



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Email and First Class Mail

Email: dan@political.law

Dan Backer, Esq.
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JUL 25 2018

RE: MUR 7434 (formerly RR 17L-20)
Gary Johnson Victory Fund and
Christina Needham in her official capacity as treasurer

Dear Mr. Backer:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your clients, Gary Johnson Victory Fund and Christina Needham in her official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 26, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On July 17, 2018, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(2) and (4), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that the Committee has 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. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1505 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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

MUR 7434

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7 **I. INTRODUCTION**

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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**

18 **A. Background**

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

¹ RAD Referral 17L-20 (Gary Johnson Victory Fund) (July 21, 2017) ("Referral"), incorporated herein by reference.

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

³ Referral 17L-20 at 1-2.

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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

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

⁴ *Id.* at 2.

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1 amended reports filed January 17, 2017, and all Committee data is
2 now accurate to the penny.⁵

3
4 **B. Legal Analysis**

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

11 In response, the Committee asserts that the increase in receipts and disbursements is
12 mostly attributable to subcontractor errors and omissions: reporting an individual contribution as
13 \$1,551.50, when the amount was actually \$50,000; omitting a \$25,000 individual contribution;⁸
14 and omitting a single wire transfer of \$490,658 to Gary Johnson 2016.⁹ The Committee argues
15 that these errors and omissions did not deprive the public of meaningful disclosure, as the
16 Committee disclosed the \$25,000 individual contribution on its 2016 Pre-General Report, twelve
17 days after it filed its 2016 October Quarterly Report; and the disbursement to Gary Johnson 2016
18 was timely reported as a receipt on that committee's own disclosure report.¹⁰ The Committee

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).

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.*

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1 further asserts that it did not notice the discrepancies until it began winding down its operations,
2 and that once the Committee became aware of the discrepancies, it conducted a full internal
3 audit, terminated the subcontractor, and filed an amended report.¹¹

4 The Committee's argument that the public was not deprived of meaningful disclosure
5 does not vitiate the violation. In the context of joint fundraising, other participating committees
6 may well disclose the types of transactions at issue here. But, as the Commission's regulations
7 specify, both the joint fundraising representative and the participating political committees are
8 required to report all receipts and disbursements in the reporting period in which they are
9 received and made.¹² Thus, Gary Johnson 2016's disclosure of its receipt of the transfer from the
10 Committee does not cure the Committee's failure to disclose that disbursement. Similarly, the
11 Committee's failure to disclose its receipt of the \$25,000 individual contribution on its original
12 2016 October Quarterly Report is not cured by the subsequent inclusion of that contribution on
13 the 2016 Pre-General Report. That contribution was received on September 30, 2016, and
14 should have been disclosed on the earlier report.¹³

15 In addition, the Committee interprets the statute as only requiring the Committee to
16 disclose the total amount of receipts and total amount of disbursements,¹⁴ and argues that the
17 Commission therefore lacks statutory authority to take adverse action as to the Committee for

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).

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).

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1 failing to disclose the items listed in the RAD Referral.¹⁵ The Committee's argument is
2 contradicted by the terms of the statute, which requires a political committee to specify the
3 categories of receipts and disbursements on the requisite reports, *i.e.*, individual contributions,
4 offsets to operating expenditures, federal operating expenses, transfers to affiliated/other party
5 committees, and refunds of contributions to individuals.¹⁶ It is undisputed that the Committee
6 was a political committee at the relevant times.

7 Therefore, there is reason to believe that Gary Johnson Victory Fund and Christina
8 Needham in her official capacity as treasurer violated 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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