



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 17, 2022

Cleta Mitchell, Esq.
499 South Capitol Street, SW
Suite 405
Washington, D.C. 20003

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RE: MUR 8000
Jim Jordan for Congress and Thomas
Datwyler, Treasurer

Dear Ms. Mitchell:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Jim Jordan for Congress and Thomas Datwyler in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 12, 2022, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2), (4), provisions of the Act, and 11 C.F.R. § 104.3(a), (b), provisions of the Commission's regulations. 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 you 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.

If you are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or epaoli@fec.gov or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual

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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 you are 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.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. 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 you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Jim Jordan for Congress and Thomas Datwyler in his official capacity as treasurer MUR 8000

I. INTRODUCTION

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

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

II. FACTUAL BACKGROUND

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

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

¹ Referral at 1 (July 28, 2021).

² Response at 1 (Dec. 27, 2021).

³ Referral at 1-2.

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

- 3
- 4 • 2020 April Quarterly. The amended report, filed more than eight months after the
5 original report, disclosed \$335,502.36 in increased disbursements on lines 17, 18,
6 and 20(a).⁵
 - 7
 - 8 • 2020 12-Day Pre-Primary. The amended report, filed more than eight months
9 after the original, disclosed increased receipts totaling \$67,364.90 on lines
10 11(a)(i) and 11(a)(ii).⁶
 - 11
 - 12 • 2020 July Quarterly. The amended report, filed just over six months from the
13 original, disclosed increased receipts of \$558,726.12 on lines 11(a)(ii) and 14.⁷
 - 14

15 The Committee does not deny the errors made in the initial reports.⁸ The Committee
16 states, consistent with its previous responses to RAD’s Requests for Additional Information,⁹
17 that all of the transactions at issue in the Referral were reported, just not in the proper report.¹⁰
18 Regarding the Amended 2020 April Quarterly, additional disbursements were “incorrectly
19 reported with a date that the expenses cleared the account, rather than the date they were
20 processed or issued.”¹¹ The Committee also asserts that the increased disbursements in the
21 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.

⁷ *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.

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

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

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.*

1 matters eligible to be referred to the Office of General Counsel or Office of Alternative Dispute
2 Resolution from moving forward.”¹⁷

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. § 30104.¹⁸ These reports must include, among other
6 things, the total amount of receipts and disbursements in the reporting period, including the date,
7 amount, and appropriate itemizations, where required.¹⁹ Authorized committees must also report
8 the total amount of unitemized contributions received during the reporting period and election
9 cycle.²⁰ Under Commission regulations, a contribution is received by a political committee on
10 the date it or a person acting on its behalf obtains possession of the contribution.²¹ “A
11 contribution that is made by credit card is ‘made’ on the date the credit card or credit card
12 number is presented,”²² and it is “received” on the same date.²³

13 In sum, the Committee failed to accurately report \$1,228,862.77 in receipts and
14 disbursements in multiple reports over two election cycles. While the Committee’s efforts to
15 implement a better accounting system and correct its reports are commendable, the Committee’s
16 disclosure reports remained inaccurate for more than two years. Although the Committee

¹⁷ RAD Education Program, Jim Jordan for Congress, July 22, 2021, 9:45 a.m. PowerPoint.

¹⁸ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

²⁰ 11 C.F.R. § 104.3(a)(3)(1)(B).

²¹ 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).

²² Advisory Opinion 2008-08 at 3 (Zucker); see also AO 2012-07 at 5 (Feinstein).

²³ AO 2012-35 at 4 (Global Transaction Services Group, Inc.).

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).