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VIA E-MAIL

Charles Kitcher
Acting Associate General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: AR 19-14: Grassroots Victory PAC and John Skic, Treasurer

Dear Mr. Kitcher:

We write as counsel to Grassroots Victory PAC (“GVP” or the “Committee”) in response to the above-referenced referral.

This matter began because GVP identified errors on reports that it had filed in 2017 and, on its own volition, corrected these reports in 2018. GVP filed its amended reports before the 2018 midterm elections, thereby giving the public a complete understanding of its receipts and disbursements before ballots were cast. GVP took numerous additional steps to improve its recordkeeping and reporting capabilities, including working with an outside compliance firm and sending staff to attend five FEC webinars.

Notwithstanding the affirmative steps taken by GVP, the Audit Division commenced an audit of GVP in October 2019. After eighteen months and thousands of dollars in legal fees, the Audit Division concluded that “GVP was correct in stating that in August 2018, prior to the October 2019 audit notification, it amended its disclosure reports to accurately disclose missing financial activity.”¹ So, in other words, the Audit found that GVP had done what committees are supposed to do when they discover an error: it proactively amended its reports before the election and did so correctly.

And yet, notwithstanding its own finding that GVP’s amended reports matched its bank activity, the Audit Division prepared a Draft Final Audit Report (“DFAR”) that included a finding of “Misstatement of Financial Activity—Increased Activity” based on the difference between the Committee’s *original* reports and its bank records.² GVP pointed out that such a finding contradicted the Materiality Thresholds, which differentiate between “Misstatement of Financial

¹ Federal Elec. Comm’n, *Final Audit Report of the Commission on the Grassroots Victory PAC (January 1, 2017 - December 31, 2018)* at 6.

² *See id.*

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Activity” and “Increased Activity,” and explain that for “Misstatement of Financial Activity,” a committee “can reduce the misstated amount by demonstrating that the audited reports were materially correct or misstated by a lesser amount prior to the audit notification letter.”³ “Increased Activity,” by contrast, does not allow for the same correction but may only be referred by the Audit Division to the Alternative Dispute Resolution Office, and not to the Office of General Counsel.⁴

By a unanimous 5-0 vote (with one abstention), the Commission agreed with GVP and rejected the Audit Division’s finding. The Commission noted that the DFAR had “a negative aspect to it” that did not accurately reflect that the Committee had proactively corrected its reports long before the Audit began.⁵ On the Commission’s instructions, the Audit Report was amended to remove references to “Misstatement of Financial Activity” and to note that the increased activity identified in the audit was proactively corrected by the Committee prior to the audit.⁶ Thus, having had an opportunity to scrutinize the Committee’s actions with regard to the reports at issue here in great detail, the Commission concluded that the Committee had proactively come into compliance prior to Commission review of its activities.

And, *still*, even after GVP self-corrected its reports prior to the election in question *and* even after an eighteen-month audit that identified nothing except what was already in the public record *and* even after a unanimous Commission rejection of its proposed finding, the Audit Division insists on referring this matter for further enforcement. It is not clear what the Audit Division hopes to achieve by continuing to beat this dead horse. GVP has shown itself to be a good actor, self-correcting errors without any prodding by the Commission and undertaking additional steps to ensure compliance. The errors on the initial filings had no impact on the electoral process, with the amendments filed well before the 2018 elections. In fact, in previous cases where a committee proactively amended reports prior to Commission action, the Commission has declined to impose any civil penalty at all.⁷

³ Fed. Elec. Comm’n, Audit Division 2017–2018 Materiality Thresholds at 29.

⁴ *See id.* at 28–31.

⁵ *See* Remarks of Commissioner Ellen Weintraub, Federal Elec. Comm’n, *Open Meeting of March 11, 2021* at 13:50-14:55, <https://www.youtube.com/watch?v=HHL5DhhpAyo&t=437s>; Remarks of Commissioner Trey Trainor, Federal Elec. Comm’n, *Open Meeting of March 11, 2021* at 18:50-19:09, <https://www.youtube.com/watch?v=HHL5DhhpAyo&t=437s>; Federal Elec. Comm’n, *Open Meeting of March 11, 2021* at 28:26–29:23, <https://www.youtube.com/watch?v=HHL5DhhpAyo&t=437s>.

⁶ *See id.*; Federal Elec. Comm’n, *Final Audit Report of the Commission on the Grassroots Victory PAC (January 1, 2017 - December 31, 2018)*.

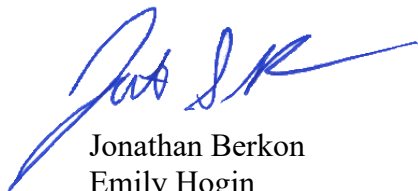
⁷ *See* MUR 5198 (Cantwell) (finding reason to believe Committee violated the Act because original were missing required information but issuing no civil penalty because Committee had promptly amended the reports prior to initiation of the matter); Statement of Reasons of Vice-Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, MUR 6386 at 3–5 (Steve Fincher for Congress) (by a vote of 3-3, declining to

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Having already sunk a substantial amount of Commission resources into this dry hole, the Audit Division now asks the Office of General Counsel to keep drilling. But the Commission has already recognized the Committee's efforts to come into compliance, and further enforcement action from the Office of General Counsel is unwarranted.

Thank you for your attention to this matter.

Sincerely,



Jonathan Berkon
Emily Hogin
Counsel to Grassroots Victory PAC

impose civil penalties where a committee amended its reports after receipt of a complaint and one month after the election).