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August 25, 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: Response of the NY Republican Federal Campaign Committee to Findings Referenced in the Federal Election Commission's Draft Final Audit Report**

Dear Mr. Hintermister:

We write on behalf of the NY Republican Federal Campaign Committee ("Committee") in response to the Federal Election Commission's ("FEC" or "Commission") Draft Final Audit Report issued on August 10, 2017 ("Draft Report"). Almost all of the activity at issue in this audit occurred over five years ago and preceded the tenures of most of the Committee's current compliance and recordkeeping staff, including its Director of Operations. Nonetheless, the Committee has attempted to cooperate and comply with the Audit Division's many requests and recommendations throughout the audit process, dedicating substantial time and resources toward doing so. The Committee is ready for the process to come to an end and waives its right to a hearing regarding the Draft Report. The Committee, however, provides the following comments concerning the Draft Report's findings for the Commission's consideration.

➢ ***Finding 1: Misstatement of Financial Activity.*** Finding 1 of the Draft Report again identifies certain purported misstatements of financial activity in the Committee's disclosure reports from the 2011-2012 election cycle that, as previously explained, predominantly were driven by the processing of nonfederal donations made by credit card. At the time, the credit card company could provide only a single account into which contributions could be deposited, which meant that the Committee could use only one account as a merchant account for processing all received credit card contributions – both federal and state. All credit card contributions, consequently, were processed initially through the federal account, with all donations intended for the state accounts promptly transferred to the state accounts and not used for federal election activities. Although the Committee no longer processes credit card receipts in this manner, it strongly believes that it remained compliant at all times and correctly omitted

such nonfederal receipts (which were reported on state-level reports) from its FEC disclosure reports.

In Advisory Opinion 2001-17 (DNC Servs.), the Commission recognized that a party committee may initially deposit a donation of nonfederal funds in its federal account without violating 11 C.F.R. § 102.5(a)(2), so long as it promptly transfers those funds to a nonfederal account. Although Advisory Opinion 2001-17 concerned receipts of composite federal/nonfederal contributions made by a single check, its logic applies equally here. Section 102.5(a)(2) itself makes no exception for deposits of nonfederal funds in a federal account – whether by a composite check or otherwise. Yet the Commission prudently recognized that party committees need administrative flexibility in dealing with their receipts. As long as nonfederal donations received by a federal account are promptly transferred to a nonfederal account and not used on federal activity, the party committee remains compliant with § 102.5(a)(2), and the nonfederal funds need not be reported as federal deposits. *See* Advisory Opinion 2001-17 (DNC Servs.) at 4 ("[E]ven though a $50,000 check will initially be deposited into the Federal account, the amount in excess of the Federal limit will be transferred out on the same business day, which is virtually contemporaneous with the deposit. Thus, the DNC may report a receipt of $20,000 into the Federal account and $30,000 into the non-Federal account.").

➢ ***Finding 2: Recordkeeping for Employees.*** Finding 2 of the Draft Report again identifies allocated state and federal payroll payments to employees for which the Committee did not maintain contemporaneous monthly payroll logs during the 2011-2012 election cycle. As the Draft Report recognizes, since 2012, the Committee has vastly improved its system for keeping and maintaining contemporaneous monthly employee time logs. The Committee, however, disagrees with the Draft Report's assertion that the Committee "concur[s]" with Finding 2. To the contrary, the Committee believes it has established – through sworn affidavits – 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 law requires. Such sworn evidence should satisfy the Audit Division with respect to the employee recordkeeping requirement.

➢ ***Finding 3: Disclosure of Occupation/Name of Employer.*** With respect to Finding 3, concerning the Committee's disclosure of the employer or occupation information of certain contributors, the Draft Report acknowledges that "[i]n response to the Interim Audit Report recommendation, [the Committee] included memo entries in its most recent filed disclosure report providing the missing contributor information." Yet, without explanation, it asserts that "this submission [by the Committee] did not materially correct the disclosure errors." There is no question, however, that the Committee satisfied the "best efforts" requirements of 11 C.F.R. § 104.7(b), and thus is in compliance with its reporting obligations under Federal Election Campaign Act. 52 U.S.C. § 30102(i). The Committee, moreover, again notes that since 2012, it

has emphasized its "best efforts" procedures, taking great care to send and maintain records of its follow-up correspondence with contributors consistent with FEC recommended procedures and implementing a related policy to ensure it promptly updates the public record to reflect any new contributor information received as a result of its efforts.

➢ ***Finding 4: Reporting of Apparent Independent Expenditures (Volunteer Materials Exemption).*** The Committee reemphasizes that the disbursements at issue in Finding 4 of the Draft Report were not independent expenditures but rather part of the Committee's non-allocable mail program. As the Draft Report recognizes, the Committee has submitted an abundance of evidence, including sworn evidence, establishing that these disbursements all related to mailings distributed using volunteers and thus, under the volunteer materials exemption (11 C.F.R. § 100.87), were not allocable to any candidates. Because the communications were not independent expenditures, the Draft Report is wrong to assert that the Committee "failed to file 24/48-hour reports." In addition, the Committee questions the legal soundness of the Audit Division's application of 11 C.F.R. § 100.22(b) to 31 of the mailers at issue.

➢ ***Finding 5: Recordkeeping for Communications.*** The Committee has searched diligently for copies of the records at issue in Finding 5 of the Draft Report, relating to certain communications the Committee disseminated in 2011 and 2012. The Committee does not have those records in its custody, so it contacted the vendors involved in the production of the communications. The Committee, however, was unable to locate any of the records at issue. As the Committee has explained throughout this audit, after the 2012 elections, Committee leadership recognized that the compliance efforts during the 2011-2012 election cycle did not meet the Committee's high standards. The Committee has taken several steps to improve its procedures with respect all of its compliance efforts – including its recordkeeping.

Thank you for your attention to this response.

Respectfully submitted,

Megan Sowards Newton

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E. Stewart Crosland

Cc: Mr. Tesfai Asmamaw
Ms. Nicole Burgess