



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

June 6, 2022

**VIA ELECTRONIC MAIL**

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Lowell D. Pearson  
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RE: MUR 7756R  
Americas PAC and Tom Donelson in  
his official capacity of treasurer

Dear Mr. Pearson:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your client, Americas PAC and Tom Donelson in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 24, 2022, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2) by failing to timely and accurately file independent expenditure reports. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of 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 you 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 you violated the law. Enclosed is a conciliation agreement for your consideration

MUR 7756R (Americas PAC)  
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If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. If your client is interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1604 or (800) 424-9530, or [ddillenseger@fec.gov](mailto:ddillenseger@fec.gov), within seven days of receipt of this letter.

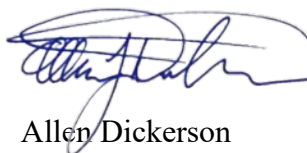
During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next 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 your client is 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](http://www.fec.gov/em/respondent_guide.pdf).

In addition, please note that you have 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 you notify 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.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Allen Dickerson  
Chairman

Enclosures:

1. Factual and Legal Analysis

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<sup>1</sup> 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.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Americas PAC

**MUR 7756R**

and Tom Donelson in his official capacity  
as treasurer

**I. INTRODUCTION**

These matters involve allegations that Americas PAC and Tom Donelson in his official capacity (the “Committee”) failed to timely file independent expenditure reports in 2020. In MUR 7756R, the Complaint alleges that beginning on May 13, 2020, the Committee ran a paid radio advertisement, attacking Democrats generally as well as attacking the Democratic incumbent for Iowa’s First Congressional District, Representative Abby Finkenauer, but failed to file a 48-Hour Report for the ad.<sup>1</sup> In response to the MUR 7756 Complaint, the Committee acknowledges that it failed to timely disclose the radio advertisements and amended its 2020 April Quarterly Report on July 13, 2020.<sup>2</sup>

Based on the disclosures made in the amended 2020 April Quarterly Report, the Reports Analysis Division (“RAD”) referred the Committee for failure to file three 48-Hour Reports to support six independent expenditures totaling \$620,832 that were disclosed in the Committee’s Amended 2020 April Quarterly Report.<sup>3</sup> The referral includes the same reporting allegations at issue in the Complaint. In its Response, the Committee acknowledges that there were some errors in reporting its activities but contends that the reporting errors were made in “good faith,”

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<sup>1</sup> Compl. (Jul. 6, 2020).

<sup>2</sup> Resp. at 1, MUR 7756 (July 23, 2020) (“MUR 7756 Resp.”).

<sup>3</sup> Referral at 1, RR 20L-28 (Americas PAC) (Dec. 15, 2020).

1 caused in part by vendor error, and quickly remedied.<sup>4</sup> The Committee therefore argues that  
2 further action by the Commission is not warranted.<sup>5</sup>

3 As discussed further below, the Committee did not timely and accurately disclose the  
4 amount spent and candidates supported or opposed in a number of its independent expenditures.  
5 And Commission precedent does not support the Committee's arguments that it should not be  
6 held responsible for its reporting violations. Accordingly, the Commission finds reason to  
7 believe that Americas PAC and Tom Donelson in his official capacity as treasurer violated  
8 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2) by failing to timely and accurately file  
9 independent expenditure reports.

## 10 **II. FACTUAL BACKGROUND**

11 Americas PAC is an independent expenditure-only committee that first registered with  
12 the Commission in 2014.<sup>6</sup> Tom Donelson has been the Committee's treasurer since its  
13 inception.<sup>7</sup>

14 The Committee's original 2020 April Quarterly Report, filed on April 15, 2020, disclosed  
15 19 independent expenditures totaling \$2,470,110.50, supporting or opposing three candidates:  
16 Joni K. Ernst, Tricia Zunker, and John James. On May 13, 2020, the Committee filed two 24-  
17 Hour Reports, disclosing 14 independent expenditures totaling \$2,220,190.50 supporting two  
18 candidates: Joni K. Ernst and John James. The following chart identifies the independent  
19 expenditures disclosed in the Committee's 2020 April Quarterly Report and 24-Hour Reports:

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<sup>4</sup> Referral Resp. at 1 (Jan. 25, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> *See* Americas PAC, Statement of Organization (Mar. 19, 2014) (amended on Sept. 30, 2014, Sept. 2, 2016, and July 18, 2018).

<sup>7</sup> *Id.*

**Independent Expenditures Disclosed in Americas PAC Original April Quarterly Report (filed April 15, 2020)**

| Name of Payee               | Date of Dissemination | Expenditure Amount    | Candidate Supported/Opposed | Election     | 24-Hour Report Filed |
|-----------------------------|-----------------------|-----------------------|-----------------------------|--------------|----------------------|
| Cumulus KHKI                | 5/13/2020             | \$130,000.00          | ERNST, JONI K               | 2020 General | 5/13/2020            |
| Cumulus Media - Flint       | 5/13/2020             | \$63,000.00           | JAMES, JOHN                 | 2020 General | 5/13/2020            |
| Des Moines Radio Group      | 5/13/2020             | \$185,000.00          | ERNST, JONI K               | 2020 General | 5/13/2020            |
| iHeart Media - Cedar Rapids | 5/13/2020             | \$180,000.00          | ERNST, JONI K               | 2020 General | 5/13/2020            |
| iHeart Media - Detroit      | 5/13/2020             | \$330,998.50          | JAMES, JOHN                 | 2020 General | 5/13/2020            |
| iHeart Media - WMXD         | 5/13/2020             | \$359,992.00          | ERNST, JONI K               | 2020 General | 5/13/2020            |
| Katz Radio Group            | 5/13/2020             | \$103,000.00          | JAMES, JOHN                 | 2020 General | 5/13/2020            |
| StateNet                    | 5/13/2020             | \$119,680.00          | JAMES, JOHN                 | 2020 General | 5/13/2020            |
| StateNet                    | 5/13/2020             | \$179,520.00          | ERNST, JONI K               | 2020 General | 5/13/2020            |
| Townsquare - Flint          | 5/13/2020             | \$90,000.00           | JAMES, JOHN                 | 2020 General | 5/13/2020            |
| Townsquare KOEL             | 5/13/2020             | \$72,500.00           | ERNST, JONI K               | 2020 General | 5/13/2020            |
| Townsquare Media - IA       | 5/13/2020             | \$219,500.00          | ERNST, JONI K               | 2020 General | 5/13/2020            |
| Townsquare Media - Lansing  | 5/13/2020             | \$115,000.00          | JAMES, JOHN                 | 2020 General | 5/13/2020            |
| WSRW - Grand Rapids         | 5/13/2020             | \$72,000.00           | JAMES, JOHN                 | 2020 General | 5/13/2020            |
|                             |                       |                       |                             |              |                      |
|                             | <b>TOTAL:</b>         | <b>\$2,220,190.50</b> |                             |              |                      |

On July 6, 2020, the Complaint was filed in this matter, alleging that Americas PAC failed to file a 48-Hour Report for a radio ad that ran beginning on May 13, 2020. After the Committee was notified of the Complaint, the Committee filed an Amended 2020 April Quarterly Report on July 13, 2020, which included a Schedule E disclosing the same dollar amount of expenditures as in the original 2020 April Quarterly, but increasing the number of independent expenditures disclosed from 14 to 24, and increasing the number of candidates supported or opposed from three to five, adding candidates Cindy Axne and Abby Finkenauer.<sup>8</sup>

<sup>8</sup> Americas PAC, Amended 2020 April Quarterly Report (July 13, 2020).

In addition, on the same date, the Committee filed two 24-Hour reports for independent expenditures that were disseminated on May 13, 2020, but were incorrectly or not previously disclosed: (1) the Committee filed an amended 24-Hour Report, which included five independent expenditures totaling \$260,840, made in opposition to Axne and Finkenauer, that had not been previously disclosed;<sup>9</sup> (2) the Committee filed a second 24-Hour Report on the same day, which included a previously disclosed expenditure totaling \$359,992.00, but changed the name of the Federal candidate and office sought from Joni K. Ernst for the Iowa Senate General 2020 Election to John James for the Michigan Senate General 2020 Election.<sup>10</sup> The six independent expenditures, totaling \$620,832, are shown below:

**Previously Undisclosed or Incorrectly Disclosed Independent Expenditures in Americas PAC Amended April Quarterly Report (filed July 13, 2020)**

| Name of Payee               | Date of Dissemination | Expenditure Amount  | Candidate Supported/Opposed | Election     | 24-Hour Report Filed |
|-----------------------------|-----------------------|---------------------|-----------------------------|--------------|----------------------|
| Cumulus KHKI                | 5/13/2020             | \$41,600.00         | Cindy Axne                  | 2020 General | 7/13/2020            |
| Des Moines Radio Group      | 5/13/2020             | \$59,200.00         | Cindy Axne                  | 2020 General | 7/13/2020            |
| iHeart Media - Cedar Rapids | 5/13/2020             | \$57,600.00         | Abby Finkenauer             | 2020 General | 7/13/2020            |
| Townsquare KOEL             | 5/13/2020             | \$23,200.00         | Abby Finkenauer             | 2020 General | 7/13/2020            |
| Townsquare Media - IA       | 5/13/2020             | \$79,240.00         | Abby Finkenauer             | 2020 General | 7/13/2020            |
| iHeart Media - WMXD         | 5/13/2020             | \$359,992.00        | John James                  | 2020 General | 7/13/2020            |
|                             | <b>TOTAL:</b>         | <b>\$620,832.00</b> |                             |              |                      |

In September 2020, RAD sent the Committee two Requests for Additional Information (“RFAs”) referencing its Amended 2020 April Quarterly Report and noting that the Committee may have failed to file one or more 48-Hour Reports for independent expenditures.<sup>11</sup> According

<sup>9</sup> Americas PAC, Amended 24-Hour Report of Independent Expenditures (July 13, 2021).

<sup>10</sup> Americas PAC, 24-Hour Report of Independent Expenditures (July 13, 2021).

<sup>11</sup> Americas PAC, RFAI at 1 (Sept. 13, 2020); Americas PAC, RFAI at 1 (Sept. 17, 2020).

to RAD, the Committee should have filed 48-Hour Reports for six independent expenditures totaling \$620,832.00, as described above.

The Committee’s counsel contacted RAD to dispute the apparent violations noted in the RFAs. The Committee also filed two FEC Form 99s in response to the RFAs, noting that it had filed notices on May 13, 2020, and amended its report to correct a reporting error caused by a “last-minute change in media traffic.”<sup>12</sup>

In response to the Complaint and Referral, the Committee states that it moved expeditiously to file amended reports after the Complaint was received.<sup>13</sup> The Committee further attributed the reporting error to its media vendors splitting expenditures among different races without informing the Committee’s counsel, but it did not explain what it meant by splitting expenditures or how that error occurred.<sup>14</sup>

### III. LEGAL ANALYSIS

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C § 30104(b). This requirement includes reporting independent expenditures made by political committees other than authorized committees.<sup>15</sup> Further, political committees that make or contract to make independent expenditures at any time during a calendar year — up to and including the 20th day before an election — must disclose the activity within 48 hours each time that the expenditure aggregates \$10,000 or more.<sup>16</sup> The report must be received by the Commission by 11:59 p.m.

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<sup>12</sup> FEC Form 99, Americas PAC, Miscellaneous Report (Oct. 2, 2020).

<sup>13</sup> MUR 7756R Resp. at 1; Referral Resp. at 1.

<sup>14</sup> Referral Resp. at 1

<sup>15</sup> 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(l)(vii).

<sup>16</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

1 on the second day following the date on which independent expenditures that aggregate \$10,000  
2 or more are publicly distributed or disseminated.<sup>17</sup> The information provided must include,  
3 *inter alia*, the date, amount, and purpose of any such independent expenditure and a  
4 statement which indicates whether such independent expenditure is in support of, or in  
5 opposition to, a candidate, as well as the name and office sought by such candidate.<sup>18</sup>

6 As identified in the referral, the available information indicates that the Committee failed  
7 to file 48-Hour reports to support six independent expenditures totaling \$620,832.00 in a timely  
8 and accurate manner. Specifically, each independent expenditure aggregated \$10,000 or more  
9 and was disseminated on May 13, 2020, up to and including the 20<sup>th</sup> day before the 2020 general  
10 election. Accordingly, these expenditures were required to be reported to the Commission  
11 within 48 hours of their dissemination, that is, by May 14, 2020. However, the Committee's  
12 amended reports disclosed Federal candidates and offices sought that had not been previously  
13 disclosed on earlier reports that it had filed. Further, those amendments were filed on July 13,  
14 2020, nearly two months after the due date.

15 The Committee contends that of the \$620,832 in independent expenditures, it timely  
16 disclosed \$359,992.00 and only corrected the name of the candidate by replacing Joni Ernst,  
17 who ran for U.S. Senate in Iowa and was erroneously listed on the report, with John James, who  
18 ran for U.S. Senate in Michigan. But given that the information regarding the name of the  
19 candidate and the office sought was not timely disclosed, the Committee's reports did not  
20 comply with 52 U.S.C. § 30104(g)(3)(B) and 11 C.F.R. § 104.4(b)(2), which require that for

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<sup>17</sup> 11 C.F.R. § 104.4(b)(2).

<sup>18</sup> 52 U.S.C. § 30104(g)(3)(B) (requiring 48-Hour Reports to include information required by section 30104(b)(6)(B)(iii)).



1 each independent expenditure reported, the committee provide the name of the candidate  
2 supported or opposed and office sought by such candidate.

3 The Committee also contends that the failure to timely and properly file the reports was  
4 due to its media vendors splitting the expenditures among various races without informing the  
5 Committee's counsel. However, the Committee has provided no information to support its  
6 assertion that the vendor acted without its knowledge, does not explain how such an error  
7 occurred, or how that error caused the Committee to file untimely and inaccurate reports.  
8 Further, the Commission has not generally considered vendor error to be a valid exculpatory or  
9 mitigating factor in reporting matters involving section 30104.<sup>19</sup> Therefore, the Commission  
10 finds reason to believe that Americas PAC and Tom Donelson in his official capacity as  
11 treasurer violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2).

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<sup>19</sup> See Factual & Legal Analysis at 1, MUR 7285 (Workers' Voice) (finding committee responsible for failing to file the necessary 24- and 48-hour reports even though it argued vendors and in-kind contributors failed to provide timely data); Factual & Legal Analysis at 1, 3, MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error); and Factual & Legal Analysis at 5-6, MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors).