



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 18 2013

David Mason, Esq.
Aristotle
205 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

RE: MUR 6739
Washington State Republican Party
and Dan Brady in his official
capacity as treasurer

Dear Mr. Mason:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Washington State Republican Party and Dan Brady in his official capacity as treasurer, (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 11, 2013, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, reading "Ellen L. Weintraub". The signature is written in a cursive, flowing style.

Ellen L. Weintraub
Chair

Enclosures

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Washington State Republican Party and
Dan Brady in his official capacity as treasurer

MUR: 6739

I. INTRODUCTION

On October 17, 2012, the Washington State Republican Party and Dan Brady in his official capacity as treasurer ("Committee") filed a *sua sponte* submission acknowledging approximately \$70,000 in net increased activity in several of its 2012 monthly reports.¹ On November 2, 2012, the Commission approved a Final Audit Report ("FAR") on the Committee. In the FAR, the Commission found that the Committee misstated its financial activity in 2009 and 2010, both as to its non-Levin activity (Finding 1) and its Levin activity (Finding 2).² See Attach. 1. Shortly thereafter, the Audit Division referred these findings to the Office of General Counsel.³

¹ The Committee also provided a supplemental submission by e-mail to answer a question regarding its calculations. See e-mail from David Mason, Committee attorney, to Elena Paoli, Staff Attorney, FEC (Feb. 27, 2013, 05:56 PM EST).

² The audit was conducted pursuant to 2 U.S.C. § 438(b). Audit did not refer an additional finding that the Committee failed to report debts for 2009 and 2010.

³ On November 19, 2012, this Office notified the Committee of the Referral. See Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38617 (Aug. 4, 2009). The Committee submitted a response.

II. AR 12-10 Facts

1. Finding One – Misstatements of 2009 and 2010 non-Levin Activity

Regarding the Committee's 2009 activity, Audit referred misstatements of beginning cash-on-hand and receipts.⁴

Table 1: 2009 non-Levin Activity

Item	Reported	Bank Records	Discrepancy
Beginning cash-on-hand January 1, 2009	\$124,951	\$155,272	\$30,321 Understated
Receipts	\$852,256	\$806,615	\$45,641 Overstated
Disbursements	\$970,577	\$952,783	\$17,794 Overstated
Ending cash-on-hand December 31, 2009	\$6,630	\$9,104	\$2,474 Understated

The 2009 understatement of beginning cash-on-hand likely resulted from prior period discrepancies. *See* Referral at 2. The 2009 overstatement of receipts resulted from reported transfers from Levin and non-federal accounts that were not supported by bank deposits or checks/debits; unreported transfers from an affiliated committee and a non-federal account; and other unexplained differences. *See* Referral at 3.

Regarding the Committee's 2010 activity, Audit referred misstatements of receipts, disbursements, and ending cash-on-hand.

Table 2: 2010 non-Levin Activity

Item	Reported	Bank Records	Discrepancy
Beginning cash-on-hand January 1, 2010	\$6,630	\$9,104	\$2,474 Understated
Receipts	\$2,275,638	\$2,972,793	\$697,155 Understated
Disbursements	\$1,925,680	\$2,988,062	\$1,062,382 Understated
Ending cash-on-hand December 31, 2010	\$356,588	-\$6,165	\$362,753 Overstated

⁴ Audit derived these figures by comparing the Committee's bank records to its disclosure reports at the time of the audit.

1 According to the Referral, the 2010 understatement of receipts resulted from unreported
2 transfers from a Levin account, non-federal accounts, and political committees; unreported
3 contributions from individuals; in-kind contributions not reported as receipts; a reported transfer
4 and contribution not supported by bank deposits; and other unexplained differences. *Id.* The
5 understatement of disbursements resulted from unreported payroll expenditures and operating
6 expenditures; unreported transfers to political parties and contributions to other committees;
7 reported disbursements not supported by checks or debits; and other unexplained differences.
8 The overstatement of ending cash-on-hand resulted from the misstated receipts and
9 disbursements. *Id.*

10 2. Finding Two – Misstatements of 2009 and 2010 Levin Activity
11

12 Regarding its 2009 Levin activity, Audit referred misstatements of beginning cash-on-
13 hand and disbursements.

Table 3: 2009 Levin Activity

Item	Reported	Bank Records	Discrepancy
Beginning cash-on-hand January 1, 2009	\$49,500	\$17,001	\$32,499 Overstated
Receipts	\$0	\$0	\$0
Disbursements	\$49,499	\$17,000	\$32,499 Overstated
Ending cash-on-hand December 31, 2009	\$1	\$1	\$0

According to the Referral, the 2009 overstatement of beginning cash-on-hand likely resulted from prior period discrepancies. The overstatement of disbursements resulted from the erroneous reporting of transfers of \$32,499 to the federal account. See Referral at 6-7.

Regarding its 2010 Levin activity, Audit referred misstatements of disbursements and ending cash-on-hand.

Table 4: 2010 Levin Activity

Item	Reported	Bank Records	Discrepancy
Beginning cash-on-hand January 1, 2010	\$1	\$1	\$0
Receipts	\$12,500	\$15,000	\$2,500 Understated
Disbursements	\$0	\$15,000	\$15,000 Understated
Ending cash-on-hand December 31, 2010	\$12,501	\$1	\$12,500 Overstated

The understated disbursements resulted from an unreported \$15,000 transfer that the Committee made to its federal account, and the overstated cash-on-hand balance resulted from the misstated receipts and disbursements. *Id.* at 7. In response to the Interim Audit Report's

1 recommendations, the Committee amended its reports to correct all its misstatements of 2009
2 and 2010 non-Levin and Levin activity. *Id.* at 4, 7.⁵

3 The Committee responded that it “does not contest the factual basis for this referral.”
4 Resp. at 1. Instead, the Committee asserts that mitigating factors counsel in favor of a reduced
5 civil penalty. *Id.* The Committee asserts that the “public was not deprived of any substantial
6 information regarding” the Committee’s initially unreported 2010 receipts and disbursements
7 prior to the election. First, a portion of the receipts were transfers reported pre-election as
8 disbursements on the Committee’s state reports and on reports filed by the Republican National
9 Committee. *Id.* Second, the remainder of the unreported receipts and \$600,000 of the \$1.06
10 million in unreported disbursements was not due to be reported until after the election. *Id.* at 1-2.

11 The Committee also states that, during the 2010 election cycle, 90% of its initially
12 unreported receipts and 80% of its initially unreported disbursements stemmed from a “single,
13 readily remediable weakness.” *Id.* at 2. The Committee explains that its staff “recorded
14 inconsistently” wire and electronic transfers and thus “a relatively small number of unrecorded
15 transactions generated a very high dollar value of unreported activity.” *Id.* The Committee has
16 since revised its internal controls and compliance practices to address its problems in this area,
17 and it now completes a monthly bank reconciliation to ensure that its disclosure reports reflect all
18 bank activity. *Id.* at 2. Finally, the Committee “asks that the Commission instruct the staff as to
19 its willingness to explore a conciliation agreement which includes extraordinary assurances of
20 reporting accuracy as a substantial substitute for a financial penalty.” *Id.* at 3.

⁵ In response to the Draft FAR, the Committee requested a hearing on a mistaken \$43,920.85 transfer from its federal to non-federal accounts. The Commission held a hearing on June 27, 2012 but ultimately concluded in the FAR that the transfers should have been reported. See Referral at 7-8. The Committee had disputed that it needed to report the mistaken transfer, as it was quickly corrected and reversed, but the Committee nevertheless amended its reports to reflect both transfers. In response to the Referral, the Committee states that it “accepts the Commission’s conclusion on reporting of the inadvertent \$43,920 disbursement and corrective transfer raised during the audit hearing.” Resp. at 1.

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B. Pre-MUR 549 Facts

In its *sua sponte* submission ("Submission"), the Committee disclosed that it failed to report \$74,386.16 in receipts in its original 2012 April, May, and June monthly reports. *See* Submission at 1. According to the Submission, the Committee's errors mainly resulted from its hiring a new vendor to manage online receipts for its party convention. *Id.* at 1-2. Due to "administrative difficulties" and a "spike in volume" of transactions, staff became "overwhelmed" and failed to enter some receipts in the proper databases, entered some receipts late, and entered receipts for at least one date twice. *Id.* at 1.

Despite its monthly reconciliations, the Committee did not become aware of the missing receipts until June "because the vendor data and forwarding practices resulted in deposits in transit each month that were large and difficult to calculate." *Id.* at 1-2. Its compliance procedures failed to prevent the error because the transfers from the vendor were delayed and there was difficulty in matching specific contributors to the vendor transfers. *Id.* at 2. According to the Submission, once the Committee discovered the discrepancies, it worked "diligently" to identify missing, duplicate, or wrongly dated transactions and to correct the data. *Id.* Concurrently with filing the Submission, the Committee amended its 2012 April, May, and June monthly reports to reflect the additional receipts and amended its July-September reports to carry forward correct cash totals reflecting the April-June amendments. *Id.* at 1. It also revised its procedures and hired an additional compliance employee for the remainder of the 2012 election cycle. *See id.* at 2-3. In light of its Submission, the Committee requests the Commission conclude this matter with no action, or alternatively, resolve it through the Fast Track process or by referral to the Alternative Dispute Resolution Office, or with the maximum penalty reduction. *Id.* at 3.

As illustrated below, the amended 2012 April and May monthly reports show an additional \$75,016.42 in receipt activity, and the amended 2012 June monthly report shows decreased receipt activity.⁶

Table 5: 2012 Activity				
Report	Date of Amendment	Original Report	Amended Report	Discrepancy
April Monthly	October 17, 2012	\$83,660.33	\$86,349.63	\$2,689.30
May Monthly	October 17, 2012	\$313,291.86	\$385,618.98	\$72,327.12
June Monthly	October 19, 2012	\$138,640.65	\$130,500.41	-\$8,140.24

In a supplemental submission, the Committee explains that the \$74,386.16 figure it cited in its Submission is the amount of contributions that the Committee received but had not included in the original reports. The Committee subtracted duplicate receipts totaling \$7,509.98 from the amended reports, resulting in a net increase of \$66,876.18. See e-mail from David Mason, Committee attorney, to Elena Paoli, Staff Attorney, FEC (Feb. 27, 2013, 05:56 PM EST).

C. Legal Analysis

The Federal Election Act of 1971, as amended, (the "Act") requires treasurers to file reports disclosing the amount of cash-on-hand at the beginning of each reporting period; the total amount of receipts for the reporting period and for the calendar year; and the total amount of disbursements for the reporting period and for the calendar year. See 2 U.S.C. § 434(b)(1), (2), (4). State, district, and local committees of a political party are required to report receipts and disbursements for federal election activity if the aggregate amount of the receipts and

⁶ On December 13, 2012, after the Committee filed its Submission but before OGC activated it, RAD sent an RFAI regarding the additional receipts in the Committee's amended 2012 May monthly report. The Committee's response to the RFAI contains the same explanation for the increase as does its Submission. See <http://images.nictusa.com/pdf/467/13960352467/13960352467.pdf> (Miscellaneous Text filed by Committee, Jan. 16, 2013).

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1 disbursements exceeds \$5,000 in a calendar year. *See* 2 U.S.C. § 434(e)(2)(A); 11 C.F.R.
2 § 300.36(b)(2). Committees that are required to report federal election activity must file monthly
3 reports. *See* 2 U.S.C. § 434(e)(4); 11 C.F.R. § 300.36(c)(1). For committees that have a Levin
4 fund account, Commission regulations also require separate disclosure reports for those funds
5 and transactions. 11 C.F.R. § 300.36.

6 The Committee misstated its financial activity in 2009, 2010, and 2012 and therefore did
7 not comply with the Act's reporting requirements. Therefore, there is reason to believe that
8 Washington State Republican Party and Dan Brady in his official capacity as treasurer violated
9 2 U.S.C. § 434(b).