

Michael E. Toner  
202.719.7545  
mtoner@wiley.law

Brandis L. Zehr  
202.719.7210  
bzehr@wiley.law



Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006  
Tel: 202.719.7000

**wiley.law**

September 24, 2021

**VIA E-MAIL**

Roy Q. Luckett  
Acting Associate General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: RR 21L-52 (Republican Party of Arkansas)**

Dear Mr. Luckett:

We represent the Republican Party of Arkansas (the “Arkansas GOP”) and Alisha Curtis in her official capacity as Treasurer of the Arkansas GOP in RR 21L-52.

We are writing in response to your August 10, 2021 letter enclosing a copy of the Reports Analysis Division’s (“RAD”) referral of the Arkansas GOP to the Federal Election Commission (“FEC” or “Commission”) Office of General Counsel for failing to disclose all financial activity on its original 2020 30-Day Post-General Report and 2020 Year-End Report. Because the Arkansas GOP immediately and proactively corrected the reports upon the discovery of the inadvertent omission of several transfers, the Commission should exercise its prosecutorial discretion and dismiss this matter. If the Commission concludes that additional action is warranted, it should transfer this matter to the Alternative Dispute Resolution (“ADR”) Program for appropriate disposition. In any event, the Commission should take into full consideration the mitigating factors that exist in this matter as well as the proactive, remedial steps that the Arkansas GOP has and is taking to prevent a recurrence of these reporting issues.

**FACTS**

The Arkansas GOP is a state political party committee that files monthly disclosure reports in accordance with Commission regulations. See 11 C.F.R. §§ 104.5(c)(3), 300.36(c). The Arkansas GOP participated in Trump Victory, a joint fundraising committee comprised of Donald J. Trump for President, the Republican National Committee (“RNC”), and numerous other state political party committees. As a participant in Trump Victory, the Arkansas GOP received a total of five transfers from the joint fundraising committee. The Arkansas GOP then transferred these funds to the RNC. These transfers were inadvertently omitted from the Arkansas GOP’s original reports.

As soon as the Arkansas GOP discovered the inadvertent reporting errors, the committee immediately amended its 30-Day Post-General and Year-End Reports to disclose the

Federal Election Commission  
 September 24, 2021  
 Page 2

transfers at issue. Notably, the Arkansas GOP filed these amendments on its own accord and did not wait to amend its reports until after it received an RFAI from RAD questioning the omission of the transfers.

The Arkansas GOP has proactively taken several steps to ensure that future inadvertent reporting errors such as this do not occur again. The Arkansas GOP is developing a written policy that focuses on joint fundraising. This written policy will explain joint fundraising, outline the specific Commission reporting requirements that apply to joint fundraising activities, and set forth specific internal compliance measures and practices. The Arkansas GOP's senior leadership has already reviewed the FEC's online compliance resources concerning joint fundraising. Finally, the Arkansas GOP plans to have a representative participate in one of the FEC's upcoming conferences or webinars for political party committees.

## **DISCUSSION**

### **I. The Commission should exercise its prosecutorial discretion and dismiss this matter.**

This RAD referral presents unique mitigating factors, and there are several reasons why dismissal based upon prosecutorial discretion is warranted.

*First*, the reporting referral is based on the unintentional omission of only a handful of transfers made over a six-week period. This referral is not based on a systemic compliance problem where financial activity is not accurately reported on an ongoing basis.

*Second*, the Arkansas GOP immediately and proactively amended its reports upon discovery of the inadvertent omission. Unlike many respondents in similar matters, the Arkansas GOP did not amend its reports only after receiving an RFAI from RAD inquiring about the omission of the transfers. Inevitably, RAD would have sent the Arkansas GOP an RFAI because Trump Victory and the RNC duly reported the transfers on their FEC reports.

*Third*, given the circumstances of this reporting referral, the Arkansas GOP's inadvertent omission did not harm the public's informational interest. The omitted financial activity consisted solely of transfers that were disclosed on Trump Victory's and the RNC's FEC reports. The harm to the public's informational interest caused by the Arkansas GOP's inadvertent omission is significantly less than the harm caused by failing to file entire reports or failing to report information that is not publicly available on reports filed by other political committees such as Trump Victory and the RNC.

*Fourth*, finding reason to believe, opening a Matter Under Review, and mechanically calculating a civil penalty in accordance with the Commission's standard formulas would result in a harsh, disproportionate penalty for an inadvertent reporting omission that was self-corrected by the Arkansas GOP immediately upon its discovery. This is especially true considering the Arkansas GOP is already taking remedial measures to ensure such reporting issues do not occur in the future.

Federal Election Commission  
September 24, 2021  
Page 3

**II. In the alternative, if the Commission decides that further action is warranted, it should refer this matter to ADR.**

In light of the mitigating factors discussed above, if the Commission determines that further action is warranted, it should refer this matter to ADR for appropriate disposition. The Arkansas GOP takes its compliance obligations seriously. Since the reporting omission, the Arkansas GOP has begun developing a written policy and compliance manual detailing policies and procedures to ensure similar reporting issues do not occur in the future. Further, the Arkansas GOP plans to attend one of the FEC's upcoming conferences or webinars for political party committees. The Arkansas GOP would welcome the opportunity to work with ADR to strengthen the party's compliance procedures and ensure that inadvertent reporting omissions remain an isolated event and do not recur in the future.

**CONCLUSION**

For all of the foregoing reasons, the Commission should exercise its prosecutorial discretion and dismiss this matter. In the event the Commission decides that further action is warranted, the Commission should assign this matter to ADR for appropriate disposition in light of the mitigating factors identified above as well as the remedial measures the Arkansas GOP is implementing to avoid future reporting issues.

Sincerely,

*/s/ Michael E. Toner*

Michael E. Toner  
Brandis L. Zehr  
Hannah Bingham