



November 22, 2019

Zuzana Pacious, Auditor
Audit Division
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

RE: Draft Final Audit Report of the Audit Division of the Mississippi Republican Party
(January 1, 2015 – December 31, 2016)

Dear Ms. Pacious:

Thank you for the opportunity to respond further to the proposed findings in the Draft Final Audit Report (DFAR) received on Monday, November 4, 2019 in connection with the Federal Election Commission's (FEC or Commission) audit of the Committee. The DFAR has made three (3) Findings and Recommendations. The Mississippi Republican Party (MRP or Committee) will address each here and would like to incorporate by reference its earlier response and put the independent expenditure finding before the full Commission. The Committee requests a hearing before the Commission for the specific purpose of discussing the facts and conclusions related to Finding 3.

Finding 1: Misstatement of Financial Activity

As noted in the DFAR, in response to the IAR, the MRP hired a compliance professional who worked with Commission staff to file a Form 99 on June 21, 2019, which corrected the misstatements for the 2015 calendar year. The MRP wishes to reiterate that any incorrect reporting of receipts or disbursements was an inadvertent administrative oversight, and without any intention to circumvent reporting requirements. We are hopeful that the MRP's investment in a compliance officer after the 2015-16 audit period demonstrates the MRP's good faith in this process and commitment to reporting accurate disclosures for all current and future filings. We thank you for the opportunity to correct any prior misstatements.

Finding 2: Reporting of Debts and Obligations

As noted in the DFAR, in response to the IAR, the MRP hired a compliance professional who worked with Commission Auditor Robert Morcomb, to file a Form 99 on June 21 and 22, 2019, properly disclosing the debts and obligations to the ten (10) vendors the Commission listed and correcting the public record.

Finding 3: Reporting of Apparent Independent Expenditures

With respect to Finding 3., "Reporting of Apparent Independent Expenditures," MRP respectfully reiterates and incorporates by reference its June 14, 2019, response to the Interim Audit Report. MRP requests that the Commission address the analysis of the Audit Division and the Office of the General Counsel that MRP payments for routine political party solicitation expenses constitute independent expenditures. MRP respectfully asserts:

- The entire amount at issue in this finding was paid for party solicitation expenses; the communications solicited contributions for MRP and explained to prospective donors the potential, permissible uses of donated funds. References to issues and candidates were incidental to the call to action of each communication, a request to donate or register to vote.
- The authority cited by the FEC's Office of the General Counsel is inapt. The Office of General Counsel cites audits issued to non-political party respondents, OGC Memorandum, Draft FAR (LRA 1077), Oct. 2, 2019, at 2, as providing adequate notice that the Commission may proceed with its novel theory with respect to political party solicitations to its prospective donors and/or members. To put it lightly, political parties are distinguishable from non-connected political committees. Parties' expression is inextricably linked to their candidates in a manner unlike other political committees, in that parties play a fundamental role in the nomination and support of its candidates. An unbound theory that would transform all party solicitations into "independent expenditures," with the attendant reporting and other requirements for such expenditures, is not soundly based on any statute, regulation, or Commission-approved guidance. To assert that a party solicitation explaining that it will work to elect its candidates up and down the ballot is express advocacy because it references an upcoming election or what is at stake in the election would be an expansion of section 100.22(b). If the Commission intends to require political parties to submit its routine solicitation expenses to burdensome additional reporting requirements and other requirements of independent expenditures, it should do so through a policy or rulemaking process, consistent with the requirements related to the promulgation of agency guidelines found in Commission regulations and the Administrative Procedures Act.
- A Commission finding with respect to a minimum of \$22,393 of the total amount at issue would be based on a determination that the payments were for communications containing express

advocacy as described 11 C.F.R. § 100.22(b). MRP previously noted that the Commission has not pursued matters involving section 100.22(b). MUR 6729 (Checks and Balances), Statement of Reasons of Chairman Goodman and Commissioners Hunter and Petersen, at 3 n.14 (Oct. 24, 2014). MRP further request that the Commission address the Office of General Counsel's three-page chart, which belies any notion that section 100.22(b) may be constitutionally enforced by the Commission. The analysis (LRA 1077) purports to apply a kaleidoscope of vague factors to political speech, hardly fulfilling the agency's "unique prerogative to safeguard the First Amendment..." *Van Hollen v. FEC*, 811 F.3d 486, 500 (D.C. Cir. 2016).

- Even under the theory that the communications included "independent expenditures" -- a conclusion MRP asserts is unfounded -- only a very small portion of the amount the Audit Division found at issue would fall into this category due to allocation principles when communications include independent advocacy and party advocacy. 11 C.F.R. § 106.1(a); See MURs 7169, etc. (*Hillary for America, et al.*)(upholding a party committee's time and space allocation of ads referencing policy issues and also advocating the election or defeat of a candidate). Here, the Office of the General Counsel cites one to two lines, at most, of each communication as constituting express advocacy. In fact, the communications at issue are overwhelmingly dedicated to party advocacy and party solicitation. The Commission should not find that the whole cost of a communication was mischaracterized when only one or two sentences in a multi-page document, under the Audit Division's theory, constitutes express advocacy. The amount at issue, therefore, must be reduced to reflect the minute portion (under the Audit Division's theory) reflecting express advocacy. Even under the Audit Division's theory, a small fraction of the total amount at issue (\$43,967) reflects the accurate potential amount in alleged violation.
- MRP respectfully notes that if the Commission properly finds that these communications were routine party solicitations, the Audit Division's findings with respect to reporting or other issues become moot.

As noted in the MRP response to the IAR, if the Commission rejects or modifies the findings in the DFAR, the Committee intends to move quickly to amend its reports to materially correct its reporting in conformance with the Commission's determination.

Conclusion

The MRP takes its reporting obligations very seriously, and we have taken extraordinary measures, both in time and money to address these issues over the last few years. As has been noted, the MRP leadership changed in the fall of 2017 and the records were not properly preserved. In spite of the change in leadership, current MRP staff have searched diligently and feverishly to provide additional documentation and invoices as requested by the Commission Auditors regarding the direct mail communications reference in the DFAR. The MRP sincerely regrets this circumstance and will continue

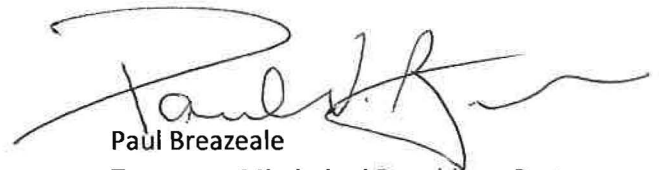
to search for records to further support the dates of dissemination for the direct mail solicitations and if located, will provide that information immediately to the Commission.

The MRP appreciates the opportunity to respond directly to the DFAR. The Committee looks forward to the questions in finding three (3) being addressed. Thank you for your consideration. Please do not hesitate to contact us if you have any further questions.

Sincerely,



Lucien Smith
Chairman, Mississippi Republican Party



Paul Breazeale
Treasurer, Mississippi Republican Party