



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 19, 2022

By Email Only

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Rollie Wilson, Esq.
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RE: MUR 8067
(formerly AR 22-03 & P-MUR 649)
UtePAC and Skyler Massy in his
official capacity as treasurer

Dear Mr. Wilson:

On May 18, 2021, the Federal Election Commission notified your client, UtePAC and Skyler Massy in his official capacity as treasurer (the "Committee"), that it had received the Committee's *sua sponte* Submission regarding possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Additionally, on July 22, 2022, the Commission notified the Committee that it had been referred by the Audit Division to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. A copy of the Audit Referral was forwarded to your client at that time.

Upon review of the available information, on September 13, 2022, the Commission found reason to believe that the Committee violated: (1) 52 U.S.C. § 30104(b) by misstating financial activity; (2) 52 U.S.C. § 30104(b) by understating total receipts and disbursements; (3) 52 U.S.C. § 30102(h) by making cash disbursements; (4) 52 U.S.C. § 30102(c) and (d) by failing to maintain records to support disbursements; and (5) 52 U.S.C. § 30104(b) by failing to correctly disclose disbursements. The Factual and Legal Analysis, which provides the basis for the Commission's findings, is enclosed for your information.

Please note that your client has 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.¹

¹ See 18 U.S.C. § 1519.

MUR 8067 (UtePAC)
Letter to Rollie Wilson, Esq.
Page 2 of 3

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

If your client is interested in engaging in pre-probable cause conciliation, or has any questions, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021 or rweiss@fec.gov, within seven days of receiving this letter. During conciliation, your client may submit any factual or legal materials that it believes are relevant to the Commission's consideration 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.² Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery 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 https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

² See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A).

MUR 8067 (UtePAC)
Letter to Rollie Wilson, Esq.
Page 3 of 3

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. 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.³

We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures
Factual and Legal Analysis

³ 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).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** UtePAC and Skyler Massy **MUR:** 8067
4 in his official capacity as treasurer
5

6 **I. INTRODUCTION**

7 This matter arose from a referral from the Audit Division’s audit of the 2018 election
8 cycle activity of UtePAC and a *sua sponte* submission (the “Submission”) by UtePAC and
9 Skyler Massy in his official capacity as treasurer (the “Committee”).¹ On June 17, 2022, the
10 Commission approved the Final Audit Report, which contained six findings that the Audit
11 Division referred to the Office of General Counsel (“OGC”) on July 18, 2022 for possible
12 enforcement action.² Those findings are: (1) misstatement of financial activity; (2) increased
13 activity; (3) cash disbursements; (4) recordkeeping of disbursements; (5) recordkeeping for
14 communications; and (6) disclosure of disbursements.³ The Committee’s response to OGC’s
15 notification does not dispute any of the findings and states that the Commission should minimize
16 any enforcement action taken against the Committee and instead seek enforcement against its
17 former treasurer and director — Robert G. Lucero Jr.⁴ The Committee’s *sua sponte* Submission
18 is based on the Preliminary Audit Findings issued on August 28, 2020.⁵ Although the
19 Submission is framed as alleging violations of the Act and Commission regulations by Lucero
20 while he was UtePAC’s treasurer, it also appears to establish the Committee’s own liability for

¹ See Referral (July 18, 2022); Submission (May 17, 2021).

² Referral at 1; *see also* Final Audit Report of the Commission on UtePAC (January 1, 2017 – December 31, 2018) (July 18, 2022) (“FAR”).

³ FAR at 7-9.

⁴ Resp. at 1 (Aug. 2, 2022).

⁵ Submission at 3.

1 various reporting violations, and it supplements the Preliminary Audit Findings with information
2 about apparent additional reporting violations that occurred after the 2018 election cycle that
3 were the subject of an independent audit conducted by an accounting firm hired by the
4 Committee.⁶ The Committee does not dispute any facts or make legal arguments regarding the
5 violations.⁷

6 For the reasons that follow, the Commission finds reason to believe that the Committee:
7 (1) violated 52 U.S.C. § 30104(b) by misstating financial activity; (2) violated 52 U.S.C.
8 § 30104(b) by understating total receipts and disbursements;⁸ (3) violated 52 U.S.C. § 30102(h)
9 by making cash disbursements;⁹ (4) violated 52 U.S.C. § 30102(c) and (d) by failing to maintain
10 records to support disbursements;¹⁰ and (5) violated 52 U.S.C. § 30104(b) by failing to correctly
11 disclose disbursements.¹¹

12 II. FACTUAL BACKGROUND

13 The Ute Indian Tribe (the “Tribe”) established UtePAC, a nonconnected political
14 committee, in September 2016 and hired Lucero as UtePAC’s treasurer and director.¹² The

⁶ *Id.* at 4, 12.

⁷ Resp. at 1-4.

⁸ FAR at 7-8.

⁹ FAR at 8; Submission at 12, Ex. T at 1-2 (“Wipfli Audit Report”).

¹⁰ FAR at 8-9; Wipfli Audit Report at 1-2.

¹¹ FAR at 9; Wipfli Audit Report at 1-2.

¹² Submission at 2; UtePAC, Statement of Organization (Sept 29, 2016),
<https://docquery.fec.gov/pdf/976/201609299032144976/201609299032144976.pdf>.

1 Submission alleges that Lucero managed UtePAC and that he is responsible for all of the
2 violations.¹³

3 The Submission is primarily based on the Commission’s Preliminary Audit Findings
4 regarding UtePAC for the 2017-18 election cycle and an independent audit of UtePAC finances
5 covering a portion of the 2019-20 election cycle conducted by an accounting firm, Wipfli LLP
6 (“Wipfli”), engaged by the Tribe.¹⁴

7 The Submission cites to the Commission’s Preliminary Audit Findings, alleging that the
8 Commission “concluded on a preliminary basis that Mr. Lucero’s management and
9 misappropriations of UtePAC funds resulted in [] violation[s],” including misstatement of
10 financial activity; misreporting of increased financial activity; excessive cash disbursements;
11 failure to maintain records for receipts and disbursements; failure to maintain records for
12 communications; and failure to disclose disbursement information.¹⁵ The Submission relies on
13 the Commission’s August 28, 2020 Preliminary Audit Findings,¹⁶ which were subsequently
14 included in the Commission’s Final Audit Report with slightly modified figures.¹⁷

15 According to the Submission, the Tribe engaged Wipfli on January 4, 2020, to conduct an
16 audit of Lucero’s management of UtePAC finances covering the period from December 2018 to
17 February 2020.¹⁸ The Submission alleges that the Wipfli audit determined that there were

¹³ Submission at 2.

¹⁴ *See id.* at 3 (“The information contained in this Submission comes from the Tribe’s and FEC’s audits that cover almost the entire time period Mr. Lucero was employed as the treasurer and director of UtePAC.”).

¹⁵ *Id.* at 4. The Submission included a number of Audit Division spreadsheets. *See id.*, Exs. A and B.

¹⁶ *Id.* at 4.

¹⁷ *See generally* FAR.

¹⁸ Submission at 11.

1 significant cash withdrawals without documentation, checks to unknown payees, and a lack of
2 supporting documentation for more than \$300,000 in transactions.¹⁹ The Submission attaches a
3 copy of Wipfli’s audit report, which concluded that “[o]verall, there was a pervasive lack of
4 control and supporting documentation over how contributions made to the [Committee] . . . were
5 spent during the time period [of the audit].”²⁰ The Wipfli audit report identified \$317,619.98 in
6 disbursements between December 2018 and February 2020,²¹ whereas the Committee disclosed
7 only \$20,943.61 in total disbursements during the entire 2019-2020 election cycle.²² The
8 Submission asserts that these findings mirror the findings of the Commission’s audit of UtePAC
9 for the previous election cycle.²³

10 According to the Submission, Lucero “became unresponsive” during the Wipfli audit and
11 therefore the Tribe terminated its relationship with Lucero on February 26, 2020.²⁴

12 The Preliminary Audit Findings were subsequently incorporated into the Interim Audit
13 Report.²⁵ At that stage of the audit process the Committee responded to the findings and
14 corrected the some of the reporting errors.²⁶ The FAR acknowledges that the Committee

¹⁹ *Id.* at 12, Ex. T.

²⁰ Submission, Ex. T.

²¹ *Id.*

²² *FEC Disbursements: Filtered Results*, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=pending&cycle=2020> (last visited Sept 7, 2022) (reflecting total disbursements by UtePAC from January 1, 2019 to December 31, 2020).

²³ Submission at 12, Ex. T.

²⁴ *Id.* at 3.

²⁵ Referral at 3.

²⁶ *Id.*

1 corrected the public record with regard to the misstated financial activity for the audit period.²⁷
2 However, because the Committee’s corrective action occurred in response to the audit, the
3 finding remained in the audit report.²⁸ In response to the Draft Final Audit Report, the
4 Committee again requested the findings that were addressed be reduced or removed from the
5 audit report and also requested an audit hearing before the Commission.²⁹ The Commission held
6 a hearing and subsequently approved the six findings in the Final Audit Report.³⁰

7 **III. LEGAL ANALYSIS**

8 **A. Misstatement of Receipts and Disbursements**

9 The Act requires committee treasurers to file accurate reports of receipts and
10 disbursements.³¹ In its original reports the Committee understated receipts by \$209,332 and
11 disbursements by \$198,202, overstated beginning cash on hand by \$15,422, and understated
12 ending cash on hand by \$12,065 in calendar year 2018.³² In response to the Commission’s audit,
13 the Committee corrected the misstated receipts, disbursements, beginning cash on hand and
14 ending cash on hand for 2018 by filing several Form 99 (Miscellaneous Electronic Submission)
15 submissions. The Commission approved a finding of these violations in the Final Audit
16 Report.³³ Additionally, the Committee indicated in its Submission that the Wipfli Audit

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ 52 U.S.C. § 30104(b).

³² Referral at 3.

³³ *Id.*

1 concluded that the Committee continued to misstate its financial activity in 2019 and 2020.³⁴
2 Therefore, given the undisputed information regarding this violation, the Commission finds
3 reason to believe that the Committee violated 52 U.S.C. § 30104(b).

4 **B. Increased Activity (Corrected)**

5 The Commission found that the Committee understated its receipts by \$248,162 and
6 disbursements by \$255,268 on the original reports filed over the two-year period ending on
7 December 31, 2018.³⁵ These figures include the \$209,332 understatement of receipts and the
8 \$198,202 understatement of disbursements from 2018 discussed above regarding the
9 Misstatement of Financial Activity violation.³⁶ In response to the Interim Audit Findings, the
10 Committee filed several Form 99 submissions to correct the reporting, as much as possible
11 according to the Committee.³⁷ Additionally, the Committee indicated in its Submission that the
12 Wipfli Audit identified \$317,619.98 in disbursements between December 2018 and February
13 2020,³⁸ whereas the Committee disclosed only \$20,943.61 in total disbursements during the
14 entire 2019-2020 election cycle.³⁹ Therefore, the Commission finds reason to believe that the
15 Committee violated 52 U.S.C. § 30104(b).

³⁴ Wipfli Audit Report at 7-8.

³⁵ Referral at 7.

³⁶ *Id.* at 7-8.

³⁷ *Id.* at 8.

³⁸ *Id.*

³⁹ *FEC Disbursements: Filtered Results*, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=spending&cycle=2020> (last visited Sept. 7, 2022) (reflecting total disbursements by UtePAC from January 1, 2019 to December 31, 2020).

1 **C. Cash Disbursements**

2 A political committee may only make expenditures in cash, not to exceed \$100, from a
3 petty cash fund.⁴⁰ A written journal for such cash expenditures is to be maintained by the
4 treasurer.⁴¹ All other disbursements shall be made by check or similar draft drawn on accounts
5 established at the committee's depositories.⁴² The Commission's audit revealed cash
6 disbursements, totaling \$13,640, which were cash withdrawals, including ATM withdrawals
7 from the Committee's bank account.⁴³ The audit also determined that the Committee did not use
8 a petty cash fund for these withdrawals nor did it ever maintain a petty cash fund.⁴⁴ The
9 Commission approved a finding of these violations in the Final Audit Report.⁴⁵ Additionally, the
10 Committee indicated in its Submission that the Wipfli Audit identified an additional \$57,985.17
11 in cash withdrawals.⁴⁶ Therefore, the Commission finds reason to believe that the Committee
12 violated 52 U.S.C. § 30102(h).

13 **D. Failure to Maintain Required Records for Disbursements**

14 The Act requires each political committee to maintain records with respect to the matters
15 required to be reported, which shall provide in sufficient detail the necessary information and
16 data from which the filed reports may be verified, explained, clarified, and checked for accuracy

⁴⁰ 52 U.S.C. § 30102(h).

⁴¹ 11 C.F.R. § 102.11.

⁴² 52 U.S.C. § 30102(h).

⁴³ Referral at 13.

⁴⁴ *Id.* at 11-12.

⁴⁵ FAR at 4-6.

⁴⁶ Wipfli Audit Report at 8.

1 and completeness.⁴⁷ The Commission’s audit concluded that the Committee did not maintain
2 sufficient records for 16 transactions totaling \$18,140.⁴⁸ The audit also concluded that the
3 Committee did not maintain records to support 15 disbursements on Schedules B (Itemized
4 Disbursements), Line 21(b) (Other Federal Operating Expenditures) and Line 29 (Other
5 Disbursements); and Schedule H4 (Disbursements for Allocated Federal/Non-Federal Activity)
6 with purposes including, “advertising,” “printing,” “video crew expense,” “outdoor retailer
7 advertising,” “printed materials” and “banners, posters, brochures.”⁴⁹ The Commission
8 approved a finding that the Committee failed to maintain records to support disbursements
9 totaling \$18,140 and failed to maintain records to support disbursements for communications
10 totaling \$61,822.⁵⁰ Additionally, the Committee indicated in its Submission that the Wipfli
11 Audit identified an additional \$317,619.98 in disbursements with no supporting
12 documentation.⁵¹ Therefore, the Commission finds reason to believe that the Committee violated
13 52 U.S.C. § 30102(c) and (d).

14 **E. Incorrect Disclosure of Disbursements**

15
16 The Act requires committees to report the correct purpose of disbursements on reports
17 filed with the Commission.⁵² The Commission’s audit identified 25 reported disbursements
18 totaling \$94,998 that either lacked or had inaccurate disclosure information.⁵³ Of these 25

⁴⁷ 52 U.S.C. § 30102(c) and (d); *see also* 11 C.F.R. § 104.14(b)(1).

⁴⁸ Referral at 14.

⁴⁹ *Id.* at 17.

⁵⁰ *Id.* at 16-17.

⁵¹ Wipfli Audit Report at 8.

⁵² 52 U.S.C. § 30104(b)(5)(A); 11 CFR § 104.3(b)(3)(i).

⁵³ Referral at 22.

1 disbursements, 13 also listed incorrect payees and were listed on the incorrect schedule.⁵⁴ The
2 Commission approved a finding of these violations in the Final Audit Report.⁵⁵ Therefore, the
3 Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) by
4 reporting inaccurate information regarding disbursements.

⁵⁴ *Id.*

⁵⁵ *Id.*