

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 21L-42

DATE REFERRED: June 29, 2021

DATE OF NOTIFICATION: July 1, 2021

DATE OF LAST RESPONSE: Aug. 5, 2021

DATE ACTIVATED: Oct. 6, 2021

EXPIRATION OF SOL: Dec. 3, 2010

ELECTION CYCLE: 2020

SOURCE: Internally Generated

RESPONDENT: Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer

**RELEVANT STATUTE
AND REGULATIONS:** 52 U.S.C. § 30104(a)(1), (b)
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED: Disclosure Reports
Reports Analysis Division Referral Materials

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

31 The Reports Analysis Division (“RAD”) referred the Indiana Democratic Congressional
32 Victory Committee and Henry Fernandez in his official capacity as treasurer (the “Committee”)
33 to the Office of General Counsel (“OGC”) for potential violations of the Federal Election
34 Campaign Act of 1971, as amended (the “Act”), arising from its failure to timely and accurately
35 disclose \$315,342.85 in disbursements on its 2020 12-Day Pre-General Report and \$733,058.45
36 in disbursements on its 2020 30-Day Post-General Report.

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1 The Committee acknowledges the errors made in these reports and explains that its
 2 inaccurate reporting was the result of a data transfer issue between the software it uses to track
 3 its finances and the separate software it uses to file its reports with the Commission.

4 Based on the available information, we recommend that the Commission open a Matter
 5 Under Review (“MUR”), find reason to believe that the Committee violated 52 U.S.C.
 6 § 30104(b) by failing to timely and accurately report disbursements, and enter into pre-probable
 7 cause conciliation with the Committee.

8 **II. FACTUAL BACKGROUND**

9 This matter was referred to OGC for the Committee’s failure to timely and accurately
 10 report disbursements.¹ Specifically, RAD’s Referral indicates that the Committee, which is the
 11 state committee of the Democratic Party in Indiana,² amended its 2020 12-Day Pre-General
 12 Report three times, with the final amendment being filed nearly six months after the original
 13 report, disclosing additional disbursements of \$315,342.85 on lines 22 and 30(b) of the report.³
 14 The Referral also indicates that the Committee amended its 2020 30-Day Post-General Report
 15 twice, with the final amendment being filed nearly five months after the original report,
 16 disclosing additional disbursements of \$733,058.45 on lines 21(b), 22, 23, 29, and 30(b) of the
 17 reports.⁴

¹ Referral at 1 (June 29, 2021)

² See Indiana Democratic Congressional Victory Committee, Amended Statement of Organization (Sept. 30, 2021).

³ Referral at 1-2. Compare Indiana Democratic Congressional Victory Committee, 2020 12-Day Pre-General Report at 4 (Oct. 22, 2020), <https://docquery.fec.gov/pdf/981/202010229336425981/202010229336425981.pdf> with Indiana Democratic Congressional Victory Committee, Third Amended 2020 12-Day Pre-General Report at 4 (Apr. 20, 2021), <https://docquery.fec.gov/pdf/348/202104209444386348/202104209444386348.pdf>.

⁴ *Id.* at 2-3. Compare Indiana Democratic Congressional Victory Committee, 2020 30-Day Post-General Report at 4 (Dec. 3, 2020), <https://docquery.fec.gov/pdf/161/202012039338279161/202012039338279161.pdf> with Indiana Democratic Congressional Victory Committee, Second Amended 2020 30-Day Post-General Report at 4 (Apr. 20, 2021), <https://docquery.fec.gov/pdf/011/202104209444387011/202104209444387011.pdf>.

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1 The Committee does not deny the errors made in either of these initial reports.⁵ Instead,
2 the Committee explains, consistent with its previous response to RAD's Request for Additional
3 Information,⁶ that the reason for its reporting errors was an inadvertent issue importing
4 information from the software used to track the Committee's finances into the software it used to
5 file reports with the Commission.⁷

6 The Committee states that it uses QuickBooks for its general accounting, but that
7 QuickBooks does not support filing Commission reports.⁸ To prepare and submit its reports to
8 the Commission, the Committee imports its disbursement data from QuickBooks into NGP VAN
9 software.⁹ The Committee states that, in 2020, it opened a new bank account for certain
10 activities but inadvertently failed to mark the bank account for importation into NGP VAN.¹⁰ As
11 a result, the data was not imported, and the activity did not appear on the Committee's reports to
12 the Commission.¹¹ The Committee states that it discovered the error in January 2021 and then
13 "retained an outside compliance firm to conduct a comprehensive audit of its activities and file
14 amended reports as necessary."¹²

15 Based on the Committee's assertion that the reporting errors were "inadvertent" and its
16 remedial actions — spending \$10,000 to retain a compliance firm to audit and correct past

⁵ See Resp. (Aug. 2, 2021).

⁶ See Indiana Democratic Congressional Victory Committee, Form 99 (Apr. 20, 2021),
<https://docquery.fec.gov/pdf/918/202104209443921918/202104209443921918.pdf> (similarly explaining that the reporting errors were "inadvertent" and "[d]ue to processing issues transferring data from the accounting software to the reporting software").

⁷ Referral at 2-4; Resp. at 1-2.

⁸ Resp. at 1-2.

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

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1 reports and file future reports — the Committee requests that the Commission take no further
 2 action or refer the matter to the Alternative Dispute Resolution Office (“ADRO”).¹³

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. § 30104.¹⁴ These reports must include, among other
 6 things, the total amount of receipts and disbursements, including the appropriate itemizations,
 7 where required.¹⁵

8 Here, the Committee admits it failed to include \$315,342.85 in disbursements on its
 9 timely filed 2020 12-Day Pre-General Report and \$733,058.45 in disbursements on its timely
 10 filed 2020 30-Day Post-General Report. Asserting that the errors were inadvertent and noting
 11 the Committee’s self-reporting of the errors via their amended reports, the Committee requests
 12 that the Commission take no further action or refer the matter to ADRO.¹⁶ Such a result would
 13 be inconsistent with how the Commission has treated prior respondents in similar circumstances.
 14 Instead, in similar matters, the Commission has found reason to believe and authorized pre-

¹³ *Id.* at 3. The Committee states that, as a result of the internal audit, it amended every 2020 disclosure report “to correct the public record and its cash on hand.” *Id.* at 2. The Committee further states that on April 14, 2021, it transferred \$54,823.37 “from its federal accounts to its nonfederal accounts to reflect an over transfer of funds due to the misclassification of expenses as allocable on Schedule H4 that should have been paid for exclusively with non-federal funds.” *Id.* at 2.

¹⁴ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁵ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

¹⁶ Resp. at 2-3.

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1 probable cause conciliation, taking the self-reported nature of the reporting violations into
2 account when calculating the civil penalty.¹⁷

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4 Accordingly, we recommend that the Commission open a MUR, find
5 reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to timely and
6 accurately disclose disbursements, and authorize pre-probable cause conciliation.

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¹⁷ See, e.g., MUR 7054 (Oakland County Democratic Party) (In a RAD referral, Respondent stated that the reporting errors were due to information not properly transferred from QuickBooks to their reporting software, NGP VAN, and requested that the Commission take no action. The Commission found reason to believe and authorized pre-probable cause conciliation.); MUR 7603 (Wyoming Republican Party, Inc.) (In a RAD referral, Respondent stated that the reporting errors were due to miscommunications between two vendors and requested that the matter be transferred to ADRO. The Commission found reason to believe and authorized pre-probable cause conciliation.).

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1 IV. RECOMMENDATIONS

1. Open a Matter Under Review;
2. Find reason to believe that the Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to timely and accurately disclose disbursements;
3. Approve the attached Factual and Legal Analysis;
4. Enter into conciliation with the Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer prior to a finding of probable cause to believe;
5. Approve the attached conciliation agreement; and
6. Approve the appropriate letter.

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