup>18</sup>

### 10 **C. Discrepancies in Reporting of Joint Fundraising Transfers**

11 The treasurer of a political committee is responsible for itemizing a contribution from an  
12 individual if the contribution exceeds \$200 per calendar year either by itself or when aggregated  
13 with other contributions from the same contributor.<sup>19</sup> Each participating committee in a joint

---

<sup>16</sup> *PACs – Political Committee and Independent Committee – Recording and Reporting Contributions and other Receipts*, Mich. Bureau of Elections, <https://mertsplus.com/mertsuserguide/index.php?n=MANUALPAC.ContributionsAndOtherReceipts#pacconlmt> (last visited Apr. 10, 2020) (“PACs may receive unlimited contribution amounts from legal sources. Exceptions apply for Caucus Committees.”).

<sup>17</sup> Contributions, UAW Michigan Voluntary Political Action Committee, 2018 Amended April Quarterly Report, Mich. Dep’t of State, <https://cfrsearch.nictusa.com/documents/460837/details/filing/contributions?schedule=%2A&changes=0> (last visited Apr. 10, 2020).

<sup>18</sup> *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>19</sup> 52 U.S.C. § 30104(b)(3)(A).



1 fundraiser must file a memo Schedule A itemizing its share of gross fundraising receipts as  
2 contributions from the original contributors to the extent required by 11 C.F.R. § 104.3(a).<sup>20</sup>

3 Here, the Committee originally disclosed \$78,000 in transfers received from the Slotkin  
4 Victory Fund during the 2018 calendar year but failed to itemize the contributions received  
5 through the transfers. In response to RFAs, the Committee amended its reports to itemize  
6 \$52,600 of the contributions it received in connection with the joint fundraiser<sup>21</sup> and itemized the  
7 remainder after receiving the Notice.<sup>22</sup> Accordingly, the Commission finds reason to believe  
8 that the Committee violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B).

---

<sup>20</sup> 11 C.F.R. § 102.17(c)(8)(i)(B). Itemization requires the amount of the contribution, the date of receipt, the full name and address of the contributor, the contributor's occupation and the name of his or her employer, and the calendar year-to-date total of all contributions from the same contributor. 11 C.F.R. § 104.3(a)(4)(i).

<sup>21</sup> See *supra* note 13.

<sup>22</sup> See *supra* note 14.