

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

ELECTION CYCLE: 2014
EXPIRATION OF SOL: Earliest: July 15, 2019
Latest: January 31, 2020

SOURCE: RAD REFERRAL

RESPONDENTS: VoteVets.org Action Fund

**RELEVANT STATUTES
AND REGULATION:** 52 U.S.C. § 30101(17)¹
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

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

¹ 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.² 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.³ 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, 2014.⁴ On August
14 8, 2014, VoteVets.org filed a 2014 July Quarterly Report disclosing the two independent expenditures
15 totaling \$295,086.46.⁵ 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.⁶ 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

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

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

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

⁵ VoteVets.org Action Fund, 2014 July Quarterly Report (Aug. 8, 2014).

⁶ 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.⁷
2 VoteVets.org did not timely file a 2014 Year-End Report disclosing the five independent expenditures
3 totaling \$786,219.19.

4 On February 19, 2015, RAD sent VoteVets.org a Notice of Failure to File concerning the
5 organization's failure to file a 2014 Year-End Report for the quarterly reporting period of October 1,
6 2014 through December 31, 2014.⁸ VoteVets.org did not respond to the Notice. On September 23,
7 2015, 216 days after RAD issued the non-filer notice, VoteVets.org filed its 2014 Year-End Report,
8 disclosing five independent expenditures totaling \$786,219.19 that were previously reported on 24-Hour
9 Reports filed on October 8, 2014.⁹

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.¹⁰ 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.¹¹ 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.¹² VoteVets.org

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

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

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

¹⁰ 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)*.

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

¹² Resp. at 3.

1 of familiarity with this requirement.¹² 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.¹³ 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.¹⁴

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

¹² Resp. at 3.

¹³ *Id.* at 2-3.

¹⁴ *Id.* at 3.

¹⁵ 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).

¹⁶ 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.*

20th day before the date of an election, but more than 24 hours before the date of an election, the entity must file a 24-Hour Report disclosing those expenditures.¹⁷

In addition, entities that are not political committees within the meaning of the Act that spend in excess of \$250 on independent expenditures during a calendar year with respect to a given election must also file a quarterly report (*i.e.*, FEC Form 5) for any quarterly period in which the independent expenditures exceed \$250 and any subsequent quarterly period during that calendar year when additional independent expenditures are made.¹⁸ Such reports must disclose the independent expenditures and contributions in excess of \$200 made for the purpose of furthering the reported independent expenditures.¹⁹

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

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

¹⁷ 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.*

¹⁸ 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)).

¹⁹ 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.²⁰

²⁰ 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.


IV. RECOMMENDATIONS

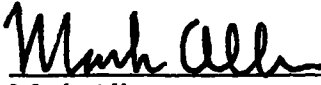
1. Decline to open a MUR in RR 15L-43 as to VoteVets.org Action Fund's late-filed 2014 July Quarterly Report;
2. Open a MUR in RR 15L-43 as to VoteVets.org Action Fund's late-filed 2014 Year-End Report;
3. Find reason to believe that VoteVets.org Action Fund violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b);
4. Authorize conciliation with VoteVets.org Action Fund prior to a finding of probable cause to believe;
5. Approve the attached Factual and Legal Analysis;
6. Approve the attached Conciliation Agreement; and

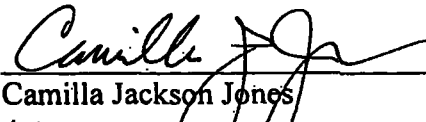
7. Approve the appropriate letter.

Daniel A. Petalas
Acting General Counsel

3.23.16
Date


Stephen A. Gura
Deputy Associate General Counsel for Enforcement


Mark Allen
Assistant General Counsel


Camilla Jackson Jones
Attorney

Attachments:

1. Factual and Legal Analysis

UNRECORDED

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: VoteVets.org Action Fund MUR
6

7 **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**

15 **A. Facts**

16 VoteVets.org is registered with the Internal Revenue Service as a 501(c)(4) social welfare
17 organization.¹ 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.

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21 expenditures totaling \$309,422.10 in opposition to Senate candidate Thomas Cotton.² 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

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² See VoteVets.org, FEC Form 5, Report of Independent Expenditures and Contributions (Oct. 8, 2014).



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

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4 organization's failure to file a 2014 Year-End Report for the quarterly reporting period of
5 October 1, 2014 through December 31, 2014.⁴ VoteVets.org did not respond to the Notice. On
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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.⁸ 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

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

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

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

⁶ RR 15L-43.

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

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

B. Analysis

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

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

⁹ *Id.* at 2-3.

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¹¹ 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).

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2 which the independent expenditures exceed \$250 and any subsequent quarterly period during
3 that calendar year when additional independent expenditures are made.¹⁴ 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.¹⁵

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).

¹⁴ 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)).

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