

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 PRE-MUR: 591
6 DATE RECEIVED: February 14, 2016
7 DATE ACTIVATED: January 13, 2017
8

9 ELECTION CYCLE: 2016
10 EXPIRATION OF SOL:
11 Earliest: January 18, 2021
12 Latest: January 27, 2021

13 **SOURCE:** *Sua Sponte* Submission
14

15 **RESPONDENT:** Right to Rise USA and Charles R. Spies
16 in his official capacity as treasurer
17

18 **RELEVANT STATUTES AND**
19 **REGULATIONS:** 52 U.S.C. § 30104(b), (g)
20 11 C.F.R. § 104.3(b)
21 11 C.F.R. § 104.4(b), (c)

22 **INTERNAL REPORTS CHECKED:** Disclosure Reports
23

24 **FEDERAL AGENCIES CHECKED:** None
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26 **I. INTRODUCTION**

27 In this *sua sponte* submission, Right to Rise USA and Charles R. Spies in his official
28 capacity as treasurer ("RTR" or the "Committee"), an independent-expenditure-only political
29 committee, admits that it did not timely file five independent expenditure reports for television
30 and radio media placements in 2016.¹ As discussed below, the factual record shows that RTR
31 failed to timely file these independent expenditure reports. Accordingly, we recommend that the
32 Commission: (1) open a MUR; (2) find reason to believe that RTR failed to timely file 24- and

¹ RTR *Sua Sponte* Submission (Feb. 25, 2016) ("Submission"); see Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("*Sua Sponte* Policy").

1 48-hour independent expenditure reports in violation of 52 U.S.C. § 30104(g); and (3) authorize
2 pre-probable cause conciliation. We further recommend that the Commission not pursue the
3 late-filed reports that the

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5 **II. FACTUAL BACKGROUND**

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7 On February 25, 2016, RTR filed this Submission admitting that it failed to timely file
8 five 24- and 48-hour independent expenditure reports for seven disbursements totaling
9 \$9,655,949, made to RTR's media buyer, Oath Strategies, LLC, in support of 2016 presidential
10 candidate Jeb Bush.² The expenditures were for television and radio media placements in Iowa,
11 New Hampshire, South Carolina, and national cable, which were disseminated on January 18,
12 19, and 26, 2016. RTR filed the reports for these expenditures on February 12, 2016.

13 The late-filed reports are summarized in the chart below:

	Report Type	Date of Dissemination	Name of Payee	Amount	Candidate/State	Date of Primary Election
1	24-hr	1/18/16	Oath Strategies LLC	\$2,465,125	Jeb Bush/Iowa	IA Pres.Caucus-2/1/16
2	48-hr	1/18/16	Oath Strategies LLC	\$2,200,000	Jeb Bush/National Cable Buy	Nationwide
3	48-hr	1/19/16	Oath Strategies LLC	\$203,200	Jeb Bush/NH	NH-2/9/16
		1/19/16	Oath Strategies LLC	\$1,905,898	Jeb Bush/NH	NH-2/9/16
		1/19/16	Oath Strategies LLC	\$523,916	Jeb Bush/SC	SC- 2/20/16
4	24-hr	1/26/16	Oath Strategies LLC	\$1,866,948	Jeb Bush/NH	NH-2/9/16
5	48-hr	1/26/16	Oath Strategies LLC	\$490,862	Jeb Bush/SC	SC-2/20/16
Total				\$9,655,949		

² Submission at 1.

1 RTR explains that the reports were filed late because it inadvertently overlooked an
2 invoice from its media vendor.³

3 III. LEGAL ANALYSIS

4 An independent expenditure is an expenditure that expressly advocates the election or
5 defeat of a clearly identified federal candidate and “that is not made in concert or cooperation
6 with or at the request or suggestion of such candidate, the candidate’s authorized political
7 committee, or their agents, or a political party committee or its agents.”⁴ Political committees
8 must disclose their independent expenditures.⁵ Political committees that makes independent
9 expenditures aggregating \$1,000 or more after the 20th day but more than 24 hours before a
10 given election must file a report describing those expenditures within 24 hours.⁶ A political
11 committee that makes independent expenditures aggregating \$10,000 outside of that 20-day
12 period, up to and including the 20th day, must file a report describing those expenditures within
13 48 hours.⁷ These reports must be filed within 24 hours or 48 hours, as applicable, “following the
14 date on which a communication that constitutes an independent expenditure is publicly
15 distributed or otherwise publicly disseminated.”⁸

16 RTR admits that it failed to timely file independent expenditure reports concerning media
17 placements that were disseminated in January 2016. However, we recommend that the
18 Commission only pursue those late-filed reports — the

³ *Id.* at 7.

⁴ 52 U.S.C. § 30101(17).

⁵ *See id.* § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

⁶ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

⁷ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

⁸ 11 C.F.R. § 104.4(b), (c).

1 nationwide media buy and the three New Hampshire media buys — but not
2 — the South Carolina and Iowa media buys.¹⁰ Accordingly, we
3 recommend that the Commission find reason to believe that RTR violated 52 U.S.C.
4 § 30104(g).¹¹

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MUR 7128 (*KelliPAC, et al.*) (dismissal of allegations of untimely filed reports where Committee was recently established, had not previously filed 24- or 48- hour reports, and reports were filed before the primary election). In light of the above, we recommend that the Commission exercise its prosecutorial discretion and not pursue the late-filed reports for the South Carolina disbursements.

¹⁰ Based on Advisory Opinion 1979-71 (PASPAC) (Advising that the Iowa caucuses are not “elections” within the Act’s meaning because they do not have authority to select a Presidential nominee), RAD has not required committees to file pre-election reports for Iowa or referred such reports as late or non-filed. However, the Iowa Republican Party changed its rules in June 2015 to provide that Iowa’s delegates to the national convention are now bound to “vote proportionally in accordance with the outcome of the Iowa Caucuses.” See Article VIII, Republican State Central Committee of Iowa Bylaws (Amended June 27, 2015) *available at* <https://www.iowagop.org/wp-content/uploads/2015/07/RPI-Bylaws-Updated-2015.pdf>. Thus, it appears that the caucuses would be an “election” for reporting purposes. Nevertheless, in early 2016, the Information Division conveyed OGC’s suggestion that given the proximity of the rule change to the Iowa caucuses and the need for further analysis and discussion, the Commission might wish to exercise its prosecutorial discretion with respect to certain election filings. See E-mail from Gregory Scott, Information Division, FEC, to Commissioners Office, FEC (Jan. 13, 2016, 4:15 PM, EST). Consistent with that suggestion, we recommend that the Commission exercise its prosecutorial discretion here and not pursue the late-filed report for the Iowa disbursement.

¹¹ See Certification, RAD Referral 15L-43 (VoteVets.org Action Fund) (June 16, 2016).

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1 **IV. RECOMMENDATIONS**

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- 3 1. Open a MUR;
- 4 2. Find reason to believe that Right to Rise USA and Charles R. Spies in his official
5 capacity as treasurer violated 52 U.S.C. § 30104(g);
- 6 3. Authorize conciliation with Right to Rise USA and Charles R. Spies in his official
7 capacity as treasurer, prior to a finding of probable cause to believe;
- 8 4. Approve the Factual and Legal Analysis;
- 9 5. Approve the proposed Conciliation Agreement; and
- 10 6. Approve the appropriate letter.

11 Lisa J. Stevenson
12 Acting General Counsel

13 Kathleen M. Guith
14 Associate General Counsel for Enforcement

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19 Dated: 5.12.17

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