

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **RAD AUDIT REFERRAL: 19-05R**

4 DATE REFERRED: 09/30/19

5 DATE OF NOTIFICATION: 10/04/19

6 DATE OF LAST RESPONSE: N/A

7 DATE ACTIVATED: 02/03/20

8 EXPIRATION OF SOL: 10/17/23 – 02/05/24

9 ELECTION CYCLE: 2018

10 **SOURCE:** Internally Generated

11 **RESPONDENT:** Virgin Islands Republican Party and John
12 Canegata in his official capacity as treasurer

13 **RELEVANT STATUTE** 52 U.S.C. § 30104(g)(1)
14 **AND REGULATION:** 11 C.F.R. § 104.4(c)

15 **INTERNAL REPORTS CHECKED:** Disclosure Reports

16 **FEDERAL AGENCIES CHECKED:** None

17 **I. INTRODUCTION**

18 This matter was generated by a Reports Analysis Division (“RAD”) Audit Referral
19 concerning disclosure reports filed by the Virgin Islands Republican Party and John Canegata in
20 his official capacity as treasurer (“VIGOP”) during the 2018 election cycle.¹ The Referral is
21 based on VIGOP’s alleged failure to file 24-hour reports in support of nineteen independent
22 expenditures totaling \$95,000.²

¹ RAD initially referred VIGOP to the Audit Division but the Commission transferred the matter to the Office of General Counsel (“OGC”) for possible enforcement action. Certification, 2017-2018 Audit Referrals – Unauthorized Committees (Sept. 30, 2019).

² Letter from Jeff S. Jordan, FEC to Scott B. Mackenzie, Treasurer, VIGOP (Oct. 4, 2019) [hereinafter Notification Letter]; RAD Audit Referral at 5, AR 19-05R (VIGOP) (Aug. 20, 2019) [hereinafter Referral] (non-public).

1 As discussed below, we recommend that the Commission find reason to believe that
2 VIGOP violated 52 U.S.C. § 30104(g)(1) of the Federal Election Campaign Act of 1971, as
3 amended (the “Act”) and 11 C.F.R. § 104.4(c) of the Commission regulations by failing to
4 timely report independent expenditures aggregating \$1,000 or more made after the 20th day, but
5 more than 24 hours before an election. Additionally, we recommend that the Commission open
6 a MUR and authorize pre-probable cause conciliation with VIGOP

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8 **II. FACTUAL AND LEGAL ANALYSIS**

9 VIGOP is a qualified, non-connected political action committee that has been registered
10 with the Commission since December 18, 2013, with Scott B. Mackenzie listed as treasurer from
11 VIGOP’s inception until December 20, 2019.³ VIGOP previously sought formal recognition as
12 the official state party committee for the U.S. Virgin Islands, but did not complete the necessary
13 steps in the process.⁴ VIGOP recently acknowledged its status as a qualified committee.⁵

³ FEC Form 1, VIGOP Statement of Org. (Dec. 18, 2013) [hereinafter Original Statement of Org.]; FEC Form 1, VIGOP Amended Statement of Org. (Dec. 20, 2019) [hereinafter Current Statement of Org.]. Mackenzie pleaded guilty on October 22, 2019, to making a false statement to the Commission and agreed to pay \$172,200 in restitution, and on February 21, 2020, was sentenced to a year and a day in prison. Press Release, Dep’t of Justice, Treasurer of Multiple Political Action Committees Pleads Guilty to Filing False Reports with the FEC (Oct. 22, 2019), <https://www.justice.gov/opa/pr/treasurer-multiple-political-action-committees-pleads-guilty-filing-false-reports-fec>; Press Release, Dep’t of Justice, Treasurer of Multiple Political Action Committees Sentenced for Filing False Reports with the FEC (Feb. 21, 2020), <https://www.justice.gov/opa/pr/treasurer-multiple-political-action-committees-sentenced-filing-false-reports-fec>.

⁴ *See* Original Statement of Org.; FEC Form 1, VIGOP Amended Statement of Org. (Feb. 21, 2014); FEC Form 1, VIGOP Amended Statement of Org. (Feb. 1, 2015); FEC Form 1, VIGOP Amended Statement of Org. (Feb. 17, 2015); FEC Form 1, VIGOP Amended Statement of Org. (Jan. 16, 2019); FEC Form 1, VIGOP Amended Statement of Org. (Nov. 20, 2019); Current Statement of Org. RAD sent VIGOP request for additional information (“RFAI”) letters on January 31, 2014, February 11, 2015, March 15, 2015, February 3, 2019, and November 21, 2019, advising that before using the contribution limits and/or statutes applicable to state parties, the committee must petition the Commission in the form of an advisory opinion to determine if it satisfies the criteria for state party status. *See, e.g.*, Advisory Op. 2002-10 (Green Party of Michigan).

⁵ FEC Form 99, VIGOP Misc. Text (Dec. 20, 2019). VIGOP is also the subject of three open matters, MURs 7546, 7547, and 7548, also involving reporting violations. These matters were merged by the Commission and are currently in pre-probable cause conciliation.

1 The Act and Commission regulations require political committees to provide an
2 accounting of all disbursements, including independent expenditures, on their regularly-
3 scheduled disclosure reports.⁶ In addition, committees that make independent expenditures
4 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
5 hours before, the date of that election must file a 24-hour report to disclose such independent
6 expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on
7 which a communication is publicly distributed or otherwise publicly disseminated.⁷ Additional
8 24-hour reports must be filed by 11:59 p.m. the following day each time a committee makes or
9 contracts to make independent expenditures aggregating an additional \$1,000.⁸

10 The Notification Letter identifies nineteen independent expenditures that VIGOP
11 reported on its 2018 Post-General Report, totaling \$95,000 between October 26, 2018, and
12 November 4, 2018, in support of eleven candidates in connection with the 2018 mid-term

⁶ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b). Committees shall report the name and address of any person who receives a disbursement for an independent expenditure from the committee during the reporting period in an aggregate amount in excess of \$200 within the calendar year (or election cycle for an authorized committee), as well as the date, amount, and purpose of any such independent expenditure and include a statement that 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(b)(6)(B)(iii); 11 C.F.R. § 104.3(b)(3)(vii). Committees must also report the total of all independent expenditures. 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

⁷ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c). The Act and Commission regulations include a separate requirement to file 48-hour reports for independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

⁸ 11 C.F.R. § 104.4(c).

1 elections, which occurred on November 6, 2018.⁹ Although the independent expenditures were
2 made after the 20th day, but more than 24 hours before the election, and the aggregate amounts
3 with respect to each of the candidates were \$1,000 or more, VIGOP did not file any associated
4 24-hour reports until after the election.¹⁰ Though VIGOP did ultimately file 24-hour reports for
5 each of these independent expenditures, it did not do so until December 6, 2018, after the
6 elections and more than a month after the applicable 24-hour reporting deadlines had passed.¹¹
7 VIGOP was notified of the Referral on October 4, 2019, and did not submit a response.

8 Therefore, we recommend that the Commission find reason to believe that VIGOP
9 violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c) by failing to timely file 24-hour
10 reports.

⁹ Notification Letter at 1; FEC Form 3X, VIGOP Amended 2018 30-Day Post-General Report, Sched. E (Feb. 5, 2019), <https://docquery.fec.gov/pdf/598/201902059145460598/201902059145460598.pdf> [hereinafter Post-General Report]; Referral at 5 (non-public). The expenditures at issue are as follows: On October 26, 2018, \$9,000 for Kevin Cramer, \$2,500 for Anthony E. Gonzalez, \$13,000 for Joshua David Hawley, \$13,000 for Dean Heller, \$8,000 for Susan Hutchison, \$2,500 for Lea Marquez Peterson, \$10,000 for Martha McSally, \$10,000 for Matt Rosendale, \$2,500 for Maria Elvira Salazar, and \$1,500 for Rick Scott; on November 4, 2018, an additional \$2,000 and \$4,000 for Kevin Cramer, an additional \$2,000 for Joshua David Hawley, an additional \$2,000 for Dean Heller, an additional \$2,000 for Susan Hutchison, \$5,000 for John James, an additional \$1,000 and \$4,000 for Martha McSally, and an additional \$1,000 for Rick Scott. Post-General Report, Sched. E.

¹⁰ Post-General Report, Sched. E; Notification Letter at 1.

¹¹ *E.g.*, FEC Form 24, VIGOP 24-Hour Report (Dec. 6, 2018), <https://docquery.fec.gov/pdf/460/201812069135368460/201812069135368460.pdf> (reporting \$2,500 in disbursements in support of Maria Elvira Salazar from October 26); FEC Form 24, VIGOP 24-Hour Report (Dec. 6, 2018), <https://docquery.fec.gov/pdf/681/201812069135363681/201812069135363681.pdf> (reporting \$15,000 in disbursements in support of Kevin Cramer from October 26 and November 4); FEC Form 24, VIGOP 24-Hour Report (Dec. 6, 2018), <https://docquery.fec.gov/pdf/615/201812069135364615/201812069135364615.pdf> (reporting \$15,000 in disbursements in support of Martha McSally from October 26 and November 4).

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9 **V. RECOMMENDATIONS**

- 10 1. Open a MUR;
- 11 2. Find reason to believe that the Virgin Islands Republican Party and John Canegata in
12 his official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R.
13 § 104.4(c) by failing to timely report independent expenditures aggregating \$1,000 or
14 more made after the 20th day, but more than 24 hours before, an election;
- 15 3. Approve the attached Factual and Legal Analysis;
- 16 4. Approve the attached proposed Conciliation Agreement; and

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Virgin Islands Republican Party and John Canegata
in his official capacity as treasurer

MUR: _____

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As discussed below, the Commission opens a MUR and finds reason to believe that VIGOP violated 52 U.S.C. § 30104(g)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”) and 11 C.F.R. § 104.4(c) of the Commission regulations by failing to timely report independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before an election.

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- 2 VIGOP was notified of the Referral on October 4, 2019, and did not submit a response.
- 3 Therefore, the Commission finds reason to believe that VIGOP violated 52 U.S.C. §
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