



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 6, 2021

Via Email

Email: madams@cpblawgroup.com

Michael Adams, Esq.
Chalmers & Adams, LLC
1300 Pennsylvania Avenue, NW
No. 190-612
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RE: MUR 7896 (Integrity NJ)
(formerly RR 19L-18)

Dear Mr. Adams:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the “Commission”) became aware of information suggesting your client, Integrity NJ and Kathleen Donohue in her official capacity as treasurer (the “Committee”), may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). On July 15, 2019, the Commission notified the Committee that the matter was being referred to the Commission’s Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On March 9, 2021, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1) and (2). The Factual and Legal Analysis, approved by the Commission, which provides the basis for the Commission’s findings, is enclosed for your information.

Please note that your clients 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.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the 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 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.

¹ See 18 U.S.C. § 1519.

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If your client is interested in engaging in pre-probable cause conciliation, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021 or rweiss@fec.gov, within seven days of receiving this letter. During conciliation, your client may submit any factual or legal materials that are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days.² Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery 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 https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

In the meantime, 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 your client wishes 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.³

We look forward to your response.

On behalf of the Commission,


 Shana M. Broussard
 Chair

Enclosures
 Factual and Legal Analysis

² See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A).

³ 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

RESPONDENTS: Integrity NJ and Kathleen Donohue in her official capacity as treasurer **MUR: 7896**

I. INTRODUCTION

11 This matter was generated by information ascertained by the Federal Election
12 Commission (the “Commission”) in the normal course of carrying out its supervisory
13 responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Reports Analysis Division (“RAD”) referred
14 Integrity NJ and Kathleen Donohue in her official capacity as treasurer (the “Committee”) to the
15 Office of General Counsel for failing to timely file two 48-Hour Reports of Independent
16 Expenditures (“48-Hour IE Reports”) to support independent expenditures totaling \$125,125 and
17 for failing to file one 24-Hour Report of Independent Expenditures (“24-Hour IE Report”)
18 supporting a \$918,155 independent expenditure. These expenditures were disclosed on the
19 Committee’s 2018 12-Day Pre-General and 30-Day Post-General Reports, respectively. As
20 discussed below, the Commission opened a matter under review and found reason to believe that
21 Integrity NJ and Kathleen Donohue in her official capacity as treasurer violated 52 U.S.C.
22 § 30104(g)(1) and (2) by failing to file the 24-Hour IE Report and by failing to timely file a 48-
23 Hour IE Report, respectively.

24 II. FACTUAL BACKGROUND

25 The Committee is an independent expenditure-only political committee that registered
26 with the Commission on February 13, 2018.¹ In its 2018 12-Day Pre-General Report, the
27 Committee disclosed on Schedule E twelve (12) independent expenditures (“IEs”) totaling

¹ See Statement of Organization (Feb. 13, 2018).

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1 \$468,565, all in opposition to U.S. Senate candidate Robert Menendez.² A review of the
 2 corresponding IE reports revealed that the Committee did not file two 48-Hour IE Reports
 3 supporting three of the IEs totaling \$125,125. In its 2018 30-Day Post-General Report, the
 4 Committee disclosed on Schedule E twelve (12) IEs totaling \$3,305,344.63, all in opposition to
 5 Robert Menendez.³ A review of the corresponding IE reports revealed that the Committee failed
 6 to file one 24-Hour IE Report supporting a \$918,155 expenditure.

7 RAD sent the Committee Requests for Additional Information (“RFAs”) on
 8 December 16, 2018, and March 24, 2019, concerning, among other things, the Committee’s
 9 failure to file the missing 48-Hour and 24-Hour IE Reports, respectively. In response, the
 10 Committee filed one late 48-Hour IE Report on February 18, 2019, disclosing the three IEs
 11 totaling \$125,125 originally disclosed on the Pre-General Report.⁴ The Committee also filed a
 12 Form 99 stating that the treasurer had prepared the 48-Hour IE Report but apparently
 13 unintentionally failed to upload it into the Commission’s electronic filing system.⁵ With respect
 14 to the missing 24-Hour IE Report for the \$918,155 expenditure first reported on the Post-General
 15 Report, the Committee filed a Form 99 on April 29, 2019, stating in pertinent part that its failure
 16 to file the report was a result of human error and was “simply missed.”⁶ It did not file a late 24-
 17 Hour IE Report.

² 2018 12-Day Pre-General Report at 19-24 (Oct. 25, 2018).

³ 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).

⁴ 48-Hour IE Report (Feb. 18, 2019).

⁵ Form 99 (Miscellaneous Text) (Feb. 18, 2019).

⁶ Form 99 (Miscellaneous Text) (Apr. 29, 2019).

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1 In response to the Office of General Counsel’s notification to the Committee of RAD’s
 2 referral, the Committee does not contest that it failed to file 24- and 48-Hour IE Reports for the
 3 IEs at issue.⁷ Rather, it provides information that it untimely filed only one 48-Hour IE Report
 4 rather than two, explaining that all three of those IEs totaling \$125,125 were for a
 5 communication disseminated on one date rather than on two different dates, as originally
 6 disclosed in its Pre-General Report and in the late-filed 48-Hour IE Report.⁸ It also attaches an
 7 affidavit and documents in support of its response and filed an amended 48-Hour IE Report
 8 showing that all three of these expenditures were made in connection with a communication
 9 disseminated on the same day.⁹

10 **III. LEGAL ANALYSIS**

11 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
 12 treasurers to file reports of receipts and disbursements in accordance with the provisions of
 13 52 U.S.C § 30104(b).¹⁰ The reporting requirement includes reporting IEs made by political
 14 committees other than authorized committees.¹¹ Every political committee that makes IEs must

⁷ Committee Resp. at 1-2.

⁸ *Id.* See 2018 12-Day Pre-General Report (Oct. 25, 2018), 48-Hour IE Report (Feb. 28, 2019).

⁹ 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 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.

¹⁰ 52 U.S.C. § 30104(a)(1).

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

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1 report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.
 2 § 104.3(b)(3)(vii).¹² In addition, a political committee that makes IEs aggregating \$10,000 or
 3 more for an election in any calendar year, up to and including the 20th day before an election,
 4 must report these expenditures within 48 hours.¹³ These reports, known as 48-Hour IE Reports,
 5 must be filed by the end of the second day “following the date on which a communication that
 6 constitutes an independent expenditure is publicly distributed or otherwise publicly
 7 disseminated.”¹⁴ A political committee that makes IEs aggregating \$1,000 or more with respect
 8 to a given election after the 20th day, but more than 24 hours before the date of that election,
 9 must disclose the expenditures within 24 hours following the date on which a communication
 10 constituting that independent expenditure is publicly distributed.¹⁵ These reports are known as
 11 24-Hour IE Reports.

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

16 Here, the Committee admits that it failed to timely file one 48-Hour IE Report for three
 17 IEs totaling \$125,125, all in connection with a communication to be disseminated beginning on

¹² 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).

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

¹⁴ 11 C.F.R. § 104.4(b)(2).

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

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1 the same date. It also admits that it failed to file a 24-Hour IE Report for a \$918,155 IE in
2 connection with a communication distributed on October 22, 2018. Accordingly, there is reason
3 to believe that Integrity NJ and Kathleen Donohue in her official capacity as treasurer violated
4 52 U.S.C. § 30104(g)(1) and (2).