

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

September 21, 2022

**Via Email Only**

reiff@sandlerreiff.com

Neil P. Reiff, Esq  
1090 Vermont Ave NW, Suite 750  
Washington, DC 20005

RE: MUR 8068 (RR 22L-13)  
Michigan Democratic State  
Central Committee

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your client, the Michigan Democratic State Central Committee and Traci Kornak in her official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 13, 2022, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions. 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 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.

Accordingly, enclosed is a conciliation agreement that the Commission has approved in settlement of this matter.

MUR 8068 (Michigan Democratic State Central Committee)  
Traci Kornak, Treasurer  
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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. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 60 days, your client should respond to this notification as soon as possible. Accordingly, if your client is interested in engaging in pre-probable cause conciliation, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302 or [rwolcott@fec.gov](mailto:rwolcott@fec.gov), 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](http://www.fec.gov/em/respondent_guide.pdf).

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.

We look forward to your response.

On behalf of the Commission,



Allen Dickerson  
Chairman

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 RESPONDENT: Michigan Democratic State Central Committee and MUR 8068  
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”).<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup>  
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.<sup>4</sup> 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,  
21 including \$151,901.33 from 29 individuals and \$2,500 from one multicandidate PAC.<sup>5</sup> The

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<sup>1</sup> Referral at 1 (Mar. 29, 2022).

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

<sup>3</sup> Resp. at 1 (Apr. 15, 2022).

<sup>4</sup> MDSCC Amended Statement of Organization at 1 (Feb. 23, 2021).

<sup>5</sup> 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

1 Referral describes that \$154,233.34 of the total excessive contributions were refunded between  
2 134 and 421 days after receipt, well beyond the 60-day deadline established by Commission  
3 regulations and that \$167.99 in excessive contributions from two individuals remained  
4 unrefunded.<sup>6</sup>

5 The Committee acknowledges receiving and failing to timely refund the excessive  
6 contributions.<sup>7</sup> The Response asserts that “[m]ost of these excessive contributions were due not  
7 to direct contributions to the party, but rather, because of joint fundraising allocations, that, in the  
8 aggregate, caused an excessive contribution to the committee.”<sup>8</sup> The Committee further asserts  
9 that it “had procedures in place to handle” the receipt of excessive contributions but attributes its  
10 failure to timely refund the contributions to “a series of miscommunications during a period of  
11 unprecedented high volume of contributions.”<sup>9</sup> The Committee’s amended reports itemize  
12 refunds of all but \$167.99 of the excessive contributions identified in the Referral.<sup>10</sup> The

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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).

<sup>6</sup> *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).

<sup>7</sup> Resp. at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 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).

1 Committee’s Response and filings with the Commission assert that it refunded the allegedly  
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.<sup>11</sup> 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  
6 monitoring of joint fundraising allocations, additional review of data prior to importation into its  
7 compliance software, improved digital communication between staff related to these  
8 contributions and a more organized workflow between staff and outside consultants related to  
9 incoming contributions.”<sup>12</sup> The Committee requests that the Commission take no further action  
10 or, alternatively, refer this matter to the Alternative Dispute Resolution Office (“ADRO”).<sup>13</sup>

### 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.<sup>14</sup> With the exception of a committee established and maintained  
15 by a national political party, no multicandidate committee shall make contributions to any other

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<sup>11</sup> 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).

<sup>12</sup> Resp. at 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. § 110.1(c)(5).

1 political committee in any calendar year which in the aggregate exceed \$5,000.<sup>15</sup> Further, the  
2 Act provides that no political committee shall knowingly accept excessive contributions.<sup>16</sup>

3 A committee's treasurer is responsible for examining all contributions received to  
4 ascertain whether contributions received, when aggregated with other contributions from the  
5 same contributor, exceed the Act's contribution limits.<sup>17</sup> Contributions which on their face  
6 exceed the contribution limits, and contributions which do not appear to exceed the contribution  
7 limits, but exceed contribution limits when aggregated with other contributions may be returned  
8 to the contributor or deposited.<sup>18</sup> If deposited, contributions must be: (1) redesignated in  
9 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); (2) reattributed in accordance with  
10 11 C.F.R. § 110.1(k)(3); or (3) refunded within 60 days of the date that the committee has actual  
11 notice of the need to refund, redesignate or reattribute the contributions.<sup>19</sup>

12 As a state party committee, the Committee was limited to accepting \$10,000 per calendar  
13 year from individuals and \$5,000 from multicandidate committees. As documented in the  
14 Referral and acknowledged in the Response, the Committee received a total of \$154,233.34 in  
15 excessive contributions from 29 individuals and one multicandidate PAC across four reports  
16 filed during calendar year 2020: the 2020 September Monthly Report, 2020 October Monthly  
17 Report, 2020 12-Day Pre-General Report, and 2020 30-Day Post-General Report.<sup>20</sup> The  
18 Committee states that it refunded all of the excessive contributions identified in the Referral but

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<sup>15</sup> 52 U.S.C. § 30116(a)(2)(C); 11 C.F.R. § 110.2(d).

<sup>16</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>17</sup> 11 C.F.R. § 103.3(b).

<sup>18</sup> *Id.* § 103.3(b)(3).

<sup>19</sup> *Id.*

<sup>20</sup> *Supra* note 5.

1 the Referral notes that it did so well outside of the 60-day deadline established by Commission  
2 regulations, issuing refunds 134-421 days after receipt of the excessive contributions.<sup>21</sup>

3         The Committee asserts that “a series of miscommunications during a period of  
4 unprecedented high volume of contributions caused a delay in processing refunds.”<sup>22</sup> The  
5 Committee does not explain, however, why some of those refunds were delayed by over a year.<sup>23</sup>  
6 Although the Response appears to offer this as mitigating circumstances surrounding the  
7 apparent violation, the Committee does not explain why it believes the Commission should treat  
8 excessive contributions via joint fundraising differently than excessive direct contributions, why  
9 a high volume during a presidential election cycle should be considered a mitigating factor, or  
10 what miscommunications occurred and how they may have impacted the Committee’s ability to  
11 timely issue refunds. The Committee requests that the Commission take no further action or,  
12 alternatively, refer this matter to ADRO, but the circumstances — including the amount in  
13 violation, the substantial delay involved in making the refunds, and the Committee’s recent  
14 history of violations<sup>24</sup> — do not support either requested outcome. The Commission therefore  
15 finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) by knowingly accepting  
16 excessive contributions.

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<sup>21</sup> 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).

<sup>22</sup> Resp. at 1.

<sup>23</sup> Referral, Attach. 1 (Untimely Resolved/Unresolved Excessive Contributions Chart) (identifying 35 contributions refunded more than a year from the date of receipt).

<sup>24</sup> Conciliation Agreement, MUR 7126 (May 11, 2017); Conciliation Agreement, MUR 7902 (Sept. 13, 2021).