



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BY E-MAIL AND USPS**

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**MAY 30 2019**

RE: MUR 7597  
(Previously RR 17L-36)  
Texas Democratic Party

Dear Mr. Reiff:

On September 21, 2017, the Federal Election Commission (the "Commission") notified your clients, the Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer (the "Committee") that in the normal course of carrying out its supervisory responsibilities, the Commission became aware of information suggesting that your clients may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 25, 2019, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b). 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 client 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 client violated the law.

Enclosed is a conciliation agreement for your consideration

If your clients are interested in engaging in pre-probable cause conciliation, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual

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 60 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 note that your clients 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.

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.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Texas Democratic Party and **MUR: 7597**  
6 Gilberto Hinojosa in his  
7 official capacity as treasurer  
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9 **I. INTRODUCTION**

10 The Reports Analysis Division (“RAD”) of the Federal Election Commission (the  
11 “Commission”) referred the Texas Democratic Party and Gilberto Hinojosa in his official  
12 capacity as treasurer (the “Committee”) to the Office of the General Counsel (“OGC”) for failing  
13 to disclose financial activity totaling \$1,600,000 in its 2016 September Monthly Report.<sup>1</sup> The  
14 Commission opens a Matter Under Review (“MUR”) and finds reason to believe that the  
15 Committee violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b) by failing to  
16 report joint fundraising receipts from the Hillary Victory Fund and transfers to the Democratic  
17 National Committee.

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. BACKGROUND**

20 The Committee is a state committee of the Democratic Party.<sup>2</sup> On September 20, 2016,  
21 the Committee filed its 2016 September Monthly Report, which disclosed \$202,535.63 on Line  
22 12, “Transfers from Affiliated/Other Party Committees.”<sup>3</sup> The Report disclosed no

<sup>1</sup> RAD Referral 17L-36 (Sept. 19, 2017) (“Referral”).

<sup>2</sup> FEC Form 1, Texas Democratic Party, *Statement of Organization* at <http://docquery.fec.gov/cgi-bin/forms/C00099267/1189744/> (amendment filed Oct. 26, 2017).

<sup>3</sup> *Id.* at 1. See also FEC Form 3X, *Report of Receipts and Disbursements for other than an Authorized Committee* at <http://docquery.fec.gov/pdf/694/201609209031044694/201609209031044694.pdf> (filed Sept. 20, 2016). See also Referral at 1.

1 disbursements on Line 22, "Transfers to Affiliated/Other Party Committees."<sup>4</sup> On March 16,  
2 2017, the Committee amended its 2016 September Monthly Report and disclosed \$1,002,535.63  
3 in receipts from the Hillary Victory Fund on Line 12, an \$800,000 increase from its original  
4 filing, and an \$800,000 disbursement/transfer to the Democratic National Committee on Line  
5 22.<sup>5</sup> The amendment contains a memo stating that the "report is being amended due to an  
6 inadvertent data entry error. The amounts now being reported on Line 12 and Line 22 associated  
7 with the Hillary Victory Fund were not included in the original report, although the memo entries  
8 supporting those amounts were reported."<sup>6</sup>

9 On April 26, 2017, RAD sent a Request for Additional Information ("RFAI") to the  
10 Committee that, among other items, requested clarification regarding the "substantial increase in  
11 receipts and disbursements disclosed in the amended 2016 September Monthly Report."<sup>7</sup> The  
12 Committee did not respond to that RFAI.<sup>8</sup> RAD referred the Committee to OGC on September  
13 19, 2017, and OGC timely notified the Committee.<sup>9</sup>

14 In response to the referral, the Committee asserts that it inadvertently entered the date of  
15 both the \$800,000 receipt from the Hillary Victory Fund and the \$800,000 transfer to the

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<sup>4</sup> *Id.*

<sup>5</sup> Referral at 1-2. See also *Report of Receipts and Disbursements, Amendment 1*, at <http://docquery.fec.gov/pdf/002/201703169050873002/201703169050873002.pdf> (filed Mar. 16, 2017).

<sup>6</sup> *Id.*

<sup>7</sup> Referral at 2. See also *Request for Additional Information* at <http://docquery.fec.gov/pdf/115/201704260300085115/201704260300085115.pdf> (Apr. 26, 2017). On May 26, 2017, the Committee again amended its 2016 September Monthly Report, but disclosed no additional receipts or disbursements.

<sup>8</sup> *Id.* On June 8, 2017, RAD spoke with a Committee representative and offered the Committee an opportunity to further address the increased financial activity disclosed in the Committee's amended report. The Committee's representative declined, saying that Committee believed its explanation was sufficient.

<sup>9</sup> Referral at 1. See also *Letter from the Commission's Complaints Examination and Legal Administration Division to the Committee* (Sept. 21, 2017).

1 Democratic National Committee into its database as September 11, 2016, instead of August 11,  
2 2016.<sup>10</sup> The Committee explains that because these transactions were in the same amounts, the  
3 Committee's cash on hand was not affected, and it therefore did not discover the errors while  
4 preparing the Committee's 2016 September Monthly Report.<sup>11</sup> The Committee states that when  
5 it discovered the errors during a March 2017 review of joint fundraising activity, it immediately  
6 amended its disclosure reports, and the Hillary Victory Fund and the Democratic National  
7 Committee disclosed both transactions in September 2016.<sup>12</sup> The Committee acknowledges its  
8 reporting errors but argues that the case should either be dismissed or referred to the  
9 Commission's Alternative Dispute Resolution Office ("ADRO").<sup>13</sup>

#### 10 B. LEGAL ANALYSIS

11 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
12 treasurers to file reports of receipts and disbursements in accordance with the provisions of  
13 52 U.S.C. § 30104.<sup>14</sup> These reports must include, *inter alia*, the amount and nature of these  
14 receipts and disbursements.<sup>15</sup>

15 The Committee violated the Act when it failed to disclose \$1,600,000 in financial  
16 activity—\$800,000 in receipts from the Hillary Victory Fund, and an \$800,000 transfer to the

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<sup>10</sup> Resp. at 1 (Oct. 24, 2017).

<sup>11</sup> *Id.* at 2. The Committee explains it did not immediately discover the incorrect dates for these transactions because the Committee had similar transactions—a receipt from the Hillary Victory Fund and a transfer to the Democratic National Committee—in September 2016, and it mistook those transactions for the transactions that are the subject of this referral.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>15</sup> See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

**1 Democratic National Committee—in its 2016 September Monthly Report. These transactions  
2 were disclosed approximately six months late, and more than four months after the 2016 general  
3 election. Accordingly, the Commission opens a Matter Under Review (“MUR”) and finds  
4 reason to believe that the Texas Democratic Party and Gilberto Hinojosa in his official capacity  
5 as treasurer violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b).**

FORNATION