

## SENSITIVE

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

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

**RAD REFERRAL:** 15L-43  
**DATE REFERRED:** November 12, 2015  
**DATE OF NOTIFICATION:** November 19, 2015  
**DATE OF LAST RESPONSE:** December 23, 2015  
**DATE ACTIVATED:** January 25, 2016

**SOURCE:** RAD REFERRAL

## RESPONDENTS: VoteVets.org Action Fund

<b>RELEVANT STATUTES AND REGULATION:</b>	52 U.S.C. § 30101(17) <sup>1</sup> 52 U.S.C. § 30104(c) and (g) 11 C.F.R. § 109.10(b) - (e)
--	---

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

**FEDERAL AGENCIES CHECKED:** None

## I. INTRODUCTION

32 The Commission's Reports Analysis Division ("RAD") referred VoteVets.org Action Fund  
33 ("VoteVets.org") to the Office of General Counsel ("OGC") because it failed to timely file its 2014 July  
34 Quarterly and Year-End Reports to show independent expenditures. VoteVets.org disclosed those  
35 expenditures on 24-Hour Reports in June and October 2014. We recommend that the Commission open  
36 a MUR and find reason to believe that VoteVets.org violated 52 U.S.C. § 30104(c) and 11 C.F.R.  
37 § 109.10(b) by failing to timely file its 2014 Year-End Report. However, because of the specific

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the “Act”), was transferred from Title 2 to new Title 52 of the United States Code.

1      circumstances in this matter, we recommend that the Commission decline to open a MUR as to  
2      VoteVets.org regarding its late-filed 2014 July Quarterly Report. We further recommend that the  
3      Commission authorize pre-probable cause conciliation with VoteVets.org.

4      **II.      FACTUAL AND LEGAL ANALYSIS**

5      **A.      Facts**

6      VoteVets.org is registered with the Internal Revenue Service as a 501(c)(4) social welfare  
7      organization.<sup>2</sup> VoteVets.org is not registered with the Commission as a political committee and  
8      therefore does not file regular disclosure reports with the Commission. VoteVets.org made independent  
9      expenditures during the 2014 election cycle.

10     On June 6, 2014, VoteVets.org filed a 24-Hour Report disclosing two independent expenditures  
11     totaling \$295,086.46 in opposition to Senate candidate Steven Daines.<sup>3</sup> On August 5, 2014, RAD sent  
12     VoteVets.org a Notice of Failure to File concerning the organization's failure to file a 2014 July  
13     Quarterly Report for the reporting coverage period of April 1, 2014, through June 30, 2014.<sup>4</sup> On August  
14     8, 2014, VoteVets.org filed a 2014 July Quarterly Report disclosing the two independent expenditures  
15     totaling \$295,086.46.<sup>5</sup> This report was 24 days late.

16     On October 8, 2014, VoteVets.org filed a 24-Hour Report disclosing two independent  
17     expenditures totaling \$309,422.10 in opposition to Senate candidate Thomas Cotton.<sup>6</sup> On the same date,  
18     VoteVets.org filed a second 24-Hour Report disclosing two independent expenditures totaling  
19     \$291,797.09 in support of Senate candidate Gary Peters, and a third 24-Hour Report disclosing one

---

<sup>2</sup>     See <http://www.votevets.org/about>. VoteVets.org organized in 2006. *Id.*

<sup>3</sup>     See VoteVets.org, FEC Form 5, Report of Independent Expenditures and Contributions (June 6, 2014).

<sup>4</sup>     See Notice of Failure to File (Aug. 5, 2014); RR 15L-43 at 1 (Nov. 12, 2014).

<sup>5</sup>     VoteVets.org Action Fund, 2014 July Quarterly Report (Aug. 8, 2014).

<sup>6</sup>     See VoteVets.org, FEC Form 5, Report of Independent Expenditures and Contributions (Oct. 8, 2014).

1 independent expenditure of \$185,000.00 in support of House candidate Kyle Mark Takai.<sup>7</sup>  
2  
3 VoteVets.org did not timely file a 2014 Year-End Report disclosing the five independent expenditures  
4 totaling \$786,219.19.

5 On February 19, 2015, RAD sent VoteVets.org a Notice of Failure to File concerning the  
6 organization's failure to file a 2014 Year-End Report for the quarterly reporting period of October 1,  
7 2014 through December 31, 2014.<sup>8</sup> VoteVets.org did not respond to the Notice. On September 23,  
8 2015, 216 days after RAD issued the non-filer notice, VoteVets.org filed its 2014 Year-End Report,  
9 disclosing five independent expenditures totaling \$786,219.19 that were previously reported on 24-Hour  
Reports filed on October 8, 2014.<sup>9</sup>

10 RAD referred VoteVets.org to OGC on November 12, 2015, for its failure to timely file the 2014  
11 July Quarterly and Year-End Reports.<sup>10</sup> On November 19, 2015, the Commission formally notified  
12 VoteVets.org that its failure to timely file 2014 July Quarterly and Year-End Reports in violation of 52  
13 U.S.C. § 30104(c) had been referred to OGC for possible enforcement action.<sup>11</sup> VoteVets.org filed a  
14 response on December 23, 2015, acknowledging its failure to timely file the 2014 July Quarterly and  
15 Year-End Reports, but asserting that it maintains a very small permanent staff that inadvertently failed to  
16 timely file the reports due to their general lack of familiarity with this requirement.<sup>12</sup> VoteVets.org

<sup>7</sup> See VoteVets.org, FEC Form 5, Reports of Independent Expenditures and Contributions (Oct. 8, 2014).

<sup>8</sup> See Notice of Failure to File (Feb. 19, 2015); RR 15L-43 at 2.

<sup>9</sup> RR 15L-43 at 3; VoteVets.org Action Fund, 2014 Year-End Report (Sept. 23, 2015).

<sup>10</sup> RR 15L-43. The referral was based on Standard 4 of the RAD referral thresholds. Standard 4 provides that entities with receipts and disbursements exceeding \_\_\_\_\_ that file a Form 5 Quarterly Report (Report of Independent Expenditures and Contributions) more than \_\_\_\_\_ days late will be referred to OGC. See 2013-2014 RAD Review and Referral Procedures for Unauthorized Committees (Standard 4).

<sup>11</sup> Notification letter from Asst. Gen. Counsel, CELA, FEC, to VoteVets.org Action Fund at 1 (Nov. 19, 2015).

<sup>12</sup> Resp. at 3.

1 of familiarity with this requirement.<sup>12</sup> VoteVets.org further asserts that because it timely filed its  
2 24-Hour Notices, the failure to file timely 2014 July Quarterly and Year-End Reports did not  
3 deprive the Commission or the general public of any relevant information at any time, thus, the  
4 matter should be dismissed or referred to the Commission's Alternative Dispute Resolution  
5 Office.<sup>13</sup> Finally, VoteVets.org states that it has retained a highly regarded outside tax and  
6 compliance firm to ensure that all future expenditures are properly and timely disclosed.<sup>14</sup>

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>15</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>16</sup> If the entity makes  
15 independent expenditures aggregating \$1,000 or more with respect to a given election after the

---

<sup>12</sup>           Resp. at 3.

<sup>13</sup>           *Id.* at 2-3.

<sup>14</sup>           *Id.* at 3.

<sup>15</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>16</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>17</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>18</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>19</sup>

10 VoteVets.org made independent expenditures on October 7, 2014, totaling \$786,219.19  
11 and was therefore required to file a 2014 Year-End Report disclosing those expenditures.  
12 VoteVets.org failed to do so in a timely manner; in fact, its report was nearly eight months late.  
13 Accordingly, there is reason to believe that VoteVets.org Action Fund violated 52 U.S.C.  
14 § 30104(c) and 11 C.F.R. § 109.10(b).

15 VoteVets.org also made independent expenditures on June 5, 2014, totaling \$295,086.46,  
16 but failed to timely file a 2014 July Quarterly Report disclosing those expenditures. Because

<sup>17</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>18</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>19</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).

- 1      VoteVets.org filed the Report 24 days after it was due and only three days after being notified it
- 2      was missing, we recommend that the Commission decline to open a MUR regarding
- 3      VoteVets.org's failure to timely file a 2014 July Quarterly Report, consistent with the
- 4      recommendations made in similar referral matters.<sup>20</sup>

5

6

7

8

9

10

11

12

---

<sup>20</sup> OGC has recommended that the Commission decline to open a Matter Under Review where the entity did not timely file the required quarterly report, but filed it shortly after receiving a non-filer notice from RAD, and the untimely report included little or no information that was not already disclosed on timely 24- or 48-Hour Reports.

1

2

3 **IV. RECOMMENDATIONS**

4       1. Decline to open a MUR in RR 15L-43 as to VoteVets.org Action Fund's late-filed  
5                   2014 July Quarterly Report;

6       2. Open a MUR in RR 15L-43 as to VoteVets.org Action Fund's late-filed 2014  
7                   Year-End Report;

8       3. Find reason to believe that VoteVets.org Action Fund violated 52 U.S.C.  
9                   § 30104(c) and 11 C.F.R. § 109.10(b);

10      4. Authorize conciliation with VoteVets.org Action Fund prior to a finding of  
11                   probable cause to believe;

12      5. Approve the attached Factual and Legal Analysis;

13      6. Approve the attached Conciliation Agreement; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

1           7. Approve the appropriate letter.

2           Daniel A. Petalas  
3           Acting General Counsel

4           3.23.16  
5           Date

6           Stephen A. Gura  
7           Deputy Associate General Counsel for Enforcement

8           Mark Allen  
9           Mark Allen  
10           Assistant General Counsel

11           Camilla Jackson Jones  
12           Camilla Jackson Jones  
13           Attorney

14           Attachments:  
15           1. Factual and Legal Analysis  
16  
17  
18  
19  
20  
21

**FEDERAL ELECTION COMMISSION**

## FACTUAL AND LEGAL ANALYSIS

RESPONDENT: **VoteVets.org Action Fund** MUR

## I. INTRODUCTION

8 The Commission’s Reports Analysis Division (“RAD”) referred VoteVets.org Action  
9 Fund (“VoteVets.org”) to the Office of General Counsel (“OGC”) because it failed to timely file  
10 its 2014 Year-End Report to show independent expenditures. VoteVets.org disclosed those  
11 expenditures on 24-Hour Reports in October 2014. Based on the available information, the  
12 Commission finds reason to believe that VoteVets.org violated 52 U.S.C. § 30104(c) and  
13 11 C.F.R. § 109.10(b) by failing to timely file its 2014 Year-End Report.

## 14 II. FACTUAL AND LEGAL ANALYSIS

## A. Facts

16       VoteVets.org is registered with the Internal Revenue Service as a 501(c)(4) social welfare  
17 organization.<sup>1</sup> VoteVets.org is not registered with the Commission as a political committee and  
18 therefore does not file regular disclosure reports with the Commission. VoteVets.org made  
19 independent expenditures during the 2014 election cycle.

20 On October 8, 2014, VoteVets.org filed a 24-Hour Report disclosing two independent  
21 expenditures totaling \$309,422.10 in opposition to Senate candidate Thomas Cotton.<sup>2</sup> On the  
22 same date, VoteVets.org filed a second 24-Hour Report disclosing two independent expenditures  
23 totaling \$291,797.09 in support of Senate candidate Gary Peters, and a third 24-Hour Report,  
24 disclosing one independent expenditure of \$185,000.00 in support of House candidate Kyle

<sup>1</sup> See <http://www.votevets.org/about>. VoteVets.org organized in 2006. *Id.*

<sup>2</sup> See [VoteVets.org](http://VoteVets.org), FEC Form 5, Report of Independent Expenditures and Contributions (Oct. 8, 2014).

1 Mark Takai.<sup>3</sup> VoteVets.org did not timely file a 2014 Year-End Report disclosing the five  
2 independent expenditures totaling \$786,219.19.

3 On February 19, 2015, RAD sent VoteVets.org a Notice of Failure to File concerning the  
4 organization's failure to file a 2014 Year-End Report for the quarterly reporting period of  
5 October 1, 2014 through December 31, 2014.<sup>4</sup> VoteVets.org did not respond to the Notice. On  
6 September 23, 2015, 216 days after RAD issued the non-filer notice, VoteVets.org filed its 2014  
7 Year-End Report, disclosing five independent expenditures totaling \$786,219.19 that were  
8 previously reported on 24-Hour Reports filed on October 8, 2014.<sup>5</sup>

9 RAD referred VoteVets.org to OGC on November 12, 2015, for its failure to timely file  
10 the 2014 Year-End Report.<sup>6</sup> On November 19, 2015, the Commission formally notified  
11 VoteVets.org that its failure to timely file 2014 Year-End Report in violation of 52 U.S.C.  
12 § 30104(c) had been referred to OGC for possible enforcement action.<sup>7</sup> VoteVets.org filed a  
13 response on December 23, 2015, acknowledging its failure to timely file the 2014 Year-End  
14 Report, but asserting that it maintains a very small permanent staff that inadvertently failed to  
15 timely file the report due to their general lack of familiarity with this requirement.<sup>8</sup> VoteVets.org  
16 further asserts that because it timely filed its 24-Hour Notices, the failure to file timely 2014  
17 Year-End Report did not deprive the Commission or the general public of any relevant

---

<sup>3</sup> See VoteVets.org, FEC Form 5, Reports of Independent Expenditures and Contributions (Oct. 8, 2014).

<sup>4</sup> See Notice of Failure to File (Feb. 19, 2015); RR 15L-43 at 2.

<sup>5</sup> RR 15L-43 at 3; VoteVets.org Action Fund, 2014 Year-End Report (Sept. 23, 2015).

<sup>6</sup> RR 15L-43.

<sup>7</sup> Notification letter from Asst. Gen. Counsel, CELA, FEC, to VoteVets.org Action Fund at 1 (Nov. 19, 2015).

<sup>8</sup> Resp. at 3.

1 information at any time, thus, the matter should be dismissed or referred to the Commission's  
2 Alternative Dispute Resolution Office.<sup>9</sup> Finally, VoteVets.org states that it has retained a highly  
3 regarded outside tax and compliance firm to ensure that all future expenditures are properly and  
4 timely disclosed.<sup>10</sup>

5 **B. Analysis**

6 Entities that are not political committees within the meaning of the Act must file  
7 disclosure reports with the Commission when they make independent expenditures that meet  
8 certain aggregate thresholds.<sup>11</sup> The timing and triggering threshold for the required report  
9 depends on when the entity makes the independent expenditures during the election cycle.  
10 Specifically, if the entity makes independent expenditures aggregating \$10,000 or more within a  
11 calendar year with respect to a given election any time prior to the 20th day before the election,  
12 the entity must file a 48-Hour Report disclosing those expenditures.<sup>12</sup> If the entity makes  
13 independent expenditures aggregating \$1,000 or more with respect to a given election after the  
14 20th day before the date of an election, but more than 24 hours before the date of an election, the  
15 entity must file a 24-Hour Report disclosing those expenditures.<sup>13</sup>

16 In addition, entities that are not political committees within the meaning of the Act that  
17 spend in excess of \$250 on independent expenditures during a calendar year with respect to a

---

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 3.

<sup>11</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>12</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.*

<sup>13</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.*

1 given election must also file a quarterly report (*i.e.*, FEC Form 5) for any quarterly period in  
2 which the independent expenditures exceed \$250 and any subsequent quarterly period during  
3 that calendar year when additional independent expenditures are made.<sup>14</sup> Such reports must  
4 disclose the independent expenditures and contributions in excess of \$200 made for the purpose  
5 of furthering the reported independent expenditures.<sup>15</sup>

6           VoteVets.org made independent expenditures on October 7, 2014, totaling \$786,219.19  
7 and was therefore required to file a 2014 Year-End Report disclosing those expenditures.  
8           VoteVets.org failed to do so in a timely manner; in fact, its report was nearly eight months late.  
9           Accordingly, the Commission finds reason to believe that VoteVets.org Action Fund violated  
10 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b).

---

<sup>14</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>15</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).