

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

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5 RAD REFERRAL 19L-09  
6 DATE OF REFERRAL: April 29, 2019  
7 DATE OF NOTIFICATION: May 1, 2019  
8 LAST RESPONSE RECEIVED: Dec. 16, 2019  
9 DATE ACTIVATED: May 31, 2019

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11 Earliest SOL: April 7, 2022<sup>1</sup>  
12 Latest SOL: April 7, 2022  
13 ELECTION CYCLE: 2016

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15 **SOURCE:** RAD Referral

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17 **RESPONDENTS:** Rebuilding America Now and Chris Marston in his  
18 official capacity as treasurer

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20 **RELEVANT STATUTE**  
21 **AND REGULATION:** 52 U.S.C. § 30104(b)  
22 11 C.F.R. § 104.3(a)

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24 **INTERNAL REPORTS CHECKED:** RAD Referral Materials  
25 Disclosure Reports

26  
27 **FEDERAL AGENCIES CHECKED:** None

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29 **I. INTRODUCTION**

30 The Commission's Reports Analysis Division ("RAD") referred Rebuilding America  
31 Now and Ryan Call in his official capacity as treasurer (the "Committee") to the Office of  
32 General Counsel for reporting an increase in financial activity of \$1,000,000 on its 2016 30-Day  
33 Post-General Report.<sup>2</sup> For the reasons discussed below, we recommend that the Commission

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<sup>1</sup> Rebuilding America Now signed two tolling agreements extending the statute of limitations by a total of 120 days, from December 8, 2021, to April 7, 2022.

<sup>2</sup> Chris Marston is the current treasurer. *See* Amended Statement of Organization, Rebuilding America Now (June 4, 2019).

1 open a MUR, find reason to believe that the Committee violated 52 U.S.C. § 30104(b), and  
2 authorize pre-probable cause conciliation with the Committee.

## 3 **II. FACTUAL AND LEGAL ANALYSIS**

### 4 **A. Factual Background**

5 The Committee is an independent expenditure-only political committee.<sup>3</sup> On  
6 December 8, 2016, the Committee filed its 2016 30-Day Post-General Report disclosing  
7 \$2,272,681.95 in itemized contributions and \$1,842.99 in unitemized contributions from  
8 individuals.<sup>4</sup> On November 2, 2018, the Committee filed an amended 2016 30-Day Post-  
9 General Report disclosing \$3,272,558.95 in itemized contributions and \$1,965.99 in unitemized  
10 contributions, an increase of \$1,000,000.00 in receipts from the original report.<sup>5</sup> On  
11 February 12, 2019, RAD sent a Request for Additional Information (“RFAI”) to the Committee  
12 regarding the substantial increase in financial activity.<sup>6</sup> In response to the RFAI, the Committee  
13 filed a Miscellaneous Electronic Submission (“FEC Form 99”) stating that a \$1 million  
14 contribution that it received from a donor on October 31, 2016, appeared to be a duplicate of the  
15 \$1 million contribution that it received from the same donor on October 20, 2016, so it did not  
16 disclose the October 31, 2016, contribution on its original 2016 30-Day Post-General Report.<sup>7</sup>  
17 After reconciling its 2016 bank statements, the Committee asserts, it determined that the donor  
18 had in fact made an additional contribution of \$1 million on October 31, 2016, which the

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<sup>3</sup> See Amended Statement of Organization, Rebuilding America Now (June 4, 2019).

<sup>4</sup> Referral at 1.

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

<sup>6</sup> *Id.* at 2. See RFAI to Committee on 2016 30-Day Pre-General Report (Feb. 12, 2019).

<sup>7</sup> Referral at 2, Attachment 2; See also Committee Miscellaneous Electronic Submission (Mar. 19, 2019).

1 Committee included in its 2016 Year-End Report's cash-on-hand balance.<sup>8</sup> The Committee  
2 further states that in September 2018, it conducted a review of its 2016 disclosure reports and  
3 discovered that it had not itemized the \$1 million contribution on October 31, 2016.<sup>9</sup> The  
4 Committee then filed an amended 2016 30-Day Post-General Report to disclose this  
5 contribution.<sup>10</sup>

6 The Committee's brief response to the referral requests pre-probable cause conciliation to  
7 resolve this matter.

## 8 **B. Legal Analysis**

9 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
10 treasurers to file reports of receipts and disbursements in accordance with the provisions of  
11 52 U.S.C. § 30104.<sup>12</sup> These reports must include, *inter alia*, the total amount of receipts and  
12 disbursements, including the appropriate itemizations, where required.<sup>13</sup>

13 The Committee did not comply with the reporting requirements when it failed to disclose  
14 a contribution of \$1 million on its 2016 30-Day Post-General Report. The Committee

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* RAD previously referred the Committee for reporting a cash-on-hand discrepancy of \$994,970 on its 2016 Year-End Report. *See* RR 18L-23. With the filing of the amended 2016 30-Day Post-General Report disclosing the \$1 million contribution received on October 31, 2016, the instant referral reframes the Committee's disclosure violation as increased activity. RAD rescinded RR 18L-23 on August 12, 2020.

<sup>12</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>13</sup> *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

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1 acknowledges in its FEC Form 99 that not all contributions were reported. Accordingly, we  
2 recommend that the Commission open a MUR and find reason to believe that the Committee  
3 violated 52 U.S.C. § 30104(b).

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**IV. RECOMMENDATIONS**

1. Open a MUR;
2. Find reason to believe that Rebuilding America Now and Chris Marston in his official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to report contributions on its 2016 30-Day Post-General Report;
3. Approve the attached Factual and Legal Analysis;
4. Enter into conciliation with Rebuilding America Now and Chris Marston in his official capacity as treasurer prior to a finding of probable cause to believe;
5. Approve the attached conciliation agreement; and

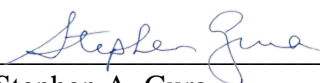
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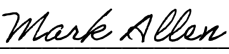
6. Approve the appropriate letter.

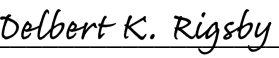
Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel for Enforcement

04.15.21  
Date

  
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Stephen A. Gura  
Deputy Associate General Counsel for Enforcement

  
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Mark Allen  
Assistant General Counsel

  
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Delbert K. Rigsby  
Attorney

Attachments

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENTS: Rebuilding America Now and  
6 Chris Marston in his official capacity  
7 as treasurer

MUR \_\_\_\_\_

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9 **I. INTRODUCTION**

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11 The matter was generated based on information ascertained by the Federal Election  
12 Commission (“Commission”) in the normal course of carrying out its supervisory  
13 responsibilities.<sup>1</sup> The Commission’s Reports Analysis Division referred Rebuilding America  
14 Now and Ryan Call in his official capacity as treasurer (the “Committee”) to the Office of  
15 General Counsel for reporting an increase in financial activity of \$1,000,000 on its 2016 30-Day  
16 Post-General Report.<sup>2</sup> For the reasons discussed below, the Commission finds that there is  
17 reason to believe that the Committee violated 52 U.S.C. § 30104(b).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Factual Background**

20 The Committee is an independent expenditure-only political committee.<sup>3</sup> On  
21 December 8, 2016, the Committee filed its 2016 30-Day Post-General Report disclosing  
22 \$2,272,681.95 in itemized contributions and \$1,842.99 in unitemized contributions from  
23 individuals.<sup>4</sup> On November 2, 2018, the Committee filed an amended 2016 30-Day Post-  
24 General Report disclosing \$3,272,558.95 in itemized contributions and \$1,965.99 in unitemized

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<sup>1</sup> See 52 U.S.C. § 30109(a)(2).

<sup>2</sup> Chris Marston is the current treasurer. See Amended Statement of Organization, Rebuilding America Now (June 4, 2019).

<sup>3</sup> See Amended Statement of Organization, Rebuilding America Now (June 4, 2019).

<sup>4</sup> Referral at 1.

1 contributions, an increase of \$1,000,000.00 in receipts from the original report.<sup>5</sup> On February  
2 12, 2019, RAD sent a Request for Additional Information (“RFAI”) to the Committee regarding  
3 the substantial increase in financial activity.<sup>6</sup> In response to the RFAI, the Committee filed a  
4 Miscellaneous Electronic Submission (“FEC Form 99”) stating that a \$1 million contribution that  
5 it received from a donor on October 31, 2016, appeared to be a duplicate of the \$1 million  
6 contribution that it received from the same donor on October 20, 2016, so it did not disclose the  
7 October 31, 2016, contribution on its original 2016 30-Day Post-General Report.<sup>7</sup> After  
8 reconciling its 2016 bank statements, the Committee asserts, it determined that the donor had in  
9 fact made an additional contribution of \$1 million on October 31, 2016, which the Committee  
10 included in its 2016 Year-End Report’s cash-on-hand balance.<sup>8</sup> The Committee further states  
11 that in September 2018, it conducted a review of its 2016 disclosure reports and discovered that  
12 it had not itemized the \$1 million contribution on October 31, 2016.<sup>9</sup> The Committee then filed  
13 an amended 2016 30-Day Post-General Report to disclose this contribution.

14 The Committee’s brief response to the referral requests pre-probable cause conciliation to  
15 resolve this matter.<sup>10</sup>

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

<sup>6</sup> *Id.* at 2. *See* RFAI to Committee on 2016 30-Day Pre-General Report (Feb. 12, 2019).

<sup>7</sup> Referral at 2, Attachment 2; *See also* Committee Miscellaneous Electronic Submission (Mar. 19, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Committee Resp. at 1 (May 22, 2019). The Committee also submitted supplemental responses on July 8, 2019 and December 16, 2019, which primarily concern other issues and do not explain the Committee’s failure to report the \$1 million in contributions on its original 2016 30-Day Post-General Report.



1           **B.     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.<sup>11</sup> These reports must include, *inter alia*, the total amount of receipts and  
5     disbursements, including the appropriate itemizations, where required.<sup>12</sup>

6           The Committee did not comply with the reporting requirements when it failed to disclose  
7     a contribution of \$1 million on its 2016 30-Day Post-General Report. The Committee  
8     acknowledges in its FEC Form 99 that not all contributions were reported. Accordingly, the  
9     Commission finds that there is reason to believe that the Committee violated 52 U.S.C.  
10    § 30104(b).

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<sup>11</sup>       52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>12</sup>       *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).