

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

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5 **AUDIT REFERRAL: 17-11R**

6 DATE RECEIVED: November 8, 2017
7 DATE OF NOTIFICATION: November 17, 2017
8 RESPONSE RECEIVED: February 12, 2018
9 DATE ACTIVATED: June 11, 2018
10 EPS: 70/TIER: 1
11 EARLIEST SOL: March 20, 2021
12 LATEST SOL: December 9, 2021
13 ELECTION CYCLE: 2016

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15 **RAD REFERRAL: 18L-04**

16 DATE RECEIVED: January 17, 2018
17 DATE OF NOTIFICATION: January 17, 2018
18 RESPONSE RECEIVED: February 8, 2018
19 DATE ACTIVATED: June 11, 2018

20
21 EARLIEST SOL: May 20, 2022
22 LATEST SOL: May 30, 2022
23 ELECTION CYCLE: 2018

24
25 **RAD REFERRAL: 18L-17**

26 DATE RECEIVED: April 2, 2018
27 DATE OF NOTIFICATION: April 4, 2018
28 RESPONSE RECEIVED: May 21, 2018
29 DATE ACTIVATED: June 11, 2018

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31 EARLIEST SOL: May 12, 2022
32 LATEST SOL: June 25, 2022
33 ELECTION CYCLE: 2018

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35 **SOURCE:**

Internally Generated

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37 **RESPONDENT:**

Virgin Islands Republican Party and Scott B.
Mackenzie in his official capacity as treasurer

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40 **RELEVANT STATUTES**
41 **AND REGULATIONS:**

52 U.S.C. § 30101(1)-(2)
52 U.S.C. § 30104(b)(4)(H)(iii)
52 U.S.C. § 30104(b)(8)
52 U.S.C. § 30104(g)(2)
11 C.F.R. § 100.72
11 C.F.R. § 104.3
11 C.F.R. § 104.4
11 C.F.R. § 104.11(a)
11 C.F.R. § 111.44(1)

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1 **INTERNAL REPORTS CHECKED:** Disclosure Reports

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3 **AGENCIES CHECKED:** None

4 **I. INTRODUCTION**

5 This matter involves three internal referrals regarding the 2016-17 activities of the Virgin
6 Islands Republican Party and Scott B. Mackenzie in his official capacity as treasurer (the
7 “Committee” or “VIGOP”). The Reports Analysis Division (“RAD”) initially referred AR 17-
8 11R to the Audit Division, and the Commission subsequently transferred the matter to the Office
9 of the General Counsel (“OGC”).¹ RAD then referred two additional matters, RR 18L-04 and
10 RR 18L-17, which address the Committee’s 2017 activity, for consideration with the initial
11 referral.² The Referrals identify three categories of possible violations – failure to properly
12 report independent expenditures (“IEs”) on Schedule E of its monthly reports, failure to timely
13 file 48-hour Reports for independent expenditures that were disclosed on Schedule E, and failure
14 to properly disclose debts on Schedule D of its monthly reports.

15 As set forth below, we recommend that the Commission open a MUR, find reason to
16 believe that the Committee violated 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(g)(2), and
17 11 C.F.R. § 104.4 by failing to properly report its independent expenditures and 48-Hour

¹ Certification at 1 (Nov. 8, 2017), AR 17-11R (July 13, 2017).

² See RR 18L-04 Referral at 1-2 (Jan. 17, 2018), RR 18L-17 Memo. at 1 (Apr. 2, 2018).

1 Reports, and 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to properly report its
2 debts and obligations, and authorize pre-probable cause conciliation.³

3 **II. FACTUAL BACKGROUND**

4 VIGOP is a qualified, non-connected political action committee that has been registered
5 with the Commission since December 18, 2013, and Scott B. Mackenzie has been its treasurer
6 since inception. VIGOP sought formal recognition as the official state party committee for the
7 U.S. Virgin Islands, but failed to complete the necessary steps in the process.⁴ To date, the
8 Commission has not recognized VIGOP as a state party committee and its status remains
9 unchanged. The Committee files monthly disclosures regarding its election activities.

10 **A. AR 17-11R**

11 RAD assessed the Committee audit points for various apparent violations related to
12 the Committee's 2016 filings and, as discussed above, referred the Committee for an audit of the
13 2015-2016 election cycle which was later changed to a direct referral to OGC.⁵ The amount in
14 violation for these referable issues totals \$924,265.11 and includes the following violations:

- 15 • failure to disclose independent expenditures on Schedule E that had been
16 disclosed on 48-Hour Reports on its 2016 June Monthly and October Monthly
17 Reports; and

³ Although RAD's Referral in AR 17-11R identified other apparent violations, including excessive contributions, mathematical discrepancies, failure to properly itemize contributions from individual, failure to properly itemize disbursements,

⁴ See, Statement of Organization (Dec. 18, 2013); Amended Statement of Organization (Feb. 21, 2014); Amended Statement of Organization (Feb. 1, 2015); Amended Statement of Organization (Feb. 17, 2015). The Committee was sent RFAIs on January 31, 2014, February 11, 2015, and March 15, 2015 explaining that it would not be recognized as a State Party until it received an Advisory Opinion approving the designation from the Commission.

⁵ AR 17-11R Referral at 1, 6 (July 13, 2017) ("Audit Referral").

- 1 • failure to timely file a 48-Hour Report for independent expenditures disclosed on
2 Schedule E of its 2016 Amended April Monthly, Amended May Monthly, July
3 Monthly, August Monthly, September Monthly, and October Monthly Reports;
4 and
5
- 6 • failure to disclose debt on Schedule D for independent expenditures that were
7 publicly disseminated prior to payment in its 2016 September Monthly, October
8 Monthly, and Amended 30-Day Post-General Reports.

9 The following charts sets forth in chronological order the individual reports containing
10 reporting errors and the amount of the violation and the nature of the violation. Three of the
11 apparent violations met the standards for automatic referral to OGC and an additional eight met
12 the standards for automatic referral to ADRO.⁶

Report	Referred Violation	Amount in Violation
Amended 2016 April Monthly	Failed to timely file a 48-Hour Report for 10 independent expenditures disclosed on Schedule E. (ADRO)	\$40,202.16
Amended 2016 May Monthly	Failed to timely file a 48-Hour Report for 87 independent expenditures disclosed on Schedule E. (ADRO)	\$31,792.87
2016 June Monthly	Failed to disclose independent expenditures on Schedule E that had been disclosed on 48-Hour Reports. (OGC)	\$77,086.21
2016 July Monthly	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E. (ADRO)	\$35,676.19
2016 August Monthly	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E. (ADRO)	\$72,201.31
2016 September Monthly	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E. (ADRO)	\$130,883.68
	Failed to disclose debt on Schedule D for 24 independent expenditures that were publicly disseminated prior to payment. (OGC)	\$160,338.65
2016 October Monthly	Failed to disclose independent expenditures on Schedule E that had been disclosed on 48-Hour Reports. (ADRO).	\$49,082.35
	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E. (ADRO)	\$140,525.35
	Failed to disclose debt on Schedule D for 12 independent expenditures that were publicly disseminated prior to payment. (OGC)	\$153,818.16
Amended 2016 30-Day Post-General	Failed to disclose debt on Schedule D for 10 independent expenditures that were publicly disseminated prior to payment. (ADRO)	\$32,658.18

⁶ *Id.* at 6-7.

1 The Office of General Counsel notified the Committee of the referral and it filed a
2 response.⁷ The Committee's Response did not address its failure to disclose independent
3 expenditures on Schedule E that had been reported on 48-Hour Reports on its 2016 June and
4 October Monthly Reports.⁸ As to the multiple instances that the Committee failed to timely file
5 48-Hour Reports for independent expenditures disclosed on Schedule E, the Committee states
6 that it amended its original 48-Hour Reports to reflect the total costs of the communications
7 rather than file additional 48-Hour Reports.⁹

8 Finally, regarding the Committee's failure to properly disclose debt related to its
9 independent expenditures that were disclosed on its 2016 September and October Monthly
10 Reports and 2016 Amended 30-Day Post-General Report, the Committee explains that it
11 reported the debt to various sub-vendors on Schedule D.¹⁰ The Committee does not explain why
12 it attributed the independent expenditures to the vendor, ForthRight Strategy, Inc. ("FRS"), but
13 did not link the various debts incurred by the sub-vendors in its reporting of those independent
14 expenditures. It also fails to address the issue raised in the RFAI, that the disclosures of the debt
15 were inadequate because they were not linked to the independent expenditures.¹¹

⁷ Notification at 1-2 (Nov. 17, 2017); Audit Resp. (Feb. 12, 2018)..

⁸ Audit Resp. at 3-6.

⁹ *Id.*

¹⁰ Audit Resp. at 5-6.

¹¹ RFAI to VIGOP at 1-2 (Mar. 15, 2017).

1 **B. RR 18L-04**

2 On January 17, 2018, RAD referred the Committee for increased activity in connection
3 with its Amended 2017 May Monthly Report, which disclosed \$192,607.92 in new debts.¹² The
4 original 2017 May Monthly Report, filed May 20, 2017, disclosed \$107,793.30 in debts on
5 Schedule D.¹³ Ten days later, the Committee amended its 2017 May Monthly Report to disclose
6 that, in April 2017, it had paid down certain debts and incurred \$192,607.92 in new debts,
7 resulting in a total debt of \$269,033.44.¹⁴

8 In July 2017, RAD sent the Committee an RFAI inquiring about the increased activity,
9 but the Committee initially failed to respond. After multiple follow-up phone calls from RAD,
10 including one in which the Committee's treasurer stated that he had forgotten to file its amended
11 reports in response to the RFAI and would do so promptly, on September 21, 2017, the
12 Committee filed a Miscellaneous Report ("Form 99") stating that it was amending its 2017 May
13 Monthly Report to include new debts it incurred and payments it made against existing debts in
14 April 2017.¹⁵ On September 29, 2017, the Committee filed its 2017 Amended May Monthly
15 Report. After OGC notified the Committee of the referral, the Committee explained that it had
16 inadvertently filed a preliminary version of its 2017 May Monthly Report that did not reflect all
17 of the Committee's new activity.¹⁶ The Committee asserts that it corrected the problem within

¹² RR 18L-04 Referral at 1-2 (Jan. 17, 2018).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ RR 18L-04 Resp. at 1 (Feb. 8, 2018).

1 ten days of the erroneous filing, acted in good faith, and used best efforts to comply with the Act;
2 therefore, the Commission should take no further action.¹⁷

3 **C. RR 18L-17**

4 In RR 18L-17, RAD referred the Committee for failing to file timely 48-Hour Reports for
5 six independent expenditures totaling \$25,261.22 disseminated during the June 2017 monthly
6 reporting period, and six independent expenditures totaling \$32,914.75 disseminated during the
7 July 2017 monthly reporting period.¹⁸

8 The Committee's original 2017 June and July Monthly Reports did not disclose any
9 independent expenditures on Schedule E. On September 25, 2017, the Committee filed two
10 48-Hour Reports — one in support of an independent expenditure disseminated on May 10,
11 2017, and the other for an independent expenditure disseminated on June 23, 2017. On
12 September 29, 2017, the Committee amended the late-filed 48-Hour Reports to support a total of
13 six independent expenditures on May 10th and six on June 23rd, and adjusted the costs of the
14 communications.¹⁹

15 RAD issued an RFAI regarding the two late 48-Hour Reports.²⁰ After initially failing to
16 respond, the Committee responded on May 21, 2018, explaining that its direct mail firm sent out
17 mailings containing direct advocacy without notifying the Treasurer; therefore, the Committee

¹⁷ *Id.* Although the Committee asserts that it corrected errors in its 2017 May Monthly Report within ten days, it did not file a properly amended report until September 29, 2017, four months after filing its first amended 2017 May Monthly report, and two months after receiving an RFAI and speaking with RAD about the inadequacy of that initial amendment. RR 18L-04 Referral at 1-2.

¹⁸ RR 18L-17 Referral at 1 (Apr. 2, 2018).

¹⁹ *Id.*

²⁰ *Id.*

1 did not report them as IEs.²¹ The Committee states that as soon as the Treasurer became aware
2 of the error, he contacted RAD, filed miscellaneous reports for each mailing; and amended its
3 reports to disclose the IEs on Schedule E.²² The Committee argues that the error was inadvertent
4 and quickly corrected, and it used best efforts. Thus, the Commission should take no further
5 action with regard to this violation.²³

6 **III. LEGAL ANALYSIS**

7 The Federal Election Campaign Act of 1971, as amended (“Act”) requires committee
8 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.
9 § 30104(b).²⁴ This requirement includes reporting IEs made by political committees other than
10 authorized committees.²⁵ Every political committee that makes IEs must report them in its
11 regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).²⁶ Such a
12 political committee must disclose on Schedule E the name of a person who receives any
13 disbursement during the reporting period in an aggregate amount or value in excess of \$200
14 within the calendar year in connection with an IE by the reporting committee.²⁷

²¹ RR 18L-17 Resp. at 1 (May 21, 2018).

²² *Id.* On September 25, 2017, the Committee filed two Form 99s to amend its 2017 June and July Monthly Reports because the original reports disclosed no activity on Line 24 of the Detailed Summary Page and did not include a Schedule E (Itemized Independent Expenditures). *Id.*

²³ *Id.* The Committee’s treasurer provided the same explanation to the RAD analyst, who informed him that the Committee’s response to the RFAI on this issue was inadequate and that it still needed to provide clarification for the public record. RR 18L-17 Referral, Attach 4.

²⁴ 52 U.S.C. § 30104(a)(1).

²⁵ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

²⁶ 11 C.F.R. § 104.4(a).

²⁷ 11 C.F.R. § 104.3(b)(3)(vii). IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. 11 C.F.R. § 104.3(b)(3)(vii)(C).

1 In addition, a political committee that makes or contracts to make IEs aggregating
2 \$10,000 or more for an election in any calendar year, up to and including the 20th day before an
3 election, must report these expenditures within 48 hours.²⁸ These reports, known as 48-Hour
4 Reports, must be filed by the end of the second day “following the date on which a
5 communication that constitutes an independent expenditure is publicly distributed or otherwise
6 publicly disseminated.”²⁹ Additionally, “[e]very person must include in the aggregate total all
7 disbursements during the calendar year for independent expenditures, and all enforceable
8 contracts, either oral or written, obligating funds for disbursements during the calendar year for
9 independent expenditures, where those independent expenditures are made with respect to the
10 same election for Federal office.”³⁰

11 The Act and Commission regulations also require political committees to disclose the
12 amount and nature of their outstanding debts and obligations until those obligations are
13 extinguished.³¹ A political committee must file separate schedules for debts owed by the
14 committee on a Schedule D with a statement explaining the circumstances and conditions under
15 which each debt and obligation was incurred and extinguished.³² A similar statement is required
16 where such debts and obligations are settled for less than their reported amount or value.³³ A
17 debt of \$500 or less must be reported at the time that payment was made or within 60 days of the
18 date the political committee incurs the debt, whichever comes first, and a debt exceeding \$500

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

²⁹ 11 C.F.R. § 104.4(b)(2).

³⁰ 11 C.F.R. § 104.4(f).

³¹ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

³² *See* 11 C.F.R. § 104.11(a).

³³ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

1 must be disclosed in the report that covers the date on which the debt was incurred.³⁴ Where the
2 exact amount of a debt is unknown, the report shall state that the amount reported is an estimate
3 and the exact amount is to be disclosed in an amended report or on the report for a reporting
4 period in which such amount is determined.³⁵

5 Under the Act's best efforts provision, when a treasurer of a political committee shows
6 that best efforts have been used to obtain, maintain, and submit the information required by the
7 Act, any report submitted by the committee will be considered to be in compliance with the
8 Act.³⁶ The Commission has explained that the best efforts provision is an affirmative defense
9 that the respondent must establish; the burden rests with the political committee and its treasurer
10 to present evidence sufficient to demonstrate that best efforts were exercised to obtain, maintain,
11 and submit the required information.³⁷ The Commission has further explained that errors caused
12 by a Committee's own negligence or errors, or a third party's delay are generally insufficient to
13 establish this defense.³⁸

14 The Committee's reports reveal a number of violations of the Act and Commission
15 regulations in connection with its reporting of IEs and debts over 11 different disclosure reports,
16 including amendments. First, it failed to timely file 48-Hour Reports for IEs totaling
17 \$509,457.53 in connection with IEs disclosed on its Amended 2016 April Monthly, Amended
18 2016 May Monthly, 2016 July Monthly, 2016 August Monthly, 2016 September Monthly, 2016

³⁴ 11 C.F.R. § 104.11(b).

³⁵ *Id.*

³⁶ 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7(a).

³⁷ *See, e.g.*, Factual and Legal Analysis at 5, MUR 7043 (Put Alaska First); *see also* Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) ("Best Efforts Policy").

³⁸ Best Efforts Policy, 72 Fed. Reg. at 31440.

1 October Monthly, 2017 Amended June Monthly, and 2017 Amended July Monthly Reports.
2 Second, the Committee failed to disclose a total of \$126,168.56 in IEs on Schedule E of its 2016
3 June, October, and September Monthly Reports that had been previously disclosed on 48-Hour
4 Reports. Third, the Committee failed to properly disclose \$539,417.96 in debts on Schedule D
5 of its 2016 September Monthly, 2016 October Monthly, 2016 30 Day Post-General, and 2017
6 Amended May Monthly Reports.

7 The Committee's best-efforts defense is unpersuasive. Regarding its independent
8 expenditure and debt reporting, VIGOP bases the claim on its own negligence and its vendor's
9 delays, but the Best Efforts Policy states that those factors are generally not valid bases for the
10 defense.³⁹ In addition, the record reflects that many RFAs and communications from RAD
11 seeking clarification regarding its disclosures went unanswered or unreturned.⁴⁰ On several
12 occasions, even after the treasurer spoke with RAD regarding corrections to disclosures that were
13 needed, the Committee still failed to file the appropriate disclosures.⁴¹ Further, VIGOP's
14 responses do not provide information that establishes that the Committee took the kind of actions
15 that the Commission has recognized as "best efforts" to comply with the Act, such as having
16 trained staff that took appropriate precautions in recordkeeping, obtaining, maintaining, and
17 submitting information to the Commission, as well as taking all reasonable steps to expeditiously
18 correct any disclosure errors.⁴²

³⁹ 72 Fed. Reg. at 31,440. *See e.g.*, MUR 6521 (Republican Party of Minnesota).

⁴⁰ *Id.*; RR 18L-17 Referral at 3-4.

⁴¹ *Id.*; RR 18L-17 Referral at 3-4.

⁴² 72 Fed. Reg. at 31,440. *See* MUR 6508 (Republican National Committee).

1 Accordingly, we recommend that the Commission find reason to believe that the
2 Committee violated 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(g)(2), and 11 C.F.R. § 104.4 by
3 either failing to report IEs or reporting them inaccurately, and violated 52 U.S.C.
4 § 30104(b)(8) and 11 C.F.R. § 104.3(d), by failing to properly report its outstanding debts and
5 obligations.

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AR 17-11R/RR 18L-04/RR 18L-17 (Virgin Islands Republican Party)

First General Counsel's Report

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2 **V. RECOMMENDATIONS**

- 3 1. Open a MUR in AR 17-11R;
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5 2. Open a MUR in RR 18L-04 and merge this matter with AR 17-11R;
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7 3. Open a MUR in RR 18L-17 and merge this matter with AR 17-11R;
8
9 4. Find reason to believe that Virgin Islands Republican Party and Scott B. Mackenzie
10 in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(4)(H)(iii),
11 30104(g)(2) and 11 C.F.R. § 104.4;
12
13 5. Find reason to believe that Virgin Islands Republican Party and Scott B. Mackenzie
14 in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(8) and 11 C.F.R.
15 § 104.3(d);
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17 6. Approve the attached Factual and Legal Analysis;
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19 7. Enter into conciliation with Virgin Islands Republican Party and Scott B.
20 Mackenzie in his official capacity as treasurer, prior to a finding of probable cause;
21 and

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8. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel

8.9.18

Date

Stephen Gura by PGB
Stephen Gura
Deputy Associate General Counsel

Lynn Y. Tran
Lynn Y. Tran
Assistant General Counsel

Camilla Jackson Jones
Camilla Jackson Jones
Attorney

Attachments:

- 1- Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Virgin Islands Republican Party and MUR _____
6 Scott B. Mackenzie in his official capacity
7 as Treasurer
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9
10 **I. INTRODUCTION**

11 This matter was generated based on information ascertained by the Federal Election
12 Commission (the “Commission”) in the normal course of carrying out its supervisory
13 responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Reports Analysis Division (“RAD”) referred
14 the Virgin Islands Republican Party and Scott B. Mackenzie in his official capacity as treasurer
15 (the “Committee” or “VIGOP”). Specifically, the Referrals include violations relating to the
16 Committee’s failure to properly report independent expenditures (“IEs”) on Schedule E of its
17 monthly reports, failure to timely file 48-Hour Reports for independent expenditures that were
18 disclosed on Schedule E, and failure to properly disclose debts on Schedule D of its monthly
19 reports.¹ The Commission opened a matter under review and found reason to believe that the
20 Committee violated 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(g)(2), and 11 C.F.R. § 104.4 by
21 failing to properly report its independent expenditures and 48-Hour Reports, and 52 U.S.C.
22 § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to properly report its debts and obligations.

23 **II. FACTUAL BACKGROUND**

24 VIGOP is a qualified, non-connected political action committee that has been registered
25 with the Commission since December 18, 2013, and Scott B. Mackenzie has been its treasurer
26 since inception. VIGOP sought formal recognition as the official state party committee for the

¹ *See* AR 17-11R Notification Letter from Jeff S. Jordan, Ass’t. Gen. Counsel, FEC, to Scott B. Mackenzie, Treasurer, at 1-2 (Nov. 17, 2017); RR 18L-04 Referral at 1-2 (Jan. 17, 2018), RR 18L-17 Referral at 1 (Apr. 2, 2018).

1 U.S. Virgin Islands, but failed to complete the necessary steps in the process.² To date, the
 2 Commission has not recognized VIGOP as a state party committee and its status remains
 3 unchanged. The Committee files monthly disclosures regarding its election activities.

4 **A. AR 17-11R**

5 The apparent violations in AR 17-11R included the Committee's failure to timely file 48-
 6 Hour Reports for independent expenditures, as well as its failure to properly disclose and provide
 7 supporting schedules for independent expenditures and debts incurred in connection with those
 8 independent expenditures. The amount in violation totals \$924,265.11 and includes the
 9 following specific violations:

- 10 • failure to disclose independent expenditures on Schedule E that had been
 11 disclosed on 48-Hour Reports on its 2016 June Monthly and October Monthly
 12 Reports; and
 13
- 14 • failure to timely file a 48-Hour Report for independent expenditures disclosed on
 15 Schedule E of its 2016 Amended April Monthly, Amended May Monthly, July
 16 Monthly, August Monthly, September Monthly, and October Monthly Reports;
 17 and
 18
- 19 • failure to disclose debt on Schedule D for independent expenditures that were
 20 publicly disseminated prior to payment in its 2016 September Monthly, October
 21 Monthly, and Amended 30-Day Post-General Reports.

22 The violations in each report are shown below:

² See, Statement of Organization (Dec. 18, 2013); Amended Statement of Organization (Feb. 21, 2014); Amended Statement of Organization (Feb. 1, 2015); Amended Statement of Organization (Feb. 17, 2015). The Committee was sent RFAIs on January 31, 2014, February 11, 2015, and March 15, 2015 explaining that it would not be recognized as a State Party until it received an Advisory Opinion approving the designation from the Commission.

MUR____ (Virgin Islands Republican Party)

Factual and Legal Analysis

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Report	Violation	Amount in Violation
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	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E.	\$140,525.35
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Amended 2016 30-Day Post-General	Failed to disclose debt on Schedule D for 10 independent expenditures that were publicly disseminated prior to payment.	\$32,658.18

1 The Office of General Counsel notified the Committee of the referral and it filed a
2 response.³ The Committee's Response did not address its failure to disclose independent
3 expenditures on Schedule E that had been reported on 48-Hour Reports on its 2016 June and
4 October Monthly Reports.⁴ As to the multiple instances that the Committee failed to timely file

³ AR 17-11R Notification Letter at 1-2; Audit Resp. (Feb. 12, 2018).

⁴ Audit Resp. at 3-6.

1 48-Hour Reports for independent expenditures disclosed on Schedule E, the Committee states
2 that it amended its original 48-Hour Reports to reflect the total costs of the communications
3 rather than file additional 48-Hour Reports.⁵

4 Finally, regarding the Committee's failure to properly disclose debt related to its
5 independent expenditures that were disclosed on its 2016 September and October Monthly
6 Reports and 2016 Amended 30-Day Post-General Report, the Committee explains that it
7 reported the debt to various sub-vendors on Schedule D.⁶ The Committee does not explain why
8 it attributed the independent expenditures to the vendor, ForthRight Strategy, Inc. ("FRS"), but
9 did not link the various debts incurred by the sub-vendors in its reporting of those independent
10 expenditures. It also fails to address the issue raised in the RFAI, namely, that the disclosures of
11 the debt were inadequate because they were not linked to the independent expenditures.⁷

12 **B. RR 18L-04**

13 On January 17, 2018, RAD referred the Committee for increased activity in connection
14 with its Amended 2017 May Monthly Report, which disclosed \$192,607.92 in new debts.⁸ The
15 original 2017 May Monthly Report, filed May 20, 2017, disclosed \$107,793.30 in debts on
16 Schedule D.⁹ Ten days later, the Committee amended its 2017 May Monthly Report to disclose

⁵ *Id.*

⁶ Audit Resp. at 5-6.

⁷ RFAI to VIGOP at 1-2 (Mar. 15, 2017).

⁸ RR 18L-04 Referral at 1-2 (Jan. 17, 2018).

⁹ *Id.*

1 that, in April 2017, it had paid down certain debts and incurred \$192,607.92 in new debts,
 2 resulting in a total debt of \$269,033.44.¹⁰

3 In July 2017, RAD sent the Committee an RFAI inquiring about the increased activity,
 4 but the Committee initially failed to respond. After multiple follow-up phone calls from RAD,
 5 including one in which the Committee's treasurer stated that he had forgotten to file its amended
 6 reports in response to the RFAI and would do so promptly, on September 21, 2017, the
 7 Committee filed a Miscellaneous Report ("Form 99") stating that it was amending its 2017 May
 8 Monthly Report to include new debts it incurred and payments it made against existing debts in
 9 April 2017.¹¹ On September 29, 2017, the Committee filed its 2017 Amended May Monthly
 10 Report. After OGC notified the Committee of the referral, the Committee explained that it had
 11 inadvertently filed a preliminary version of its 2017 May Monthly Report that did not reflect all
 12 of the Committee's new activity.¹² The Committee asserts that it corrected the problem within
 13 ten days of the erroneous filing, acted in good faith, and used best efforts to comply with the Act;
 14 therefore, the Commission should take no further action.¹³

15 C. RR 18L-17

16 In RR 18L-17, RAD referred the Committee for failing to file timely 48-Hour Reports for
 17 six independent expenditures totaling \$25,261.22 disseminated during the June 2017 monthly

¹⁰ *Id.*

¹¹ *Id.*

¹² RR 18L-04 Resp. at 1 (Feb. 8, 2018).

¹³ *Id.* Although the Committee asserts that it corrected errors in its 2017 May Monthly Report within ten days, it did not file a properly amended report until September 29, 2017, four months after filing its first amended 2017 May Monthly report, and two months after receiving an RFAI and speaking with RAD about the inadequacy of that initial amendment. RR 18L-04 Referral at 1-2.

1 reporting period, and six independent expenditures totaling \$32,914.75 disseminated during the
2 July 2017 monthly reporting period.¹⁴

3 The Committee's original 2017 June and July Monthly Reports did not disclose any
4 independent expenditures on Schedule E. On September 25, 2017, the Committee filed two
5 48-Hour Reports — one in support of an independent expenditure disseminated on May 10,
6 2017, and the other for an independent expenditure disseminated on June 23, 2017. On
7 September 29, 2017, the Committee amended the late-filed 48-Hour Reports to support a total of
8 six independent expenditures on May 10th and six on June 23rd, and adjusted the costs of the
9 communications.¹⁵

10 RAD issued an RFAI regarding the two late 48-Hour Reports.¹⁶ After initially failing to
11 respond, the Committee responded on May 21, 2018, explaining that its direct mail firm sent out
12 mailings containing direct advocacy without notifying the Treasurer; therefore, the Committee
13 did not report them as IEs.¹⁷ The Committee states that as soon as the Treasurer became aware
14 of the error, he contacted RAD, filed miscellaneous reports for each mailing; and amended its
15 reports to disclose the IEs on Schedule E.¹⁸ The Committee argues that the error was inadvertent

¹⁴ RR 18L-17 Referral at 1 (Apr. 2, 2018).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ RR 18L-17 Resp. at 1 (May 21, 2018).

¹⁸ *Id.* On September 25, 2017, the Committee filed two Form 99s to amend its 2017 June and July Monthly Reports because the original reports disclosed no activity on Line 24 of the Detailed Summary Page and did not include a Schedule E (Itemized Independent Expenditures). *Id.*

1 and quickly corrected, and it used best efforts. Thus, the Commission should take no further
 2 action with regard to this violation.¹⁹

3 **III. LEGAL ANALYSIS**

4 The Federal Election Campaign Act of 1971, as amended (“Act”) requires committee
 5 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.
 6 § 30104(b).²⁰ This requirement includes reporting IEs made by political committees other than
 7 authorized committees.²¹ Every political committee that makes IEs must report them in its
 8 regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).²² Such a
 9 political committee must disclose on Schedule E the name of a person who receives any
 10 disbursement during the reporting period in an aggregate amount or value in excess of \$200
 11 within the calendar year in connection with an IE by the reporting committee.²³

12 In addition, a political committee that makes or contracts to make IEs aggregating
 13 \$10,000 or more for an election in any calendar year, up to and including the 20th day before an
 14 election, must report these expenditures within 48 hours.²⁴ These reports, known as 48-Hour
 15 Reports, must be filed by the end of the second day “following the date on which a
 16 communication that constitutes an independent expenditure is publicly distributed or otherwise

¹⁹ *Id.* The Committee’s treasurer provided the same explanation to the RAD analyst, who informed him that the Committee’s response to the RFAI on this issue was inadequate and that it still needed to provide clarification for the public record. RR 18L-17 Referral, Attach 4.

²⁰ 52 U.S.C. § 30104(a)(1).

²¹ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

²² 11 C.F.R. § 104.4(a).

²³ 11 C.F.R. § 104.3(b)(3)(vii). IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. 11 C.F.R. § 104.3(b)(3)(vii)(C).

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

1 publicly disseminated.”²⁵ Additionally, “[e]very person must include in the aggregate total all
2 disbursements during the calendar year for independent expenditures, and all enforceable
3 contracts, either oral or written, obligating funds for disbursements during the calendar year for
4 independent expenditures, where those independent expenditures are made with respect to the
5 same election for Federal office.”²⁶

6 The Act and Commission regulations also require political committees to disclose the
7 amount and nature of their outstanding debts and obligations until those obligations are
8 extinguished.²⁷ A political committee must file separate schedules for debts owed by the
9 committee on a Schedule D with a statement explaining the circumstances and conditions under
10 which each debt and obligation was incurred and extinguished.²⁸ A similar statement is required
11 where such debts and obligations are settled for less than their reported amount or value.²⁹ A
12 debt of \$500 or less must be reported at the time that payment was made or within 60 days of the
13 date the political committee incurs the debt, whichever comes first, and a debt exceeding \$500
14 must be disclosed in the report that covers the date on which the debt was incurred.³⁰ Where the
15 exact amount of a debt is unknown, the report shall state that the amount reported is an estimate
16 and the exact amount is to be disclosed in an amended report or on the report for a reporting
17 period in which such amount is determined.³¹

²⁵ 11 C.F.R. § 104.4(b)(2).

²⁶ 11 C.F.R. § 104.4(f).

²⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

²⁸ *See* 11 C.F.R. § 104.11(a).

²⁹ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

³⁰ 11 C.F.R. § 104.11(b).

³¹ *Id.*

1 Under the Act’s best efforts provision, when a treasurer of a political committee shows
2 that best efforts have been used to obtain, maintain, and submit the information required by the
3 Act, any report submitted by the committee will be considered to be in compliance with the
4 Act.³² The Commission has explained that the best efforts provision is an affirmative defense
5 that the respondent must establish; the burden rests with the political committee and its treasurer
6 to present evidence sufficient to demonstrate that best efforts were exercised to obtain, maintain,
7 and submit the required information.³³ The Commission has further explained that errors caused
8 by a Committee’s own negligence or errors, or a third party’s delay are generally insufficient to
9 establish this defense.³⁴

10 The Committee’s reports reveal a number of violations of the Act and Commission
11 regulations in connection with its reporting of IEs and debts over 11 different disclosure reports,
12 including amendments. First, it failed to timely file 48-Hour Reports for IEs totaling
13 \$509,457.53 in connection with IEs disclosed on its Amended 2016 April Monthly, Amended
14 2016 May Monthly, 2016 July Monthly, 2016 August Monthly, 2016 September Monthly, 2016
15 October Monthly, 2017 Amended June Monthly, and 2017 Amended July Monthly Reports.
16 Second, the Committee failed to disclose a total of \$126,168.56 in IEs on Schedule E of its 2016
17 June, October, and September Monthly Reports that had been previously disclosed on 48-Hour
18 Reports. Third, the Committee failed to properly disclose \$539,417.96 in debts on Schedule D

³² 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7(a).

³³ *See, e.g.*, Factual and Legal Analysis at 5, MUR 7043 (Put Alaska First); *see also* Statement of Policy Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) (“Best Efforts Policy”).

³⁴ Best Efforts Policy, 72 Fed. Reg. at 31440.

1 of its 2016 September Monthly, 2016 October Monthly, 2016 30 Day Post-General, and 2017
2 Amended May Monthly Reports.

3 The Committee's best-efforts defense is unpersuasive. Regarding its independent
4 expenditure and debt reporting, VIGOP bases the claim on its own negligence and its vendor's
5 delays, but the Best Efforts Policy states that those factors are generally not valid bases for the
6 defense.³⁵ In addition, the record reflects that many RFAIs and communications from RAD
7 seeking clarification regarding its disclosures went unanswered or unreturned.³⁶ On several
8 occasions, even after the treasurer spoke with RAD regarding corrections to disclosures that were
9 needed, the Committee still failed to file the appropriate disclosures.³⁷ Further, VIGOP's
10 responses do not provide information that establishes that the Committee took the kind of actions
11 that the Commission has recognized as "best efforts" to comply with the Act, such as having
12 trained staff that took appropriate precautions in recordkeeping, obtaining, maintaining, and
13 submitting information to the Commission, as well as taking all reasonable steps to expeditiously
14 correct any disclosure errors.³⁸

15 Accordingly, the Commission finds reason to believe that the Committee violated
16 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(g)(2), and 11 C.F.R. § 104.4 by either failing to report
17 IEs or reporting them inaccurately, and violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R.
18 § 104.3(d), by failing to properly report its outstanding debts and obligations.

³⁵ 72 Fed. Reg. at 31,440. *See e.g.*, MUR 6521 (Republican Party of Minnesota).

³⁶ *Id.*; RR 18L-17 Referral at 3-4.

³⁷ *Id.*; RR 18L-17 Referral at 3-4.

³⁸ 72 Fed. Reg. at 31,440. *See* MUR 6508 (Republican National Committee).