



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

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Michael E. Toner
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

July 21, 2022

RE: MUR 8031 (formerly RR 21L-35)
Hawaii Republican Party and
Stephen C. Holck in his official
capacity of treasurer

Dear Mr. Toner:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your client, the Hawaii Republican Party and Stephen C. Holck in his official capacity as treasurer (the “Committee”), may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). On July 12, 2022, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R. § 104.3(a), (b), and 102.17(c). 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 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. Enclosed is a conciliation agreement for your consideration, [REDACTED]. The basis of the Commission’s civil penalty calculation is set forth below.

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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 Christopher Curran or Peter Blumberg, the attorneys assigned to this matter, at (202) 694-1650, 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 sixty 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.

In addition, 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

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).

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson".

Allen Dickerson
Chairman

Enclosures:

1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Hawaii Republican Party and
Stephen C. Holck in his official
capacity as treasurer **MUR 8031**

I. INTRODUCTION

12 The Reports Analysis Division (“RAD”) referred the Hawaii Republican Party and
13 Stephen C. Holck in his official capacity as treasurer (the “Committee”) to the Office of General
14 Counsel for failing to accurately disclose an aggregate total of \$3,159,637.98 in additional
15 receipts and disbursements on its 2020 30-Day Post-General Report. RAD also referred the
16 Hawaii Republican Party to the Office of General Counsel for failing to accurately disclose an
17 aggregate total of \$232,980.30 in additional receipts and disbursements in its 2020 Year-End
18 Report. As discussed below, the Commission finds reason to believe that the Committee
19 violated 52 U.S.C. § 30104(b)(2), (4), 11 C.F.R. § 104.3(a), (b), and 11 C.F.R. § 102.17(c) by
20 failing to report receipts and disbursements.

II. FACTUAL BACKGROUND

A. The Committee's Original 2020 30 Day-Post-General and Year-End Reports

24 The Committee is a state party committee of the Republican party.¹ On December 3,
25 2020, the Committee filed its 2020 30-Day Post-General Report covering the period from
26 October 15, 2020 through November 23, 2020.² The report disclosed \$51,250.00 in receipts on

¹ FEC Form 1, HRP Amended Statement of Org. at 2 (Feb. 24, 2001).

² RAD Referral at 1 (Hawaii Republican Party) (June 2, 2021) (“Referral”).

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1 Line 12 (Transfers from Affiliated/Other Party Committees) of the Detailed Summary Page.³

2 The report also disclosed \$0.00 in disbursements on Line 22 (Transfers to Affiliated/Other Party

3 Committees) of the Detailed Summary Page.⁴ On January 30, 2021, the Committee filed its

4 2020 Year-End Report covering the period from November 24, 2020, through December 31,

5 2020.⁵ The Report disclosed \$0.00 on Line 12 of the Detailed Summary Page.⁶ The report also

6 disclosed \$0.00 on Line 22 of the Detailed Summary Page.⁷

7 **B. The Amended 2020 30-Day Post-General Report**

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9 On February 28, 2021, the Committee filed an Amended 2020 30-Day Post-General

10 Report.⁸ The report disclosed \$1,631,068.99 in receipts on Line 12 of the Detailed Summary

11 Page, an increase in receipts of \$1,579,818.99 from the original report.⁹ The report also

12 disclosed \$1,579,818.99 in disbursements on Line 22 of the Detailed Summary Page, an increase

13 of \$1,579,818.99 from the original report.¹⁰ The Amended 2020 30-Day Post-General Report

14 included memo text stating in part:

15 “Amended to include JF transfers and associated memos as well as

16 corresponding transfers to the RNC. These transactions were initially not

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

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reported due to a misunderstanding regarding reporting requirements and responsibilities”¹¹

On March 21, 2021, RAD sent a Request for Additional Information (“RFAI”) to the

5 Committee referencing the Amended 2020 30-Day Post-General Report.¹² The RFAI

6 acknowledged the memo text attached to the report but requested additional clarification

7 regarding the substantial increase in receipts and disbursements disclosed in the Amended 2020

8 30-Day Post-General Report.¹³

C. The Amended 2020 Year-End Report

The Committee also filed an Amended 2020 Year-End Report on February 28, 2021.¹⁴

12 This report disclosed \$116,490.15 on Line 12 of the Detailed Summary Page, an increase in

13 receipts of \$116,490.15 from the original report.¹⁵ The report also disclosed \$116,490.15 in

14 disbursements on Line 22 of the Detailed Summary Page, an increase of \$116,490.15 from the

15 original report.¹⁶ Additionally, the report included memo text stating in part:

“Amended to include JF transfer, associated memos, and corresponding transfer to the RNC. These transactions were initially not reported due to a misunderstanding regarding reporting requirements and responsibilities”¹⁷

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Id.

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Id.

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Id.

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Id.

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Id.

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1 On March 21, 2021, RAD sent the Committee an RFAI regarding the Amended 2020
 2 Year-End Report.¹⁸ The RFAI acknowledged the memo text attached to the report but requested
 3 additional clarification regarding the substantial increase in receipts and disbursements disclosed
 4 in the Amended 2020 Year-End Report.¹⁹ On April 26, 2021, in a Miscellaneous Report
 5 responding to both RFAIs, the Committee said the reports were amended to include the required
 6 information and reiterated that the joint fundraising transactions “were not reported due to a
 7 misunderstanding regarding reporting requirements.”²⁰.

8 **D. The Referral**

9
 10 On June 2, 2021, RAD referred the matter to the Office of General Counsel for possible
 11 enforcement action under 52 U.S.C. § 30109, and on the same day this Office notified the
 12 Committee of the referral.²¹ A copy of the referral was included with the notification.²² The
 13 Committee responded on July 21, 2021.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ FEC Form 99, Miscellaneous Report to FEC, HRP (Apr. 26, 2021),
<https://docquery.fec.gov/pdf/803/202104269445376803/202104269445376803.pdf>.

²¹ See Letter from Jeff S. Jordan to Stephen C. Holk (June 2, 2021); Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009). On April 27, 2021, prior to the referral, the assigned RAD analyst called a representative for the Committee and explained that the increases in receipts and disbursements on the Amended 2020 30-Day Post-General Report and Amended 2020 Year-End Report, may be referred to another Commission office for potential further action. Referral at 3. The Analyst told the Committee representative that the Committee could provide additional clarification for the public record if it wished to do so, but the Committee did not submit additional materials. *Id.*

²² See Email from Christal Dennis to Stephen C. Holk (June 2, 2021).

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1 The Committee’s Response repeats its previous explanations that its reporting errors
 2 stemmed from a misunderstanding of the reporting requirements for joint fundraising.²³ The
 3 Committee argues that the Commission should dismiss the matter in an exercise of its
 4 prosecutorial discretion because the reporting errors “involve[] the inadvertent omission of
 5 several transfers, which were immediately and proactively corrected by the Hawaii GOP upon
 6 discovery of the omission.”²⁴ The Committee also states that it has since begun development of
 7 a written compliance manual and is implementing a “transition protocol” to ensure such
 8 reporting errors do not happen again.²⁵ If not dismissed, the Committee requests that the matter
 9 be transferred to the Alternative Dispute Resolution Program.²⁶

10 **III. LEGAL ANALYSIS**

11 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
 12 treasurers to file reports of receipts and disbursements in accordance with the provisions of
 13 52 U.S.C. § 30104.²⁷ These reports must include, *inter alia*, the name of each person who
 14 contributes over \$200, the total amount of receipts and disbursements, including transfers from
 15

²³ HRP Resp. at 1 (“When Hawaii GOP officials agreed to participate in Trump Victory, they were not aware that the party was required to report the activity. As such, they did not inform their compliance vendor—who prepares the party’s FEC reports—of their participation in Trump Victory.”)

²⁴ *Id.*

²⁵ *Id.* at 2. The Committee also states that it plans to have a representative attend a Commission conference or webinar for political party committees. *Id.*

²⁶ *Id.*

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

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1 affiliated committees and between political party committees, and appropriate itemizations,
 2 where required.²⁸

3 The Act and Commission regulations permit candidates and political committees to
 4 engage in joint fundraising activities by establishing a separate political committee to act as their
 5 joint fundraising representative.²⁹ Participants must enter into a written agreement that identifies
 6 this representative and states the formula for the allocation of fundraising proceeds and
 7 expenses.³⁰ Commission regulations also require that the representative establish a separate
 8 depository account to be used solely for the receipt and disbursement of joint fundraising
 9 proceeds and deposit those proceeds in this account within ten days of receipt.³¹

10 Under 11 C.F.R. § 102.17(c)(8), a joint fundraising representative must report all funds
 11 received in the reporting period they are received and all disbursements in the reporting period
 12 they are made.³² Similarly, the date a contribution is received by the joint fundraising
 13 representative is the date that the participating political committee must report as the date the
 14 contribution was received, even if it is disbursed by the joint fundraising representative at a later
 15 date and even though the participating political committee is only required to report the proceeds
 16 once the funds have been received from the fundraising representative.³³ After the joint

²⁸ 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

²⁹ 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

³⁰ 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

³¹ *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

³² *Id.* § 102.17(c)(8)(i)-(ii).

³³ See *id.* § 102.17(c)(3)(iii), (c)(8)(i)(A).

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1 fundraising representative distributes the net proceeds, the participating committee must report
2 its share received as a transfer-in from the fundraising representative and also file a memo entry
3 on Schedule A itemizing its share of gross receipts as contributions from the original contributors
4 as required by 11 C.F.R. § 104.3(a).³⁴

5 Here, the Committee acknowledges that it omitted required receipt and disbursement
6 information on its original 2020 Post-General and 2020 Year-End Reports. Accordingly, the
7 Commission finds reason to believe that the Committee and Stephen C. Holck in his official
8 capacity as treasurer violated 52 U.S.C. § 30104(b)(2) and (4), 11 C.F.R. § 104.3(a), (b), and 11
9 C.F.R. § 102.17.

³⁴

See id. § 102.17(c)(8)(i)(B).