



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 21, 2022

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark.Smith@legis.state.ia.us

Mark Smith
816 Roberts Terrace
Marshalltown, IA 50158

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

Dear Mr. Smith:

This is in reference to the complaint you filed with the Federal Election Commission on July 6, 2020. The Commission found that there was reason to believe that Americas PAC and Tom Donelson in his official capacity as treasurer violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2), provisions of the Federal Election Campaign Act of 1971, as amended and Commission regulations. On October 3, 2022, a conciliation agreement signed by the respondent was accepted by the Commission. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which formed the basis for the Commission's findings, and a copy of the conciliation agreement with Americas PAC is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650 or ddillenseger@fec.gov.

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5 **RESPONDENT:** Americas PAC

MUR 7756R

6 and Tom Donelson in his official capacity
7 as treasurer

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9 **I. INTRODUCTION**

10 These matters involve allegations that Americas PAC and Tom Donelson in his official
11 capacity (the “Committee”) failed to timely file independent expenditure reports in 2020. In
12 MUR 7756R, the Complaint alleges that beginning on May 13, 2020, the Committee ran a paid
13 radio advertisement, attacking Democrats generally as well as attacking the Democratic
14 incumbent for Iowa’s First Congressional District, Representative Abby Finkenauer, but failed to
15 file a 48-Hour Report for the ad.¹ In response to the MUR 7756 Complaint, the Committee
16 acknowledges that it failed to timely disclose the radio advertisements and amended its 2020
17 April Quarterly Report on July 13, 2020.²

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

¹ Compl. (Jul. 6, 2020).

² Resp. at 1, MUR 7756 (July 23, 2020) (“MUR 7756 Resp.”).

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

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

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 2014.⁶ Tom Donelson has been the Committee's treasurer since its
13 inception.⁷

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:

⁴ Referral Resp. at 1 (Jan. 25, 2021).

⁵ *Id.*

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

⁷ *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
	TOTAL:	\$2,220,190.50			

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.⁸

⁸ 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;⁹ (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.¹⁰ 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
	TOTAL:	\$620,832.00			

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.¹¹ According

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

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

¹¹ 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.”¹²

In response to the Complaint and Referral, the Committee states that it moved expeditiously to file amended reports after the Complaint was received.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶ The report must be received by the Commission by 11:59 p.m.

¹² FEC Form 99, Americas PAC, Miscellaneous Report (Oct. 2, 2020).

¹³ MUR 7756R Resp. at 1; Referral Resp. at 1.

¹⁴ Referral Resp. at 1

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

¹⁶ 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.¹⁷ 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.¹⁸

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 20th 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

¹⁷ 11 C.F.R. § 104.4(b)(2).

¹⁸ 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 30104.¹⁹ 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).

¹⁹ 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).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Americas PAC and Tom Donelson)	MUR 7756R
in his official capacity as treasurer)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (“Commission”) pursuant to a complaint and information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Americas PAC and Tom Donelson in his official capacity as treasurer (“Respondent”) violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2), provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Americas PAC is an independent expenditure-only political committee that is registered with the Commission. It is a political committee within the meaning of 52 U.S.C. § 30101(4).

2. Tom Donelson is the treasurer of Americas PAC.

3. The Act requires political committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C § 30104(b).

The reporting requirement includes reporting independent expenditures made by political committees other than authorized committees. 52 U.S.C. § 30104(b)(4)(H)(iii); *see also* 11 C.F.R. § 104.3(b)(1)(vii).

4. In addition, a political committee that makes independent expenditures, aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report these expenditures within 48 hours each time that the expenditure aggregates \$10,000 or more. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). These reports, known as 48-Hour Reports of Independent Expenditures (“48-Hour Reports”), must be received by the Commission by 11:59 p.m. on the second day following the date on which a communication that constitutes an independent expenditure is public distributed or otherwise publicly disseminated. 11 C.F.R. § 104.4(b)(2). The information provided must include, *inter alia*, the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate. 52 U.S.C. § 30104(g)(3)(B) (requiring 48-Hour Reports to include information required by section 30104(b)(6)(B)(iii)).

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

\$2,220,190.50 supporting two candidates: Joni K. Ernst and John James.

6. The Committee filed an Amended 2020 April Quarterly Report on July 13, 2020, which included a Schedule E and two 24-Hour reports, which included six new 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 Cindy Axne and Abby Finkenauer, that had not been previously disclosed; (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 supported and office sought from Joni K. Ernst for the Iowa Senate General 2020 Election to John James for the Michigan Senate General 2020 Election. The six independent expenditures, totaling \$620,832, are shown in the chart below:

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iHeart Media - WMXD	5/13/2020	\$359,992.00	John James	2020 General	7/13/2020
	TOTAL:	\$620,832.00			

7. In September 2020, the Reports Analysis Division sent the Committee two Requests for Additional Information, 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.

V. Respondent violated 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2) by failing to timely and accurately file 48-Hour Reports supporting six independent expenditures totaling \$620,832.00.

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Fifty Thousand Four Hundred Dollars (\$50,400), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30104(g) and 11 C.F.R. § 104.4(b)(2).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

MUR 7756R (Americas PAC)
 Conciliation Agreement
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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
 Acting General Counsel

BY: **Charles Kitcher**
 Charles Kitcher
 Associate General Counsel
 for Enforcement

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Date

FOR THE RESPONDENT:



(Name)

(Position) Trensburg

9-5-2022

Date