

JONES DAY

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April 12, 2017

VIA ELECTRONIC AND U.S. MAIL

Thomas Hintermister
Assistant Staff Director, Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: NY Republican Federal Campaign Committee

Dear Mr. Hintermister:

We write on behalf of the NY Republican Federal Campaign Committee ("Committee") to respond to items raised in the Federal Election Commission's ("FEC" or "Commission") Interim Audit Report issued on February 23, 2017 ("Report"), concerning the Committee's activities during the 2011-2012 election cycle.

The Committee hopes it has made clear to the Commission during the course of this audit that it takes its federal campaign finance compliance and reporting obligations very seriously. While the Committee expects always to make best efforts to report its campaign finance activities completely and accurately, after the 2012 elections, Committee leadership realized that the recordkeeping and compliance efforts during that cycle had not wholly lived up to these expectations. Consequently, in early 2013, Committee leadership hired a new Director of Operations, replaced several other members of the 2012 recordkeeping and compliance staff, and implemented various corrective actions, dedicating substantial resources toward revamping the recordkeeping and compliance operation to ensure that the issues of the 2011-2012 election cycle were corrected for future election cycles.

This audit covers activity that transpired up to over six years ago and thus precedes the tenures of most current Committee staff. Nevertheless, the Committee has sought to cooperate and comply with the requests and recommendations of the Audit Division as best it can throughout the audit process. The Committee indeed has devoted significant time and resources to try to fulfill the Audit Division's document requests (including those set forth in the Report) while simultaneously ensuring it meets its ongoing operational and reporting demands.

1. Misstatement of Financial Activity

The Report identifies certain purported misstatements of financial activity in the Committee's disclosure reports from the 2011-2012 election cycle. As the Report recognizes, the overwhelming cause of these discrepancies was the credit card company being able to provide only a single account into which contributions could be deposited. As a result of this limitation, the Committee could use only one account as a merchant account for processing all received credit card contributions, both federal and state. Accordingly, all credit card contributions initially were processed through the federal account, with any contributions intended for the state accounts promptly transferred to the state accounts. *Cf.* Advisory Opinion 2001-17 (DNC Servs.). None of the non-federal funds ever were used for federal activities. Funds intended for and transferred to the state accounts were not reported on the Committee's federal disclosures because they were not federal receipts subject to FEC regulation; however, those funds were disclosed on the public record – in the Committee's state reports.

The Report nonetheless requests that the Committee amend its disclosure reports from 2011 and 2012 in order to reflect the receipt and subsequent transfer out of the non-federal contributions, as well as to correct other, smaller misstatements noted in the Report. Based on conversations with its accountants, the Committee understands that, given the significant passage of time since the 2011-2012 election cycle, even if it were to undertake such costly forensic steps, it nonetheless may prove impossible to reconstruct the records necessary to recreate its filings in order to remedy the Report's findings. Given its limited resources, asking the Committee to try is too great a burden to ask it to undertake.

As the Report acknowledges, however, after 2012 the Committee implemented new protocols for processing credit card contribution receipts that segregated the credit cards by different merchant numbers. Now the Committee has the ability to process contributions made by credit cards into the appropriate state or federal cash accounts. Although this is a time-consuming, manual process, it allows for accurate depositing and, in turn, accurate reporting of credit card contributions. Furthermore, since the Committee hired its current Director of Operations in January 2013, the information disclosed on the Committee's FEC reports consistently has been reconciled with the Committee's accountant before filing. Monthly cash account reconciliations are completed prior to submission, and all receipts and disbursements (including deposits in transit and outstanding checks) have been accurately and timely reported.

2. Recordkeeping for Employees

The Report identifies \$713,427 in allocated state and federal payments to Committee employees for which the Committee did not maintain monthly payroll logs during the 2011-2012 election cycle (the Report does not provide a breakdown of this figure by time, either by month

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or year). The Report recognizes that the Committee did not keep contemporaneous payroll logs throughout the covered period. Yet it requests that the Committee provide such logs. Clearly, the Committee is unable to create true and accurate time logs for activity that occurred up to more than six years ago – especially for individuals who, for the most part, have not worked for the Committee in several years.

The Committee, however, has already established that it made every effort to ensure that its employees who spent a significant portion of their time working in connection with federal elections during the 2011-2012 election cycle were paid properly from the Committee's federal account. As the Report itself acknowledges, the Committee provided the Commission affidavits from the Committee's Executive Director during the 2011-2012 election cycle. Those sworn affidavits make clear – subject to penalty of perjury – which of the Committee's employees during the 2011-2012 election cycle spent less than 25% of their time on activities in connection with federal elections and thus could be paid using an allocation of federal and state funds under the Commission's regulations.

The Committee also has acknowledged that it needed to improve its system for keeping and maintaining monthly employee time logs, and that it has, in fact, done so. In early 2014, after the Commission made its policy regarding enforcement of the time-log requirement clear, the Committee immediately adopted and implemented a mandatory time-keeping policy applicable to all Committee staff, which is run through the Committee's Director of Operations. A copy of that policy and a sample monthly time log are being provided with this response letter, as requested in the Report. *See Ex. A.*

3. Disclosure of Name of Employer/Occupation

The Report recommends that the Committee establish "best efforts" by amending its 2011-2012 election cycle reports to disclose missing employer/occupation information for certain contributors who made contributions to the Committee during that election cycle and for whom the Committee possesses the required information.

The Committee is amending its reports consistent with the Commission's recommendation. As approved by the Audit Division on March 16, 2017, the Committee has elected to do so using the disclosure method set forth at 11 C.F.R. § 104.7(b)(4)(i)(A). Accordingly, the Committee will be filing with its next regularly scheduled report (i.e., its 2017 April Monthly Report) an amended memo Schedule A listing those 2011-2012 contributions for which previously omitted contributor identifications have been received.

Furthermore, the Committee wishes to reiterate that, as the Report notes, since 2012 the Committee has made its "best efforts" procedures a point of compliance emphasis. The

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Committee takes great care to send and keep records of its follow-up correspondence with federal contributors consistent with FEC recommended procedures. The Committee also has implemented a related policy to ensure that it promptly updates the public record to reflect any new contributor information it receives as a result of its best efforts.

4. Reporting of Apparent Independent Expenditures (Volunteer Materials Exemption)

The Report identifies and questions the nature of \$1,142,503 in disbursements that the Committee disclosed on Schedule B supporting Line 30(b) as "Federal Election Activity Paid Entirely with Federal Funds." Despite the Committee's consistent – and already supported – position that these disbursements all related to mailings distributed by the Committee using volunteers and thus were not allocable to any candidates under the volunteer materials exemption (11 C.F.R. § 100.87), the Report second-guesses that stance and demands additional information to (further) establish the non-allocable nature of the costs.

The Committee previously submitted sworn affidavits, with associated invoices and mailers, from several mail vendors and others describing the role volunteers played in preparing and distributing various mailers paid for by the Committee in connection with certain 2011 and 2012 elections. Those affidavits detailed the hands-on role that the Committee's legal counsel, David Previte, played during the 2011-2012 election cycle in working with vendors to ensure that there was adequate volunteer involvement in the production and distribution of the mailers. Mr. Previte, moreover, submitted his own affidavit detailing his oversight of the Committee's volunteer mail program and related reporting efforts in 2011 and 2012.

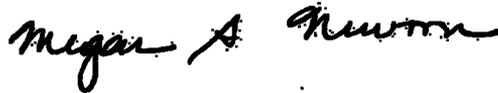
The Committee is submitting five additional sworn affidavits with this response letter. Four of the affidavits have been provided by mail vendors involved in the distribution of mailings not addressed in the seven affidavits submitted previously. These affidavits detail the active role that volunteers played in the production and distribution of various mailers at the instruction of and in coordination with the Committee and, in particular, David Previte. See Exs. B–E. The other affidavit being submitted with this letter is a second affidavit of Mr. Previte. Mr. Previte once again explains his oversight role in 2011 and 2012 and attests that "[a]ll of the express advocacy mailings reported as federal election activity on Line 30(b) of the Committee's FEC disclosure reports during the 2012 Election Cycle were part of the Committee's Volunteer Mail Program," and also that he "followed the same procedures described in [his earlier affidavit] to ensure there was substantial volunteer participation in all of the mailings' production and distribution." Ex. F, at ¶ 8.

These affidavits, in combination with the materials previously submitted, more than sufficiently establish that all of the expenditures at issue in the Report were appropriately treated and reported as non-allocable under the volunteer materials exemption.

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We appreciate the Commission's attention to this response.

Respectfully submitted,

A handwritten signature in black ink that reads "Megan A. Newton". The signature is written in a cursive style with a large initial 'M' and 'N'.

Megan Sowards Newton
E. Stewart Crosland

Cc: Mr. Tesfai Asmamaw
Ms. Nicole Burgess