

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)

5) MUR 7119

6 Americans for Liberty and Free Enterprise)
7 and Gary F. Fox in his official capacity)
8 as treasurer)
9)

10
11 **GENERAL COUNSEL'S REPORT # 2**

12
13 **I. ACTIONS RECOMMENDED**

14 Take no further action with respect to Americans for Liberty and Free Enterprise and
15 Gary F. Fox in his official capacity as treasurer (the "Committee"), issue a caution letter, and
16 close the file.

17 **II. BACKGROUND**

18 The Committee registered with the Commission as an independent-expenditure-only
19 committee on October 30, 2015, but has never any filed disclosure reports with the
20 Commission.¹ The Complaint alleges, among other things, that the Committee violated the
21 Federal Election Campaign Act of 1971, as amended ("Act"), by failing to file disclosure reports
22 that would reveal disbursements it made in connection with a public event at a restaurant in
23 Loudon County, Virginia, on July 6, 2016, in support of presidential candidate Donald J.
24 Trump.² On March 6, 2018, the Commission found reason to believe that the Committee
25 violated 52 U.S.C. § 30104(b) for failing to file the required periodic disclosure reports.³ The

¹ Committee Statement of Org. (October 30, 2015).

² Compl. at 3 (Aug. 4, 2016).

³ Cert., MUR 7119 (Mar. 6, 2018); Factual and Legal Analysis at 6, MUR 7119 (Mar. 6, 2018). On the same date, the Commission also found no reason to believe that the Committee made prohibited in-kind contributions to Trump and his authorized campaign committee, Donald J. Trump for President, Inc., via alleged coordinated expenditures. *Id.*

1 Office of the General Counsel ("OGC") investigated this allegation, and this report outlines the
2 results.

3 **III. INVESTIGATION**

4 During the investigation, the Committee's Executive Vice President, Bryan Crosswhite,
5 indicated that the Committee had not filed the required disclosure reports because it did not have
6 any financial activity to report, but added that the Committee would be willing to file the missing
7 reports. He elaborated that although the Committee held one event in July 2016, it had otherwise
8 been completely inactive since registering with the Commission, and it had never received any
9 contributions or made any expenditures.

10 On June 19, 2018, the Committee filed only a miscellaneous submission that read, "The
11 committee has had no activity since Oct. 30, 2015. The committee is inactive[.]"⁴ After we
12 explained to the Committee that this summary submission was insufficient,⁵ on July 5, 2018, the
13 Committee filed all of the missing disclosure reports, dating back to its formation. Each of the
14 reports that it filed, with one exception, disclosed no activity, *i.e.*, the Committee reported that it
15 had no receipts, no disbursements, and no cash on hand.⁶ The one exception was the 2016
16 October Quarterly Report, which disclosed a \$100 contribution from "Cajun Experience," and a
17 corresponding \$100 disbursement to "Trump Campaign," dated July 6, 2016.⁷

⁴ Committee Misc. Electronic Submission (June 19, 2018).

⁵ See Letter from Saurav Ghosh, FEC, to Bryan Crosswhite, Executive Vice President, Americans for Liberty and Free Enterprise (June 21, 2018) (explaining that the summary submission was insufficient to satisfy the Committee's disclosure obligations, and specifically requesting that the Committee address the allegation that it had unreported activity in connection with the July 6, 2016, event).

⁶ See, *e.g.*, Committee 2016 Year-End Report (July 5, 2018).

⁷ Committee 2016 Oct. Quarterly Report at 6, 7 (July 5, 2018).

1 Crosswhite later confirmed that the \$100 activity was, in fact, an in-kind contribution
2 from the Cajun Experience restaurant to the Committee for the use, without charge, of the
3 restaurant to host the July 6, 2016, event. Crosswhite explained that this is the usual amount that
4 the restaurant — which is owned by Crosswhite's wife — would charge for someone (usually a
5 band) to rent the outdoor part of the restaurant. Crosswhite also explained that neither the
6 restaurant nor the Committee paid for any food or drink at the event; all food or drink at the event
7 was paid for by the individual attendees. He also stated that there were no costs associated with
8 advertising for the event, telling us that he had publicized it on Facebook and, in any case, the
9 event was attended by only a handful of people.

10 Crosswhite asserted that the Committee gave no money to the "Trump Campaign" and
11 the "Trump Campaign" reference in the Committee's 2016 October Quarterly Report was
12 essentially an error in trying to properly report what was actually an in-kind contribution from the
13 "Cajun Experience" restaurant to the Committee for the use of the restaurant to hold an event
14 supporting Trump's candidacy.⁸

15 IV. ANALYSIS

16 Under the Act, political committees must maintain an accurate account of their receipts,
17 disbursements, and cash-on-hand balances, and must accurately report those amounts in periodic
18 disclosure reports filed with the Commission.⁹ Here, the information uncovered through our
19 investigation indicates that although the Committee failed to meet its reporting obligations under
20 the Act, it had virtually no activity to report throughout its existence. The entirety of the

⁸ Letter from Bryan Crosswhite, Executive Vice President, Americans for Liberty and Free Enterprise, to Saurav Ghosh, FEC (July 12, 2018) (memorializing his representations regarding the in-kind contribution).

⁹ 52 U.S.C. §§ 30102(c), 30104(b); see 11 C.F.R. § 104.3.

1 Committee's operations appears to be limited to a single public event held on July 6, 2016, and
2 the Committee has indicated that its financial activity connected to that event was *de minimis*:
3 aside from a \$100 in-kind contribution from the restaurant for the use of the restaurant's patio,
4 the Committee did not receive any monetary contributions or make any expenditures in
5 connection with the event. The Committee represents that it did not charge the event attendees,
6 provided no food or drinks at the event, and spent no money publicizing the event. We have no
7 information inconsistent with the Committee's representations about its financial activity.

8 Under these circumstances, we recommend that the Commission exercise its
9 prosecutorial discretion to take no further action in this matter, issue a letter cautioning the
10 Committee regarding its disclosure obligations under the Act, and close the file.¹⁰

11 **V. RECOMMENDATIONS**

- 12 1. Take no further action against Americans for Liberty and Free Enterprise and
13 Gary F. Fox in his official capacity as treasurer;
14 2. Approve a caution letter to the Committee; and

¹⁰ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

3. Close the file.

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7/19/18
Date

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