

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 19L-18

DATE REFERRED: July 15, 2019

DATE OF NOTIFICATION: July 15, 2019

RESPONSE RECEIVED: August 6, 2019

DATE ACTIVATED: November 7, 2019

EXPIRATION OF SOL:

October 4, 2023 – October 23, 2023
ELECTION CYCLE 2018

ELECTION CYCLE: 2018

SOURCE: Internally Generated

RESPONDENTS: Integrity NJ and Kathleen Donohue in her official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30101(17) 52 U.S.C. § 30104(g)(1) and (2) 11 C.F.R. § 104.4(b) and (c)
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INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred Integrity NJ and Kathleen Donohue in

31 her official capacity as treasurer (the “Committee”) to the Office of General Counsel for failing

32 to timely file two 48-Hour Reports of Independent Expenditures (“48-Hour IE Reports”) to

33 support independent expenditures totaling \$125,125 and for failing to file one 24-Hour Report of

34 Independent Expenditures (“24-Hour IE Report”) supporting a \$918,155 independent

³⁵ expenditure. These expenditures were disclosed on the Committee's 2018 12-Day Pre-Gen

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1 and 30-Day Post-General Reports, respectively.¹ As discussed below, we recommend that the
 2 Commission open a MUR and find reason to believe that the Committee violated 52 U.S.C.
 3 § 30104(g)(1) and (2) by failing to file the 24- Hour IE Report and failing to timely file a 48-
 4 Hour IE Report, respectively, enter into pre-probable cause conciliation with the Committee, and
 5 approve the attached conciliation agreement.

6 **II. FACTUAL BACKGROUND**

7 The Committee is an independent expenditure-only political committee that registered
 8 with the Commission on February 13, 2018.² In its 2018 12-Day Pre-General Report, the
 9 Committee disclosed on Schedule E twelve (12) independent expenditures ("IEs") totaling
 10 \$468,565, all in opposition to U.S. Senate candidate Robert Menendez.³ A review of the
 11 corresponding IE reports revealed that the Committee did not file two 48-Hour IE Reports
 12 supporting three of the IEs totaling \$125,125. In its 2018 30-Day Post-General Report, the
 13 Committee disclosed on Schedule E twelve (12) IEs totaling \$3,305,344.63, all in opposition to
 14 Robert Menendez.⁴ A review of the corresponding IE reports revealed that the Committee failed
 15 to file one 24-Hour IE Report supporting a \$918,155 expenditure.

16 RAD sent the Committee Requests for Additional Information ("RFAs") on
 17 December 16, 2018, and March 24, 2019, concerning, among other things, the Committee's
 18 failure to file the missing 48-Hour and 24-Hour IE Reports, respectively. In response, the

¹ The untimely-filed 48-Hour IE Reports met the threshold for referral to the Alternative Dispute Resolution Office but were referred to the Office of the General Counsel to "limit the duplicate consideration of matters" in accordance with the *2017-2018 RAD Review and Referral Procedures (Standard 7)* at 17-18.

² See Statement of Organization (Feb. 13, 2018).

³ 2018 12-Day Pre-General Report at 19-24 (Oct. 25, 2018).

⁴ 2018 30-Day Post-General Report at 22-27 (Dec. 6, 2018); *see also* Amended 30-Day Post-General Report at 22-27 (Jan. 20, 2019) (this amendment reflected no changes in the reported IEs).

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1 Committee filed one late 48-Hour IE Report on February 18, 2019, disclosing the three IEs
 2 totaling \$125,125 originally disclosed on the Pre-General Report.⁵ The Committee also filed a
 3 Form 99 stating that the treasurer had prepared the 48-Hour IE Report but apparently
 4 unintentionally failed to upload it into the Commission's electronic filing system.⁶ With respect
 5 to the missing 24-Hour IE Report for the \$918,155 expenditure first reported on the Post-General
 6 Report, the Committee filed a Form 99 on April 29, 2019, stating in pertinent part that its failure
 7 to file the report was a result of human error and was "simply missed."⁷ It did not file a late 24-
 8 Hour IE Report.

9 In response to the Office of General Counsel's notification to the Committee of RAD's
 10 referral, the Committee does not contest that it failed to file 24- and 48-Hour IE Reports for the
 11 IEs at issue.⁸ Rather, it provides information that it untimely filed only one 48-Hour IE Report
 12 rather than two, explaining that all three of those IEs totaling \$125,125 were for a
 13 communication disseminated on one date rather than on two different dates, as originally
 14 disclosed in its Pre-General Report and in the late-filed 48-Hour IE Report.⁹ It also attaches an
 15 affidavit and documents in support of its response and filed an amended 48-Hour IE Report
 16 showing that all three of these expenditures were made in connection with a communication
 17 disseminated on the same day.¹⁰

⁵ 48-Hour IE Report (Feb. 18, 2019).

⁶ Form 99 (Miscellaneous Text) (Feb. 18, 2019).

⁷ Form 99 (Miscellaneous Text) (Apr. 29, 2019).

⁸ Committee Resp. at 1-2.

⁹ *Id.* See 2018 12-Day Pre-General Report (Oct. 25, 2018), 48-Hour IE Report (Feb. 28, 2019).

¹⁰ Committee Resp. at 1-2, Attachments; Amended 48-Hour Report IE Report (Aug. 7, 2019). The Committee treasurer states in an affidavit that she made a clerical error when she originally reported the dissemination dates for two of the three IEs as October 2, 2018 and the third as October 3, 2018, when all three

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1 **III. LEGAL ANALYSIS**

2 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
 3 treasurers to file reports of receipts and disbursements in accordance with the provisions of
 4 52 U.S.C § 30104(b).¹¹ The reporting requirement includes reporting IEs made by political
 5 committees other than authorized committees.¹² Every political committee that makes IEs must
 6 report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.
 7 § 104.3(b)(3)(vii).¹³ In addition, a political committee that makes IEs aggregating \$10,000 or
 8 more for an election in any calendar year, up to and including the 20th day before an election,
 9 must report these expenditures within 48 hours.¹⁴ These reports, known as 48-Hour IE Reports,
 10 must be filed by the end of the second day “following the date on which a communication that
 11 constitutes an independent expenditure is publicly distributed or otherwise publicly
 12 disseminated.”¹⁵ A political committee that makes IEs aggregating \$1,000 or more with respect
 13 to a given election after the 20th day, but more than 24 hours before the date of that election,

related to a media buy for a communication disseminated on October 2, 2018. Kathleen Donohue Aff. ¶¶ 3-4, 6-7. The Committee’s amended 12-Day Pre-General and amended 48-Hour IE Reports filed after the Committee’s response, however, reflect the dissemination dates for the three IEs as October 3, 2018. *See Amended 12-Day Pre-General Report at 19-20 (Aug. 7, 2019), Amended 48-Hour IE Report (Aug. 7, 2019).* It appears that the correct dissemination date was October 2, 2018, based on the vendor invoice provided, which shows the communication was to be disseminated beginning on that date through October 8, 2018. Committee Resp., Ex. A (invoice from Pinpoint Media). In any event, the Committee has established that it could have reported all of the expenditures on just one report.

¹¹ 52 U.S.C. § 30104(a)(1).

¹² 52 U.S.C. § 30104(b)(4)(H)(iii); *see also* 11 C.F.R. § 104.3(b)(1)(vii).

¹³ 11 C.F.R. § 104.4(a). The term “independent expenditure” means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or in cooperation with, or at the request or suggestion of, such candidate, the candidate’s committee, or their agents. 52 U.S.C. § 30101(17).

¹⁴ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

¹⁵ 11 C.F.R. § 104.4(b)(2).

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1 must disclose the expenditures within 24 hours following the date on which a communication
2 constituting that independent expenditure is publicly distributed.¹⁶ These reports are known as
3 24-Hour IE Reports.

4 In 2018, October 17 was the 20th day before the November 6 general election. Thus, an
5 IE made by a political committee on or before that date aggregating \$10,000 or more needed to
6 be disclosed in a 48-Hour IE Report. IEs aggregating \$1,000 or more made on October 18
7 through November 4, 2018, needed to be disclosed in a 24-Hour IE Report.

8 Here, the Committee admits that it failed to timely file one 48-Hour IE Report for three
9 IEs totaling \$125,125, all in connection with a communication to be disseminated beginning on
10 the same date. It also admits that it failed to file a 24-Hour IE Report for a \$918,155 IE in
11 connection with a communication distributed on October 22, 2019. Accordingly, we recommend
12 that the Commission open a matter under review and find reason to believe Integrity NJ and
13 Kathleen Donohue in her official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and (2).

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¹⁶ 52 U.S.C. § 30104(g)(1)(A); 11 C.F.R. § 104.4(c).

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3 **V. RECOMMENDATIONS**

4 1. Open a MUR;

5 2. Find reason to believe that Integrity NJ and Kathleen Donohue in her official

6 capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and (2);

7 3. Approve the attached Factual and Legal Analysis;

8 4. Approve the attached Conciliation Agreement; and

9 5. Approve the appropriate letter.

12 Lisa J. Stevenson
13 Acting General Counsel

15 Charles Kitcher
16 Acting Associate General Counsel for Enforcement

18 February 5, 2020

19 Date

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