



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 23, 2021

Via Electronic Mail

jberkon@elias.law

Jonathan Berkon, Esq.
Elias Law Group
10 G Street NE, Suite 600
Washington, DC 20002

RE: MUR 7948 (Grassroots Victory PAC)

Dear Mr. Berkon:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting your client, Grassroots Victory PAC and John Skic, in his official capacity of treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 16, 2021, the Commission notified your client of a referral to the Office of General Counsel alleging violations of the Act. A copy of the referral, numbered AR 19-14, was forwarded to your client at that time. On December 16, 2021, the Commission opened a matter under review and found reason to believe that the Committee violated 52 U.S.C. § 30104(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that your client has 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. *See* 18 U.S.C. § 1519. 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.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.

¹

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).

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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 you as a way 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 your client violated the law.

If your client is interested in engaging in pre-probable cause conciliation, please contact Christopher S. Curran, the attorney assigned to this matter, at (202) 294-3097 or ccurran@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within 30 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter 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 http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Grassroots Victory PAC and John Skic in his official capacity as treasurer **MUR:** 7948

I. INTRODUCTION

This matter arises from an audit of Grassroots Victory PAC's ("GVP's") activity during the 2018 election cycle. Following a Commission Final Audit Report finding that GVP understated its disbursements by \$106,674 on its original disclosure reports filed over the two-year period ending on December 31, 2018, GVP was referred to the Office of General Counsel ("OGC") for possible enforcement action. GVP filed a Response arguing that because it proactively corrected the misstated disbursements prior to the audit, which did not make any additional findings, the Commission should exercise its prosecutorial discretion and dismiss the matter without taking any further action.

For the reasons set forth below, the Commission finds reason to believe that GVP violated 52 U.S.C. § 30104(b) of the Federal Election Campaign Act of 1971, as amended (the "Act").

II. FACTUAL BACKGROUND

GVP is a nonconnected political action committee.¹ GVP initially disclosed combined total disbursements of \$127,214.46 on its Monthly Reports covering January 2017 through March 2018.² On January 30, 2018, GVP filed amended 2017 July, August, September,

¹ Grassroots Victory PAC, Statement of Org. (Feb. 8, 2016), <https://docquery.fec.gov/pdf/556/201602089008442556/201602089008442556.pdf>.

² *Infra* Figure 1.

October, November, and December Monthly Reports disclosing previously unreported disbursements of \$90,161.74.³ On February 26, 2018, the Commission's Reports Analysis Division ("RAD") sent Requests for Additional Information ("RFAs") to GVP referencing the amended September, October, and November Monthly Reports.⁴ On August 17 and 20, 2018, GVP filed a second set of amended reports, overlapping with the six reports from above and including an additional nine, disclosing total disbursements of \$239,957.77, a difference of \$112,743.31 compared to GVP's original reports covering January 2017 through March 2018.⁵ But because GVP's amended February 2018 Monthly Report disclosed a *decrease* in disbursements, the total misstated amount across all reports is \$141,843.29. The August 2018 amended reports included memo text responding to the RFAs:

In order to discover the source of these discrepancies, [GVP] hired a compliance firm to review all of its past reports and financial activities. This review has uncovered additional undisclosed disbursements, as well as some previously reported contributions and disbursements that require amendment.⁶

The below chart shows GVP's original reported disbursements and subsequent amendments:

³ *Id.*

⁴ *E.g.*, Grassroots Victory PAC, RFAI (Feb. 26, 2018), <https://docquery.fec.gov/pdf/177/201802270300000177/201802270300000177.pdf> (2017 September Monthly).

⁵ *Infra* Figure 1. Note that Figure 1 only shows the specific GVP Monthly Reports that initially misstated disbursements (totaling \$239,957.77) whereas GVP amended additional reports that did not present a misstatement from the original.

⁶ *E.g.*, Grassroots Victory PAC, Amended 2017 September Monthly Report Grassroots Victory PAC (Aug. 17, 2018), <https://docquery.fec.gov/pdf/575/201808179119956575/201808179119956575.pdf>.

Figure 1. GRASSROOTS VICTORY PAC – Amended Disbursements

Monthly Report	Original	Amended January 2018	Amended August 2018	Difference from Original
Feb-2017	\$588.55		\$653.31	\$64.76
Mar-2017	\$235.20		\$261.70	\$26.50
Apr-2017	\$111.46		\$171.41	\$59.95
May-2017	\$9,221.50		\$9,990.71	\$769.21
Jun-2017	\$0		\$246.26	\$246.26
Jul-2017	\$0	\$138.88	\$340.48	\$340.48
Aug-2017	\$0	\$374.16	\$1,140.24	\$1,140.24
Sep-2017	\$0	\$44,358.24	\$46,376.15	\$46,376.15
Oct-2017	\$0	\$31,272.78	\$26,512.23	\$26,512.23
Nov-2017	\$0	\$10,176.69	\$16,323.23	\$16,323.23
Dec-2017	\$0	\$3,840.99	\$7,403.24	\$7,403.24
YE 2017	\$79,798.51		\$82,518.87	\$2,720.36
Feb-2018	\$35,000.00		\$20,450.01	\$14,549.99
Mar-2018	\$2,259.24		\$27,283.27	\$25,024.03
Apr-2018	\$0		\$286.66	\$286.66
TOTAL	\$127,214.46	\$90,161.74	\$239,957.77	\$141,843.29

The single finding in the Final Audit Report (“FAR”) related to GVP’s original reported disbursements, which GVP corrected prior to the audit—discussed above.⁷ The total amount of GVP’s undisclosed disbursements in the FAR (\$106,674) is less than the final reported amended amount listed above (\$141,843.29), which is attributable to the Commission calculating the amount of the misstatement in absolute terms regardless of whether it was an under or overstatement of the correct amount.⁸

In response to OGC’s notification, GVP argues that enforcement is unwarranted.⁹ GVP acknowledges its original reporting errors, but argues that the Commission already concluded

⁷ Final Audit Report of Grassroots Victory PAC at 3 (Apr. 28, 2021).

⁸ The difference between \$112,743.31 (the final amended amount if the decreased activity reported on GVP’s amended 2018 February Monthly Report is treated as a negative) and \$106,674 (Final Audit Report) is \$6,069.31. This difference reflects GVP overreporting its 2017 disbursements by \$953.84 and its 2018 disbursements by \$5,115.48. Neither amount is included in the Final Audit Report.

⁹ Grassroots Victory PAC Resp. at 3 (July 16, 2021).

1 that GVP proactively came into compliance prior to the audit, and that the Commission should
2 take no enforcement action and assess no civil penalty as a result.¹⁰ GVP also asserts that in
3 previous cases where a committee proactively amended reports prior to Commission action, the
4 Commission declined to impose any civil penalty.¹¹

5 **III. LEGAL ANALYSIS**

6 The Act requires committee treasurers to file reports of disbursements in accordance with
7 the provisions of 52 U.S.C. § 30104(b)(4).¹² These reports must be timely and must include,
8 *inter alia*, the total amount of disbursements, including the appropriate itemizations, where
9 required.¹³ Here, as shown by its amendments filed on January 30, 2018, and August 17, 2018,
10 GVP did not comply with the Act's reporting requirements when it misstated its disbursements
11 in its original reports covering January 2017 through March 2018. As shown in Figure 1 above,
12 the total amount of GVP's misstated disbursements is \$141,843.29.

13 Nonetheless, GVP argues that the Commission should dismiss because it proactively
14 corrected the misstatements prior to the audit, which found no other problems with its 2018
15 election cycle reporting. However, the Commission proceeds in this matter in accordance with
16 its established thresholds and procedures for handling findings that are the subject of a final audit
17 report.

18 GVP points to two enforcement matters where the Commission did not seek a civil
19 penalty from a committee when it proactively amended reports prior to Commission action, and

¹⁰ *Id.* at 1, 2.

¹¹ *See id.* at 2 (citing MURs 5198 (Cantwell) and 6386 (Steve Fincher for Congress)).

¹² 52 U.S.C. § 30104(a)(1); *see also* 11 C.F.R. § 104.1(a).

¹³ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

1 argues that the same result should apply here.¹⁴ Both matters, MUR 5198 (Cantwell) and MUR
2 6386 (Steve Fincher for Congress), were complaint-generated and involved candidate bank loans
3 that were not properly disclosed.¹⁵ However, more recently, the Commission has pursued
4 matters involving misstated disbursements where a committee proactively corrected the
5 mistakes.¹⁶

6 Under these circumstances, the Commission finds reason to believe that GVP violated
7 52 U.S.C. § 30104(b).

¹⁴ See Resp. at 2.

¹⁵ See First Gen. Counsel's Rpt. at 12-15, MUR 5198 (Cantwell); First Gen. Counsel's Rpt. at 4-6, MUR 6386 (Steve Fincher for Congress).

¹⁶ See, e.g., MUR 7916 (Rebuilding America Now); MUR 7895 (Democratic Services Corp./Democratic National Committee); MUR 7603 (Wyoming Republican Party); MUR 7599 (Nevada State Democratic Party); MUR 7598 (South Carolina Democratic Party); MUR 7597 (Texas Democratic Party).