



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

January 18, 2024

By First Class Mail and EMAIL

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RE: MUR 8196
The Moderate PAC, Inc. and Marysue
Strong in her official capacity as
treasurer

Dear Mr. Sullivan:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your client, The Moderate PAC, Inc. and Marysue Strong in her official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On January 11, 2024, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30104(b), (g) 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 you 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. *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 you wish 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

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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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 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 you violated the law. Enclosed is a conciliation agreement for your consideration, [REDACTED]

[REDACTED]

[REDACTED]

Please note that you 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. *See* 18 U.S.C. § 1519.

If your client is interested in engaging in pre-probable cause conciliation, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or (800) 424-9530 or cjacksonjones@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 sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is 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.

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, reading "Sean J. Cooksey". The signature is written in a cursive, flowing style.

Sean J. Cooksey
Chairman

Enclosures
Factual and Legal Analysis



1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** The Moderate PAC, Inc. and Marysue Strong **MUR: 8196**
4 in her official capacity as treasurer

5 **I. INTRODUCTION**

6 The Reports Analysis Division (“RAD”) referred The Moderate PAC, Inc. and Marysue
7 Strong in her official capacity as Treasurer (“the Committee”) for failing to timely file five 24-
8 Hour Reports totaling \$582,652 to support seven independent expenditures disclosed on the 2022
9 30-Day Post-General Report, in accordance with the *2021-2022 RAD Review and Referral*
10 *Procedures (Standard 7)*.¹ In addition, the Referral alleges that the Committee failed to disclose
11 all of its financial activity on its 2022 12-Day Pre-General Report, which was discovered when
12 the Committee filed an Amended 2022 12-Day Pre-General Report, disclosing \$63,340 in
13 disbursements that had not been listed on the original report.²

14 The Committee admits that it failed to make the timely disclosures, but asserts that its
15 treasurer was inexperienced and was serving for the first time in the capacity as treasurer for a
16 federal political committee.³ It asserts that the treasurer made best efforts to educate herself as to
17 the Act’s reporting requirements and had a “good faith” belief that she had filed timely and
18 accurate disclosure reports, and requests that the Commission consider these mitigating factors
19 when assessing liability and imposing a civil penalty.

¹ Referral at 1 (May 8, 2023).

² *Id.* at 2-3.

³ Resp. at 3-6 (June 1, 2023).

Because the Committee does not dispute that it failed to timely file the necessary 24-Hour Reports, the Commission finds reason to believe that The Moderate PAC, Inc. and Marysue Strong in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), (g).

II. FACTUAL BACKGROUND

The Moderate PAC, Inc. is an independent expenditure-only committee that initially registered with the Commission on September 28, 2021, under the name Fiscal Moderates Coalition PAC, and later changed its name to The Moderate PAC, Inc. on December 7, 2021.⁴ The Committee's treasurer during all times relevant to the Referral was Marysue Strong.

A. 24-Hour Reports for Independent Expenditures disclosed on the Committee's 2022 30-Day Post-General Report

On November 21, 2022 the Committee filed a late 24-Hour Report disclosing four independent expenditures, which had been made between October 24 and November 1, 2022.⁵ On December 7, 2022, the Committee filed another late 24-Hour Report to support three independent expenditures, which had been made between October 28, 2022 and November 2, 2022.⁶ Collectively, these 24-Hour Reports disclosed seven independent expenditures totaling \$582,652.⁷ On December 8, 2022, the Committee filed its 2022 30-Day Post-General Report, covering the period October 20, 2022 through November 28, 2022.⁸ That report disclosed the

⁴ See The Moderate PAC, Inc., Fifth Amended Statement of Organization (Aug. 22, 2022), <https://docquery.fec.gov/pdf/919/202208229528156919/202208229528156919.pdf>; The Moderate PAC Inc., Third Amended Statement of Organization (Dec. 7, 2021), <https://docquery.fec.gov/pdf/324/202112079469812324/202112079469812324.pdf>; Fiscal Moderates Coalition PAC, Statement of Organization (Sep. 28, 2021), <https://docquery.fec.gov/pdf/206/202109289467145206/202109289467145206.pdf>

⁵ The Moderate PAC, Inc., 2022 24-Hour Report (Nov. 21, 2022), <https://docquery.fec.gov/pdf/185/202211219546833185/202211219546833185.pdf>.

⁶ The Moderate PAC, Inc., 2022 24-Hour Report (Dec. 7, 2022), <https://docquery.fec.gov/pdf/769/202212079547246769/202212079547246769.pdf>.

⁷ See Referral at 1.

⁸ The Moderate PAC, Inc., 2022 30-Day Post-General Report (Dec. 8, 2022), <https://docquery.fec.gov/pdf/311/202212089547988311/202212089547988311.pdf>.

same seven independent expenditures totaling \$582,652, all of which were made within 20 days of the November 8, 2022 general election.⁹ As explained above and summarized in Chart A below, the Committee eventually filed 24-Hour Reports for these independent expenditures, but all were filed late and several weeks after the general election.¹⁰

Chart A: Itemized Independent Expenditures Without a Timely 24-Hour Report

Name of Payee	Dissemination Date	Amount	Candidate	Election	24-Hour Report Received (Late)
Blue Reel Creative	10/24/22	\$57,000	Jared Golden	General 2022	11/21/22 (due 10/25/22)
ALG Polling, Inc. d/b/a Impact Research	10/25/22	\$31,200	Jared Golden	General 2022	11/21/22 (due 10/25/22)
Waterfront Strategies	10/25/22	\$155,040	Jared Golden	General 2022	11/21/22 (due 10/25/22)
Blue Reel Creative	10/28/22	\$5,000	Donald “Don” Davis	General 2022	12/7/22 (due 10/29/22)
Waterfront Strategies	10/28/22	\$10,640	Donald “Don” Davis	General 2022	12/7/22 (due 10/29/22)
Waterfront Strategies	11/1/22	\$223,772	Jared Golden	General 2022	11/21/22 (due 11/2/22)
Waterfront Strategies	11/2/22	\$100,000	Jared Golden	General 2022	12/7/22 (due 11/3/22)

On January 19, 2023, a Request for Additional Information (“RFAI”) was sent to the Committee referencing the 2022 30-Day Post-General Report and noting that the Committee may have failed to timely file one or more of the required 24-Hour Reports for these seven independent expenditures.¹¹ On January 31, 2023, the Committee filed an FEC Form 99

⁹ Referral at 1-2, Attach. 1.

¹⁰ See Chart A, *infra*.

¹¹ The Moderate PAC, Inc., 2022 30 Day Post-General RFAI at 2-3 (Jan. 19, 2023), <https://docquery.fec.gov/pdf/915/202301190300167915/202301190300167915.pdf>.

(Miscellaneous Electronic Submission) (“Form 99”) in response to the RFAI.¹² In its submission, the Committee states:

This message is in response to the RAD letter dated 1/19/2023 from Mr. Wetzel. It appears that when I filed all of our 24 and 48-hour reports in the FEC file system, which we did timely and diligently within the 24- and 48-hour requirement, some of the files were not UPLOADED. If you have access to the FEC file system, you can clearly see when we filed all the 24 hour and 48-hour reports online. Perhaps we could plan to have a Zoom call and I could share my screen to show the dates that they were entered and documented? This was simply an administrative (Did not fully UPLOAD each one) as planned – We are very sorry for this oversight and now understand the steps: CLOSE, VALIDATE and most importantly UPLOAD.¹³

In Response to the Referral, the Committee argues that the treasurer made “best efforts” to comply with the Act’s reporting requirements.¹⁴ In support of its “best efforts” claims, the Committee submits an affidavit from its treasurer, Marysue Strong, wherein she affirms that she was the individual who was responsible for filing the Committee’s reports and contends that she filed all quarterly and 48-hour reports during the 2022 election cycle in a timely manner.¹⁵

In the affidavit, Strong states that she had questions as to the Committee’s 24-hour reporting obligations, particularly whether the Committee was required to disclose certain 24-hour transactions on both the 24-Hour Reports and the Post-Election Report.¹⁶ Strong also claims she placed a call to the FEC Help Line and was informed that the transactions were not required to be disclosed on both the 24-Hour Report and the Post-Election report, which Strong states she thought meant that the Committee had the option to either disclose the transactions on the 24-hour

¹² FEC Form 99 (Jan. 31, 2023), <https://docquery.fec.gov/pdf/129/202301319575480129/202301319575480129.pdf>.

¹³ *Id.*

¹⁴ Resp. at 3.

¹⁵ Resp. at 2; Marysue Strong Aff.” at 2, ¶ 5 (May 30, 2023).

¹⁶ Resp. at 2; Strong Aff. at 2, ¶ 5.

Report and the Post-Election Report.¹⁷ Notwithstanding this misperception, Strong states that she attempted to file each of the seven 24-hour required transactions into the Software system, but the entries apparently did not upload,¹⁸ and claims that she did not become aware of the failure to upload until she received the January 19, 2023 RFAI letter from RAD.¹⁹ Strong's affidavit also notes that the Committee filed a Form 99 on January 31, 2023 in an effort to explain the circumstances surrounding the missed filings.²⁰

The Committee contends that these factors should allow the Committee to avail itself of the "best efforts" defense, or at least should mitigate the violation. First, the Committee notes that Strong was serving for the first time in the capacity as treasurer for a federal political committee, and notes that she took several on-line classes on FEC compliance requirements and how to use the compliance software, and she consistently sought advice from the FEC Help Line as compliance issues arose.²¹ Second, the Committee contends that Strong's efforts to seek advice on whether to disclose the 24-hour report transactions in both the 24-Hour Reports and the 30-Day Post-Election Report, and her attempt to file the 24-Hour reports she believed were unnecessary, constituted best efforts.²² Third, the Committee argues that each of the seven transactions at issue were entered into the compliance software within the 24-hour time period, as

¹⁷ Resp. at 2; Strong Aff. at 2, ¶¶ 5-6. The Committee's response indicates that the treasurer attended FEC Compliance classes, and these filing requirements are covered in those sessions, according to RAD.

¹⁸ *Id.* at 3-5, Ex. D; Strong Aff. at 2, ¶9. The treasurer's affidavit says, "I filed each of the 24-hour reports on those five separate dates, it was my belief that the seven transactions at issue had been properly entered and uploaded into the Software. I did not receive a notification from the Software system that indicated the information had not been satisfactorily up-loaded. The Transaction Report indicates the seven transactions at issue were entered into the Software system, but it did not indicate that the transactions failed to properly up-load." Strong Aff. ¶ 10.

¹⁹ Resp. at 2; Strong Aff. ¶¶ 7-10. All of the late 24-Hour Reports were filed *prior to* the January 19, 2023 RFAI date referenced by the Committee as the first time they became aware that they were not timely uploaded.

²⁰ Resp. at 3; Strong Aff. at 3, ¶ 16.

²¹ Resp. at 3.

²² Resp. at 3; Strong Aff. at 6-7.

1 reflected in the FEC Transaction Report attached as Exhibit D to the Response, but the
 2 transactions did not upload to the system, and Strong had a good faith belief that she had filed the
 3 reports, which lasted until she was notified by RAD that the 24-Hour Reports had not been filed.²³
 4 Fourth, the Committee asserts there was no malfeasance or an intent to conceal the source of its
 5 funds, the amounts it was expending, the vendors who were being paid and the candidates who
 6 were being supported in disbursement, as the disbursements during the 24-hour report period
 7 were substantially similar to those reported in the timely filed 48-hour reports.²⁴ Thus, the
 8 Committee argues its “best efforts” to comply with the reporting requirements for 24-hour
 9 expenditures should mitigate its violations of the Act.

10 **B. Increased Financial Activity on the Committee’s 2022 12-Day Pre-General**
 11 **Report**
 12

13 The Referral also alleges the Committee failed to disclose all financial activity on its 2022
 14 12-Day Pre-General Report filed October 20, 2022.²⁵ On October 20, 2022, the Committee filed
 15 its original 2022 12-Day Pre-General Report covering the period from October 1, 2022, through
 16 October 19, 2022.²⁶ The Committee initially disclosed zero dollars in disbursements on Line
 17 21(b) (Other Federal Operating Expenditures) and zero dollars on Line 29 (Other Disbursements)
 18 of the Detailed Summary Page.²⁷ On October 31, 2022, the Committee filed an Amended 2022
 19 12-Day Pre-General Report, disclosing an increase of \$49,677.50 in disbursements from the

²³ *Id.* at 3-5, Ex. D; Strong Aff. at 9.

²⁴ *Id.* at 5.

²⁵ Referral at 2-3; 2022 October Quarterly Report.

²⁶ 2022 12-Day Pre-General Report (Oct. 20, 2022), <https://docquery.fec.gov/pdf/608/202210209537666608/202210209537666608.pdf>.

²⁷ *Id.*

original report.²⁸ On November 1, 2022, the Committee filed a Second Amended 2022 12-Day Pre-General Report, which disclosed additional disbursements, for a total of \$63,340, that had not been disclosed on the original report.²⁹ These disclosures are reflected in Chart B below.

Chart B: Disbursements on the 2022 12-Day Pre-General Report

Report Line	2022 12-Day Pre-General Report	Date Reported	Amended 2022 12-Day Pre-General Report	Date Reported	Second Amended 2022 12-Day Pre-General Report	Date Reported	Increase in Reported Disbursements
Line 21(b): "Other Federal Operating Expenses"	\$0	10/20/22	\$40,677.50	10/31/22	\$54,340	11/1/22	\$54,340
Line 29: "Other Disbursements"	\$0	10/20/22	\$9,000	10/31/22	\$9,000	11/1/22	\$9,000
						TOTAL	\$63,340

On December 7, 2022, an RFAI was sent to the Committee regarding the Amended 2022 12-Day Pre-General Report, filed on November 1, 2022.³⁰ The RFAI requested clarification regarding the substantial increase in disbursements disclosed on the Amended 2022 12-Day Pre-General Report.³¹ On December 22, 2022, the Committee filed a Form 99 in response to the RFAI.³² In its submission, the Committee states:

²⁸ The Amended 2022 12-Day Pre-General Report disclosed \$40,677.50 on Line 21(b) and \$9,000.00 on Line 29 of the Detailed Summary Page. Amended 2022 12-Day Pre-General Report (Oct. 31, 2022), <https://docquery.fec.gov/pdf/567/202210319546676567/202210319546676567.pdf>

²⁹ The Second Amended 2022 12-Day Pre-General Report disclosed \$54,340.00 on Line 21(b) and \$9,000.00 on Line 29 of the Detailed Summary Page. Second Amended 2022 12-Day Pre-General Report (Nov. 1, 2022), <https://docquery.fec.gov/pdf/839/202211019546694839/202211019546694839.pdf>.

³⁰ RFAI for Amended 2022 12-Day Pre-General Report (Dec. 7, 2022), <https://docquery.fec.gov/pdf/944/202212070300162944/202212070300162944.pdf>.

³¹ *Id.*

³² FEC Form 99 (Dec. 22, 2022), <https://docquery.fec.gov/pdf/845/202212229574205845/202212229574205845.pdf>.

1 I'm responding to your RFAI dated 12/7/22. Re: # 1 - I had been advised (during a
2 prior call, with a different analyst), that we should be reporting all expenses (even
3 Operating), in the 24/48-hour reports. We later found out that this was not the case.
4 I had to then modify a 24/48-hour report which had both independent expenses AND
5 operating expenses, hence the amended pre-general report. This has now been
6 corrected.³³

7
8 Although the Form 99 does not state when the Committee's treasurer spoke with RAD,
9 between October 12, 2022 until April 26, 2023, RAD logged multiple communications with
10 Strong.³⁴ On two of these occasions, RAD notified the Committee's treasurer that these matters
11 could be referred to another Commission office for further review and advised the Committee to
12 file an FEC Form 99 with any clarifying information for the public record.³⁵ The Referral states
13 that, to date, no further communications have been received from the Committee regarding these
14 matters.³⁶

15 In its Response, the Committee does not specifically address the allegations concerning
16 the increased activity disclosed in either of its amended 2022 12-Day Pre-General Reports.
17 However, the Committee's response to these allegations can be inferred from its December 22,
18 2022, Form 99 response to the December 7, 2022 RFAI and the Committee's general assertion in
19 its Response that it was confused as to the reporting obligations for 24 and 48-Hour Reports and
20 that its treasurer made "best efforts" to comply with the Act. In the Committee's December 22,
21 2022, Form 99 submission, the treasurer states she was under the impression, based on her
22 conversations with the RAD analysts, that she did not need to list "Other Federal Operating
23 Expenses" and "Other Expenses" in addition to "Independent Expenses" for which 24 and 48-

³³ *Id.*

³⁴ Referral at 2-3.

³⁵ *Id.* at 3.

³⁶ *Id.*

Hour Reports were required on its 2022 12-Day Pre-General Report, but does not provide specific details concerning the dates or the substance of those communications.³⁷ Although the increased activity RFAI was triggered by the Committee's October 31 and November 1 attempts to rectify the oversight by amending its filings, Committee does not describe the facts surrounding how and why it decided to file the amendments to the report in either its Form 99 or its Response.

III. LEGAL ANALYSIS

Political committees registered with the Commission must file periodic reports disclosing their receipts and disbursements.³⁸ An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate, and is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents.³⁹ In addition to a political committee's regular reporting obligations, the Act further requires additional independent expenditure reporting within 24 hours of the expenditure when a person makes or contracts to make independent expenditures aggregating \$10,000 or more after the 20th day but more than 24 hours before the date of an election.⁴⁰ In 2022, the 20-day period for the general election began on October 20, 2022 and ended on November 6, 2022.⁴¹

The Committee does not dispute that it failed to timely file the necessary 24-Hour Reports for seven independent expenditures totaling \$582,652 that were made October 24, 2022 through

³⁷ Resp. at 3.

³⁸ 52 U.S.C. § 30104(a).

³⁹ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. §§ 100.22(a), (b).

⁴⁰ *See* 52 U.S.C. § 30104(g); 11 C.F.R. § 109.10(d).

⁴¹ *See 24- and 48-Hour Reports of Independent Expenditures Periods: Main Page (2022)*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/2022-reporting-dates/24-and-48-hour-reports-independent-expenditures-periods-main-page-2022/> (last visited Oct. 19, 2023).

1 November 2, 2022, and reflected on its 2022 30-Day Post-General Report, all of which were
2 eventually filed late. The Committee also does not dispute that it failed to timely report
3 disbursements totaling \$63,340 for independent expenditures on its 2022 12-Day Pre-General
4 Report filed October 20, 2022.

5 Instead, the Committee asserts the failure to file the timely 24-Hour Report for
6 independent expenditures reported on the 2022 30-Day Post-General Report was inadvertent and
7 asserts a “best efforts” defense contending that the lack of negligence or malfeasance justifies a
8 mitigated penalty.⁴² The Committee’s treasurer states that she attempted to timely file the
9 appropriate notices using the filing software, but the filings did not upload to the FEC compliance
10 system properly.⁴³ The treasurer further states that she was unaware that the filings had not
11 uploaded, and notably did not file the 24-Hour Reports until a month after they were due, which
12 was after the general election.⁴⁴ She also claims that she was confused as to the reporting
13 requirements for disbursements that required 24-Hour Reports, specifically, whether those
14 disbursements needed to be disclosed on subsequent post-election or year-end reports.⁴⁵ She claims
15 to have become aware that the Committee failed to make these disclosures on its 2022 12-Day
16 Pre-General Report only after the Committee received the January 19, 2023 RFAI.⁴⁶

17 Under the Act’s best efforts provision, when a treasurer of a political committee shows
18 that best efforts have been used to obtain, maintain, and submit the information required by the

⁴² Resp. at 3.

⁴³ *Id.*

⁴⁴ *Id.* at 4.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.*

1 Act, any report submitted by the committee will be considered to be in compliance with the Act.⁴⁷
 2 The Commission has explained that the best efforts provision is an affirmative defense that the
 3 respondent must establish — the burden rests with the political committee and its treasurer to
 4 present evidence sufficient to demonstrate that best efforts were exercised to obtain, maintain, and
 5 submit the required information.⁴⁸

6 The Best Efforts Policy Statement provides that the Commission will generally conclude
 7 that a committee has not met the best efforts standards if its reporting failures result from, among
 8 other things, the inexperience, negligence or error of committee staff, and failure on the part of
 9 the Committee to know the recordkeeping and filing requirements of the Act.⁴⁹ In determining
 10 whether a committee has shown best efforts, the Commission considers the affirmative steps
 11 taken to keep adequate records and make accurate reports, as well as the reasons for the
 12 committee's failure to obtain, maintain, or submit the proper information.⁵⁰ As explained below,
 13 the Committee has not provided a sufficient justification to support its claim that it used best
 14 efforts to submit timely and accurate reports.

⁴⁷ 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7(a).

⁴⁸ *See, e.g.*, Factual and Legal Analysis ("F&LA") at 5, MUR 7043 (Put Alaska First); *see also* Policy Statement Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) ("Best Efforts Policy").

⁴⁹ Best Efforts Policy, 72 Fed. Reg. at 31,440; *see also* F&LA at 7-8, MUR 6725 (Ron Paul 2012 Presidential Campaign Committee, Inc.) (finding that a committee who was under a misimpression that certain contributions were not reportable had not met the standard under the Best Efforts Policy). Analogously, under the Administrative Fines program, the Commission has explicitly stated, for a challenge to a reporting violation to be considered on the basis of best efforts, a committee must have filed the required report no later than 24 hours after the end of the "reasonably unforeseen circumstance" that caused it to miss the filing deadline. 11 C.F.R. § 111.35(b). Under the Administrative Fines program (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly, are not considered reasonably unforeseeable. *See id.* at § 111.35(d); *see also, e.g.* AF 3619 (rejecting a challenge where a Committee appropriately prepared but unsuccessfully uploaded a filing).

⁵⁰ Best Efforts Policy, 72 Fed. Reg. at 31,440.

1 In the first instance, the treasurer states that she thought the 24-Hour Reports had been
2 entered but did not upload, and she was unaware of the software failure because the software did
3 not generate an email alerting her to the filing being incomplete, causing her to file the notices
4 several weeks late and after the general election.⁵¹ This explanation does not establish that “best
5 efforts” were taken either before or after the reports were not filed, because it does not address
6 whether the Committee took any steps prior to the reporting failure to prevent such a failure, such
7 as by identifying procedures to avoid reporting errors nor does it address the lengthy delay
8 between the filing lapse and its discovery.⁵² Moreover, the Committee does not explain how this
9 error occurred with these seven reports, which were due on different dates, nor how it went
10 unnoticed for so long, when the treasurer had previously filed other 48-Hour and Quarterly
11 Reports without incident.⁵³ Ultimately, it is up to the treasurer to verify that she has used the
12 software properly and to correct any filing errors promptly.

13 In the second instance, the Committee provides no direct explanation as to why it failed to
14 timely report certain operating expenses and disbursements on its 2022 12-Day Pre-General
15 Report, except to say its treasurer was inexperienced and confused as to the reporting
16 requirements.

17 The Committee’s Form 99 that it submitted in response to RAD’s inquiry appears to
18 contend that it had been operating under a mistaken belief that 24 and 48-Hour Reports were

⁵¹ Resp. at 3.

⁵² See F&LA at 6-7 (Ron Paul 2012 Presidential Campaign Committee, Inc.); F&LA at 5-6 (Republican National Committee).

⁵³ FEC File does not provide notifications when reports are not uploaded. Confirmation notices are sent after a report is successfully uploaded. Since the Committee had previously successfully uploaded 48-Hour Reports, the absence of a confirmation notice should have alerted the Committee that the report was not properly uploaded.

1 required for operating expenses.⁵⁴ This, coupled with another mistaken belief that Committees
2 could elect to either use 24 and 48-Hour reports or a post-general report to disclose independent
3 expenditures, may have led it to initially underreport activity on its 12-Day Pre-General Report.⁵⁵
4 According to the Referral, between October 12, 2022 and April 26, 2023, the Committee spoke
5 with multiple RAD analysts who advised the treasurer on how to file 24 and 48-Hour Reports and
6 other disclosures, including when such reports would be required, the filing deadlines for various
7 reports, how to create and upload the reports, how to check the FEC system to verify that reports
8 had been properly filed, and even suggested that the Committee consult with a compliance firm if
9 it required additional assistance.⁵⁶ In particular, in instances where Strong personally advanced a
10 belief that she did not need to disclose receipts and disbursements, she was corrected by the
11 analysts and instructed that the 12-Day Pre-General Report would need to disclose independent
12 expenditure activity as well as receipts and disbursements.⁵⁷

13 The Best-Efforts Policy generally excludes inexperience, negligence, or error of
14 committee staff or agents as a valid defense.⁵⁸ The Committee contends that its treasurer
15 completed the appropriate compliance training, but now claims that the Committee's violations
16 occurred because of misunderstandings of basic reporting requirements for disbursements made
17 within 20 days of the general election. Ultimately, the treasurer's efforts to familiarize herself
18 with reporting requirements appear to have been insufficient to ensure that the Committee's

⁵⁴ See *supra* at 8-9.

⁵⁵ See Resp. at 2-3.

⁵⁶ See *Campaign Guide for Nonconnected Committees*, <https://www.fec.gov/resources/cms-content/documents/policy-guidance/nongui.pdf> and *Getting Started Manual*, https://www.fec.gov/resources/cms-content/documents/GettingStarted_FECFileManual_pac-party.pdf.

⁵⁷ Referral at 3.

⁵⁸ *Id.*; see F&LA at 5, MUR 7043 (Put Alaska First).

disclosures complied with the Act. Accordingly, the fact that its treasurer was inexperienced or confused by the Act's requirements is insufficient to meet the "best efforts" standard to mitigate these reporting violations.⁵⁹

Because the Committee does not dispute that it failed to timely file the necessary 24-Hour Reports and further investigation is not necessary to establish either violation or its size, consistent with findings in prior MURs involving similar violations, the Commission finds reason to believe that The Moderate PAC, Inc. and Marysue Strong in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), (g).⁶⁰

⁵⁹ See F&LA at MURs 7546, 7547, and 7548 (Virgin Islands Republican Party) (rejecting a best-efforts defense where a committee failed to demonstrate that it had "trained staff that took appropriate precautions in recordkeeping, obtaining, maintaining, and submitting information to the Commission, as well as taking all reasonable steps to expeditiously correct any disclosure errors.").

⁶⁰ See, e.g., F&LA at 4, MUR 7436 (Warrior PAC) (finding reason to believe that the committee violated section 30104(g) by failing to file 48-Hour Reports of Independent Expenditures); F&LA at 5, MUR 7337 (Conservative Leadership for Ariz.) (same); F&LA at 9, MUR 7276 (Right to Rise USA) (same); F&LA at 3, MUR 6219 (Kuhl for Congress) (same); Factual & Legal Analysis at 8, MUR 5783 (Green Party of Luzerne Cty.) (same).

