



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By Electronic Mail and First Class Mail

NOV 27 2018

Virgin Islands Republican Party
Scott B. Mackenzie, Treasurer
P.O. Box 295
Christiansted, VI 00821

RE: MURs 7546/7547/7548
Virgin Islands Republican Party and
Scott B. Mackenzie in his official
capacity as treasurer

Dear Mr. Mackenzie:

On November 17, 2017, the Federal Election Commission (the "Commission") notified Virgin Islands Republican Party and Scott B. Mackenzie, in his official capacity as treasurer (the "Committee"), of AR 17-11R, RR 18L-04 and RR 18L-17 indicating that, in the normal course of carrying out its supervisory responsibilities, the Commission became aware of information suggesting that the Committee may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On November 14, 2018, the Commission opened MURs 7546/7547/7548 and found reason to believe that the Committee violated 52 U.S.C. § 30104(b), (g) of the Act by: 1) failing to timely file 48-hour Reports for \$509,457.53 in independent expenditures, 2) failing to properly report \$126,168.56 in independent expenditures, and 3) failing to properly disclose \$539,417.96 in debt obligations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

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If the Committee is interested in engaging in pre-probable cause conciliation, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or (800) 424-9530 or cjacksonjones@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Virgin Islands Republican Party and MURs 7546/7547/7548
Scott B. Mackenzie in his official
capacity as Treasurer

I. INTRODUCTION

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

II. FACTUAL BACKGROUND

VIGOP is a qualified, non-connected political action committee that has been registered with the Commission since December 18, 2013, and Scott B. Mackenzie has been its treasurer 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 • failure to timely file a 48-Hour Report for independent expenditures disclosed on
14 Schedule E of its 2016 Amended April Monthly, Amended May Monthly, July
15 Monthly, August Monthly, September Monthly, and October Monthly Reports;
16 and
- 17 • failure to disclose debt on Schedule D for independent expenditures that were
18 publicly disseminated prior to payment in its 2016 September Monthly, October
19 Monthly, and Amended 30-Day Post-General Reports.
20
21

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 RFAs 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.

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 Factual and Legal Analysis
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Report	Violation	Amount in Violation
Amended 2016 April Monthly	Failed to timely file a 48-Hour Report for 10 independent expenditures disclosed on Schedule E.	\$40,202.16
Amended 2016 May Monthly	Failed to timely file a 48-Hour Report for 87 independent expenditures disclosed on Schedule E.	\$31,792.87
2016 June Monthly	Failed to disclose independent expenditures on Schedule E that had been disclosed on 48-Hour Reports.	\$77,086.21
2016 July Monthly	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E.	\$35,676.19
2016 August Monthly	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E.	\$72,201.31
2016 September Monthly	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E.	\$130,883.68
	Failed to disclose debt on Schedule D for 24 independent expenditures that were publicly disseminated prior to payment.	\$160,338.65
2016 October Monthly	Failed to disclose independent expenditures on Schedule E that had been disclosed on 48-Hour Reports.	\$49,082.35
	Failed to timely file a 48-Hour Report for independent expenditures disclosed on Schedule E.	\$140,525.35
	Failed to disclose debt on Schedule D for 12 independent expenditures that were publicly disseminated prior to payment.	\$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.	\$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
17 that, in April 2017, it had paid down certain debts and incurred \$192,607.92 in new debts,
18 resulting in a total debt of \$269,033.44.¹⁰

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.*

¹⁰ *Id.*

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

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

14 In RR 18L-17, RAD referred the Committee for failing to file timely 48-Hour Reports for
15 six independent expenditures totaling \$25,261.22 disseminated during the June 2017 monthly
16 reporting period, and six independent expenditures totaling \$32,914.75 disseminated during the
17 July 2017 monthly reporting period.¹⁴

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.

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

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

8 RAD issued an RFAI regarding the two late 48-Hour Reports.¹⁶ After initially failing to
9 respond, the Committee responded on May 21, 2018, explaining that its direct mail firm sent out
10 mailings containing direct advocacy without notifying the Treasurer; therefore, the Committee
11 did not report them as IEs.¹⁷ The Committee states that as soon as the Treasurer became aware
12 of the error, he contacted RAD, filed miscellaneous reports for each mailing; and amended its
13 reports to disclose the IEs on Schedule E.¹⁸ The Committee argues that the error was inadvertent
14 and quickly corrected, and it used best efforts. Thus, the Commission should take no further
15 action with regard to this violation.¹⁹

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.*

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.

1 **III. LEGAL ANALYSIS**

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

10 In addition, a political committee that makes or contracts to make IEs aggregating
11 \$10,000 or more for an election in any calendar year, up to and including the 20th day before an
12 election, must report these expenditures within 48 hours.²⁴ These reports, known as 48-Hour
13 Reports, must be filed by the end of the second day “following the date on which a
14 communication that constitutes an independent expenditure is publicly distributed or otherwise
15 publicly disseminated.”²⁵ Additionally, “[e]very person must include in the aggregate total all
16 disbursements during the calendar year for independent expenditures, and all enforceable
17 contracts, either oral or written, obligating funds for disbursements during the calendar year for

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).

²⁵ 11 C.F.R. § 104.4(b)(2).

1 independent expenditures, where those independent expenditures are made with respect to the
2 same election for Federal office.”²⁶

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

15 Under the Act’s best efforts provision, when a treasurer of a political committee shows
16 that best efforts have been used to obtain, maintain, and submit the information required by the
17 Act, any report submitted by the committee will be considered to be in compliance with the

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 Act.³² The Commission has explained that the best efforts provision is an affirmative defense
2 that the respondent must establish; the burden rests with the political committee and its treasurer
3 to present evidence sufficient to demonstrate that best efforts were exercised to obtain, maintain,
4 and submit the required information.³³ The Commission has further explained that errors caused
5 by a Committee's own negligence or errors, or a third party's delay are generally insufficient to
6 establish this defense.³⁴

7 The Committee's reports reveal a number of violations of the Act and Commission
8 regulations in connection with its reporting of IEs and debts over 11 different disclosure reports,
9 including amendments. First, it failed to timely file 48-Hour Reports for IEs totaling
10 \$509,457.53 in connection with IEs disclosed on its Amended 2016 April Monthly, Amended
11 2016 May Monthly, 2016 July Monthly, 2016 August Monthly, 2016 September Monthly, 2016
12 October Monthly, 2017 Amended June Monthly, and 2017 Amended July Monthly Reports.
13 Second, the Committee failed to disclose a total of \$126,168.56 in IEs on Schedule E of its 2016
14 June, October, and September Monthly Reports that had been previously disclosed on 48-Hour
15 Reports. Third, the Committee failed to properly disclose \$539,417.96 in debts on Schedule D
16 of its 2016 September Monthly, 2016 October Monthly, 2016 30 Day Post-General, and 2017
17 Amended May Monthly Reports.

18 The Committee's best-efforts defense is unpersuasive. Regarding its independent
19 expenditure and debt reporting, VIGOP bases the claim on its own negligence and its vendor's

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

11 Accordingly, the Commission finds reason to believe that the Committee violated
12 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(g)(2), and 11 C.F.R. § 104.4 by either failing to report
13 IEs or reporting them inaccurately, and violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R.
14 § 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).