

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3
4 **RAD REFERRAL: 18L-02**

5 DATE REFERRED: 01/02/2018

6 DATE OF NOTIFICATION: 01/05/2018

7 LAST RESPONSE RECEIVED: No Response

8 DATE ACTIVATED: 05/22/18

9
10 ELECTION CYCLE: 2016

11 EXPIRATION OF SOL: Earliest SOL: 9/11/2021;

12 Latest SOL: 9/30/2021

13
14 **SOURCE:**

Internally Generated

15
16 **RESPONDENTS:**

America Comes First PAC and David W. Schamens
in his official capacity as treasurer

17
18 **RELEVANT STATUTES
19 AND REGULATIONS:**

52 U.S.C. § 30101(17)

52 U.S.C. § 30104(g)(2)

52 U.S.C. § 30104(a), (b)

11 C.F.R. § 104.4(b)

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24 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

Reports Analysis Division Referral Materials

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27 **I. INTRODUCTION**

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29 The Reports Analysis Division (“RAD”) referred America Comes First PAC and

30 David W. Schamens in his official capacity as treasurer (the “Committee”) to the Office of the

31 General Counsel for failing to file two 48-Hour Reports of Independent Expenditures (“48-Hour

32 IE Reports”) totaling \$68,297.60 during the 2016 election cycle. The independent expenditures

33 (“IEs”) supported Presidential candidate Donald J. Trump in the 2016 general election.

34 As set forth below, we recommend that the Commission open a matter under review, find
35 reason to believe that the Committee violated 52 U.S.C. § 30104(g)(2), authorize pre-probable
36 cause conciliation, and approve the attached conciliation agreement.

1 **II. FACTS**

2 The Committee originally registered with the Commission as a non-connected committee
3 on August 5, 2016.¹ It did not file any disclosure reports with the Commission until after the
4 November 8, 2016, general election when it filed its original 2016 October Quarterly and 2016
5 Pre-General Reports on December 5, 2016.² Neither of these reports disclosed any independent
6 expenditures.

7 About a week later, the Committee filed amended 2016 October Quarterly and Pre-
8 General Reports and a Form 99 stating its intention to be organized as an independent-
9 expenditure-only political committee (“IEOPC”) and asserting that it had mailed a statement
10 about its IEOPC status along with its August 2016 Statement of Organization.³ The amended
11 2016 October Quarterly Report disclosed on Schedule E, *inter alia*, three independent
12 expenditures totaling \$68,297.60 in support of Presidential candidate Donald J. Trump for which
13 it had failed to file two 48-Hour IE Reports.⁴

¹ Statement of Organization at 2 (Aug. 5, 2016).

² 2016 Oct. Quarterly Report (Dec. 5, 2016); 2016 Pre-General Report (Dec. 5, 2016).

³ *See* Amended 2016 Oct. Quarterly Report (Dec. 11, 2016); Amended Pre-General Reports (Dec. 14, 2016 01:47); Form 99 (Misc. Text) (Dec. 12, 2016) (stating Committee intended to make unlimited independent expenditures and raise funds in unlimited amounts and would not use those funds to make contributions). Although the Committee states in the Form 99 that it mailed the IEPOC statement with its August 5, 2016, Statement of Organization, the Committee filed that Statement electronically. See note 1.

⁴ Amended 2016 Oct. Quarterly Report at 11-12. All but one of these IEs (for \$15) were reported in the original October Quarterly Report as operating expenditures. In addition, the Committee’s amended 2016 October and 2016 Pre-General Reports also disclosed on Schedule E independent expenditures to Trump Victory (“TV”), a joint fundraising committee, that it had originally reported as contributions to “Trump, Donald J/Michael R. Pence;” TV refunded the contributions to the Committee on December 30, 2016. TV 2016 Year End Report at 45 (Jan. 31, 2017 23:11); *see also* TV Amended 2016 October Quarterly Report at 1530-1531 (Apr. 5, 2017). These refunded contributions were not part of the activity referred to OGC and we make no recommendation as to them.

1 The Committee did not respond to RAD's February 21, 2017, Request for Additional
2 Information about the amended 2016 October Quarterly Report, which identified the \$68,297.60
3 in independent expenditures and advised the Committee that it may have failed to file 48-Hour
4 IE Reports disclosing them.⁵ Similarly, the Committee did not respond to the notification letter
5 regarding this referral.

6 The Committee has filed no disclosure reports with the Commission since it filed its 2016
7 Post-General Report on December 14, 2016. The Commission has assessed civil monetary
8 penalties for the Committee's failure to file quarterly disclosure reports in four Administrative
9 Fines matters --- AF Nos. 3235, 3253, 3287 and 3341.⁶ The Committee filed no responses to the
10 reason-to-believe or final determination notification letters in these cases.

11 **III. LEGAL ANALYSIS**

12 The Federal Election Campaign Act of 1971, as amended, requires committee treasurers
13 to file periodic reports disclosing their receipts and disbursements.⁷ In addition to its regular
14 reporting obligations, any committee that makes or contracts to make independent expenditures
15 aggregating \$10,000 or more at any time up to and including the 20th day before the date of an

⁵ RR 18L-02 at 2,

⁶ The civil money penalties in AF Nos. 3235 (late-filed 2016 Pre-General Report); 3253 (late filed 2016 Post General Report); 3287 (non-filed 2016 Year End Report); and 3341 (non-filed 2017 Mid-Year Report) have been referred for collection to the U.S. Treasury. The Committee has also been notified of Commission reason-to believe findings in two additional Administrative Fines matters for its failure to file the 2017 Year End (AF No 3355) and the 2018 April Quarterly Reports (AF No. 3375).

⁷ 52 U.S.C. § 30104(a), (b).

1 election shall file a report describing the expenditures within 48 hours.⁸ These reports must be
 2 filed within 48 hours “following the date on which a communication that constitutes an
 3 independent expenditure is publicly distributed or otherwise publicly disseminated.”⁹ An
 4 independent expenditure is an expenditure that expressly advocates the election of a clearly
 5 identified federal candidate and is not made in concert or cooperation with or at the request or
 6 suggestion of such a candidate, the candidate’s authorized political committee or their agents.¹⁰

7 The Committee failed to file any disclosure reports until after the November 8, 2016,
 8 general election. On December 11, 2016, it disclosed on Schedule E of its amended 2016
 9 October Quarterly Report, the following \$68,297 in independent expenditures in support of
 10 Donald J. Trump for which it failed to file two 48-Hour IE Reports:

Date of Disbursement or Obligation	Amount	Payee
September 9, 2016	\$50,000.00	Sokal Media Group
September 22, 2016	\$ 15.00	America Comes First PAC
September 28, 2016	\$18,282.60	Propel Marketing

11 Accordingly, we recommend that the Commission find reason to believe that America Comes
 12 First PAC and David W. Schamens in his official capacity as treasurer violated 52 U.S.C.
 13 § 30104(g)(2).

14

⁸ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). In 2016, the reporting period for filing 48-Hour Independent Expenditure Reports ended on October 19, 2016. See https://transition.fec.gov/info/charts_ie_dates_2016.shtml.

⁹ 11 C.F.R. § 104.4(b)(2). The Committee’s amended 2016 October Quarterly Report lists only dates of disbursements and not dates of dissemination for the relevant IEs

¹⁰ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b).

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11 **V. RECOMMENDATIONS**

- 12 1. Open a matter under review with respect to RR 18L-02;
- 13 2. Find reason to believe that America Comes First PAC and David W. Schamens in his
14 official capacity as treasurer violated 52 U.S.C. § 30104(g)(2);
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- 16 3. Authorize conciliation with America Comes First PAC and David W. Schamens in
17 his official capacity as treasurer prior to a finding of probable cause to believe;
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- 19 4. Approve the attached proposed conciliation agreement;

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** America Comes First PAC and David W. MUR _____
6 Schamens in his official capacity as treasurer
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9 **I. INTRODUCTION**

10 This matter was generated based on information ascertained by the Federal Election
11 Commission (“Commission”) in the normal course of carrying out its supervisory
12 responsibilities. *See* 52 U.S.C. § 30109(2). The Commission’s Reports Analysis Division
13 (“RAD”) referred America Comes First PAC and David W. Schamens in his official capacity as
14 treasurer (the “Committee”) to the Office of the General Counsel for failing to file two 48-Hour
15 Reports of Independent Expenditures (“48-Hour IE Reports”) totaling \$68,297.60 during the
16 2016 election cycle. For the reasons set forth below, the Commission finds reason to believe that
17 the Committee violated 52 U.S.C. § 30104(g)(2).
18

19 **II. FACTS**

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21 on August 5, 2016.¹ It did not file any disclosure reports with the Commission until after the
22 November 8, 2016, general election when it filed its original 2016 October Quarterly and 2016
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24 expenditures.

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10 in independent expenditures and advised the Committee that it may have failed to file 48-Hour
11 IE Reports disclosing them.⁵ Similarly, the Committee did not respond to the notification letter
12 regarding this referral.

13 **III. ANALYSIS**

14 The Act requires committee treasurers to file periodic reports disclosing their receipts and
15 disbursements.⁶ In addition to its regular reporting obligations, any committee that makes or

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⁵ RR 18L-02 at 2,

⁶ 52 U.S.C. § 30104(a), (b).

1 contracts to make independent expenditures aggregating \$10,000 or more at any time up to and
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13 Accordingly, the Commission finds reason to believe that America Comes First PAC and
 14 David W. Schamens in his official capacity as treasurer violated 52 U.S.C. § 30104(g)(2).

⁷ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). In 2016, the reporting period for filing 48-Hour Independent Expenditure Reports ended on October 19, 2016. See https://transition.fec.gov/info/charts_ie_dates_2016.shtml.

⁸ 11 C.F.R. § 104.4(b)(2). The Committee’s amended 2016 October Quarterly Report lists only dates of disbursement and not dates of dissemination for the relevant IEs.

⁹ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b).