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December 23, 2015

Via E-Mail

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: RR 15L-43

Dear Mr. Jordan:

The undersigned serves as counsel to VoteVets.org Action Fund ("VoteVets.org"). I am writing in response to the Commission's letter of December 1, 2015 in connection with the above-referenced referral. For the reasons set forth below, VoteVets.org respectfully requests that OGC recommend that no further action be taken in this matter or, in the alternative, that this matter be referred to the Alternative Dispute Resolution Division for further proceedings.

This matter relates to the late filing of two Quarterly Form 5 reports filed by VoteVets.org relating to activity undertaken in 2014. Specifically VoteVets.org filed two 24 Hour Reports relating to independent expenditures in June of 2014 and three 24 Hour notices of independent expenditures in October 2014. This matter is being referred for enforcement due to Vote Vets.org's failure to file Quarterly Reports that contained the identical information required to be disclosed in the 24 Hour independent expenditure reports filed earlier by VoteVets.org.

By way of background, VoteVets.org is a social welfare organization that was organized in 2006 in accordance with 26 U.S.C. § 501(c)(4). Although the organization's primary purpose is to advocate on a non-partisan basis for veterans issues, it has, on occasion, disseminated communications containing express advocacy for and against federal candidates.

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Although VoteVets timely filed five 24 Hour Reports for independent expenditures in 2014 required under 52 U.S.C. 2130104(g), it inadvertently failed to timely file the duplicative Quarterly reports which are separately required under 52 U.S.C. § 30104(c). Thus, this referral is being made because VoteVets.org failed to file a report that included the exact same information that was required in timely filed reports with 24 hours of the dissemination of those communications. For the reasons stated below, the Commission should not pursue this matter and close the file in accordance with Heckler v. Cheaney, 470 U.S. 821 (1985).

1) History of Reporting Provision

When Congress initially passed legislation providing for both 24 Hour and Quarterly filing of independent expenditure reporting for any organization that spent in excess of \$250 in a calendar year, and a 24 Hour reporting was only required for independent expenditures made within 20 days of an election if they exceeded \$1,000 relative to that election. Thus, any independent expenditures disseminated by an organization more than 20 days of an election were not disclosed until the Quarterly report required by the reporting statute. P.L. 96-187 (January 8, 1980). Accordingly, Congress created a regime to capture independent expenditures that were made outside of 20 days of an election in the quarterly reporting scheme rather than by requiring immediate disclosure of those expenditures.

This reporting regime remained generally unchanged until Congress inserted an additional reporting requirement for any independent expenditures made more than 20 days before an election if those expenditures exceeded \$10,000 in connection with a particular election. P.L. 107-155 (March 27, 2002). Consequently, for those organizations that spend more than \$10,000 in each election for which they make independent expenditures, the current reporting scheme is completely duplicative and the organization is required to file two identical reports.

Due to the duplicative nature of these requirements, the Commission's resources would be better utilized by the consideration of an interpretive rule that would waive such duplicative requirements rather than the unnecessary pursuit of the late filing of identical information that had already been provided to the Commission on a timely basis so that similarly situated organizations are not faced with enforcement actions for failing to timely file the exact same information twice with the Commission, especially when the initial 24 or 48 Hour report has been filed on a timely basis.

2) Harm to the Public

Although VoteVets.org acknowledges that the two separate, duplicative reports were required by law, and the second of those reports were not timely filed, the Commission must weigh the factors required by the courts to determine whether a penalty is appropriate. These factors include, amongst other things, the good or bad faith of the defendants, the injury to the public, and the necessity of vindicating the authority of the responsible federal agency. See Federal Election Commission v. Friends of Jane

Harman, 59 F.Supp2d 1046, 1058 (C.D. Cal. 1999) (citing Federal Election Commission v. Furgatch, 869 F.2d 1256, 1258 (9th Cir. 1989)). The application of each of these factors strongly weighs in favor of dismissal of this matter. First, the errors were caused by an inadvertent omission due to the unfamiliarity of the dual reporting scheme of the small VoteVets.org staff in 2014. Second, all of the information required by the Quarterly Report had already been publicly and timely disclosed in 24 Hour Reports filed by VoteVets.org. Third, there is no valid justification for the Commission to penalize an organization for failing to file duplicative, identical reports. To be sure, the Commission should consider providing relief to such organizations so that duplicate reports are not required. It should be noted that after a search of the Commission's enforcement database, I have been unable to locate a single instance of the enforcement of the Quarterly reports required under section 30104(c) (or its predecessor 2 U.S.C. § 434(c)) where the organization had previously timely filed the identical information on 24 Hour Reports as required by 52 U.S.C. § 30104(g).

3) Inadvertent Nature of the Failure to File the Report

VoteVets.org maintains a very small permanent staff whose primary responsibility is to run a social welfare organization and not a federal political committee. Consequently, the staff has a very limited knowledge of federal campaign finance disclosure requirements. Although the staff successfully filed the 24 Hour reports (which provide the spending information to the Commission and general public on an immediate basis), it inadvertently failed to timely file the Quarterly Reports due to their general lack of familiarity with this requirement. This omission was completely inadvertent and did not deny the Commission or general public any information for any amount of time. Nevertheless, in order to ensure that this omission does not occur in the future, and in order to improve its accounting and compliance operations, VoteVets.org has retained a highly regarded outside tax/compliance firm to ensure that all future independent expenditures are properly and timely disclosed.

For the reasons stated above, the Commission should close this matter, or, in the alternative, refer this matter to its Alternative Disputes Resolution Division. If you have any further questions, please contact me at (202) 479-1111.

Respectfully submitted,

Neil P. Reiff
Counsel for VoteVets.org Action
Fund