

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
CONNIE MACK, FLORIDA
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
ANN MARIE BUERKLE, NEW YORK
PAUL A. GOSAR, D.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DesJARLAIS, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TREY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

<http://oversight.house.gov>

April 3, 2012

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

EDOLPHUS TOWNS, NEW YORK
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
DENNIS J. KUCINICH, OHIO
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE QUIGLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

The Honorable Caroline C. Hunter
Chair
Federal Elections Commission
999 E Street Northwest
Washington, DC 20462

Dear Chair Hunter:

The Committee on Oversight and Government Reform is examining the use of union dues and fees to fund political causes contrary to the will of many union workers. On February 8, 2012, the Committee held a hearing entitled, "The Right to Choose: Protecting Union Workers from Forced Political Contributions," that featured three union workers who believe their rights are being violated by the use of their dues to support political activity. The full hearing video and testimony of all of the witnesses are available at <http://issues.oversight.house.gov/worker-rights>. I write to request information from the FEC to further inform the Committee in its oversight of these issues.

At the hearing, Claire Waites, an eighth grade science teacher and a "member in good standing" of the National Education Association (NEA), testified that she was forced to make contributions to the union's political action committee (PAC). As a delegate to the NEA Convention, Ms. Waites explained that in 2004 she was told by local Baldwin County leadership that a contribution to the NEA's "Children's Fund" was "nonnegotiable," and at the 2008 NEA Convention, a contribution of \$100 was allegedly made in her name with travel money.¹ After Ms. Waites learned about the 2008 contribution to the "Children's Fund," and that it was a PAC, she strongly objected to it.² She attempted to retrieve the travel funds that had gone to the "Children's Fund" from Alabama Education Association leadership, but was informed that was not possible.³

The Committee learned that on January 13, 2009, Ms. Waites duly filed a complaint with the Federal Election Commission. This complaint recounted her experience at the NEA's 2008 national convention, and alleged specific violations of the Federal Election Campaign Act of

¹ *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform*, 112th Cong. (2012) (testimony of Claire Waites).

² *Id.*

³ *Id.*

1971, as amended.⁴ The factual allegations contained in the complaint accord with the sworn testimony received by the Committee on February 8, 2012. In a letter dated December 18, 2009, the Commission's General Counsel informed Ms. Waites that the Commission decided to dismiss her complaint and close the file.⁵ The Factual and Legal Analysis enclosed with that letter stated that the dismissal was based on "the small amount at issue, the inconsistencies and gaps in the factual record, and in furtherance of the Commission's resources relative to other matters."⁶

The Committee understands that due to limited resources, the Commission must exercise prosecutorial discretion in determining whether to proceed in a matter. Nonetheless, the articulated grounds for the dismissal prompt concern that the Commission may not be sufficiently protecting the right of union workers to prevent the use of their dues to support political activity. A report by the General Counsel appears to recognize a genuine controversy as to the violations alleged by Ms. Waites.⁷ Indeed, it states that "there is a conflict between the parties' declarations and affidavits ... [but] we do not believe it would be the most efficient use of the Commission's resources to resolve these allegations given the small amount at issue."⁸ The report also expresses "concern that AEA may have disregarded its responsibilities as a collecting agent for the ["Children's Fund"]."⁹ Yet, the General Counsel ultimately recommends dismissal of each count based on the "*de minimus* amount at issue."¹⁰ Such a determination ignores the possibility that such violations, aggregated across a large organization, can result in substantial sums. The context of the allegations alleged by Ms. Waites is demonstrative: the NEA "Children's Fund" claims to have contributed over \$8.9 million "to support NEA-recommended candidates for federal office."¹¹

To enable the Committee to better understand the Commission's policy and practice with regard to complaints filed by individual union members, I request that you provide responses to the following requests for information, producing documents as requested and as necessary to sufficiently support your answers, by April 17, 2012.

1. The First General Counsel's Report and the Factual and Legal Analysis predicate their conclusions on the *de minimus* amount in question. Please describe any baseline threshold, formal or informal, the Commission references when deciding whether an amount is *de minimus*.

⁴ See Compl. of Claire Waites, Jeanne Fox, and the National Right to Work Legal Defense and Education Foundation, Inc. ¶¶ 23-27, MUR #6159.

⁵ Letter from Thomasenia P. Duncan, General Counsel, Federal Election Commission, to Bruce N. Cameron, Attorney for Ms. Claire Waites (Dec. 18, 2009).

⁶ Federal Election Commission, Factual and Legal Analysis: MUR 6159, Dec. 18, 2009.

⁷ Federal Election Commission, First General Counsel's Report: MUR 6159, Nov. 12, 2009.

⁸ *Id.* at 9.

⁹ *Id.* at 16.

¹⁰ *Id.* at 11.

¹¹ NEA Fund, About the NEA Fund, *available at* www.neafund.org.

2. Federal election law violations alleged by an individual member of an organization could reflect endemic, organization-wide violations. Please describe any policy or approach, formal or informal, adopted by the Commission to assess the scope of violations against a particular organization by individual members of that organization.
3. It is conceivable that a complaint might allege major procedural violations of the Federal Election Campaign Act of 1971, as amended, while only implicating a relatively small amount of money. Please identify the cases in which the Commission proceeded in matter notwithstanding a finding by the General Counsel that the amount was *de minimis*.
4. Please provide all documents and communications referring or relating to MUR # 6159 or Ms. Claire Waites.

In preparing your answers to these questions, please answer each question individually and include the text of each question with your response. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact Brian Daner or Kristin Nelson of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5074

Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.