



FEDERAL ELECTION COMMISSION
Washington, DC 20463

By Electronic Mail and First-Class Mail
contact@americacomes1st.org

DEC 18 2018

David W. Schamens, Treasurer
American Comes First PAC
P.O. Box 201
Advance, NC 27006

RE: MUR 7555 (formerly RR 18L-02)
America Comes First and David W.
Schamens in his official capacity as
treasurer

Dear Mr. Schamens:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that America Comes First PAC and you in your official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act, as amended (the "Act"). On January 5, 2018, the Commission notified the Committee that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 52 U.S.C. § 30109. On December 6, 2018, the Commission opened MUR 7555 and found reason to believe that the Committee violated 52 U.S.C. § 30104(g) by failing to file two 48-Hour Independent Expenditure Reports in connection with the 2016 general election. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's finding.

Please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless the Committee notifies the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. ¶ 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30179(a)(9).

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To expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward 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 the Committee 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.

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 Respondent on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

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.

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in cursive script, appearing to read "Caroline C. Hunter", with a long horizontal flourish extending to the right.

Caroline C. Hunter
Chair

Attachments:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: America Comes First PAC and David W. MUR 7555
6 Schamens in his official capacity as treasurer
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8

9 **I. INTRODUCTION**

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

19 **II. FACTS**

20 The Committee originally registered with the Commission as a non-connected committee
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
23 Pre-General Reports on December 5, 2016.² Neither of these reports disclosed any independent
24 expenditures.

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

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

1 About a week later, the Committee filed amended 2016 October Quarterly and Pre-
2 General Reports and a Form 99 stating its intention to be organized as an independent-
3 expenditure-only political committee (“IEOPC”) and asserting that it had mailed a statement
4 about its IEOPC status along with its August 2016 Statement of Organization.³ The amended
5 2016 October Quarterly Report disclosed on Schedule E, *inter alia*, three independent
6 expenditures totaling \$68,297.60 in support of Presidential candidate Donald J. Trump for which
7 it had failed to file two 48-Hour IE Reports.⁴

8 The Committee did not respond to RAD’s February 21, 2017, Request for Additional
9 Information about the amended 2016 October Quarterly Report, which identified the \$68,297.60
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

³ See Amended 2016 Oct. Quarterly Report (Dec. 11, 2016); Amended Pre-General Report (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 IEOPC 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.

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
 2 including the 20th day before the date of an election shall file a report describing the
 3 expenditures within 48 hours.⁷ These reports must be filed within 48 hours “following the date
 4 on which a communication that constitutes an independent expenditure is publicly distributed or
 5 otherwise publicly disseminated.”⁸ An independent expenditure is an expenditure that expressly
 6 advocates the election of a clearly identified federal candidate and is not made in concert or
 7 cooperation with or at the request or suggestion of such a candidate, the candidate’s authorized
 8 political committee or their agents.⁹

9 The Committee failed to file any disclosure reports until after the November 8, 2016,
 10 general election. On December 11, 2016, it disclosed on Schedule E of its amended 2016
 11 October Quarterly Report, the following \$68,297 in independent expenditures in support of
 12 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

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).