



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

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Spencer Toder, Treasurer
Spencer Toder for Senate
4021 Laclede Ave
P.O. Box 23039
Saint Louis, MO 63056

October 12, 2023

RE: MUR 8178
Spencer Toder for Senate

Dear Mr. Toder:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting Spencer Toder for Senate and you in your official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). On March 10, 2023, the Federal Election Commission ("Commission") notified the Committee of a Referral by the Commission's Reports Analysis Division (RR 23L-08) to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109, for failing to disclose all financial activity on your 2022 12-Day Pre-Primary Report. A copy of the Referral was provided to you with the March 10, 2023 notification.

Upon review of the referred matter, the Commission, on October 5, 2023, found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(4) and 11 C.F.R. § 104.3(b) by failing to timely and accurately report disbursements. The Factual and Legal Analysis, which forms the basis of the Commission's determination, 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 the Committee as a way to resolve the matter at an early stage and without the need for briefing the issue of whether

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or not the Commission should find probable cause to believe that the Committee violated the law.

Enclosed is a conciliation agreement for your consideration, which includes a civil penalty

Please note that the Committee has 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. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you are interested in engaging in pre-probable cause conciliation, please contact Rocelyn Halili, the attorney assigned to this matter, at (202) 694-1190 or at mhalili@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the 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 sixty (60) days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you 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/em/respondent_guide.pdf.

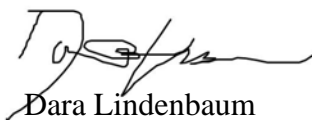
If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read 'Dara Lindenbaum', written over a horizontal line.

Dara Lindenbaum
Chair

Enclosures:

Factual and Legal Analysis

1 **II. FACTUAL BACKGROUND**

2 Spencer Toder was a candidate for U.S. Senate in Missouri in 2022,² and the Committee
3 is his principal campaign committee, with Nicholas Zateslo as treasurer until January 24, 2023,
4 when Toder took over the position.³

5 **A. Failure to Timely and Accurately Disclose Financial Activity Relating to**
6 **the 2022 Primary Election**

7
8 On July 22, 2022, the Committee filed a 2022 12-Day Pre-Primary Report covering the
9 period from July 1, 2022 to July 13, 2022.⁴ The Report disclosed no disbursements on Line 17
10 (Operating Expenditures) or Line 19(a) (Loan Repayments of Loans Made or Guaranteed by the
11 Candidate) of the Detailed Summary Page.⁵ On December 1, 2022, 132 days later and after the
12 primary, the Committee filed an amendment to its original 2022 12-Day Pre-Primary Report,
13 disclosing \$21,598.14 in operating expenditures and \$500,000 in candidate loan repayments, a
14 total increase of \$521,598.14 in disbursements from the original report.⁶

15 RAD issued a Request for Additional Information (“RFAI”) to the Committee on
16 December 6, 2022, referencing the Committee’s Amended 2022 12-Day Pre-Primary Report.⁷
17 The RFAI asked the Committee to clarify the substantial increase in disbursements disclosed on

² See Spencer Ross Toder, Statement of Candidacy (Apr. 15, 2021). Toder lost the Democratic primary election on August 2, 2022. See *Missouri Secretary of State*, Missouri Election Results, Primary Election August 2, 2022, <https://www.sos.mo.gov/elections/results> (last visited July 18, 2023).

³ See Spencer Toder for Senate, Amended Statement of Organization (Mar. 19, 2022); Spencer Toder for Senate Amended Statement of Organization (Jan. 24, 2023).

⁴ Referral at 1 (June 22, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2.

1 its Amended 2022 12-Day Pre-Primary Report and explain why it failed to include this
2 information in its original report.⁸

3 **B. Responses**

4 On December 27, 2022, the Committee responded to the RFAI by filing a Miscellaneous
5 Electronic Submission (“Form 99”).⁹ The Form 99 stated that, with respect to the 12-Day Pre-
6 Primary Report, it appears that the loans and expenses did not upload properly into the
7 Commission’s reporting system.¹⁰

8 On March 15, 2023, the Committee submitted a Response to RAD’s Referral, stating that
9 the Committee usually processes bank statements at the end of each month, and because of the
10 “fast-paced nature” of filing the 12-Day Pre-Primary Report in the middle of the month, which
11 covers the period of July 1 to July 13, 2022, the Committee failed to include the disbursements.¹¹
12 The Committee also claims that its compliance software, which was supposed to issue a warning
13 for a possible RFAI based on inputted information, failed to produce the warning.¹²

14 **III. LEGAL ANALYSIS**

15 The Act requires committee treasurers to file reports of receipts and disbursements in
16 accordance with the provisions of 52 U.S.C. § 30104.¹³ These reports must include, *inter alia*,
17 the total amount of receipts and disbursements, including the appropriate itemizations, where
18 required.¹⁴ In addition to the regular quarterly reports, in any year where there is an election for

⁸ RFAI (Dec. 6, 2022), <https://docquery.fec.gov/pdf/708/202212060300162708/202212060300162708.pdf>.

⁹ See Toder for Senate, Form 99 (Dec. 27, 2022), <https://docquery.fec.gov/dcdev/fectxt/1673539.txt>.

¹⁰ *Id.*

¹¹ Comm. Resp. at 1 (Mar. 15, 2023).

¹² *Id.*

¹³ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁴ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

1 which a candidate is seeking election, or nomination for election, the treasurer of an authorized
2 committee shall file a pre-election report, which shall be filed no later than the 12th day before
3 an election.¹⁵ The pre-election report must disclose all receipts and disbursements as of the 20th
4 day before a primary or general election.¹⁶

5 Here, the Committee acknowledges that it failed to include disbursements on its original
6 2022 12-Day Pre-Primary Report.¹⁷ On its Amended 2020 12-Day Pre-Primary Report, the
7 Committee disclosed additional disbursements totaling \$521,598.14.¹⁸ Therefore, the Committee
8 did not comply with the Act’s reporting requirements when it failed to timely and accurately
9 report \$521,598.14 in aggregate disbursements.

10 In response to the Referral, the Committee claims the omissions made on its original
11 2022 12-Day Pre-Primary Report were errors resulting from its internal processing system that
12 relied on month-end statements and a software failure.¹⁹ Although the loan repayments were not
13 included in the 12-Day Pre-Primary Report, the Committee requests that the Commission impose
14 no penalty and that the campaign committee be allowed to terminate because the omission was
15 an error and the Committee has been “forthright and honest in reporting this data entry mistake
16 and . . . proactively reported the error without prompt.”²⁰

17 In circumstances involving committees that made inadvertent reporting errors by omitting
18 receipts and disbursements, the Commission has consistently found reason to believe and

¹⁵ 52 U.S.C. § 30104(a)(2)(i); 11 C.F.R. § 104.5(a)(2).

¹⁶ 11 C.F.R. § 104.5(a)(2)(i)(B); *see also* 52 U.S.C. § 30104(b)(2), (4).

¹⁷ Comm. Resp. at 1.

¹⁸ Referral at 2; *compare* original 2022 12-Day Pre-Primary Report at 4, *with* Amended 2022 12-Day Pre-Primary Report at 4.

¹⁹ Comm. Resp. at 1.

²⁰ *Id.*

1 engaged in pre-probable cause conciliation, incorporating the self-reported nature of the
2 reporting violations.²¹

3 Accordingly, the Commission finds reason to believe that the Committee and Spencer
4 Toder in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(4) and 11 C.F.R.
5 § 104.3(b) by failing to timely and accurately report disbursements.

²¹ *See, e.g.*, Conciliation Agreement, MUR 8070 (Democratic Executive Committee of Florida); Conciliation Agreement, MUR 8061 (Republican Party of Minnesota—Federal); Conciliation Agreement, MUR 8050 (Montana Democratic Party).