



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 29, 2022

VIA ELECTRONIC MAIL

reiff@sandlerreiff.com

Neil Reiff, Esq.
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.
1090 Vermont Ave NW, Suite 750
Washington, DC 20005

RE: MUR 7971(RR 21L-42)
Indiana Democratic Congressional
Victory Committee and Henry
Fernandez in his official capacity
as treasurer

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your client, Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 22, 2022, the Commission found reason to believe that your client violated 52 U.S.C. § 30104(b) by failing to timely and accurately disclose disbursements. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

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 your client 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 you violated the law. Enclosed is a conciliation agreement for your consideration

MUR 7971 (Indiana Democratic Congressional Victory Committee)
Letter to Neil Reiff, Esq.
Page 2

If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. If your client is interested in engaging in pre-probable cause conciliation, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1577 or nmueller@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 60 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is 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. 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.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", written over a horizontal line.

Allen Dickerson
Chairman

Enclosures:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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

MUR 7971

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the “Commission”) in the normal course of carrying out its supervisory responsibilities.¹ The Reports Analysis Division (“RAD”) referred the Indiana Democratic Congressional Victory Committee and Henry Fernandez in his official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), arising from its failure to timely and accurately disclose \$315,342.85 in disbursements on its 2020 12-Day Pre-General Report and \$733,058.45 in disbursements on its 2020 30-Day Post-General Report.

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

Based on the available information, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to timely and accurately report disbursements.

¹ See 52 U.S.C. § 30109(a)(2).

II. FACTUAL BACKGROUND

This matter was referred to OGC for the Committee's failure to timely and accurately report disbursements.² Specifically, RAD's Referral indicates that the Committee, which is the state committee of the Democratic Party in Indiana,³ amended its 2020 12-Day Pre-General Report three times, with the final amendment being filed nearly six months after the original report, disclosing additional disbursements of \$315,342.85 on lines 22 and 30(b) of the report.⁴ The Referral also indicates that the Committee amended its 2020 30-Day Post-General Report twice, with the final amendment being filed nearly five months after the original report, disclosing additional disbursements of \$733,058.45 on lines 21(b), 22, 23, 29, and 30(b) of the reports.⁵

The Committee does not deny the errors made in either of these initial reports.⁶ Instead, the Committee explains, consistent with its previous response to RAD's Request for Additional Information,⁷ that the reason for its reporting errors was an inadvertent issue importing

² Referral at 1 (June 29, 2021).

³ See Indiana Democratic Congressional Victory Committee, Amended Statement of Organization (Sept. 30, 2021).

⁴ 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>.

⁵ 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>.

⁶ See Resp. (Aug. 2, 2021).

⁷ 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").

1 information from the software used to track the Committee’s finances into the software it used to
2 file reports with the Commission.⁸

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

12 Based on the Committee’s assertion that the reporting errors were “inadvertent” and its
13 remedial actions — spending \$10,000 to retain a compliance firm to audit and correct past
14 reports and file future reports — the Committee requests that the Commission take no further
15 action or refer the matter to the Alternative Dispute Resolution Office (“ADRO”).¹⁴

⁸ Referral at 2-4; Resp. at 1-2.

⁹ Resp. at 1-2.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 3.

III. LEGAL ANALYSIS

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁵ These reports must include, among other things, the total amount of receipts and disbursements, including the appropriate itemizations, where required.¹⁶

Here, the Committee admits it failed to include \$315,342.85 in disbursements on its timely filed 2020 12-Day Pre-General Report and \$733,058.45 in disbursements on its timely filed 2020 30-Day Post-General Report. Asserting that the errors were inadvertent and noting the Committee's self-reporting of the errors via their amended reports, the Committee requests that the Commission take no further action or refer the matter to ADRO.¹⁷ Such a result would be inconsistent with how the Commission has treated prior respondents in similar circumstances.¹⁸ Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to timely and accurately disclose disbursements.

¹⁵ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁶ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

¹⁷ Resp. at 2-3.

¹⁸ 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.).