

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 RAD REFERRAL: 17L-20
6 DATE REFERRED: July 21, 2017
7 DATE OF NOTIFICATION: July 26, 2017
8 LAST RESPONSE RECEIVED: Sept. 11, 2017
9 DATE ACTIVATED: November 30, 2017

10
11 EXPIRATION OF SOL: October 15, 2021
12 ELECTION CYCLE: 2016

13
14 **SOURCE:** Internally Generated
15
16 **RESPONDENTS:** Gary Johnson Victory Fund and Christina Needham
17 in her official capacity as treasurer
18
19 **RELEVANT STATUTE**
20 **AND REGULATION:** 52 U.S.C. § 30104(b)(2), (4)
21 11 C.F.R. § 104.3(a), (b)
22
23 **INTERNAL REPORTS CHECKED:** Disclosure Reports
24
25 **FEDERAL AGENCIES CHECKED:** None
26

27 **I. INTRODUCTION**

28 The Reports Analysis Division ("RAD") referred Gary Johnson Victory Fund and
29 Christina Needham in her official capacity as treasurer ("Committee") to the Office of General
30 Counsel ("OGC") for failing to disclose an aggregate total of \$899,400.01 in receipts and
31 disbursements on its 2016 October Quarterly Report.¹ For the reasons discussed below, we
32 recommend that the Commission open a MUR, find reason to believe that the Committee

¹ RAD Referral 17L-20 (Gary Johnson Victory Fund) (July 21, 2017) ("Referral"), incorporated herein by reference. According to the Cover Memorandum to the Referral, the additional disbursements disclosed on the Committee's amended 2016 October Quarterly Report met the threshold for referral to OGC under RAD's 2015-2016 Review and Referral Procedures (Standard 7). See Cover Memorandum to Referral at 1. The Committee's failure to disclose additional receipts is referable to the Alternative Dispute Resolution Office ("ADRO") but is included in this Referral in accordance with the Referral Procedures to limit unnecessary duplication of matters.

1 violated 52 U.S.C. § 30104(b)(2) and (4), authorize pre-probable cause conciliation with the
 2 Committee, and approve the attached proposed conciliation agreement.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 The Committee is a joint fundraising committee.² On January 17, 2017, the Committee
 6 amended its 2016 October Quarterly Report disclosing additional receipts and disbursements, as
 7 set forth in the charts below.³

| Receipts 52 U.S.C. § 30104(b)(2) | | | |
|---|---|---|---------------------------|
| Report Line | Amount Reported on 2016 October Quarterly | Amount Reported on Amended 2016 October Quarterly | Increased Activity Amount |
| Line 11(a)(i): Itemized Contributions From Individuals | \$1,425,785.68 | \$1,565,173.87 | \$139,388.19 |
| Line 11(a)(ii): Unitemized Contributions From Individuals | \$891,904.50 | \$1,100,946.66 | \$209,042.16 |
| Line 15: Offsets to Operating Expenditures | \$0 | \$89.68 | \$89.68 |
| | | Total: | \$348,520.03 |

| Disbursements 52 U.S.C. § 30104(b)(4) | | | |
|---|---|---|---------------------------|
| Report Line | Amount Reported on 2016 October Quarterly | Amount Reported on Amended 2016 October Quarterly | Increased Activity Amount |
| Line 21(b): Other Federal Operating Expenses | \$1,360,116.63 | \$1,419,609.27 | \$59,492.64 |
| Line 22: Transfers to Affiliated/Other Party Committees | \$0 | \$490,658.60 | \$490,658.60 |
| Line 28(a): Refunds of Contributions to Individuals | \$2,576.08 | \$3,304.82 | \$728.74 |
| | | Total: | \$550,879.98 |

² See Amended Statement of Organization, Gary Johnson Victory Fund (Jan. 22, 2018).

³ Referral at 1-2.

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1 On February 20, 2017, RAD sent the Committee a Request for Additional Information
2 ("RFAI"), seeking clarification regarding the substantial increase in receipts and disbursements
3 disclosed on the amended 2016 October Quarterly Report.⁴ In Response, the Committee filed an
4 FEC Form 99 (Miscellaneous Report), which stated, in part:

5 . . . After the 2016 election, the Committee conducted an internal
6 audit to identify discrepancies in its reporting data. A number of
7 incorrectly reported items were discovered, along with certain data
8 sets from processing vendors that had not properly imported into the
9 Committee's filing software. These errors were corrected in the
10 amended reports filed January 17, 2017, and all Committee data is
11 now accurate to the penny.⁵

12
13 **B. Legal Analysis**

14 Political committees must report their financial activity, including their receipts and
15 disbursements in accordance with the provisions of the Federal Election Campaign Act of 1971,
16 as amended.⁶ These reports must include, *inter alia*, the total amount of receipts and
17 disbursements, including the appropriate itemizations, where required.⁷ The Referral shows that
18 the Committee failed to include \$348,520.03 in receipts and \$550,879.98 in disbursements on its
19 original 2016 October Quarterly Report.

20 In response, the Committee asserts that the increase in receipts and disbursements is
21 mostly attributable to subcontractor errors and omissions: reporting an individual contribution as
22 \$1,551.50, when the amount was actually \$50,000; omitting a \$25,000 individual contribution;⁸

⁴ *Id.* at 2.

⁵ *Id.*

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

⁷ *See* 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

⁸ *Resp.* at 1, 4-5 (Sept. 11, 2017).

1 and omitting a single wire transfer of \$490,658 to Gary Johnson 2016.⁹ The Committee argues
2 that these errors and omissions did not deprive the public of meaningful disclosure, as the
3 Committee disclosed the \$25,000 individual contribution on its 2016 Pre-General Report, twelve
4 days after it filed its 2016 October Quarterly Report; and the disbursement to Gary Johnson 2016
5 was timely reported as a receipt on that committee's own disclosure report.¹⁰ The Committee
6 further asserts that it did not notice the discrepancies until it began winding down its operations,
7 and that once the Committee became aware of the discrepancies, it conducted a full internal
8 audit, terminated the subcontractor, and filed an amended report.¹¹

9 The Committee's argument that the public was not deprived of meaningful disclosure
10 does not vitiate the violation. In the context of joint fundraising, other participating committees
11 may well disclose the types of transactions at issue here. But, as the Commission's regulations
12 specify, both the joint fundraising representative and the participating political committees are
13 required to report all receipts and disbursements in the reporting period in which they are
14 received and made.¹² Thus, Gary Johnson 2016's disclosure of its receipt of the transfer from
15 the Committee does not cure the Committee's failure to disclose that disbursement. Similarly,
16 the Committee's failure to disclose its receipt of the \$25,000 individual contribution on its
17 original 2016 October Quarterly Report is not cured by the subsequent inclusion of that

⁹ *Id.* at 5. Gary Johnson 2016, the principal campaign committee of Johnson's presidential campaign, is a participating committee in Gary Johnson Victory Fund along with 24 Libertarian Party state committees. *See* Gary Johnson Victory Fund Amended Statement of Organization (Feb. 14, 2017).

¹⁰ *Id.*

¹¹ *Id.* at. 1-2, 5-6.

¹² *See* 11 C.F.R. § 102.17(c)(8)(i), (ii); *see also* Explanation & Justification, Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,300 (June 7, 1983).

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1 contribution on the 2016 Pre-General Report. That contribution was received on September 30,
2 2016, and should have been disclosed on the earlier report.¹³

3 In addition, the Committee interprets the statute as only requiring the Committee to
4 disclose the total amount of receipts and total amount of disbursements,¹⁴ and argues that the
5 Commission therefore lacks statutory authority to take adverse action as to the Committee for
6 failing to disclose the items listed in the RAD Referral.¹⁵ The Committee's argument is
7 contradicted by the terms of the statute, which requires a political committee to specify the
8 categories of receipts and disbursements on the requisite reports, *i.e.*, individual contributions,
9 offsets to operating expenditures, federal operating expenses, transfers to affiliated/other party
10 committees, and refunds of contributions to individuals.¹⁶ It is undisputed that the Committee
11 was a political committee at the relevant times.

12 Based on the Committee's failure to disclose all of its receipts and disbursements on its
13 original 2016 October Quarterly Report, we recommend that the Commission open a MUR and
14 find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2) and (4).

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¹³ See Amended 2016 October Quarterly Report, Gary Johnson Victory Fund (Jan. 17, 2017); *see also* Resp. at 4-5.

¹⁴ See 52 U.S.C. § 30104(b)(2) and (4).

¹⁵ Resp. at 3.

¹⁶ See 52 U.S.C. § 30104(b)(2)(A), (b)(2)(I), (b)(4)(A), (b)(4)(C), (b)(2)(F).

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2 **IV. RECOMMENDATIONS**

3 1. Open a MUR.

4

5 2. Find reason to believe that Gary Johnson Victory Fund and Christina Needham in
6 her official capacity as treasurer violated 52 U.S.C. § 30104(b)(2) and (4).

7

8 3. Approve the attached Factual and Legal Analysis.

9

10 4. Enter into conciliation with Gary Johnson Victory Fund and Christina Needham
11 in her official capacity as treasurer, prior to a finding of probable cause to believe.

12

13 5. Approve the attached Conciliation Agreement.

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6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

2.28.18
Date

BY: Stephen Gura
Stephen A. Gura
Deputy Associate General Counsel for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

Attachments:
1. Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Gary Johnson Victory Fund and Christina Needham MUR ____
4 in her official capacity as treasurer
5
6

7 **I. INTRODUCTION**
8

9 This matter was generated based on information ascertained by the Federal Election
10 Commission (the "Commission") in the normal course of carrying out its supervisory
11 responsibilities, *see* 52 U.S.C. § 30109(a)(2). The Commission's Reports Analysis Division
12 ("RAD") referred Gary Johnson Victory Fund and Christina Needham in her official capacity as
13 treasurer ("Committee") to the Office of General Counsel for failing to disclose an aggregate
14 total of \$899,400.01 in receipts and disbursements on its 2016 October Quarterly Report.¹ For
15 the reasons set forth below, the Commission finds reason to believe that the Committee violated
16 52 U.S.C. § 30104(b)(2) and (4).

17 **I. FACTUAL AND LEGAL ANALYSIS**

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7 offsets to operating expenditures, federal operating expenses, transfers to affiliated/other party
8 committees, and refunds of contributions to individuals.¹⁶ It is undisputed that the Committee
9 was a political committee at the relevant times.

10 Therefore, there is reason to believe that Gary Johnson Victory Fund and Christina
11 Needham in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(2) and (4).

¹⁴ See 52 U.S.C. § 30104(b)(2) and (4).

¹⁵ Resp. at 3.

¹⁶ See 52 U.S.C. § 30104(b)(2)(A), (b)(2)(I), (b)(4)(A), (b)(4)(C), (b)(2)(F).