



FEDERAL ELECTION COMMISSION
Washington, DC 20002

Laurence E. Gold
Trister, Ross, Schadler, & Gold, PLLC
1666 Connecticut Ave., NW, 5th Floor
Washington, DC 20009

AUG 22 2018

RE: MUR 7470 (RR18L-01)
For Our Future

Dear Mr. Gold:

On January 5, 2018, the Federal Election Commission (the "Commission") notified your clients, For Our Future and Sky Gallegos in her official capacity as treasurer (the "Committee"), of a referral from the Commission's Reports Analysis Division alleging that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the referral.

After reviewing the allegations contained in the complaint, your response, and publicly available information, the Commission, on August 7, 2018, found reason to believe that the Committee violated 52 U.S.C. § 30104(b) & (g). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

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 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 your clients 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 your clients violated the law.

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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.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Christopher L. Edwards, the attorney assigned to this matter, at (202) 694-1568, or at cedwards@fec.gov, 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/respondent.guide.pdf>.

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

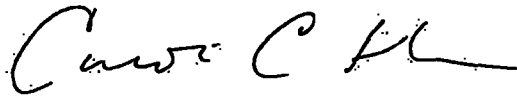
This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

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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We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chairwoman

Attachments:

Factual and Legal Analysis

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UNIVERSITY MICROFILMS

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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3 **RESPONDENTS:** For Our Future and Sky Gallegos in her official MUR 7470 (RR18L-01)
4 capacity as treasurer
5

6 **I. INTRODUCTION**

7 The Reports Analysis Division (“RAD”) referred For Our Future and Sky Gallegos in her
8 official capacity as treasurer (the “Committee”) to the Office of the General Counsel for
9 (1) failing to file nine 48-Hour Reports totaling \$336,826.36 to support 79 independent
10 expenditures disclosed on its 2016 October Quarterly Report; (2) failing to disclose
11 disbursements totaling \$3,373,551.35 on its 2016 30-Day Post-General Report; (3) failing to file
12 two 48-Hour Reports totaling \$35,585.44 to support twelve independent expenditures disclosed
13 on its 2016 12-Day Pre-General Report; and (4) failing to disclose debts totaling \$67,548.34 on
14 its 2016 October Quarterly Report.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17 **1. Unfiled 48-Hour Reports**

18 On April 13, 2017, the Committee filed an Amended 2016 October Quarterly Report,
19 which included a Schedule E disclosing 224 independent expenditures totaling \$1,809,273.26
20 made in support of or opposition to 14 federal candidates.¹ This amended report showed that the
21 Committee failed to file nine 48-Hour Reports for 79 independent expenditures, totaling
22 \$336,826.36, for the 2016 General Election.² After receiving a Request for Additional Information

¹ For Our Future, Amended 2016 October Quarterly Report (Dec. 9, 2016); *see* RR 18L-01 at 5.

² RR 18L-01 at 5. The independent expenditures either opposed or supported candidates running for seats in the United States Senate in the following states: Florida (candidates Marco Rubio and Patrick Murphy); Nevada (candidates Catherine Cortez Masto and Joe Heck); Ohio (candidates Rob Portman and Ted Strickland);

1 (“RFAI”), the Committee filed a second amended report along with a Form 99 stating that it
2 inadvertently attributed some of these independent expenditures for U.S. Senate candidates to
3 presidential candidates.³

4 The Committee also filed an Amended 2016 12-Day Pre-General Report on April 13, 2017,
5 which included a Schedule E (Itemized Independent Expenditures) disclosing 216 independent
6 expenditures totaling \$1,715,439.63 made in support of or opposition to 18 federal candidates.⁴
7 This amended report showed that the Committee failed to file 48-Hour Reports to support 45
8 independent expenditures totaling \$267,914.60 for the 2016 General Election.⁵ After receiving an
9 RFAI, the Committee filed a Second Amended 2016 12-Day Pre-General Report.⁶ This amended
10 report included a Schedule E disclosing 209 independent expenditures totaling \$1,786,330.85
11 made in support of or opposition to 18 federal candidates.⁷ Despite these changes, the Committee
12 still failed to file two 48-Hour Reports to support twelve independent expenditures totaling
13 \$35,585.44 for the 2016 General Election.⁸

14 The Committee’s Response to the RAD Referral admits that it did not file the 48-Hour
15 Reports identified above.⁹

16

Pennsylvania (candidates Patrick Toomey and Kathleen McGinty); and Wisconsin (candidates Russell Feingold and Ronald Johnson). *See id.*

³ For Our Future, Amended 2016 October Quarterly Report (Aug. 9, 2017); *see* RR 18L-01 at 5.

⁴ For Our Future, Amended 2016 Pre-General Report (Apr. 13, 2017); *see* RR 18L-01 at 6.

⁵ RR 18L-01 at 6.

⁶ For Our Future, Amended 2016 Pre-General Report (Aug. 9, 2017); *see* RR 18L-01 at 6.

⁷ *See* For Our Future, Amended 2016 Pre-General Report (Aug. 9, 2017); RR 18L-01 at 6.

⁸ *See* RR 18L-01 at 6. These independent expenditures supported and opposed both presidential and senatorial candidates. *See id.*, Attach. 4.

⁹ Response of For Our Future at 11 (Feb. 28, 2018).

1 **2. Undisclosed Disbursements**

2 On December 9, 2016, the Committee filed its 2016 30-Day Post-General Report that
3 disclosed \$2,368,702.36 in disbursements on Schedule B, Line 21(b) (Other Federal Operating
4 Expenditures) of the Detailed Summary Page.¹⁰ The Committee amended this report three times;
5 the third time was in response to an RFAI.¹¹ The last amendment disclosed \$5,742,253.71 in
6 disbursements on Schedule B, Line 21(b), an increase of \$3,373,551.35 from the original
7 report.¹² The Committee also submitted a FEC Form 99, which stated that almost all of the
8 increase related to administrative costs paid to vendors. It explained that, due to the
9 Committee's ongoing reconciliation processes, it reported disbursements as estimated amounts
10 of independent expenditures.¹³

11 In its Response to the RAD Referral, the Committee admits that Schedule B of its
12 original 2016 30-Day Post-General Report contained the following errors relating to eight of its
13 vendors:

- 14 • \$2,322,745.13 in nonfederal and administrative costs associated with six
15 canvassing vendors was not reported; and
 - 16 • \$1,089,448.83 in administrative costs associated with two digital advertising firms
17 was not reported.¹⁴
- 18
19

¹⁰ For Our Future, 2016 30 Day Post-General Report (Dec. 9, 2016); see RR 18L-01 at 3.

¹¹ For Our Future, Amended 2016 30 Day Post-General Reports (Jan. 27, 2017; Apr. 13, 2017; Aug. 9, 2017); see RR 18L-01 at 3.

¹² See RR 18L-01 at 3.

¹³ *Id.* at 3-4.

¹⁴ Resp. at 2. Additionally, \$37,972.65 involving 13 payees was incorrectly reported because it should not have been included in the disbursement figure. *Id.*

1 The Committee explains that instead of reporting its actual disbursements to the vendors on
2 Line 21(b) of its original 2016 30-Day Post-General Report, it estimated costs for the
3 independent expenditures made via disbursements to those vendors, and reported those costs on
4 Schedule E in memo entries.¹⁵

5 A review of the Committee's original 2016 30-Day Post-General Report confirms that it did
6 not list seven of those eight vendors on Schedule B, Line 21(b), and it either did not report or
7 underreported the amounts it disbursed to them.¹⁶ These errors are summarized below.

Name of Canvassing Vendor or Digital Advertising Firm	Disbursed according to Schedule B, Line 21(b) of original 2016 30-Day Post-General Report	Disbursed according to Schedule B, Line 21(b) of final Amended 2016 30-Day Post-General Report
Extra Extras (<i>canvassing vendor</i>)	\$122,940	\$195,736.69
Fieldworks LLC (<i>canvassing vendor</i>)	No disbursements reported	\$616,604.43
For Our Future Action Fund (<i>canvassing vendor</i>)	No disbursements reported	\$733,780.18
Grassroots Campaigns, Inc. (<i>canvassing vendor</i>)	No disbursements reported	-\$240,807.58
GRSG (<i>canvassing vendor</i>)	No disbursements reported	\$87,565
Paychex (<i>canvassing vendor</i>)	No disbursements reported	\$1,072,478.10
Rising Tide (<i>digital ad. firm</i>)	No disbursements reported	\$912,751.67
Waterfront (<i>digital ad. firm</i>)	No disbursements reported	\$176,697.16

8 The Committee explains that it disclosed disbursements as estimated independent
9 expenditures, although it acknowledges that not all of the payments it made to these vendors

¹⁵ See Resp. at 4-8; For Our Future 2016 30 Day Post-General Report, Schedule E (Dec. 9, 2016). Specifically, the Committee reported the following payments on Schedule E of its original 2016 30-Day Post-General Report: Fieldworks LLC, \$145,659.90; For Our Future Action Fund, \$386,187.51; Grassroots Campaigns, Inc., \$1,255,938.75; GRSG, \$123,615.00; Paychex, \$366,090.00; Rising Tide, \$261,000; Waterfront, \$4,000.

¹⁶ See Resp. at 2-8; For Our Future 2016 30 Day Post-General Report, Schedule B (Dec. 9, 2016).

1 were for independent expenditures.¹⁷ The Committee also made disbursements for
2 administrative costs, nonfederal canvassing activities, and messages that did not contain express
3 advocacy.¹⁸ Such expenses comprise the \$3,599,876.54 that the Committee eventually reported
4 on Line 21(b) of Schedule B, but originally failed to report. The response does not clarify
5 whether any of these costs were included in the Committee's estimates of independent
6 expenditures reported on Schedule E.¹⁹

7 3. Undisclosed Debts

8 The Committee's original 2016 October Quarterly Report disclosed \$433,544.30 in total
9 debts.²⁰ The Committee amended that report three times; the last amendment disclosed
10 \$486,356.49 in total debts.²¹ Of that amount, \$63,407.54 was disclosed on Schedule D (Debts
11 and Obligations) as newly incurred debts for the reporting period that were not disclosed on the
12 original report.²²

13 On July 5, 2017, RAD sent a RFAI requesting clarification regarding the substantial
14 increase in debts disclosed on the Third Amended 2016 October Quarterly Report.²³ In response,
15 the Committee filed a Fourth Amended 2016 October Quarterly Report that disclosed \$67,548.34

¹⁷ See Resp. at 5-7.

¹⁸ *Id.*

¹⁹ The Committee's final Amended 2016 30-Day Post-General Report reported \$5,742,253.71 in operating expenditures on Line 21(b), compared to \$2,368,702.36 for its original version of that report, and reported \$6,756,091.99 in independent expenditures on Line 24, compared to \$2,383,839.55 for its original version of that report. Thus, both figures increased substantially.

²⁰ For Our Future, 2016 October Quarterly Report, Schedule D (Oct. 15, 2016); see RR 18L-01 at 1. The debt amounts stated in this paragraph reflect the total amounts reported in each report, not the amount those totals fluctuated from one report to the next.

²¹ For Our Future, Amended 2016 October Quarterly Report, Schedule D (Apr. 13, 2017); see RR 18L-01 at 2.

²² RR 18L-01 at 2.

²³ For Our Future, RFAI: October Quarterly 2016 (July 5, 2017); see RR 18L-01 at 2.

1 in newly incurred debts that were not disclosed on the original report.²⁴ On the same day, the
2 Committee submitted a FEC Form 99 that referenced the unreported debts.²⁵

3 The Committee's response to the referral admits it did not disclose the debts and asserts
4 that the failure to disclose them was inadvertent.²⁶

5 B. Legal Analysis

6 Under 52 U.S.C. § 30104(g), any committee that makes or contracts to make independent
7 expenditures aggregating \$10,000 or more at any time up to and including the 20th day before
8 the date of an election shall file a report describing the expenditures within 48 hours.²⁷ These
9 filings are known as 48-Hour Reports.

10 The Act requires committee treasurers to file reports of receipts and disbursements in
11 accordance with the provisions of 52 U.S.C. § 30104(b).²⁸ That provision requires political
12 committees other than authorized committees, like For Our Future, to report the total amount of
13 disbursements and all individual disbursements.²⁹ Political committees other than authorized
14 committees must report itemized operating expenditures,³⁰ which are reported on Line 21(b) of
15 Schedule B.³¹

²⁴ For Our Future, Amended 2016 October Quarterly Report, Schedule D (Aug. 9, 2017); *see* RR 18L-01 at 2.

²⁵ RR 18L-01 at 2-3. The Form 99 explained that the Committee did not receive an invoice for a \$547.20 debt until January 2017, thus causing it to be reported late, and that the salary and benefits that the Committee owed to two individuals, totaling \$62,860.34, had been inadvertently omitted because the Committee did not know that the salaries for those individuals were attributable to it. *See id.*

²⁶ Resp. at 2.

²⁷ 52 U.S.C. § 30104(g)(2)(A).

²⁸ 52 U.S.C. § 30104(a)-(b).

²⁹ *Id.* § 30104(b)(4)(H)(v).

³⁰ 11 C.F.R. § 104.3(b)(1)(i)(A).

³¹ *See* Federal Election Commission, *Instructions for FEC Form 3X and Related Schedules* at 1, 13 (May 2016).

1 The Act and Commission regulations require political committees to disclose the amount
2 and nature of outstanding debts and obligations until those debts are extinguished.³² A political
3 committee must file a separate schedule (Schedule D) for debts owed by the committee with a
4 statement explaining the circumstances and conditions under which each debt and obligation was
5 incurred or extinguished.³³ A debt or obligation of \$500 or less must be reported as of the time
6 that payment is made or within sixty days of the date on which the political committee incurs the
7 debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that
8 covers the date on which the debt was incurred.³⁴

9 The Commission will generally conclude that when a committee fails to obtain, maintain,
10 or submit information or reports, it can show best efforts, and thus be considered in compliance
11 with the Act, by establishing (1) that it took relevant precautions to avoid the failure, (2) the
12 committee trained staff responsible for obtaining, maintaining, and submitting the relevant
13 information under the Act, (3) the failure was the result of reasonably unforeseen circumstances
14 beyond the committee's control, and (4) upon discovering the failure, the committee took all
15 reasonable additional steps to expeditiously file any unfiled and correct any inaccurate reports.³⁵

16 The Committee admits that it failed to file required 48-Hour Reports, did not report
17 certain disbursements, and did not disclose certain debts. While it argues that it used best efforts
18 with regard to reporting its disbursements, that argument is unavailing. The Committee
19 disbursed a combined total of \$3,599,876.54 to six of the eight vendors identified above, yet did

³² 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

³³ See 11 C.F.R. § 104.11(a).

³⁴ See *id.* § 104.11(b).

³⁵ See *Policy Statement on Treasurer's Best Efforts*, 72 Fed. Reg. 31438 (June 7, 2007).

1 not include *any* entries for those six vendors on Schedule B, Line 21(b) of its original 30-Day
2 Post-General Report. Schedule E of that original report shows that the Committee was aware of
3 at least some disbursements made to those vendors. The Committee presents no facts or
4 reasonably unforeseen circumstances beyond the Committee's control that would have caused it
5 to completely omit six vendors that the Committee paid a combined total of \$3,599,876.54 from
6 Line 21(b). Further, the Committee's original reporting of what would turn out to be significant
7 underestimates of its final disbursements did not specify which amounts were for independent
8 expenditures and which were for operating expenses. Thus, the Commission finds reason to
9 believe that the Committee violated 52 U.S.C. § 30104(b) and (g) with regard to all of the
10 referred activity.