



February 7, 2022

BY EMAIL

Phone: (949) 441-5352

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

Re: Response to the Interim Audit Report on Citizens for Waters

Dear Ms. Yarbrough:

On behalf of my client, Citizens for Waters, (the "Committee"), we write in response to the Interim Audit Report ("the Report") of the Audit Division.

The audit covered the Committee's activities for the 2019-2020 election cycle. The Committee consistently made its best effort to comply with the Federal Election Campaign Act. However, the COVID-19 pandemic impacted the Committee's operations due to California's shelter-in-place orders and limited staff availability.

#### **1. Misstatement of Financial Activity**

The Committee used the same software provider to prepare its campaign reports for over twenty (20) years and began experiencing various technical issues as the software became increasingly outdated. The Committee heavily relied on the software company's technical support to prepare and electronically file its reports. And many of the misstatements on the Report are attributable to software technical issues. These issues were further exacerbated by the pandemic as technical issues continued to grow but company customer support reduced.

The Committee began using a new software to prepare campaign statements immediately following the 2019-2020 cycle. It is in the process of preparing and filing amendments to all its campaign reports to accurately reflect the Committee's financial activities.

#### **2. Receipt of Contributions in Excess of the Limit**

The Committee made its best effort to track contributions to ensure they were within the contribution limits. Its receipt of the excess contributions totaling \$19,000 was inadvertent and the Committee has refunded the contributions. Attached as Exhibit A are copies of the refunds issued.

### 3. Cash Disbursements

The Committee made its best effort to comply with the Act's recordkeeping and reporting requirements. Due to the extenuating circumstances of the pandemic, the Committee issued cash, which was entrusted to the campaign manager, to distribute payments to canvassers and pay for canvassing costs. Congresswoman Waters' constituents are comprised of many low-wage and working-class communities who regularly work paycheck to paycheck and, in many instances, cash their checks immediately at check-cashing stores or directly from the banks. During the pandemic, many of these check cashing stores and banks were closed or maintained limited hours of operation making it difficult for canvassers to cash their checks. The Committee, therefore, issued cash to its canvassers rather than checks.

The campaign manager made her best efforts to track all cash expenditures, however, was unable to provide the Committee with all disbursement records. The campaign manager is willing to make a declaration that the cash received was used to pay canvassers and in furtherance of the canvassing program.

### 4. Alleged Contributions from Unregistered Political Organizations

The Report finding states that the Committee received *contributions* from Unregistered Political Organizations. However, the Committee asserts that the payments received were not contributions subject to the Acts applicable contribution limits pursuant to 52 U.S.C. § 30116(a)(2). Rather reimbursements for costs associated with appearing on Congresswoman Waters' slate mailer brochure.

The Act defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."<sup>1</sup> The Committee received 47 *payments*, totaling \$568,000, from unregistered *non-federal* committees<sup>2</sup> in consideration for *their* appearance on Congresswoman Waters slate mailer. First, the payments were not intended as gifts and the non-federal committees had a full expectation of receiving a benefit. Further, the payments made were not for the purpose of influencing any election for Federal office. Rather, these were non-federal committees making payments in support of non-federal candidates or ballot measures on the ballot.

Further, the Commission has advised that "reimbursements by the authorized committees of Federal candidates listed in the mailers in amounts equal to the attributable costs associated with each candidate's listing would not constitute support to Waters' Committee because, in this situation, mere reimbursement of the costs associated with the production and distribution of the proposed mailer within a reasonable period of time would not constitute "anything of value" to Waters' Committee under the Act."<sup>3</sup> The Committee disagrees with the Office of General Counsel ("OAG") and the audit staff's assertion that it cannot rely on this advice.<sup>4</sup> While the advice letter addresses reimbursements from Federal candidates, the circumstances are *exactly* the same in that the non-federal committees

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<sup>1</sup> See 52 U.S.C. § 30101(8)(A), See also 11 C.F.R. § 100.52.

<sup>2</sup> See Report at 12.

<sup>3</sup> See Advisory Op. 2004-37 at 4.

<sup>4</sup> See Report at 15.

were reimbursing the Committee for its fair share of costs to appear on Congresswoman Waters' slate mailer brochure.

As provided in the opinion letter, where payments made to the Committee was more than the non-federal committee's fair share, refunds for the excess payments were issued within a period of time. In fact, of the Committee partially refunded \$5,000 in slate mailer payments.

The Committee agrees with OGC and the audit staff that the slate mailer brochures constitute Federal Election Activity<sup>5</sup> and are, therefore, subject to the limitations, prohibitions, and reporting requirements of the Act.<sup>6</sup> However, the Committee maintains it did not "solicit, receive, direct, transfer, or spend funds"<sup>7</sup> for the slate mailer brochure using non-federal funds.

The Committee took proactive measures to issue invoices and verify funds used to pay for slate mailer costs were from federally permissible sources. Its misstatement of the applicable individual contribution limit and omission of some prohibited sources on notices was unintentional. Therefore, the Committee is in the process of reviewing and confirming that funds received from the unregistered political organizations were from federally permissible funds to determine and disgorge any impermissible funds to the US Treasury. Attached as Exhibit B are copies of some federally permissible letters received.

The Committee appreciates the opportunity to respond to the Report. Please let me know if you have any questions or need additional information.

Sincerely,



Leilani Rudow Beaver  
Counsel for Citizens for Waters

LRB:LRB

cc: Congresswoman Maxine Waters  
David Gould, Treasurer

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

<sup>6</sup> *See* 52 U.S.C. § 30125(e)(1)(a)

<sup>7</sup> *Id.*