

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **RR 22L-13**

4 DATE REFERRED: Mar. 29, 2022

5 DATE OF NOTIFICATION: Mar. 30, 2022

6 RESPONSE RECEIVED: Apr. 15, 2022

7 DATE ACTIVATED: May 16, 2022

8 SOL: Oct. 20, 2025 – Dec. 3, 2025

9 ELECTION CYCLE: 2020

10 **SOURCE:** Internally Generated

11 **RESPONDENT:** Michigan Democratic State Central Committee and
12 Traci Kornak in her official capacity as treasurer

13 **RELEVANT STATUTE
14 AND REGULATIONS:**

15 52 U.S.C. § 30116(a), (f)

16 11 C.F.R. § 103.3(b)(3)

17 11 C.F.R. § 110.1(c)(5)

18 11 C.F.R. § 110.2(d)

19 11 C.F.R. § 110.9

20 **INTERNAL REPORTS CHECKED:** Disclosure reports

21 **FEDERAL AGENCIES CHECKED:** None

22 **I. INTRODUCTION**

23 The Reports Analysis Division (“RAD”) referred the Michigan Democratic State Central
24 Committee and Traci Kornak in her official capacity as treasurer (“MDSCC” or the
25 “Committee”) to the Office of General Counsel (“OGC”) for failing to timely remedy
26 \$154,233.34 in excessive 2020 calendar year contributions, in violation of the Federal Election
27 Campaign Act of 1971, as amended (the “Act”).¹ According to the Referral, the Committee
28 issued refunds between 134 and 421 days after receipt, including 35 refunds made over a year
29 after receipt.² The Committee acknowledges the untimely refunds and attributes the late refunds

30 ¹ Referral at 1 (Mar. 29, 2022).

31 ² *Id.*, Attach. 1 (Untimely Resolved/Unresolved Excessive Contributions Chart).

1 to “a series of miscommunications during a period of unprecedented high volume of
2 contributions.”³ For the reasons discussed below, we recommend that the Commission open a
3 Matter Under Review (“MUR”), find reason to believe that the Committee violated 52 U.S.C.
4 § 30116(f), and authorize pre-probable cause conciliation with the Committee.

5 **II. FACTUAL BACKGROUND**

6 MDSCC is a state party committee of the Democratic Party and Traci Kornak is the
7 Committee’s treasurer.⁴ RAD referred this matter to OGC because the Committee received
8 \$154,401.33 in excessive contributions during calendar year 2020 that it failed to timely refund,
9 including \$151,901.33 from 29 individuals and \$2,500 from one multicandidate PAC.⁵ The
10 Referral describes that \$154,233.34 of the total excessive contributions were refunded between
11 134 and 421 days after receipt, well beyond the 60-day deadline established by Commission
12 regulations and that \$167.99 in excessive contributions from two individuals remained
13 unrefunded.⁶

14 The Committee acknowledges receiving and failing to timely refund the excessive
15 contributions.⁷ The Response asserts that “[m]ost of these excessive contributions were due not

³ Resp. at 1 (Apr. 15, 2022).

⁴ MDSCC Amended Statement of Organization at 1 (Feb. 23, 2021).

⁵ Referral at 1; *id.*, Attach. 1 (Untimely Resolved/Unresolved Excessive Contributions Chart) (identifying excessive contributions from the Committee’s 2020 September Monthly Report, Amended 2020 October Monthly Report, 2020 12-Day Pre-General Report, and 2020 30-Day Post-General Report, and listing the number of days between receipt and refund of each).

⁶ *Id.*, Attach. 1 (Unremedied Contributions, Listed by Contributor Chart) (listing \$142.98 in excessive contributions from Elizabeth Naftali and \$25.01 in excessive contributions from Lisa Orange as unremedied). The excessive contributions were reported on the Committee’s original 2020 September Monthly Report (filed Sept. 20, 2020), Amended 2020 October Monthly Report (filed Nov. 19, 2020), 2020 12-Day Pre-General Report (filed Oct. 22, 2020), and 2020 30-Day Post-General Report (filed Dec. 3, 2020). Referral at 2-5. RAD sent the Committee Requests for Additional Information (“RFAIs”) for each of these original reports requesting information about the apparent excessive contributions. MDSCC, RFAI (Nov. 12, 2020) (2020 September Monthly Report); MDSCC, RFAI (Jan. 18, 2021) (2020 October Monthly Report); MDSCC, RFAI (Jan. 18, 2021) (2020 12-Day Pre-General Report); MDSCC, RFAI (Feb. 17, 2021) (2020 30-Day Post-General Report).

⁷ Resp. at 1.

1 to direct contributions to the party, but rather, because of joint fundraising allocations, that, in the
2 aggregate, caused an excessive contribution to the committee.”⁸ The Committee further asserts
3 that it “had procedures in place to handle” the receipt of excessive contributions but attributes its
4 failure to timely refund the contributions to “a series of miscommunications during a period of
5 unprecedented high volume of contributions.”⁹ The Committee’s amended reports itemize
6 refunds of all but \$167.99 of the excessive contributions identified in the Referral.¹⁰ The
7 Committee’s Response and filings with the Commission assert that it refunded the allegedly
8 outstanding \$167.99 in aggregate refunds to two individuals “in 2021,” but that those
9 transactions were not itemized due to the small amounts, and we are aware of no information to
10 the contrary.¹¹ The Response also states that “MDSCC has taken several steps to ensure that any
11 [excessive] contributions are refunded in a timely matter, including real time monitoring of joint
12 fundraising allocations, additional review of data prior to importation into its compliance
13 software, improved digital communication between staff related to these contributions and a
14 more organized workflow between staff and outside consultants related to incoming

⁸ *Id.*

⁹ *Id.*

¹⁰ The Committee filed amended reports that included memo text entries referencing completed or planned refunds of the excessive contributions identified in the RFAIs. MDSCC Amended 2020 September Monthly Report at 6 (Oct. 5, 2021); MDSCC Amended 2020 October Monthly Report at 6 (Oct. 5, 2021); MDSCC Amended 2020 Pre-General Report at 6 (Oct. 5, 2021); MDSCC Amended 2020 Post-General Report at 6 (Oct. 5, 2021). The Committee supplemented those amendments with Miscellaneous Electronic Submissions that also referenced those refunds. *See* MDSCC FEC Form 99 (July 14, 2021, and Oct. 5, 2021).

¹¹ Resp. at 1; MDSCC Amended 2020 Pre-General Report at 6 (Oct. 5, 2021) (“Lisa Orange[‘s] . . . excessive contributions were refunded on the March Monthly report, filed March 20, 2021”); MDSCC Amended 2020 Post-General Report at 6 (Oct. 5, 2021) (“Refunds for . . . Lisa Orange were refunded on the April Monthly Report filed 4/20/21. . . . [contributions from] Elizabeth Naftali were transferred in error. The adjustment was made and reported in the 9/30/21 Biden Victory Fund transfer to be reported on the October Monthly Report to be filed on or before 10/20/21.”); *see also* MDSCC FEC Form 99 (Oct. 5, 2021) (referencing its refunds of the excessive contributions from Naftali and Orange).

1 contributions.”¹² The Committee requests that the Commission take no further action or,
2 alternatively, refer this matter to the Alternative Dispute Resolution Office (“ADRO”).¹³

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It also participated in the RAD

5 Education Program for the 2019-2020 cycle in lieu of an audit.¹⁵

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The Committee has been the subject of prior enforcement matters and an audit referral.

7 Most recently, on September 3, 2021, the Commission approved a negotiated conciliation

8 agreement with the Committee in MUR 7902 (AR 19-11R) involving over \$42,000 in excessive

9 contributions in calendar year 2018 that were refunded beyond the 60-day deadline.¹⁶ The

10 negotiated agreement required the Committee to pay a \$19,000 civil penalty; cease and desist

11 from, *inter alia*, further 30116(f) violations; and have the treasurer or other personnel responsible

12 for Federal Election Campaign Act compliance attend a Commission-sponsored training within

13 12 months.¹⁷

14 The Committee was also a respondent in MUR 7126, wherein the Committee entered into

15 a conciliation agreement admitting to recordkeeping, deposit, and reporting violations associated

16 with bingo fundraisers and agreed to pay a \$500,000 civil penalty.¹⁸ The conciliation agreement

¹² Resp. at 1.

¹³ *Id.* at 2.

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¹⁵ *Id.*

¹⁶ Certification ¶ 1, MUR 7902 (MDSCC) (Apr. 22, 2021).

¹⁷ Conciliation Agreement ¶¶ VI.1-3, MUR 7902; Cert., MUR 7902 (Sept. 3, 2021). The Committee paid the \$19,000 civil penalty on September 15, 2021. Two-Way Memo., MUR 7902 (Oct. 1, 2021). Commission records show that the Committee’s Director of Research, Nicholas Barnes, attended the Commission’s 2021 Virtual Conference in August 2021; we have no record of any Committee staff attending subsequent Commission-sponsored training conferences. Intra-agency Email from Isaac Baker Communications Specialist, FEC, to Ray Wolcott, Staff Attorney, FEC (July 18, 2022, 11:12 EST) (“Baker Email”).

¹⁸ Conciliation Agreement ¶¶ V.1-7, VI.1, MUR 7126 (May 11, 2017). The Conciliation Agreement required the Committee to pay the \$500,000 penalty by May 10, 2019, and established a payment plan, but the Committee

1 in MUR 7126 also included a requirement that the “Treasurer and other personnel responsible for
 2 complying with the Act and Commission’s regulations attend a Commission-sponsored regional
 3 training conference” within one year of the agreement’s May 11, 2017 effective date, and the
 4 Committee agreed to retain an independent outside accounting firm or compliance consultant to
 5 provide advice to the Committee on its accounting processes and internal controls regarding
 6 compliance.¹⁹

7 III. LEGAL ANALYSIS

8 The Act provides that no person shall make contributions to a political committee
 9 established and maintained by a state committee of a political party in any calendar year that, in
 10 the aggregate, exceed \$10,000.²⁰ With the exception of a committee established and maintained
 11 by a national political party, no multicandidate committee shall make contributions to any other
 12 political committee in any calendar year which in the aggregate exceed \$5,000.²¹ Further, the
 13 Act provides that no political committee shall knowingly accept excessive contributions.²²

14 A committee’s treasurer is responsible for examining all contributions received to
 15 ascertain whether contributions received, when aggregated with other contributions from the
 16 same contributor, exceed the Act’s contribution limits.²³ Contributions which on their face

failed to pay a portion (\$195,000) within the prescribed two-year period. CA ¶ VI.1.a-b; Debt Letter from Jeff Jordan, Complaints and Legal Administration, FEC, to Traci Kornak, Treasurer, Michigan Democratic State Central Committee (Dec. 18, 2019). According to the Commission’s internal records, the Commission transferred the debt to the Department of Treasury on January 28, 2020, and the Committee ultimately paid the debt through four payments made to Treasury in June, July, August, and September 2020.

¹⁹ Conciliation Agreement ¶¶ VI.5-6, MUR 7126. Commission records show that the Committee’s previous treasurer, Sandra O’Brien, and the current Committee Chair, Lavora Barnes, attended the Commission’s 2017 Chicago Regional Conference in August 2017. Baker Email; *Lavora Barnes, MDP Chair*, MICHIGANDEMOS.COM, <https://michigandems.com/chair> (last visited July 18, 2022) (identifying Barnes as MDSCC Chief Operating Officer from 2015-2019 and Committee Chair from February 2019 to present).

²⁰ 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. § 110.1(c)(5).

²¹ 52 U.S.C. § 30116(a)(2)(C); 11 C.F.R. § 110.2(d).

²² 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

²³ 11 C.F.R. § 103.3(b).

1 exceed the contribution limits, and contributions which do not appear to exceed the contribution
2 limits, but exceed contribution limits when aggregated with other contributions may be returned
3 to the contributor or deposited.²⁴ If deposited, contributions must be: (1) redesignated in
4 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); (2) reattributed in accordance with
5 11 C.F.R. § 110.1(k)(3); or (3) refunded within 60 days of the date that the committee has actual
6 notice of the need to refund, redesignate or reattribute the contributions.²⁵

7 As a state party committee, the Committee was limited to accepting \$10,000 per calendar
8 year from individuals and \$5,000 from multicandidate committees. As documented in the
9 Referral and acknowledged in the Response, the Committee received a total of \$154,233.34 in
10 excessive contributions from 29 individuals and one multicandidate PAC across four reports
11 filed during calendar year 2020: the 2020 September Monthly Report, 2020 October Monthly
12 Report, 2020 12-Day Pre-General Report, and 2020 30-Day Post-General Report.²⁶ The
13 Committee states that it refunded all of the excessive contributions identified in the Referral but
14 the Referral notes that it did so well outside of the 60-day deadline established by Commission
15 regulations, issuing refunds 134-421 days after receipt of the excessive contributions.²⁷

16 The Committee asserts that “a series of miscommunications during a period of
17 unprecedented high volume of contributions caused a delay in processing refunds.”²⁸ The

²⁴ *Id.* § 103.3(b)(3).

²⁵ *Id.*

²⁶ *Supra* note 5.

²⁷ Referral Attach. 1 (Untimely Resolved/Unresolved Excessive Contributions Chart) (listing the number of days between receipt and refund of each excessive contribution); *see* Resp. at 1 (explaining that \$167.99 in refunded contributions were unitemized and therefore, not apparent on its amended reports); MDSCC Amended 2020 Post-General Report at 6 (Oct. 5, 2021) (stating that refunds for the \$167.99 were made in March 2021, approximately 4-6 months after MDSCC received the excessive contributions).

²⁸ Resp. at 1.

1 Committee does not explain, however, why some of those refunds were delayed by over a year.²⁹
2 Although the Response appears to offer this as mitigating circumstances surrounding the
3 apparent violation, the Committee does not explain why it believes the Commission should treat
4 excessive contributions via joint fundraising differently than excessive direct contributions, why
5 a high volume during a presidential election cycle should be considered a mitigating factor, or
6 what miscommunications occurred and how they may have impacted the Committee's ability to
7 timely issue refunds. The Committee requests that the Commission take no further action or,
8 alternatively, refer this matter to ADRO, but the circumstances — including the amount in
9 violation, the substantial delay involved in making the refunds, and the Committee's recent
10 history of violations, discussed above — do not support either requested outcome.³⁰ Indeed, the
11 Committee has already attended multiple Commission-sponsored education programs, including
12 training in 2017, 2020, and 2021, and yet continues to commit similar violations of the Act. We
13 therefore recommend that the Commission open a MUR and find reason to believe that the
14 Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions.

²⁹ Referral, Attach. 1 (Untimely Resolved/Unresolved Excessive Contributions Chart) (identifying 35 contributions refunded more than a year from the date of receipt).

³⁰ Resp. at 1. This matter was referred to OGC in accordance with RAD Review and Referral Procedures

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V. RECOMMENDATIONS

1. Open a Matter Under Review;
2. Find reason to believe that Michigan Democratic State Central Committee and Traci Kornak in her official capacity as treasurer violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions;
3. Approve the attached Factual and Legal Analysis;
4. Enter into pre-probable cause conciliation with Michigan Democratic State Central Committee and Traci Kornak in her official capacity as treasurer;
5. Approve the attached Proposed Conciliation Agreement; and

1 6. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

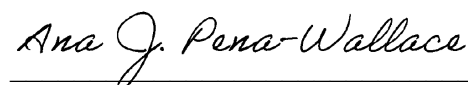
Charles Kitcher
Associate General Counsel for Enforcement

8/16/2022



Date

Claudio J. Pavia
Deputy Associate General Counsel for
Enforcement



Ana J. Peña-Wallace
Assistant General Counsel



Ray Wolcott
Attorney

Attachments

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT: Michigan Democratic State Central Committee and MUR _____
5 Traci Kornak in her official capacity as treasurer

6 **I. INTRODUCTION**

7 The Reports Analysis Division (“RAD”) referred the Michigan Democratic State Central
8 Committee and Traci Kornak in her official capacity as treasurer (“MDSCC” or the
9 “Committee”) to the Office of General Counsel (“OGC”) for failing to timely remedy
10 \$154,233.34 in excessive 2020 calendar year contributions, in violation of the Federal Election
11 Campaign Act of 1971, as amended (the “Act”).¹ According to the Referral, the Committee
12 issued refunds between 134 and 421 days after receipt, including 35 refunds made over a year
13 late.² The Committee acknowledges the untimely refunds and attributes the late refunds to “a
14 series of miscommunications during a period of unprecedented high volume of contributions.”³
15 For the reasons discussed below, the Commission finds reason to believe that the Committee
16 violated 52 U.S.C. § 30116(f).

17 **II. FACTUAL BACKGROUND**

18 MDSCC is a state party committee of the Democratic Party and Traci Kornak is the
19 Committee’s treasurer.⁴ RAD referred this matter to OGC because the Committee received
20 \$154,401.33 in excessive contributions during calendar year 2020 that it failed to timely refund,
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¹ Referral at 1 (Mar. 29, 2022).

² *Id.*, Attach. 1 (Untimely Resolved/Unresolved Excessive Contributions Chart).

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 7 to direct contributions to the party, but rather, because of joint fundraising allocations, that, in the
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 2 outstanding \$167.99 in aggregate refunds to two individuals “in 2021,” but that those
 3 transactions were not itemized due to the small amounts, and the Commission is aware of no
 4 information to the contrary.¹¹ The Response also states that “MDSCC has taken several steps to
 5 ensure that any [excessive] contributions are refunded in a timely matter, including real time
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11 **III. LEGAL ANALYSIS**

12 The Act provides that no person shall make contributions to a political committee
 13 established and maintained by a state committee of a political party in any calendar year that, in
 14 the aggregate, exceed \$10,000.¹⁴ With the exception of a committee established and maintained
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¹¹ Resp. at 1; MDSCC Amended 2020 Pre-General Report at 6 (Oct. 5, 2021) (“Lisa Orange[‘s] . . . excessive contributions were refunded on the March Monthly report, filed March 20, 2021”); MDSCC Amended 2020 Post-General Report at 6 (Oct. 5, 2021) (“Refunds for . . . Lisa Orange were refunded on the April Monthly Report filed 4/20/21. . . . [contributions from] Elizabeth Naftali were transferred in error. The adjustment was made and reported in the 9/30/21 Biden Victory Fund transfer to be reported on the October Monthly Report to be filed on or before 10/20/21.”); *see also* MDSCC FEC Form 99 (Oct. 5, 2021) (referencing its refunds of the excessive contributions from Naftali and Orange).

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1 political committee in any calendar year which in the aggregate exceed \$5,000.¹⁵ Further, the
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5 same contributor, exceed the Act's contribution limits.¹⁷ Contributions which on their face
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9 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); (2) reattributed in accordance with
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¹⁷ 11 C.F.R. § 103.3(b).

¹⁸ *Id.* § 103.3(b)(3).

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