



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

September 6, 2022

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SUBJECT: Interim Audit Report on Citizens for Waters (LRA 1144)

The Office of the General Counsel (“OGC”) has reviewed the draft Interim Audit Report (“IAR”) on Citizens for Waters (“CFW”). The IAR contains four findings: Misstatement of Financial Activity (Finding 1), Receipt of Contributions in Excess of the Limit (Finding 2), Cash Disbursements (Finding 3), and Contributions from Unregistered Political Organizations (Finding 4).¹ OGC concurs with the findings, and comments on Finding 4. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

¹ OGC recommends that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the IAR.
11 C.F.R. §§ 2.4(a), (b)(6).

I. CONTRIBUTIONS FROM UNREGISTERED POLITICAL ORGANIZATIONS (FINDING 4).

CFW, an authorized committee and principal campaign committee of congressional office holder Maxine Waters, received 47 payments totaling \$568,000 from unregistered/non-federal committees for a brochure mailer program in the 2019-2020 election cycle, for which it made an aggregate of \$567,230 in disbursements. For the reasons set forth below, OGC concurs with the Finding that these receipts and disbursements do not comply with the requirements of 52 U.S.C. § 30125(e)(1)(A) and comments to explain the differences between this audit and MUR 7522 (Citizens for Waters).

Funds received or spent by a federal candidate or her committee in connection with an election for federal office, including for Federal election activity, must comply with the amount limitations, source prohibitions, and reporting requirements of the Act.² OGC agrees with the Audit Division's conclusion that CFW received and spent funds for its mailers for "Federal election activity" because the mailers were public communications (mass mailings) that refer to clearly identified candidates for federal office and that promote or support candidates for those offices.³ CFW received \$568,000 for the mailers from non-federal committees that may receive funds from prohibited sources or in amounts exceeding the Act's limitations.⁴ CFW has not provided the Audit Division with documentation that these payments were made from permissible funds and, in fact, invoices and letters CFW sent to the unregistered non-federal committees omitted mention of some prohibited sources, such as federal contractors, and incorrectly stated that the non-federal committees could pay for inclusion in the mailer using contributions of up to \$5,000 from individuals.⁵ Moreover, there is not documentation that these non-federal committees reported the funds to the Commission.⁶ We agree, therefore, that CFW's mailer program does not comply with the requirements of 52 U.S.C. § 30125(e)(1)(A).⁷

² 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

³ See 52 U.S.C. § 30101(20)(A)(iii) (defining "Federal election activity"); 11 C.F.R. § 100.24(b)(3) (same); see also 52 U.S.C. § 30101(22), (23) (defining "public communication" and "mass mailing," respectively); 11 C.F.R. §§ 100.26, 100.27 (same). In response to the audit, CFW produced two mailers, which expressly advocated the election of clearly identified Federal candidates as well as state and local candidates.

⁴ California state law permits corporate contributions to candidates and has higher contribution limits. See Cal. Gov't Code §§ 85300–85321; National Conference of State Legislatures, State Limits on Contributions to Candidates, 2019-2020 (June 2019), <https://www.ncsl.org/Portals/1/Documents/Elections/Contribution-Limits-to-Candidates-2019-2020.pdf?ver=2019-10-02-132802-117>.

⁵ The individual contribution limitation to candidate committees for the audit period was \$2,800 per election.

⁶ See Factual & Legal Analysis at 8-9, MUR 7337 (Debbie Lesko *et al.*) (finding reason to believe candidate and committee violated 52 U.S.C. § 30125(e)(1)(A) by receiving funds from nonfederal committee that had not reported its funds to the Commission) (approved by Commission Jul. 29, 2019) (open MUR).

⁷ OGC further concurs with the IAR's recommendations that CFW: (1) provide evidence that the receipts were made from permissible funds; (2) refund the impermissible funds, (3) if unable to process a refund, disgorge the impermissible funds to the U.S. Treasury, or (4) if funds are not available for refund or disgorgement, disclose the receipts requiring refunds on Schedule D (Debts and Obligations) until funds become available.

OGC concludes that Finding 4 reaches a legally-correct result notwithstanding the Commission's recent dismissal, as a matter of prosecutorial discretion, of MUR 7522 (Citizens for Waters).⁸ MUR 7522 concerned CFW's net receipt of \$12,000 in funds from one non-federal committee (a state IEOPC) for inclusion of one non-federal candidate in one CFW mailer in the 2017-2018 election cycle that was similar to CFW's 2019-2020 election cycle mailers at issue in this audit.⁹

In MUR 7522, OGC analyzed CFW's receipt of the non-federal committee's payment as an excessive contribution under 52 U.S.C. § 30116, stated that the Commission had not previously appeared to consider whether a state IEOPC could pay for inclusion in a federal candidate committee's mailer, and recommended that the Commission exercise its prosecutorial discretion and dismiss MUR 7522 due to the "somewhat modest amount" in violation.¹⁰ While all six Commissioners voted to dismiss MUR 7522 under *Heckler v. Chaney*, citing the "somewhat modest amount" in violation and the lack of precedent for a non-federal IEOPC's payment for inclusion of a non-federal candidate in a mailer, three Commissioners did so while analyzing 52 U.S.C. § 30116¹¹ and three Commissioners did so while analyzing 52 U.S.C. 30125(e)(1)(A).¹²

Unlike the one modest payment of \$12,000 CFW received from one non-federal committee in the 2017-2018 election cycle that the Commission addressed in MUR 7522, the Audit Division has identified 47 payments to CFW in the 2019-2020 election cycle, totaling \$568,000, from unregistered, nonfederal committees, which is a substantial number of contributors, a substantial amount of total dollar receipts, and a substantial percentage of CFW's 2019-2020 total receipts, comprising approximately 26.7% of the total. Moreover, the focus in an audit differs from that in an enforcement action. An audit determines whether the committee *substantially complied* with the limitations, prohibitions, and disclosure requirements of the Act; the initial stage of an enforcement matter concludes whether there is reason to believe a committee *has committed, or is about to commit, a violation of the Act*.¹³

⁸ See Certification ¶ 3 (Nov. 15, 2021), MUR 7522 (Citizens for Waters); Statement of Reasons ("SOR"), Vice Chair Dickerson and Comm'rs Cooksey and Trainor at 2, MUR 7522; SOR, Chair Broussard and Comm'rs Weintraub and Walther at 1, MUR 7522; see also *Heckler v. Chaney*, 470 U.S. 821 (1985); cf. First Gen. Counsel's Rpt. ("First GCR") at 1, MUR 7522 (recommending dismissal pursuant to *Heckler v. Chaney*).

⁹ See First GCR at 5, MUR 7522; Waters and CFW Resp. at 1, MUR 7522 (Dec. 7, 2018) ("Each election cycle, Citizens for Waters produces and distributes a slate mailer that expressly advocates the election of clearly identified Federal and non-Federal candidates.").

¹⁰ First GCR at 4-6, MUR 7522. [REDACTED]

¹¹ SOR, Vice Chair Dickerson and Comm'rs Cooksey and Trainor at 5-6, MUR 7522.

¹² SOR, Chair Broussard and Comm'rs Weintraub and Walther at 3, MUR 7522 (also concluding that CFW received an excessive contribution under 52 U.S.C. § 30116 by not timely refunding the excessive portion of payment but agreeing with dismissal as a matter of prosecutorial discretion).

¹³ Compare 52 U.S.C. § 30111(b) (audit) with 52 U.S.C. § 30109(a)(2) (enforcement); see also FEC Strategic Plan FY 2022-2026 at 10 ("Instances of noncompliance *may* lead to an FEC enforcement case, or Matter Under Review (MUR).") (emphasis added).

The IAR's recommendations as to Finding 4 – that CFW provide documentation as to the permissibility of the receipts from non-federal committees and refund or disgorge impermissible funds it received – will further the compliance function of the audit rather than impose a civil penalty such as might occur in an enforcement action.