

July 20, 2020

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**BY EMAIL AND U.S. MAIL**

Federal Election Commission  
Audit Division  
Mr. Kendrick Smith  
1050 First Street, NE  
Washington, DC 20002  
Email: [audit@fec.gov](mailto:audit@fec.gov); [REDACTED]

**Re: Response to the Interim Audit Report on Dr. Raul Ruiz for Congress**

Dear Mr. Smith:

On behalf of our client, Dr. Raul Ruiz for Congress ("the Committee"), we write in response to the Interim Audit Report (the "Report") of the Audit Division. We appreciate the additional time provided to respond to the Report in light of the COVID-19 Pandemic.<sup>1</sup>

**INTRODUCTION**

This audit covered the Committee's activities for the 2017-2018 election cycle. At that time, the Committee engaged a professional political accounting firm based in Washington, DC to handle its accounting, obtain and keep the records required by Commission regulations, and prepare its reports. Before the Commission initiated the audit, to bolster its compliance, the Committee ended its relationship with its previous firm, and engaged a different firm to perform these same duties. Since then, the Committee, consulting with its counsel and the professionals at the current firm, has taken steps to improve and strengthen its compliance practices.

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<sup>1</sup> The Audit Division sent the Interim Audit Report to the Committee on May 1, 2020, with a due date for response on June 3, 2020—while both the Committee's home state of California and the District of Columbia were under shelter-in-place orders because of the COVID-19 pandemic. *See* Letter from Dayna C. Brown to John Pinkney (May 1, 2020). The Committee requested a 90-day extension because of the pandemic, while asking in the alternative for a 45-day extension that could be extended for cause. *See* Letter from Brian G. Svoboda and Varoon Modak to Dayna C. Brown (May 11, 2020). Initially, the Audit Division told the Committee that it would have to toll the statute of limitations to obtain even a 45-day extension, even though there was no pending enforcement action, nor any Commission finding of any potential violation. *See* Email from William Antosz to Brian G. Svoboda (May 12, 2020); Letter from Brian G. Svoboda and Varoon Modak to Dayna C. Brown (May 15, 2020). After the Committee's representatives and the auditors spoke on May 19, the auditors agreed to grant the requested 90-day extension unconditionally. *See* Email from Kendrick Smith to Varoon Modak (May 19, 2020).

Moreover, since the audit began, the Committee has consistently responded to and cooperated with the auditors' requests for information, despite the limited information available because of the change in political accounting firms and the prior firm's practices. Through its diligence, persistence and cooperation, the Committee was able to resolve all potential issues presented during the audit, except for the two findings presented in the Report.

The Committee respectfully submits that these two remaining findings are not supported by fact or law:

- *First*, the finding of a \$16,794 misstatement of financial activity, while scant when compared to Committee's \$5,716,370 in overall activity over the two-year period, is the result of inconsistent and confusing guidance provided by the auditors.
- *Second*, the finding of potential personal use, based almost entirely on \$5,860.78 in disbursements to gas stations by a campaign in a district spanning nearly 6,000 square miles, misreads and misapplies the recordkeeping requirements that apply to these disbursements.

We respectfully request that the Audit Division vacate the findings and issue a draft final audit report that makes clear that the Committee substantially complied with the relevant provisions of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 *et seq.* ("the Act").

## DISCUSSION

### A. Alleged Misstatement of Financial Activity

The Report's misstatement finding claims that the Committee "understated its disbursements by \$16,794" in 2017,<sup>2</sup> against \$2,538,316 in disbursements over the course of the election cycle and \$5,716,370 in total overall activity.<sup>3</sup> Specifically, the Report claims that:

The understatement of disbursements resulted from the following:

- |  |          |
|--|----------|
| • Disbursements not reported or reported incorrectly   | + 13,500 |
| • Contribution refunds reported but did not clear bank | - 586    |
| • Unexplained differences                              | + 3,880  |

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<sup>2</sup> Report at 3.

<sup>3</sup> *Id.* at 2.

Net Understatement of Disbursements

\$16,794<sup>4</sup>

The information provided by the auditors regarding the nature and extent of the asserted misstatement has been inconsistent and unclear. On December 2, 2020, the auditors provided the Committee with a document alleging \$37,740.54 in reporting errors related to the Committee's disbursements, including a partial list of disbursements that were supposed to have contributed to the finding. Three days later, on December 5, 2020, the Audit staff provided a revised document that reduced this alleged total to \$20,107.41. After months of discussion and correspondence, the Committee still has not been presented with a comprehensive, consistent list of the corrections that must be made to its reported disbursements.

The Committee has cooperated with the auditors throughout the process and is prepared to make any necessary corrections to its reports. Having changed compliance personnel and bolstered its practices even before the audit began, the Committee recognizes that some corrections need to be made. Still, these changes should correspond to clear, consistent and accurate direction from the auditors. The Committee respectfully requests the Audit Division to vacate the finding—which involves only a small portion of the Committee's overall activity—and provide a corrected enumeration of the needed changes, upon which the Committee will promptly amend its reports to comply with a correct recommendation.

## **B. Alleged Personal Use of Campaign Funds**

The Report claims to have “identified disbursements totaling \$5,899 as potential personal use of campaign funds. The disbursements included purchases for vehicle-related expenditures such as parking, gasoline, and insurance payments. The Audit staff recommends that RRFC provide documentation demonstrating that these expenditures are related to the campaign or seek reimbursement.” The auditors made this recommendation while citing 11 CFR § 113.1(g)(8), which requires committees making mixed-purpose expenditures to keep a contemporaneous log to document dates and expenses related to personal use.

However, virtually all of the expenses involved—\$5,860.78—were to gas stations,<sup>5</sup> made by a campaign for office in a district that spans nearly 6,000 square miles.<sup>6</sup> The auditors assert that these gas expenses, which are commonly incurred by campaigns with multiple staff and substantial terrain, qualify as “vehicle expenses” to which the recordkeeping and reimbursement provisions of 11 CFR § 113.1(g)(1)(ii)(D) apply.<sup>7</sup> Thus, with no notice, the Report would

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<sup>4</sup> *Id.* at 5.

<sup>5</sup> See Email from William A. Antosz to Marty Kuest (May 4, 2020).

<sup>6</sup> See [https://www2.census.gov/geo/maps/cong\\_dist/cd113/cd\\_based/ST06/CD113\\_CA36.pdf](https://www2.census.gov/geo/maps/cong_dist/cd113/cd_based/ST06/CD113_CA36.pdf). The remainder were a \$22.11 disbursement identified as for parking, and two \$7.95 disbursements identified as made to Anchor General Insurance. See Email from William A. Antosz to Marty Kuest (May 4, 2020).

<sup>7</sup> See Report at 6.

retroactively impose a log requirement on every committee that makes a disbursement for gas, which is a common, legitimate campaign expense.

The Report badly misreads the personal use rules in this regard:

*First*, campaigns at all levels—whether for President, U.S. Senate or U.S. House—commonly incur expenses for fuel, whether directly or by reimbursing their personnel. They do so in order to travel between events, undertake field operations, and otherwise engage in political activity, especially in large states or sprawling districts like the Committee’s. These disbursements present no special issue of personal use. To the contrary, Commission rules expressly provide that neither “[t]ravel expenses” nor “[v]ehicle expenses” are per se personal use, but instead are evaluated on a case-by-case basis, like all other expenses.<sup>8</sup>

*Second*, there is no general Commission requirement that campaigns must keep records to support individual fuel expenses. Rather, the additional requirements cited by the auditors apply only when a campaign uses funds for both personal use and either campaign or officeholder use.<sup>9</sup> These additional requirements arose from Advisory Opinion 2001-03, which involved a special set of facts not present here: a candidate sought permission to use campaign funds to *purchase* an automobile “that would be used primarily to transport you and members of your campaign staff to political and campaign related events in the Washington DC metropolitan area.”<sup>10</sup> The Commission has given no notice that these augmented recordkeeping requirements apply every time a campaign committee pays for gas, also.

*Third*, the Report flips the regulations’ treatment of fuel expenses. The rules take gas expenses out of the category of *per se* personal use and treat them like any other expense. But the Report takes the exact opposite approach. It presumes the expenses to be personal use and requires the Committee to prove otherwise. Here, the auditors have rewritten the regulation by creating a new presumption of personal use. Because the Committee could not overcome the conjectured presumption to the auditors’ satisfaction, they concluded that the expenditures must have been for personal use. Such “reasoning” turns the rule on its head.

*Fourth*, to reach a personal use finding based on no evidence, the Report rejects the *actual* evidence that the Committee’s campaign manager provided in response to the Exit Conference. As the Report acknowledges, the Committee “provided a declaration from the Campaign Manager attesting that the disbursements for gasoline were for campaign-related travel. The Campaign Manager further stated that because the congressional district is 6,000 square miles in

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<sup>8</sup> See 11 C.F.R. § 113.1(g)(1)(ii)(C), (D).

<sup>9</sup> See *id.* §§ 113.1(g)(1)(ii) (D), (g)(8).

<sup>10</sup> See FEC Advisory Op. 2001-03 (Meeks) (internal quotations omitted). See also Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds 67 Fed. Reg. 76,962, 76,974 (2003) (saying that section 113.1(g)(8)’s augmented recordkeeping requirement “is based on the analysis in AO 2001-3”).

area, extensive vehicle travel was necessary in connection with the campaign.”<sup>11</sup> This should have resolved the finding, but because the evidence was not in the form of a contemporaneous log or record, and so did not meet the auditors’ erroneous understanding of the rules, the auditors persisted with the finding.

In the end, the Report would have the Commission set a new precedent, and presume that fuel expenses—which are a common category of campaign expenditure, especially in national campaigns, statewide elections, and geographically large districts like the Committee’s—are inherently suspect, subject to augmented reporting requirements, and treated no differently than when the campaign buys the candidate a car. This approach is wholly inconsistent with the law and common sense.

### CONCLUSION

The Committee is committed to continued compliance with the Federal Election Campaign Act and all relevant Commission regulations. However, for the reasons described above, the findings in the Interim Audit Report are not adequately supported. The Committee respectfully requests that the Audit Division vacate the findings, provide the Committee with a revised misstatement analysis that permits it to amend its reports accurately, and issue a draft final audit report that reflects the Committee’s material compliance with the Act.

We appreciate the Commission's consideration of this response.

Very truly yours,



Brian G. Svoboda  
Varoon Modak  
Counsel to Dr. Raul Ruiz for Congress

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<sup>11</sup> Report at 7.