

A-G79 @B9CI G'H9LH'fl 97 : cfa ' - - Ł

We are responding to your letter dated March 22, 2015 regarding the Committee's 2014 Amended 12 Day Pre-General Report.

We first respond with respect to the independent expenditures, totaling \$16,166.44, involving the following payees:

- AFSCME Special Account
- AFSCME for Michigan
- AFT Solidarity 527
- Colorado AFL-CIO L2K
 - Committee on Letter Carriers Political Education
- Communication Workers of America Working Voices
- Great Lakes Regional Organizing Committee/LIUNA General Treasury
- Michigan Nurses Association General Account
- Michigan State AFL-CIO General Fund
 - National Air Traffic Controllers Association Political Action Committee (aka NATCA PAC)
- Retail, Wholesale and Department Store Union International Treasury Account
- UFCW International Union Working Families Advocacy Project
- UNITE HERE Local 24
- Voices of the American Federation of Government Employees

(Please note that the committee should also have listed Colorado AFL-CIO L2K as an in-kind expenditure recipient on its April 8, 2015 response to the Commission's January 21, 2015 RFAI concerning the Committee's 2014 October Quarterly Report.)

All of the independent expenditures to these payees were in-kind independent expenditures that the Committee reported under an interpretation of 11 C.F.R. § 104.13(a)(12), which provides: "Except for items noted in 11 CFR 104.13(b) ? ? [c]contributions of stocks, bonds, art objects and other similar items to be liquidated? ? each in-kind contribution shall also be reported as an expenditure at the same usual or normal value and reported on the appropriate expenditure schedule, in accordance with 11 CFR 104.3(b).? This regulation, then, requires an offsetting disbursement entry on Form 3X for every in-kind contribution that a committee receives during the same reporting period. However, the Committee's application of this regulation did not reflect that the Federal Election Commission ("Commission") has long maintained an interpretative rule that requires all in-kind expenditures to be reported as a Line 21(b) operating expenditure.

That interpretative rule exists in several official Commission publications. The first is its Campaign Guide for Nonconnected Committees (2008). The Federal Election Campaign Act ("the Act") states that the Commission shall "prepare, publish, and furnish to all persons required to file reports and statements under this Act a manual recommending uniform methods of bookkeeping and reporting." 52 U.S.C. § 30111(a)(2). The Commission identifies its Campaign Guides as "compliance manuals for committees registered with the FEC." <http://www.fec.gov/info/publications.shtml> (emphasis added). And, the guide for nonconnected committees like Workers? Voice instructs:

[T]he value of the in-kind contribution [received] must be reported as an operating expenditure on Line 21(b) (in order to avoid inflating the cash-on-hand amount). 104.13(a)(2). If the in-kind contribution must be itemized on Schedule A, then it must also be itemized as an operating expenditure on Schedule B for operating expenditures. See the illustration at right. Id. at 58 (footnote omitted). The Campaign Guide for Corporations and Labor Organizations, at p. 55, contain nearly identical instructional language, including the citation to § 104.13(a)(2). This, then, is an interpretative rule that binds the Commission unless and until the Commission changes it.

The second kind of publication that establishes this interpretative rule is the instructions for Form 3X itself. The

A-G79 @B9CI G'H9LH'fl 97 : cfa ' - - Ł

Act directs the Commission to prescribe rules, regulations, and forms to carry out the provisions of this Act. 52 U.S.C. 30111(a)(7) (emphasis added). The Form 3X instructions direct: Each contribution in-kind must also be reported in the same manner as an operating expense on Schedule B and included in the total for Operating Expenditures. Instructions for Form 3X and Related Schedules, p. 10 (emphasis added); see also id. at 13 (Contributions in-kind received by the committee which are itemized on Schedule A must also be itemized as an operating expenditure on Schedule B.) (emphases added).

That Workers? Voice did not actually rely upon the Commission's interpretative rule when it reported its in-kind expenditures in the Pre-General Report does not matter; the Commission cannot enforce compliance with a reporting standard that did not then, and still does not, exist. Workers? Voice stands ready to amend its Pre-General Report to list on Line 21(b) rather than Schedule E all of its in-kind expenditure transactions with the above-listed payees. Of course, the 48-hour reporting requirement did not apply to Line 21(b), so at most Workers? Voice reported its in-kind expenditures on the wrong reporting schedule of its Pre-General Report.

Even if for some reason the Commission's interpretative rule were invalid and there is no reason why it would be and for some further reason these in-kind expenditures were required to be reported on Schedule E within 48 hours of the dissemination of the particular communication, this did not always occur during this reporting period, for two reasons.

First, Workers? Voice relied heavily upon in-kind contributions of third-party-paid personnel in order to carry out its activities, and those kinds of in-kind contributions account for all or virtually all of the amounts that Workers? Voice correspondingly reported as in-kind expenditures to the payees above. Workers? Voice established an elaborate accounting system in order to timely record the nature, timing and value of these contributions and their use in its activities. Nonetheless, some of this information was not received by Workers? Voice from its in-kind contributors or otherwise in time for Workers? Voice to report it on a 48-hour report.

Second, Workers? Voice's vendor's accounting entry system for generating 48-hour reports for a particular election did not produce a listing on the reports of some expenditure that preceded the attainment of the \$10,000 reporting threshold; instead, the report listed only the expenditures that crossed the threshold.

Your letter secondly refers to a total of \$160,056.36 in monetary independent expenditures to eight different payees. However, our records show that only \$1,633.03 of that total was late reported.

Expenditures totaling \$146,161.34 were self-evidently timely reported within 48 hours of the dissemination date listed for those expenditures in your letter. These expenditures concern the following entities:

- AFL-CIO
- Grassroots Solutions
- Mack Sumner Communications LLC
- New Partners Consulting, Inc.
- The Pivot Group
- Rocky Mountain Voter Outreach

Below is a spreadsheet that lists the dissemination and reporting dates for all independent expenditures that on their face were timely reported. We request that you clarify what facts and analysis led to these expenditures appearing in your letter. In order that we may have a fair opportunity to address any such facts or analysis, we request that you provide any clarification to us before any action is taken to refer this matter to any other office within the Commission.

The entries referenced in your letter for expenditures of \$6,130.99 and \$6,131.00 to payee AKPD Message and Media LLC also were timely reported. The distribution date for these entries was October 14, and they were timely reported in a 48 Hour Report on October 16. Unfortunately, due to a different vendor

A-G79 @ @ B9CI G'H9LH'fl 97 : cfa ' - - Ł

system flaw, the Schedule E entries for ?Date of Public Distribution/Dissemination? and ?Date of Disbursement or Obligation? were reversed, which resulted in an entry that appeared to be late but in fact was not. Workers? Voice will amend the report accordingly if requested to do so, but we respectfully submit that this explanation should suffice.

The late-reported \$1,633.03 consisted of the following:

First, with respect to payee Mosaic, which produced flyers that were distributed by canvassers, \$90 of the \$1,530 of entries that your letter lists reflect late reporting due to the vendor technical flaw described above. The remainder of the late reported entries, however, was due to the payee failing to timely invoice the Committee for several fliers that Mosaic produced for the Committee. Mosaic did not catch this oversight until well after the election. After Mosaic did report these costs to the Committee, the Committee amended its Pre-General Report to reflect these costs.

Second, the payee AFL-CIO entries of \$3.13 and \$0.90, and the payee New Partners Consulting, Inc. entries for \$49.50 and \$49.50, each are late-reported expenditures that resulted from the vendor system flaw concerning the thresholds, described above.

While the Committee regrets the late reporting of these expenditures, we note that the amounts involved are relatively low and pertain to vendors as to which many other Committee expenditures were timely reported, and their omission from 48-Hour reports did not result in any lack of notice to the public as to which candidates the Committee was supporting or opposing, because the Committee had already reported substantial independent expenditures regarding all of them.

In light of the above, we respectfully submit that no further action should be taken with respect to any of these matters.

VendorExplanation FEC Date Candidate

AFL-CIO

28.64	Reported on time 10/16 for 10/14	14-Oct	Begich
39.38	Reported on time 10/17 for 10/15	15-Oct	Begich
440.77	Reported on time 10/16 for 10/14	14-Oct	Sullivan
17.90	Reported on time 10/16 for 10/14	14-Oct	Udall
7.71	Reported on time 10/17 for 10/15	15-Oct	Udall
.45	Reported on time 10/16 for 10/14	14-Oct	Grimes
.45	Reported on time 10/16 for 10/14	14-Oct	McConnell
2.69	Reported on time 10/17 for 10/15	15-Oct	Grimes
2.69	Reported on time 10/17 for 10/15	15-Oct	McConnell
24.34	Reported on time 10/16 for 10/14	14-Oct	Land
24.34	Reported on time 10/16 for 10/14	14-Oct	Peters
63.55	Reported on time 10/17 for 10/15	15-Oct	Land
63.55	Reported on time 10/17 for 10/15	15-Oct	Peters

New Partners

23014.75	Reported on time 10/17 for 10/15	15-Oct	Begich
23014.75	Reported on time 10/17 for 10/15	15-Oct	Sullivan
12870	Reported on time 10/17 for 10/15	15-Oct	Gardner
3564	Reported on time 10/17 for 10/15	15-Oct	McConnell

A-G79 @ B9CI G'H9LH'fl 97 : cfa ' - - Ł

Rocky Mountain Voter Outreach

441.60 Reported on time 10/16 for 10/14 14-Oct Udall

556.80 Reported on time 10/17 for 10/15 15-Oct Udall

25 Reported on time 10/16 for 10/14 14-Oct Land

25 Reported on time 10/16 for 10/14 14-Oct Peters

Mack Sumner

47804.02 Reported on time 10/16 for 10/14 14-OctMcConnell

Grassroots Solutions

2038.59 Reported on time 10/16 for 10/14 14-Oct Land

2038.59 Reported on time 10/16 for 10/14 14-Oct Peters

Pivot

30051.78 Reported on time 10/17 for 10/15 15-OctSullivan