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re: Identification Number C00520262;
Amended 12 Day Pre-Primary Report received 12/14/2012

We have your letter of February 7, 2013, which requests a response by March 14, 2013.

You request information for two items.

The following information is general background for the two items. Detailed responses follow.

A. General Background

1. The University of Hawaii Professional Assembly is a labor union organized and recognized under Hawaii statutes. It is the exclusive representative of all faculty of the University of Hawaii throughout the State of Hawaii. It has performed this function for over three decades. Faculty of the University of Hawaii are employees of the State of Hawaii. The University of Hawaii is created and governed by Hawaii law.

2. The University of Hawaii Professional Assembly maintains a general treasury account, Bank of Hawaii Acct. #0017-082426, and a political action account Bank of Hawaii Acct. #0081-974004.

3. Mandatory statutory dues, owed by bargaining unit members to UHPA pursuant to Hawaii Revised Statutes 89-4, are deducted from the wages of bargaining unit members by the State of Hawaii. These dues are received by UHPA from the State of Hawaii, and are deposited into the general treasury account. Dues revenues are the overwhelmingly predominant source of income for UHPA; other categories would be minor, for example, miscellaneous interest income on deposits.

4. Pursuant to the policy of the UHPA Board of Directors, general treasury money is moved from the general treasury account to the political action account from time to time. The political action account monies are used exclusively for political action. UHPA has not organized a separate PAC; the political action account, like the general treasury, is under supervision of UHPAs management and directors.

5. The general treasury money that is moved to the political action account is derived from and is attributed to bargaining unit members who are citizens. No money from individuals who are not citizens goes into the political action account.

6. Under UHPA Board policy, the amount of money moved from the general treasury to the political action account does not exceed one hundred dollars (\$100) per person, per election cycle.

7. The political action account has been used over time to support contributions or independent expenditures in Hawaii state elections. It was so used in 2012. All Hawaii reporting requirements have been complied with, to the best of UHPAs knowledge and ability.

8. UHPA has from time to time endorsed federal candidates. However, at no time, from the founding of UHPA to date, has UHPA ever made a contribution to any federal candidate.

9. UHPA has made independent expenditures to support or oppose federal candidate(s) on one and only one occasion: the 2012 election cycle.

10. The candidates UHPA supported via independent expenditures in 2012 were Ed Case, Mazie Hirono, Barack Obama, and Mufi Hanneman.

11. These expenditures were not discussed, announced, planned, coordinated, produced, or in any way whatsoever

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arranged by or with the candidates, any of their people, via any of UHPAs people, directly or indirectly. They were the result of separate work using separate contractors who had no dealings with the candidates.

12. In anticipation of expending more than ten thousand dollars in independent expenditures in the federal election cycle of 2012, UHPA for the first time registered with the Federal Election Commission in 2012.

13. Each UHPA expenditure that directly or indirectly supported independent expenditures in the federal election in the 2012 election cycle has been reported to the FEC. All errors reported to UHPA are unintentional and have been corrected.

14. Each and every item of independent expenditure, in whatever form or broadcast, was clearly identified as being the work of UHPA, without the approval of any candidate.

15. Each item of independent expenditure was paid for by money from the political action account, that was funded from the UHPA general treasury as above.

B. Letter of February 7, 2013; 1

1. UHPAs political action account had a carried-over balance of \$71,760, coming into the 2012 election cycle, since the account was not spent down in the prior election cycle. To this pre-existing balance, UHPA added \$219,206.68, during the 2012 election cycle, by transfer from its general treasury account. Of this election cycle total of \$290,966.68, \$288,605.79 was used for federal independent expenditures. As stated above, no money was used for federal contributions. The \$151,507 figure you inquire about was deposited into the political action account, from the general treasury account, during the reporting period in question.

2. The reasons the receipts totaling \$290,996.68 were not disclosed on the original report were: a) inadvertence, b) focus on getting the expenditures correct within the time limit, and c) unfamiliarity with the FEC forms and uncertainty, for a first report, about how to correctly represent the facts.

3. UHPA believes that under Citizens United, there should be no obstacle to UHPAs using general treasury money to support independent expenditures. Accordingly, the sole germane question is how to best represent the use of general treasury money (in the political action account), when some of that money is used for federal independent expenditures. UHPA believes that the Amended Report shows the germane facts.

C. Letter of February 7, 2013, 2

1. UHPA believes that under Citizens United, a labor union can make independent expenditures in federal elections directly from its general treasury. This is because UHPA, as a collective entity composed of members, possesses First Amendment rights in its own name. UHPA may or may not choose to create a separate PAC, but UHPA itself possesses First Amendment rights. Independent expenditures, direct from UHPAs general treasury, are a fully-legal exercise of protected political speech provided that the expenditures are truly independent, and do not constitute contributions.

2. As stated above, UHPA has never, on any occasion, from its founding to date, made any contributions to federal candidates. It certainly did not do so in the 2012 period reported.

3. If UHPA had made contributions to federal candidates, the situation might well be different, but that would not be this case. Because UHPA made no contributions, and only independent expenditures, and is entitled to do so direct from its general treasury, UHPA respectfully submits that your advice in 2 misses the mark.

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4. UHPA transferred general treasury monies to its political action account, which, as noted above, is maintained in large part for non-federal activity (i.e., electoral activity in Hawaii) in UHPAs name. As noted above, UHPA has not organized a separate PAC. UHPA itself manages its political action account, which is funded with general treasury monies. UHPA authorized the independent expenditures from the political action account. UHPA conducts all political activities without a separate PAC.

With all respect, UHPA does not believe that 11 CFR 1025(a)(1)(i) applies to this matter. There is no federal account. The political action account has been used for state activity, and, as of 2012, federal independent expenditures. UHPA has engaged in no federal election activity (such as contributions to federal candidates) that requires that there be a federal account. The lone and sole federal activity UHPA has ever undertaken were independent expenditures in 2012, which, per Citizens United, may be made direct from the general treasury (by definition, not a federal account). Accordingly, we believe that no money needs to be returned from any account to any other account; certainly not from the political action account to the general treasury again, because the sole activity was protected First Amendment corporate speech undertaken by UHPA.

The transaction was not an internal transfer of funds from one federal account to another. UHPA appreciates your caution against double counting, and in no way wants to create the impression of excessive receipts or excessive cash on hand.

UHPA understands that the FEC may have questions based on the above response, or may have a different view of regulations and their applicability. UHPA desires to comply with all currently-applicable law. At the same time, UHPA supposes that there is some confusion possible in applying regulations in the post-Citizens United climate. UHPA would be very happy to go over the above facts in whatever detail you may require.
