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## FEDERAL ELECTION COMMISSION

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Washington, D.C. 20463

## **FIRST GENERAL COUNSEL'S REPORT**

CELA

RAD REFERRAL: 15L-38

DATE REFERRED: October 7, 2015

DATE OF NOTIFICATION: October 9, 2015

DATE OF LAST RESPONSE: N/A

DATE ACTIVATED: November 2, 2015

**ELECTION CYCLE: 2014**

## **EXPIRATION OF SOL: July 15, 2020**

SOURCE: RAD REFERRAL

**RESPONDENT:** Americans for a Conservative Direction

**RELEVANT STATUTE:** 52 U.S.C. § 30104(c) and (g)  
**AND REGULATION:** 11 C.F.R. § 109.10(b) and (e)

**INTERNAL REPORTS CHECKED:** RAD Referral Documents  
Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

## 1. INTRODUCTION

The Commission's Reports Analysis Division ("RAD") referred Americans for a Conservative Direction ("AFCD") to the Office of General Counsel ("OGC") because it failed to timely file its 2014 July Quarterly Report to show independent expenditures. AFCD disclosed those expenditures on one 24-Hour Report in April 2014. We recommend that the Commission open a MUR and find reason to believe that AFCD violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) by failing to timely file a 2014 July Quarterly Report. We further recommend that the Commission authorize pre-probable cause conciliation with AFCD.

1      **II.    FACTUAL AND LEGAL ANALYSIS**

2      **A. Facts**

3            AFCD is an advocacy organization that is not registered with the Commission as a  
4            political committee and therefore does not file regular disclosure reports with the Commission.<sup>1</sup>

5            On April 25, 2014, AFCD filed a 24-Hour Report disclosing independent expenditures totaling  
6            \$102,035 that it made between April 25, 2014 and May 6, 2014. AFCD did not file the required  
7            July Quarterly Report for the corresponding quarterly reporting period of April 1, 2014 through  
8            June 30, 2014.

9            On August 7, 2014, RAD sent AFCD a Notice of Failure to File concerning the  
10           organization's failure to file a 2014 July Quarterly Report.<sup>2</sup> On September 10, 2015, 399 days  
11           later, AFCD filed its overdue 2014 July Quarterly Report disclosing independent expenditures  
12           totaling \$102,035, the aggregated total of the amount shown on its 24-Hour Report.<sup>3</sup> On that  
13           same date, RAD informed AFCD that its failure to timely file the disclosure report might be  
14           referable for further Commission action, and encouraged AFCD to place any additional  
15           explanation on the public record.<sup>4</sup> The quarterly report, which disclosed the same activity as the  
16

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<sup>1</sup>          See AFCD's website, <http://www.americansforconservativedirection.com/#about>.

<sup>2</sup>          See Notice of Failure to File (Aug. 7, 2014); RR 15L-38 at 1 (Oct. 7, 2015).

<sup>3</sup>          Americans for a Conservative Direction, 2014 July Quarterly Report (Sept. 10, 2015); RR 15L-38 at 2.

<sup>4</sup>          RR 15L-38 at 2. RAD issued a Request for Additional Information ("RFAI") to AFCD on September 29, 2015, regarding the failure of the organization to report contributions on its late-filed 2014 July Quarterly Report. See RFAI to Americans for a Conservative Direction (Sept. 29, 2015). In a letter, dated January 24, 2015, AFCD responded by stating that no donations were received for the purpose of furthering the reported independent expenditures. Letter from Chris Winkelman, Atty. for Americans for a Conservative Direction, to the Reports Analysis Division, FEC (Nov. 6, 2015).

1 24-Hour Report, was filed nearly 14 months (422 days) after its due date.

2 RAD referred AFCD to OGC on October 7, 2015, for its failure to timely file the 2014  
3 July Quarterly Report.<sup>5</sup> On October 9, 2015, the Commission formally notified AFCD that its  
4 failure to timely file a 2014 July Quarterly Report in violation of 52 U.S.C. 30104(c) had been  
5 referred to OGC for possible enforcement action.<sup>6</sup> AFCD did not respond to the referral  
6 notification.

7 **B. Analysis**

8 Entities that are not political committees within the meaning of the Act must file  
9 disclosure reports with the Commission when they make independent expenditures that meet  
10 certain aggregate thresholds.<sup>7</sup> The timing and triggering threshold for the required report  
11 depends on when the entity makes the independent expenditures during the election cycle.  
12 Specifically, if the entity makes independent expenditures aggregating \$10,000 or more within a  
13 calendar year with respect to a given election any time prior to the 20th day before the election,  
14 the entity must file a 48-Hour Report disclosing those expenditures.<sup>8</sup> If the entity makes  
15 independent expenditures aggregating \$1,000 or more with respect to a given election after the

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<sup>5</sup> RR 15L-38. The referral was based on Standard 4 of the RAD referral thresholds.

<sup>6</sup> Notification letter from Assist. Gen. Counsel, CELA, FEC, to Americans for a Conservative Direction from at 1 (Oct. 7, 2015).

<sup>7</sup> An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. 52 U.S.C. § 30101(17).

<sup>8</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The entity must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

1 20th day before the date of an election, but more than 24 hours before the date of an election, the  
2 entity must file a 24-Hour Report disclosing those expenditures.<sup>9</sup>

3 In addition, entities that are not political committees within the meaning of the Act that  
4 spend in excess of \$250 on independent expenditures during a calendar year with respect to a  
5 given election must also file a quarterly report (*i.e.*, FEC Form 5) for any quarterly period in  
6 which the independent expenditures exceed \$250 and any subsequent quarterly period during  
7 that calendar year when additional independent expenditures are made.<sup>10</sup> Such reports must  
8 disclose the independent expenditures and contributions in excess of \$200 made for the purpose  
9 of furthering the reported independent expenditures.<sup>11</sup>

10 AFCD made independent expenditures on April 25, 2014, totaling \$102,035 and was  
11 therefore required to file a 2014 July Quarterly Report disclosing those expenditures. AFCD  
12 failed to do so in a timely manner.<sup>12</sup> Accordingly, there is reason to believe that Americans for a  
13 Conservative Direction violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b).

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<sup>9</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The entity must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

<sup>10</sup> 11 C.F.R. § 109.10(b); *see* 52 U.S.C. § 30104(c). *See also* Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)).

<sup>11</sup> 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(e). There are important practical reasons for the quarterly reporting requirement — these reports disclose all independent expenditures the entity made during the quarterly reporting period, including those that fall outside the 24-Hour and 48-Hour reporting requirements. 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10. As a practical matter, the Commission has no other means of determining whether an entity that fails to file a quarterly report or verified statement has met its reporting obligations for that quarter. For example, an independent expenditure made within 24 hours of an election is not reportable on 24-hour or 48-hour reports and would only be disclosed on a quarterly report. Similarly, if a committee made one independent expenditure of \$250 or greater, but less than \$1,000, it would also only be disclosed on a quarterly report. 11 C.F.R. § 109.10(b) and (d).

<sup>12</sup> 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

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1 **IV. RECOMMENDATIONS**

2       1. Open a MUR in RR 15L-38;

3       2. Find reason to believe that Americans for a Conservative Direction violated

4       52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b);

5       3. Authorize conciliation with Americans for a Conservative Direction prior to a

6       finding of probable cause to believe;

7       4. Approve the attached Factual and Legal Analysis;

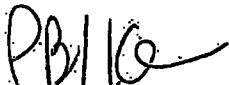
8       5. Approve the attached Conciliation Agreement; and

9       6. Approve the appropriate letter.

10      Date

11      3/4/16

12        
13      Kathleen Guith  
14      Acting Associate General Counsel for Enforcement

15        
16      Peter G. Blumberg  
17      Assistant General Counsel

18        
19      Marianne Abely  
20      Attorney

21      Attachments:

22      1. Factual and Legal Analysis

## FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

5 RESPONDENT: Americans for a Conservative Direction. MUR

## 7 I. INTRODUCTION

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9 Conservative Direction (“AFCD”) to the Office of General Counsel (“OGC”) because it failed to  
10 timely file its 2014 July Quarterly Report to show independent expenditures. AFCD disclosed  
11 those expenditures on one 24-Hour Report in April 2014. Based on the available information,  
12 the Commission finds reason to believe that Americans for a Conservative Direction violated  
13 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) by failing to timely file its 2014 July Quarterly  
14 Report.

## 15 II. FACTUAL AND LEGAL ANALYSIS

## 16 A. Background

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18 political committee and therefore does not file regular disclosure reports with the Commission.<sup>1</sup>  
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21 July Quarterly Report for the corresponding quarterly reporting period of April 1, 2014 through  
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See AFCD's website, <http://www.americansforaconservativedirection.com/#about>.

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