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2018 AUG 23 PM 12: 21

August 23, 2018

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Federal Election Commission
Office of Complaints Examination and Legal
Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 204632018 AUG 23 PM 2: 37
OFFICE OF
GENERAL COUNSEL**Re: RR18L-25**

Dear Mr. Jordan:

On behalf of the Nevada State Democratic Party, and Jan Churchill in her official capacity as treasurer (collectively, the "Committee"), this letter responds to Referral RR18L-25.

This referral arises from the Committee's amendment of its reports—on its own initiative—to show the receipt of transfers of joint fundraising proceeds that were already disclosed as memo entries, and to show the making of intra-party transfers that were already on the public record through the recipient's own disclosure. The initial omissions occurred as a result of a single error, which was that a lone bank statement for one of the Committee's multiple accounts was missed during the reconciliation that preceded the filing of the Committee's 2016 Post-General Report.

These facts present no basis for further enforcement under the Federal Election Campaign Act of 1971, as amended, ("FECA" or the "Act"), 52 U.S.C. § 30101 *et seq.* The initial error did not substantially prejudice the public interest, because the joint fundraising proceeds comprising the omitted transfers were already on the report as memo entries, and because the omitted disbursements were already on the public record through the recipient's own report. Moreover, this matter is only before the Commission now because of the Committee's good faith corrective action. Accordingly, the Commission should take no further action on the referral.

BACKGROUND

This matter arises from the Committee's 2016 Post-General Report, which disclosed the culmination of the Committee's 2016 election cycle activities during a very short time period. On the initial report timely filed on December 8 ("Original Report"), the Committee reported receiving one transfer of joint fundraising proceeds in the amount of \$253,418.00 on line 12 of

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schedule A,¹ and memo entries totaling \$2,694,803.46.² The reason for the gap between the transfer and the memo entries was that the latter were in the Committee's reporting database, but the former was on a bank statement for one of the Committee's accounts that had been overlooked in the initial preparation of the Original Report. When the Committee discovered the omission, it amended its 30 Day Post-General Report to show additional joint fundraising transfers totaling \$1,656,364.14, and additional transfers to other party committees totaling \$1,656,750.83, bringing the receipts in line with the memo entries previously disclosed, and adding transfers to the Democratic National Committee that were shown on the bank statement and omitted from the Original Report.³

On April 12, 2018, the Committee received a Request for Additional Information ("RFAI") asking why the activity was not previously disclosed on the First Amended Report.⁴ On May 16, 2018, the Respondents replied, stating, in relevant part:

The Nevada State Democratic Party takes its disclosure responsibilities very seriously and makes every effort to file complete and accurate reports. Despite its best efforts, in the busy season of the 2016 election, it discovered several weeks ago that it missed one bank statement which resulted in the omission of several transfers and disbursements from the report. The Nevada State Democratic Party promptly amended its 2016 post-general election report to show transfers in the amount of \$1,656,364.14 received from the Hillary Victory Fund and disbursements in the amount of \$1,656,750.83 made to the Democratic National Committee upon learning of their omission. However, note that the Nevada State Democratic Party's original report did include all of the underlying Hillary Victory Fund memo entries and otherwise reported all incoming transfers from HVF and all outgoing transfers to the DNC. In addition, the Hillary Victory Fund disclosed all the transfers to the Party, and the Democratic National Committee reported the transfers from the Party on their respective FEC reports so that the activity was readily available on the public record. The Party's prompt corrective action is in line with its general reporting practices of compliance with the

¹ See Nevada State Democratic Party, Original Post-General 2016 Report (filed on Dec. 8, 2016), <http://docquery.fec.gov/pdf/308/201612089037811308/201612089037811308.pdf>; see Nevada State Democratic Party, First Amended Post-General 2016 Report (filed on Jan. 30, 2017)

<http://docquery.fec.gov/pdf/862/201701309041566862/201701309041566862.pdf>.

² See Nevada State Democratic Party, Original Post-General 2016 Report (filed on Dec. 8, 2016), <http://docquery.fec.gov/pdf/308/201612089037811308/201612089037811308.pdf>.

³ See Nevada State Democratic Party, Fourth Amended Post-General 2016 Report (filed on Feb. 5, 2018), <http://docquery.fec.gov/pdf/288/201802059094240288/201802059094240288.pdf>.

⁴ Request for Additional Information, Federal Election Comm'n (Apr. 12, 2018), <http://docquery.fec.gov/pdf/541/201804130300003541/201804130300003541.pdf>.

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requirements of the Federal Election Campaign Act and Federal Election Commission regulations.⁵

On June 11, 2018, Treasurer Jan Churchill received a call from Jack Baisden, an Analyst in the Reports Analysis Division (“RAD”) in which she was informed that the Committee would be referred to another office. Counsel for the Committee called RAD in an attempt to procure Attachment 4, mentioned in the referral letter. However, the RAD Analyst stated that Attachment 4 is an internal communication log that RAD does not make public. On July 2, 2018, the Reports Analysis Division referred the Committee’s amendments to the Commission’s Office of General Counsel.

ANALYSIS

Further action on this referral is not necessary to promote the public interest, nor the Commission’s interest:

First, the contributions comprising the initially omitted joint fundraising transfer were on the Committee’s reports as memo entries. The public had access to the most salient information, which was the identity of those who had given to the Committee through joint fundraising activities.

Second, the joint fundraising transfers to the Committee, and the Committee’s transfers to other party committees, were already on the public record through the other committees’ reports. The Hillary Victory Fund reported the transfers of joint fundraising proceeds to the Committee.⁶ The Democratic National Committee reported receiving transfers from the Nevada State Democratic Party.⁷ Thus, the public had access to this information, even before the Committee made the necessary corrections.

Third, the Committee acted in good faith. The omission was caused by a single, explicable lapse, that the Committee corrected upon becoming aware of it. The only reason the Commission is considering this referral at all is because the Committee amended its report on its own initiative. That the Committee is a state party committee should be relevant to the Commission’s consideration. By maintaining multiple accounts, allocating shared expenses, and complying with the extensive obligations under the Bipartisan Campaign Reform Act of 2002, the Committee operates under the most complex of Commission rules.

⁵ Nevada State Democratic Party, Fifth Amended Post-General 2016 Report (filed on May 16, 2018).

<http://docquery.fec.gov/pdf/195/201805169112043195/201805169112043195.pdf>.

⁶ Hillary Victory Fund, Original Post-General 2016 Report (filed on Dec. 8, 2018),

<http://docquery.fec.gov/pdf/286/201612089040174286/201612089040174286.pdf>.

⁷ DNC Services Corp./Dem. Nat’l Committee, Original Post-General 2016 Report (filed on Dec. 8, 2018),

<http://docquery.fec.gov/pdf/785/201612089040566785/201612089040566785.pdf>.

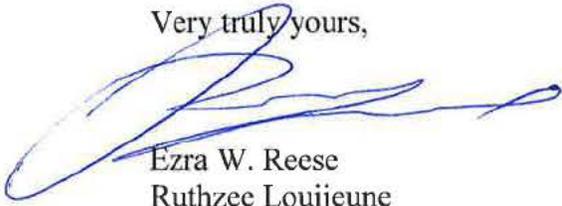
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The Committee's good faith and the diminished effect on the public interest should affect the disposition of the referral. Were this matter before a court, and not the Commission, the court would be bound to consider (1) the good or bad faith of the respondent, (2) the injury to the public, (3) the defendant's ability to pay, and (4) the need to vindicate the Commission's authority.⁸ These factors weigh in favor of the Committee, whose mistake was mitigated in the first instance by its own disclosure of the memo entries and the disclosure of the transfers by others, and ultimately corrected by the Committee's own action.

CONCLUSION

The Committee acted promptly and in good faith to meet all of its obligations under the Act. It filed reports and amended them when necessary. For the foregoing reasons, the Commission should determine that the referral does not require further use of Commission resources.⁹

Very truly yours,



Ezra W. Reese
Ruthzee Louijeune
Counsel to the Nevada State Democratic Party and Jan Churchill, in her official capacity as treasurer

⁸ See *FEC v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989); *FEC v. Friends of Jane Harman*, 59 F. Supp.2d 1046, 1058 (C.D. Cal 1999).

⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985) (the Commission has broad discretion to determine how to proceed with respect to complaints and referrals); 72 Fed. Reg. 12545-46 (Mar. 16, 2007) ("Pursuant to the exercise of its prosecutorial discretion, the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount of significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the Commission lacks majority support for proceeding with a matter for other reasons.").