

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Keep El Paso Honest and Lindsey) MURs 7321, 7335, 7359, and 7473
6 Workman in her official capacity)
7 as treasurer)
8)
9

10 **SECOND GENERAL COUNSEL'S REPORT**
11

12 **I. ACTIONS RECOMMENDED**

13 We recommend that the Commission: (1) authorize pre-probable cause conciliation; (2)
14 approve the attached proposed conciliation agreement; and (3) approve the appropriate letters.

15 **II. BACKGROUND**

16 The Commission found reason to believe that the Committee violated 52 U.S.C.
17 § 30104(a), (b), and (g) and 11 C.F.R. §§ 104.4 and 109.10(d) by failing to report its receipts and
18 disbursements during the 2018 election cycle and authorized the use of compulsory process to
19 conduct an investigation to determine the amount of the unreported receipts and disbursements.¹
20 Although the Committee was uncooperative during 2019 and 2020, while the Commission
21 lacked a quorum to enforce its subpoenas, in late 2021 and early 2022, the Committee
22 cooperated by providing information and filing an 2018 April Quarterly Report disclosing
23 \$414,648 of aggregate receipts, disbursements, and independent expenditures made in the first
24 quarter of 2018. The Committee also confirmed that it has had no activity since the first quarter
25 of 2018. Based on the results of the investigation, we recommend that the Commission authorize
26 pre-probable cause conciliation to resolve the violations and approve the proposed conciliation
27 agreement.

¹ Certification ("Cert.") ¶¶ 1, 3 (June 3, 2019).

III. RESULTS OF THE INVESTIGATION

A. Procedural Summary

On June 14, 2019, this Office notified the Committee of the Commission's reason to believe findings and provided the Factual and Legal Analysis.² We also included questions and document requests regarding the Committee's failure to file any of its disclosure reports, to be answered by the Committee's treasurer.³ On June 20, 2019, the Committee's treasurer contacted the Commission's Reports Analysis Division ("RAD") and indicated that she would be filing the Committee's overdue disclosure reports.⁴ Notwithstanding these communications with RAD, the Committee did not file any reports and did not return RAD's follow-up telephone calls.⁵ During the summer of 2019, this Office contacted the treasurer, who again stated that she would file the Committee's missing reports as well as produce the documents requested in the notification to the Commission's findings.⁶ However, no reports were filed, and the treasurer did not respond to repeated attempts at communication.⁷

In addition to our communications with the Committee's treasurer, we also contacted Carlos Sierra, an El Paso area political consultant identified by both press accounts and the Committee's treasurer as having created and organized the Committee and directed its activities.⁸ Sierra initially agreed to a telephone interview on August 13, 2019, but did not answer when we called and did not

² RTB Notif. Letter at 1 (June 14, 2019).

³ *Id.*

⁴ RAD Communication Log (June 20, 2019).

⁵ *Id.*

⁶ Lindsey Workman Enforcement Contact Log at 1 ("Workman Contact Log").

⁷ *See id.* at 1.

⁸ *See id.* (documenting statements by Workman that Sierra had recruited her to be treasurer of the Committee and was her boss and mentor); Carlos Sierra Enforcement Contact Log at 1 (documenting multiple phone contacts with Sierra in August 2019) ("Sierra Contact Log"); First Gen. Counsel's Rpt. at 4.

1 immediately return text messages asking if he intended to do the interview.⁹ On August 26, 2019,
 2 Sierra said that he still intended to cooperate with the investigation but no longer intended to do the
 3 telephone interview and would prefer to correspond in writing via email.¹⁰ From September through
 4 December 2019 Workman and Sierra neither responded to multiple attempts to contact them, nor
 5 provided any documents or other responsive information.¹¹

6 After Workman and Sierra failed to produce documents or answer our questions, and
 7 Workman continued to fail to file the Committee's reports, the Commission issued Subpoenas to
 8 Produce Documents and Orders to Submit Written Answers ("Subpoenas and Orders") directed to
 9 the Committee and to Sierra.¹² On September 12, 2019, this Office sent those Subpoenas and
 10 Orders to the Committee and Sierra by United Parcel Service and directed each to respond with
 11 documents and answers within 30 days.¹³ The Subpoenas and Orders sought documents and
 12 information related to the Committee's operations and finances.¹⁴ Despite acknowledging
 13 receipt of the Subpoenas and Orders,¹⁵ neither the Committee or Sierra complied, despite

⁹ Sierra Contact Log at 1.

¹⁰ *Id.*

¹¹ *Id.*; Workman Contact Log at 1.

¹² Cert. (Sept. 3, 2019) (documenting a vote on August 30, 2019). On August 31, 2019, shortly after approving the subpoenas, the Commission lost a quorum following the resignation of Commissioner Matthew Petersen. Quorum was briefly reestablished from May 19 through July 2, 2020; lost again on July 3, 2020, following the resignation of Commissioner Caroline Hunter; and reestablished in December 2020.

¹³ Letters to the Committee and Sierra (attaching Subpoenas and Orders) (Sept. 12, 2019).

¹⁴ *Id.*

¹⁵ See Sierra Contact Log at 1 (documenting a January 28, 2020 telephone conversation wherein Sierra discussed the subpoena with the OGC investigator, stated his intention to comply by providing responsive answers and records, but noted that only Workman had access to the bank records); Email from Wanda D. Brown, FEC OGC, to Sierra (Jan. 28, 2020) (following up on Sierra's conversation with the OGC investigator and confirming that Sierra intended to submit responsive documents the following week).

1 numerous phone calls, letters, and emails from this Office reminding them of their duty to
 2 comply with the subpoenas and produce the requested documents.¹⁶

3 Starting in the early summer of 2021, Sierra began providing information regarding the
 4 Committee's activities, and in July 2021 he provided responsive documents and responses to our
 5 questions.¹⁷ During the late summer and fall of 2021, Sierra coordinated with Workman to
 6 obtain responsive bank records that were produced to this Office in November 2021.¹⁸ During
 7 November and December 2021, Sierra prepared and submitted a draft of the Committee's 2018
 8 April Quarterly report (which was the only period in which it was active).¹⁹ After reviewing the
 9 draft report, we identified deficiencies in the draft and sent Sierra a list of items that needed to be
 10 corrected, including several missing purpose entries for Committee disbursements and the
 11 omission of Schedule E disclosing the Committee's independent expenditures.²⁰ The Committee
 12 submitted its 2018 April Quarterly Report on December 10, 2021.²¹ After review by OGC and

¹⁶ See Workman Contact Log at 1-2 (documenting attempts to contact Workman throughout November 2019-February 2020); Sierra Contact Log at 1 (documenting attempts to contact Sierra throughout November 2019-January 2020, and a conversation on January 28, 2020, wherein Sierra told an OGC investigator that he would send a response to the subpoena by the end of the following week); Email from Mark Shonkwiler, FEC OGC, to Lindsay Workman (Feb. 13, 2020) (discussing "follow-up on [OGC's] efforts to resolve [Workman's] noncompliance with the Commission's outstanding subpoena"); Email from Mark Shonkwiler, FEC OGC, to Carlos Sierra (Feb. 13, 2020) (discussing "follow-up on [OGC's] efforts to resolve [Sierra's] noncompliance with the Commission's outstanding subpoena"); Email from Lindsey Workman to Wanda D. Brown, FEC OGC, (stating that Workman obtained Committee bank statements and would submit that week) (Dec. 10, 2019); Email from Wanda D. Brown, FEC OGC, to Sierra (documenting his commitment to submitting documents, made to OGC investigator) (Jan. 28, 2020); and Email from Sierra to Wanda D. Brown, FEC OGC (stating he would soon send documents and answers) (Feb. 7, 2020).

¹⁷ See Email from Sierra to Anne Spivey, FEC OGC (July 28, 2021) (containing a link to copies of documents and written subpoena response

¹⁸ Email from Workman to Anne Spivey, FEC OGC (Nov. 4, 2021) (attaching responsive bank records).

¹⁹ Email from Sierra to Mark Shonkwiler, FEC OGC (Nov. 18, 2021) (attaching a draft copy of the Committee's 2018 April Quarterly Report).

²⁰ Email from Ray Wolcott, FEC OGC, to Sierra (Dec. 1, 2021).

²¹ Keep El Paso Honest Amended 2018 April Quarterly Report (Dec. 10, 2021).

RAD, we noted that Schedule E was omitted from the report and advised the Committee and Sierra of the need to file an amended report disclosing the Committee's independent expenditures.²² We coordinated with the Committee's assigned RAD analyst to provide direct assistance to Sierra in correcting the deficiencies, and on January 27, 2022, the Committee submitted an Amended 2018 April Quarterly Report.²³ We compared the information in the Amended 2018 April Quarterly Report with contemporaneous Committee invoices and bank records provided by Workman²⁴ and, in consultation with the Committee's assigned RAD Analyst, determined that the amended report appeared to completely and accurately disclose the Committee's receipts, disbursements, and independent expenditures.

B. Committee Formation and Operation

Sierra states that he formed the Committee for the sole purpose of opposing a particular candidate in the 2018 Primary Election for Texas's 18th Congressional District, Veronica Escobar.²⁵ Sierra was solely responsible for forming and operating the Committee, and Workman, the treasurer, was the only other staff member.²⁶ Workman states that Sierra recruited her to be the Committee's treasurer, that she had no prior treasurer experience or experience with FEC reporting, that she was not involved in any decisions about Committee solicitations or disbursements, and that although she was signatory on the Committee's bank

²² Email from Ray Wolcott, FEC OGC, to Sierra (Dec. 20, 2021).

²³ Email from Ray Wolcott, FEC OGC, to Michael Hartsock and Nick Tarone, FEC RAD (Dec. 1, 2021); Email from Ray Wolcott, FEC OGC, to Nick Tarone, FEC RAD (Dec. 20, 2021); Email from Ray Wolcott, FEC OGC, to Sierra (Dec. 20, 2021) (providing the RAD analyst's contact information and encouraging Sierra to contact RAD for assistance completing the amended report).

²⁴ *Supra* note 18.

²⁵ Sierra Subpoena Response ¶ 1.a-c (July 28, 2021).

²⁶ *Id.* ¶ 1.a-b.

1 account, she “never wrote checks or signed for anything.”²⁷ After the Committee registered with
 2 the Commission on November 7, 2017, Sierra created a website, set up an online “donation
 3 portal,” drafted fundraising letters, and began mailing those letters to “El Paso donors who [he]
 4 felt would contribute to the cause [of opposing Escobar’s election].”²⁸ Sierra states that he was
 5 the “sole decision maker on how funds were spent,” and that he “led creative direction” for ads
 6 and other public communications paid for by the Committee.²⁹ Sierra states that Workman
 7 opened the Committee’s bank account shortly after the Committee registered with the
 8 Commission.³⁰ Sierra states that Workman was the only one with access to the account, and
 9 Sierra never received statements directly from the bank.³¹

10 All of the Committee’s receipts and disbursements occurred between January 2 – March
 11 1, 2018, the latter being the date of the primary election.³² The Committee disclosed \$207,000 in
 12 total receipts comprising 12 total contributions made by four individual contributors between
 13 January 2 – February 22, 2018.³³

²⁷ Workman Call Log at 1 (documenting a phone conversation with Workman on August 13, 2019).

²⁸ *Id.* ¶ 3.a.

²⁹ *Id.* ¶¶ 4.a, 8.a

³⁰ *Id.* ¶ 6.a.

³¹ *Id.* ¶ 6.b-c.

³² Keep El Paso Honest Amended 2018 April Quarterly Report at 6-16 (Jan 27, 2022).

³³ *Id.* at 2, 6-9.

1 Amended 2018 Quarterly Report, Schedule A, Receipts

Date	Amount	Contributor
1/2/2018	\$5,000	Stuart Meyer
1/2/2018	\$5,000	Stuart Meyer
1/2/2018	\$5,000	Stuart Meyer
1/2/2018	\$5,000	Stuart Meyer
1/2/2018	\$5,000	Stuart Meyer
1/5/2018	\$15,000	Donald Lane Trust
1/5/2018	\$15,000	Pat Lama
1/12/2018	\$50,000	Stuart Meyer
1/18/2018	\$2,000	Michael Gopin
2/22/2018	\$33,000	Stuart Meyer
2/22/2018	\$33,000	Stuart Meyer
2/22/2018	\$34,000	Stuart Meyer
Total:	\$207,000	

2 The Committee disclosed a total of \$207,000 in disbursements, including \$10,756 in
 3 itemized operating expenditures on Schedule B and \$195,607 in independent expenditures on
 4 Schedule E, shown in the tables below, and \$636.79 of operating expenses that were itemized in
 5 the Committee's electronic filing, but do not appear as itemized disbursements on Schedule B
 6 because of what RAD described as a quirk of the e-filing software.³⁴

7 Amended 2018 Quarterly Report, Schedule B, Disbursements

Date	Amount	Recipient	Purpose
1/4/2018	\$1,425.11	Lindsey Workman	Salary
1/9/2018	\$5,000.00	Caplin & Drysdale	Legal
1/22/2018	\$907.71	L2, Inc	Voter Data
1/31/2018	\$227.53	Apple, Inc	Premium iCloud Services and Accounting App
2/1/2018	\$586.94	Giant Eagle	Food for Fundraiser
2/28/2018	\$731.11	Apple, Inc	Premium iCloud Services and Accounting App
2/28/2018	\$737.00	PNC	Banking Fees
2/28/2018	\$569.23	Lindsey Workman	Salary
3/1/2018	\$571.82	Lindsey Workman	Salary
Total:	\$10,756.45		

³⁴ *Id.* at 2, 10-16. In consultation with the Committee's RAD analyst, we determined that the \$636.79 discrepancy between the Committee's reported total disbursements and the itemized disbursements on Schedule B of its Reports was caused by a quirk of the E-filing software that caused certain types of operating expenses to not be itemized Schedule B of the Report, despite being included in the Committee's electronic file and reflected in the total disbursements. RAD confirmed that the Committee had reported \$207,000 in disbursements in the file the Committee uploaded.

1 Amended 2018 Quarterly Report, Schedule E, Independent Expenditures

Date	Amount	Payee	Election Support/Oppose
1/15/2018	\$206.76	Universal Graphics	2018 TX-16 Primary Veronica Escobar - Oppose
1/20/2018	\$23,500.00	Renegade Public Affairs ³⁵	2018 TX-16 Primary Veronica Escobar - Oppose
1/20/2018	\$58,000.00	Renegade Public Affairs	2018 TX-16 Primary Veronica Escobar - Oppose
2/1/2018	\$4,950.00	Clear Channel Outdoor	2018 TX-16 Primary Veronica Escobar - Oppose
2/7/2018	\$4,950.00	Clear Channel Outdoor	2018 TX-16 Primary Veronica Escobar - Oppose
2/10/2018	\$7,000.00	Renegade Public Affairs	2018 TX-16 Primary Veronica Escobar - Oppose
3/1/2018	\$97,000.00	Renegade Public Affairs	2018 TX-16 Primary Veronica Escobar - Oppose
Total:	\$195,606.76		

2 The Committee submitted vender invoices and bank records corroborating these receipts and
 3 disbursements and confirming that the Committee's bank account had a zero balance as of April
 4 14, 2018.³⁶

5 The Committee reported having zero cash on hand at the end of March 2018,³⁷ and
 6 provided bank records confirming that the account has a zero balance as of April 13, 2018.³⁸

7 The Committee's activity was limited to raising and spending in connection with the 2018
 8 primary election referenced above. Sierra states that he intends to terminate at the conclusion of
 9 these matters.³⁹

³⁵ Sierra is the owner and CEO of Renegade Public Affairs. About Renegade Public Affairs, RENEGADE PUBLIC AFFAIRS, <https://renegadepublicaffairs.com/about> (last visited May 11, 2022). According to Sierra, Renegade Public Affairs acted as a media buyer for the Committee. Sierra Subpoena Response ¶ 4.b.

³⁶ See Email from Workman to Sierra and Enclosed Bank Records (Nov. 4, 2021).

³⁷ Amended 2018 April Quarterly Report at 2, 12, 15 (Jan. 27, 2022) (reporting zero cash on hand at the end of the reporting period and reporting the last Committee disbursements on March 1, 2018).

³⁸ Committee Bank Records at 18 (documenting a zero balance as of April 13, 2018).

³⁹ Email from Sierra to Ray Wolcott, FEC OGC (June 28, 2022).

IV. LEGAL ANALYSIS

The Act requires committee treasurers to file reports disclosing all receipts and disbursements, in accordance with the provisions of 52 U.S.C. § 30104.⁴⁰ These reports must include, *inter alia*, the amount and nature of these receipts and disbursements.⁴¹ Political Committees must also report the identification of each person whose aggregate contributions exceed \$200 within the calendar year, or election cycle in the case of an authorized committee, along with the date and amount of any such contributions.⁴² Political committees are also required to report the name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, as well as the date, amount, and purpose of such payments.⁴³

An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents.⁴⁴ Political committees must disclose their independent expenditures on Schedule E of their regular disclosure reports.⁴⁵ In addition to a political committee's regular reporting

⁴⁰ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

⁴¹ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

⁴² 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a)(4)(i). For contributions by individuals, "identification" consists of name, mailing address, occupation, and employer. 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

⁴³ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

⁴⁴ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of "expressly advocating").

⁴⁵ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b). Committees shall report the name and address of any person who receives a disbursement for an independent expenditure from the committee during the reporting period in an aggregate amount in excess of \$200 within the calendar year (or election cycle for an authorized committee), as well as the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought

obligations, when a committee makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before, the date of an election, the Act requires the Committee to file an additional report describing those expenditures within 24 hours.⁴⁶ Additional 24-hour reports must be filed each time subsequent independent expenditures relating to the same election aggregate an additional \$1,000 or more.⁴⁷ Further, a political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day, must file a report describing those expenditures within 48 hours.⁴⁸ Additional 48-hour reports must be filed each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more.⁴⁹ These reports must be filed within 24 or 48 hours, respectively, “following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated.”⁵⁰

Here, based on the investigation, it is apparent that the Committee failed to disclose \$207,000 in receipts and \$207,000 in disbursements, totaling \$414,000 in unreported activity. The Committee also failed to file any 24- or 48-hour reports related to \$195,606.76 in independent expenditures, despite aggregating more than \$1,000 and \$10,000 in independent

by such candidate. 52 U.S.C. § 30104(b)(6)(B)(iii); 11 C.F.R. § 104.3(b)(3)(vii). Committees must also report the total of all independent expenditures. 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

⁴⁶ 52 U.S.C. § 30104(g)(1); 11 C.F.R. §§ 104.4(c), 109.10(d).

⁴⁷ 52 U.S.C. § 30104(g)(1)(B); 11 C.F.R. §§ 104.4(c), 109.10(d).

⁴⁸ 52 U.S.C. § 30104(g)(2); 11 C.F.R. §§ 104.4(b), 109.10(c).

⁴⁹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. §§ 104.4(b), 109.10(c).

⁵⁰ 11 C.F.R. § 104.4(b)(2), (c).

expenditures during the respective periods of time prior to the 2018 primary election.⁵¹ This confirms the Commission's original finding that there is reason to believe the Committee violated 52 U.S.C. § 30104(a), (b) (g) and 11 C.F.R. §§ 104.4 and 109.10(d) by failing to file reports of its receipts and disbursements.⁵²

During the course of the investigation, the Committee filed its 2018 April Quarterly report and a subsequent amendment. As discussed above, based on the banking records and other information we obtained, the amended report appears to accurately disclose all of the Committee's receipts and disbursements, and the information received during the investigation indicates that the Committee's activity was limited to that single reporting period. The public record, therefore, now reflects a complete picture of the Committee's activity.

⁵¹ *Supra* note 34. The Committee crossed the \$10,000 aggregate 48-hour reporting threshold on January 20, 2018, and crossed \$1,000 aggregate the 24-hour reporting threshold on March 1, 2018. *Id.*

⁵² OGC considered, but is not recommending, finding reason to believe as to Workman in her personal capacity. The Commission has determined that it may deem a current or former treasurer to be party to an enforcement action in their personal capacity where the available information suggests, *inter alia*, that the treasurer recklessly failed to fulfill duties imposed by law or intentionally deprived themselves of operative facts giving rise to the violation. See Statement of Policy Regarding Treasurers in Enforcement Proceedings, 70 Fed. Reg. 3, 4 (Jan. 3, 2005) (the "Treasurer Policy"). Workman, who had no prior experience as a treasurer, had a very limited role in terms of the Committee's operations. Workman did not direct unreported campaign disbursements and did not direct the Committee's fundraising or spending. Additionally, although the Committee raised and spent a significant amount of money, it was only active for a short period of time, and all of its activity was confined to the reporting period for a single disclosure report. Although Workman appears to have failed in her duties as treasurer, the available information indicates that it was likely due to inexperience and ignorance of those responsibilities rather than recklessness or willful blindness to the Committee's activities. Compare Factual & Legal Analysis ("F&LA") at 5, MUR 6889 (Michael Delk) (dismissing allegations against a treasurer in his personal capacity where the available information indicated that he was "a non-professional political committee staffer, and an inexperienced PAC participant," and the alleged reporting violations appeared to have been caused by the treasurer's "reli[ance] on the erroneous guidance of politically experienced, professional [committee] staff")

MURs 7321, 7335, 7359, and 7473 (Keep El Paso Honest)
Second General Counsel's Report
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VI. RECOMMENDATIONS

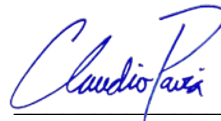
1. Authorize pre-probable cause conciliation with Keep El Paso Honest and Lindsey Workman in her official capacity as treasurer;
2. Approve the attached Proposed Conciliation Agreement; and
3. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for
Enforcement

7/28/2022

Date



Claudio J. Pavia
Deputy Associate General Counsel
for Enforcement



Mark Shonkwiler
Assistant General Counsel



Ray Wolcott
Attorney