



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Stephen Hershkowitz, Esq.
Mr. Neil Reiff, Esq.
Sandler, Reiff, Young & Lamb, P.C.
1025 Vermont Avenue, N.W.,
Suite 300
Washington, DC 20005

OCT 17 2013

RE: MUR 6758
(formerly RR 13L-08)
Rob Zerban for Congress
and Randy Bryce, in his
official capacity as treasurer

Dear Messrs. Hershkowitz and Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("the Commission") became aware of information suggesting that your clients, Rob Zerban for Congress and Randy Bryce in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 24, 2013, the Commission notified the Committee that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On September 24, 2013, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose disbursements on its original 2012 12-Day Pre-General Report, an election sensitive report. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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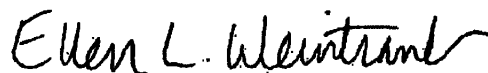
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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that the Committee has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

cc: Rob Zerban

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Rob Zerban for Congress and Randy Bryce MUR 6758
4 in his official capacity as treasurer

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6 **I. GENERATION OF MATTER**

7 This matter was generated based on information ascertained by the Federal Election
8 Commission (the "Commission") in the normal course of carrying out its supervisory
9 responsibilities, *see* 2 U.S.C. § 437g(a)(2). The Reports Analysis Division ("RAD") referred
10 Rob Zerban for Congress and Randy Bryce in his official capacity as treasurer (the
11 "Committee") to the Office of General Counsel ("OGC") for failing to disclose additional
12 disbursements of \$438,682.66, which were not disclosed on its original 2012 12-Day Pre-
13 General Report. In response, the Committee acknowledges the reporting errors but requests that
14 the Commission decline to open an enforcement matter. Based on the available information, the
15 Commission has determined to open a matter under review ("MUR") in connection with
16 RR 13L-08 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to
17 disclose disbursements accurately to the Commission.

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Factual Background**

20 The Committee is the principal campaign committee of Rob Zerban, who was a candidate
21 for the U.S. House of Representatives from Wisconsin's First Congressional District during the
22 2012 election cycle.¹ On October 22, 2012, the Committee timely filed its 2012 12 Day Pre-

¹ Zerban lost the 2012 general election. Resp. at 1 (Jun. 11, 2013).

1 General Report² covering the period from October 1, 2012 through October 17, 2012, which
2 disclosed \$323,024.29 in disbursements. RR13L-08 at 1 (Zerban for Congress). Thereafter, the
3 Committee filed three amendments to the original report, one in December 2012, one in January
4 2013, and one in April 2013, disclosing additional disbursements totaling \$438,682.66.
5 *Id.* at 1-2.

6 On February 11, 2013, RAD sent the Committee a Request for Additional Information
7 ("RFAI"), requesting clarification regarding the substantial increase in disbursements that were
8 not disclosed in the original filing. RR13L-08 at 2. Responding to the RFAI, the Committee
9 filed a Miscellaneous Document ("Form 99") on March 8, 2013, stating that:

10 Zerban for Congress noticed several discrepancies in our records
11 while completing the 2012 Post Election campaign filing and initiated
12 an internal audit to rectify the problem. The internal audit was not
13 completed by the 2012 Post Election filing deadline, so an attempt
14 was made to correct the record to the best of our ability at the time by
15 filing amended reports for the errors we had become aware of. Once
16 the internal audit was completed, Zerban for Congress filed amended
17 reports for all affected periods to correct the errors.

18 *Id.*

19 RAD referred the Committee to OGC and upon receipt of the Referral, OGC notified the
20 Committee about this matter on April 24, 2013. *See Agency Procedure for Notice to*
21 *Respondents in Non-Complaint Generated Matters*, 74 Fed.Reg. 38,617 (Aug. 4, 2009).

22 In response to the notification, the Committee maintains that the Commission should
23 dismiss the matter for a number of reasons. *See Resp.* 1-2. First, the Committee argues that the
24 reporting error was accidental, noting that the treasurer and the treasurer's staff at the time of the

² Pursuant to 11 C.F.R. § 111.43(d)(1), election sensitive reports include pre-election reports for primary, general, and special elections.

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1 original filing were inexperienced volunteers. *Id.* at 1. Second, the Committee states that, at the
2 time, it lacked the ability to automatically import its transactions into its campaign finance
3 software, and thus was entering these transactions by hand. *Id.* Consequently, when the
4 Committee misplaced a page of disbursements that it should have entered into the software, it did
5 not realize it had omitted the information until it was preparing its 2012 30-Day Post-General
6 Report. *Id.* at 2. Third, the Committee argues that it voluntarily remedied the errors without any
7 prompting by the Commission. *Id.* at 1. Once it learned of the errors, the Committee asserts that
8 it filed an amended 2012 Pre-General Report within six weeks of the original filing. *Id.* at 2.
9 After additional auditing, the Committee filed a subsequent amendment on January 23, 2013.
10 See 2012 Amended 2012 12-Day Pre-General Rpt. (Jan. 23, 2013).³ Finally, the Committee
11 argues that the matter should be dismissed because it has less than \$2,000 in cash.⁴ Resp. at 2.
12 Alternatively, the Committee requests the Commission refer the matter to ADR. *Id.*

13 B. Legal Analysis

14 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
15 treasurers to file reports of receipts and disbursements in accordance with the provisions of
16 2 U.S.C. § 434. 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter*

³ See <http://images.nictusa.com/pdf/122/13960388123/13960388122.pdf>. The Committee's third amended 2012 12 Day Pre-General Report, filed on April 15, 2013, disclosed no change in the amount of disbursements from the January 23, 2013 amendment. See Amended 2012 12-Day Pre-General Rpt. (Apr. 15, 2013), <http://images.nictusa.com/pdf/692/13961642692/13961642692.pdf>.

⁴ At the time of its June 7, 2013, Response to the Referral, the Committee's 2013 April Quarterly Report showed a cash-on-hand balance of \$1,597.93. 2013 April Quarterly Rpt. at 2 (Apr. 15, 2013), <http://images.nictusa.com/pdf/341/13961644341/13961644341.pdf>. The Committee's 2013 July Quarterly Report, filed on July 15, 2013, discloses a cash-on-hand balance of \$12.49. 2013 July Quarterly Rpt. at 2 (July 15, 2013), <http://images.nictusa.com/pdf/149/13964091149/13964091149.pdf>.

1 *alia*, the total amount of disbursements, including the appropriate itemizations, where required.

2 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(b).

3 Here, the Committee admits it did not comply with the Act's reporting requirements
4 when it failed to disclose a total of \$438,682.66 in disbursements that were not disclosed on its
5 original 2012 12-Day Pre-General Report. Resp. at 1-2. Therefore, the Commission has
6 determined to find reason to believe that Rob Zerban for Congress and Randy Bryce in his
7 official capacity as treasurer violated 2 U.S.C. § 434(b).

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