

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 21L-47

DATE REFERRED: July 28, 2021

DATE OF NOTIFICATIONS: July 28, 2021
Dec. 23, 2021

DATE OF RESPONSE: Dec. 27, 2021

DATE ACTIVATED: Jan. 11, 2022

EXPIRATION OF SOL: Dec. 6, 2023, to July 15, 2025

ELECTION CYCLES: 2018, 2020

SOURCE: Internally Generated

RESPONDENT: Jim Jordan for Congress and Thomas Datwyler 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

1. INTRODUCTION

The Reports Analysis Division (“RAD”) referred Jim Jordan for Congress and Thomas

33 Datwyler in his official capacity as treasurer (the “Committee”) to the Office of General Counsel
34 (“OGC”) for potential violations of the Federal Election Campaign Act of 1971, as amended (the
35 “Act”), arising from its failure to timely and accurately disclose \$1,228,862.77 in receipts and
36 disbursements in five disclosure reports.

37 The Committee states that the errors were caused by a then-inadequate accounting system
38 that could not “keep up” with a large increase in contributions in the 2020 election cycle and that

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1 “failed . . . to manage and properly report receipts and disbursements.”¹ The Committee retained
 2 a new treasurer, who conducted a review of the Committee’s reports, receipts, and
 3 disbursements, and filed amendments to correct the inaccurate disclosure reports.

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)(2), (4) and 11 C.F.R. § 104.3(a), (b) by failing to timely and accurately report
 7 receipts and disbursements, and enter into pre-probable 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 receipts and disbursements.² Specifically, RAD’s Referral indicates that the Committee,
 11 which is Representative Jim Jordan’s principal campaign committee, contained reporting errors
 12 as follows:

- 13 • 2018 30-Day Post-General. The third amended report, filed more than two years
 14 after the original report, disclosed \$122,706.60 in increased disbursements on
 15 lines 17 (operating expenditures), 18 (transfers to other authorized committees),
 16 and 20(a) (individual refunds).³
- 17
- 18 • 2019 Year-End. The third amended report, filed one year after the original report,
 19 disclosed \$144,562.79 in increased receipts on lines 11(a)(i) (contributions from

¹ Resp. at 1 (Dec. 27, 2021).

² Referral at 1 (July 28, 2021); *see also* RAD Procedures, Standard 7. The Referral addresses increased activity disclosed via amendments to five disclosure reports. The increased activity on the Committee’s 2020 April Quarterly Report satisfied the threshold for referral to OGC, while the remaining increased activity satisfied thresholds for referral to the Alternative Dispute Resolution Office (“ADRO”). Pursuant to Commission policy, RAD referred all the increased activity to OGC “to limit the duplicate consideration of matters.” *See* RAD Review and Referral Procedures 2019-20 Election Cycle (“RAD Procedures”) at 22.

The initial notification letter sent by OGC to the Committee inadvertently only referenced the increased activity to the 2020 April Quarterly Report, although all five reports were listed in the attached referral itself. *See* Referral Notif. Letter (July 28, 2021). A supplemental letter was sent to clarify that all five reports were at issue in this matter. *See* Referral Notif. Letter (Dec. 23, 2021).

³ Referral at 1-2.

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individuals), 11(a)(ii) (unitemized contributions from individuals), and 14 (offsets to operating expenditures).⁴

- 2020 April Quarterly. The amended report, filed more than eight months after the original report, disclosed \$335,502.36 in increased disbursements on lines 17, 18, and 20(a).⁵
 - 2020 12-Day Pre-Primary. The amended report, filed more than eight months after the original, disclosed increased receipts totaling \$67,364.90 on lines 11(a)(i) and 11(a)(ii).⁶
 - 2020 July Quarterly. The amended report, filed just over six months from the original, disclosed increased receipts of \$558,726.12 on lines 11(a)(ii) and 14.⁷

The Committee does not deny the errors made in the initial reports.⁸ The Committee

states, consistent with its previous responses to RAD's Requests for Additional Information.⁹

that all of the transactions at issue in the Referral were reported, just not in the proper report.¹⁰

Regarding the Amended 2020 April Quarterly, additional disbursements were “incorrectly”

reported with a date that the expenses cleared the account, rather than the date they were

processed or issued.”¹¹ The Committee also asserts that the increased disbursements in the

Amended 2018 30-Day Post-General were caused by "duplicate entries and disbursements that

4 *Id.* at 2-3.

5 *Id.* at 3-4.

6 *Id.* at 4-5.

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Id. at 5-6.

8 *See Resp.*

⁹ See FEC Committee Filings: Other Documents, FEC.GOV, <https://www.fec.gov/data/committee/C00416594/?tab=filings&cycle=2022> (last visited Mar. 21, 2022) (the Committee’s Form 99 filings).

¹⁰ Resp. at 2-5. The Committee also received RFAIs regarding reports showing decreased receipts, e.g., 2019 October Quarterly, and disbursements, e.g., 2020 July Quarterly, but none of those reports were referable to either OGC or ADRO.

¹¹ Resp. at 2, quoting FEC Form 99 (April 4, 2021).

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1 had been overreported.”¹² Increased activity in the three other reports reflects that contributions
 2 were reported in the reporting period in which the contributions were entered into the reporting
 3 database, rather than the date on which the contribution was processed online.¹³ The Committee
 4 does not explain nor is it clear from its responses to RAD how the previous “inadequate”
 5 accounting system contributed to these reporting problems.

6 The Committee also states that it participated in educational training with RAD in July
 7 2021, where “trainers assured both [treasurer] Mr. Datwyler and [counsel] Ms. Mitchel [sic] that
 8 the Commission does not punish committees for finding and correcting errors in their previously
 9 filed reports.”¹⁴ Commission records indicate that Datwyler and counsel attended the RAD
 10 Education Program on July 22, 2021, as the Committee accrued 10 audit points in the 2019-20
 11 election cycle.¹⁵ Prior to the training, however, RAD sent the Committee two documents that
 12 state participation in the training removes the Committee from consideration for an audit but that
 13 “the training would not prevent matters that would otherwise be referred to [OGC] or [ADRO]
 14 for the 2019-2020 election cycle from moving forward.”¹⁶ At the training, RAD made a
 15 presentation that included the statement that attendance at the training “[d]oes not prevent
 16 matters eligible to be referred to the Office of General Counsel or Office of Alternative Dispute

¹² Resp. at 5. The amended report, however, also adjusted the amounts of a few entries and disclosed previously unreported disbursements, such as a \$109,738.80 disbursement on November 26, 2018, to Campaign Solutions for “digital consulting.”

¹³ *Id.* at 3-5.

¹⁴ *Id.* at 6.

¹⁵ RAD Referral Memo at 2.

¹⁶ See Letter from Debbie Chacona, Assistant Staff Director, RAD, FEC, to Thomas Datwyler, Treasurer, Jim Jordan for Congress (June 4, 2021), including RAD Education FAQs

The FAQs state that the program is “an informal, education-based means for resolving compliance issues.” FAQs at 1. Training is tailored to the Committee’s “issues identified during the review of the committees’ reports and cited in [RFAIs] sent during the 2019-2020 election cycle.” *Id.*

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1 Resolution from moving forward.”¹⁷ In addition, in a May 12, 2021, phone call with Datwyler, a
 2 RAD analyst informed him that the increased activity disclosed on the Committee’s five reports
 3 would be referred to another Commission office for potential further action.¹⁸

4 **III. LEGAL ANALYSIS**

5 The Act requires committee treasurers to file reports of receipts and disbursements in
 6 accordance with the provisions of 52 U.S.C. § 30104.¹⁹ These reports must include, among other
 7 things, the total amount of receipts and disbursements in the reporting period, including the date,
 8 amount, and appropriate itemizations, where required.²⁰ Authorized committees must also report
 9 the total amount of unitemized contributions received during the reporting period and election
 10 cycle.²¹ Under Commission regulations, a contribution is received by a political committee on
 11 the date it or a person acting on its behalf obtains possession of the contribution.²² “A
 12 contribution that is made by credit card is ‘made’ on the date the credit card or credit card
 13 number is presented,”²³ and it is “received” on the same date.²⁴

14 In sum, the Committee failed to accurately report \$1,228,862.77 in receipts and
 15 disbursements in multiple reports over two election cycles. While the Committee’s efforts to

¹⁷ RAD Education Program, Jim Jordan for Congress, July 22, 2021, 9:45 a.m. PowerPoint (available in VBM).

¹⁸ See Referral, Attach. 3 (Communication Log).

¹⁹ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²⁰ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

²¹ 11 C.F.R. § 104.3(a)(3)(1)(B).

²² 11 C.F.R. § 102.8(a). The Commission’s Campaign Guide for Authorized Committees states that this is the date used for reporting purposes. See Campaign Guide for Congressional Candidates and Committees at 25 (October 2021).

²³ Advisory Opinion 2008-08 at 3 (Zucker); see also AO 2012-07 at 5 (Feinstein).

²⁴ AO 2012-35 at 4 (Global Transaction Services Group, Inc.).

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1 implement a better accounting system and correct its reports are commendable, the Committee's
 2 disclosure reports remained inaccurate for more than two years. Although the Committee
 3 requests that the Commission take no further action on the Referral,²⁵ such a result would be
 4 inconsistent with how the Commission has treated prior respondents in similar circumstances.
 5 Instead, in similar matters, the Commission has found reason to believe and authorized pre-
 6 probable cause conciliation, taking the self-reported nature of the reporting violations into
 7 account when calculating the civil penalty.²⁶ Regarding the Committee's statement that RAD
 8 "assured" Respondent and counsel that no action would be taken, such a statement contradicts
 9 written materials given to Respondents and documentation of a conversation with the
 10 Committee's RAD analyst.

11 This matter was appropriately referred to OGC under Standard 7 of RAD's Review and
 12 Referral Procedures.²⁷ Accordingly, we recommend that the Commission open a MUR, find
 13 reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R.
 14 § 104.3(a), (b) by failing to timely and accurately disclose disbursements, and authorize pre-
 15 probable cause conciliation.

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²⁵ See Resp. at 6.

²⁶ See, e.g., MUR 7054 (Oakland County Democratic Party) (finding reason to believe and authorizing pre-probable cause conciliation where, in response to a RAD referral, respondent stated that reporting errors stemmed from error in transferring information from QuickBooks to their reporting software, NGP VAN, and requested that the Commission take no action); MUR 7603 (Wyoming Republican Party, Inc.) (finding reason to believe and authorizing pre-probable cause conciliation where, in response to a RAD referral, respondent stated that reporting errors stemmed from miscommunications between two vendors and requested that matter transfer to ADRO).

²⁷ See RAD Procedures, Standard 7 at 85.

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5 **IV. RECOMMENDATIONS**

6 1. Open a Matter Under Review;

7 2. Find reason to believe that Jim Jordan for Congress and Thomas Datwyler in his
8 official capacity as treasurer violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R.
9 § 104.3(a), (b) by failing to timely and accurately disclose disbursements and
10 receipts;

11 3. Approve the attached Factual and Legal Analysis;

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4. Enter into conciliation with Jim Jordan for Congress and Thomas Datwyler 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.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

April 7, 2022

Date

Peter J. Blumberg

Peter G. Blumberg
Acting Deputy Associate General Counsel
for Enforcement

Theodore Lutz

Theodore Lutz
Acting Assistant General Counsel

Elena Paoli

Elena Paoli
Attorney

Attachments:

- ## 1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jim Jordan for Congress and Thomas Datwyler in his official capacity as treasurer

MUR

I. INTRODUCTION

10 The Referral alleges that Jim Jordan for Congress and Thomas Datwyler in his official
11 capacity as treasurer (the “Committee”) violated the Federal Election Campaign Act of 1971, as
12 amended (the “Act”) and Commission regulations by failing to timely and accurately disclose
13 \$1,228,862.77 in receipts and disbursements in five disclosure reports.¹

14 The Committee states that the errors were caused by a then-inadequate accounting system
15 that could not “keep up” with a large increase in contributions in the 2020 election cycle and that
16 “failed . . . to manage and properly report receipts and disbursements.”² The Committee retained
17 a new treasurer, who conducted a review of the Committee’s reports, receipts, and
18 disbursements, and filed amendments to correct the inaccurate disclosure reports.

19 II. FACTUAL BACKGROUND

20 The Referral indicates that the Committee, which is Representative Jim Jordan's principal
21 campaign committee, contained reporting errors as follows:

- 22 • 2018 30-Day Post-General. The third amended report, filed more than two years
23 after the original report, disclosed \$122,706.60 in increased disbursements on
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2 Resolution from moving forward.”¹⁷

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1 requests that the Commission take no further action on the Referral,²⁴ such a result would be
2 inconsistent with how the Commission has treated prior respondents in similar circumstances.
3 Instead, in similar matters, the Commission has found reason to believe and authorized pre-
4 probable cause conciliation.²⁵ Regarding the Committee's statement that RAD "assured"
5 Respondent and counsel that no action would be taken, such a statement contradicts written
6 materials given to Respondents and documentation of a conversation with the Committee's RAD
7 analyst.

8 Therefore, the Commission finds reason to believe that Jim Jordan for Congress and
9 Thomas Datwyler in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(2), (4) and
10 11 C.F.R. § 104.3(a), (b) by failing to timely and accurately disclose receipts and disbursements.

²⁴ See Resp. at 6.

²⁵ See, e.g., MUR 7054 (Oakland County Democratic Party) (finding reason to believe and authorizing pre-probable cause conciliation where, in response to a RAD referral, respondent stated that reporting errors stemmed from error in transferring information from QuickBooks to their reporting software, NGP VAN, and requested that the Commission take no action); MUR 7603 (Wyoming Republican Party, Inc.) (finding reason to believe and authorizing pre-probable cause conciliation where, in response to a RAD referral, respondent stated that reporting errors stemmed from miscommunications between two vendors and requested that matter transfer to ADRO).