

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

RR 23L-34R

DATE REFERRED: Nov. 13, 2023

DATE OF NOTIFICATION: Nov. 16, 2023

LAST RESPONSE RECEIVED: Dec. 12, 2023

DATE ACTIVATED: Jan. 30, 2024


 STATUTE OF LIMITATIONS: Nov. 7, 2027

ELECTION CYCLE: 2022

SOURCE: Internally Generated**RESPONDENT:** CatholicVote.org**RELEVANT STATUTE**

AND REGULATION: 52 U.S.C. § 30104(g)(1)
11 C.F.R. § 109.10(d)

INTERNAL REPORTS CHECKED: Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Reports Analysis Division (“RAD”) referred CatholicVote.org, a membership organization, to the Office of General Counsel (“OGC”) for allegedly failing to timely file a 24-Hour Report regarding three independent expenditures totaling \$300,000 disseminated two days prior to the 2022 general election.¹ CatholicVote.org filed a 24-Hour Report the day after the expenditures were disseminated, but it appears blank on the Commission’s website other than listing CatholicVote.org as the filer. CatholicVote.org maintains that the version of the report it submitted did contain the total independent expenditures as well as the itemized independent expenditures. The Response states that the blank filing (the “Blank 24-Hour Report”) was the

¹ RAD initially referred CatholicVote.org to the Alternative Dispute Resolution Office (“ADRO”). Referral at 1 (July 5, 2023). On August 8, 2023, CatholicVote.org agreed to participate in the Alternative Dispute Resolution (“ADR”) process, but, on November 10, 2023, it withdrew as the result of an impasse. Transfer Memo at 1 and Attach. 1 (CatholicVote.org, Commitment to Participate in ADR # 1124 (Aug. 8, 2023)). Accordingly, RAD transferred the matter to OGC for further action. Transfer Memo at 1.

1 result of an unknown technological error and that CatholicVote.org saved a “print preview” of
 2 the filing before submission that appeared complete and accurate; the Response provides
 3 documentation in support, including CatholicVote.org’s FECFile data file, copies of the “print
 4 preview” of the report it states it filed with the Commission, and screenshots of what the
 5 Response states is the metadata associated with that print preview file. However, information in
 6 CatholicVote.org’s FECFile data file and records of the Web Check validation program
 7 maintained by the Commission indicate that the report the Committee filed with the Commission
 8 was blank and, further, that CatholicVote.org received a confirmation email at the validation
 9 stage with a warning that the report contained no itemized transaction data.

10 Accordingly, we recommend the Commission find reason to believe that
 11 CatholicVote.org violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 109.10(d) by failing to
 12 timely file a 24-Hour Report regarding \$300,000 in independent expenditures. We also
 13 recommend that the Commission enter into pre-probable cause conciliation with
 14 CatholicVote.org.

15 II. FACTUAL BACKGROUND

16 CatholicVote.org is a membership organization;² since 2010, it has made over \$2 million
 17 in independent expenditures.³ On November 6, 2022, it made three independent expenditures

² Though CatholicVote.org filed two Statements of Organization in 2012 on which it checked the box indicating that it was a separate segregated fund, it subsequently filed a statement with the Commission in which it stated that the previous filings were in error and that CatholicVote.org had not intended to establish itself as a political committee. CatholicVote.org, Original Statement of Organization at 2 (Apr. 15, 2012), <https://docquery.fec.gov/pdf/882/12951424882/12951424882.pdf> (checking box reading “This committee is a separate segregated fund”); CatholicVote.org, Amended Statement of Organization at 2 (Sept. 4, 2012), <https://docquery.fec.gov/pdf/018/12952868018/12952868018.pdf> (same); CatholicVote.org, Miscellaneous Text (Mar. 13, 2024), <https://docquery.fec.gov/pdf/853/202403139622406853/202403139622406853.pdf> (“The entity associated with ID C90011800 is a Form 5 independent expenditure filer and is not a committee. Any previous Form 1 filing was filed in error and should be ignored.”).

³ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C90011800&is_notice=false&most_recent=true (last visited Mar. 26, 2024) (reflecting all independent expenditures by CatholicVote.org, totaling \$2,083,842.77 between October 12, 2010, and November 28, 2022).

1 aggregating \$300,000 in support of different candidates, payable to Majority Strategies, as
 2 follows:⁴

Date	Amount	Recipient	Candidate Supported
Nov. 6, 2022	\$41,500	Majority Strategies	Adam Laxalt
Nov. 6, 2022	\$93,500	Majority Strategies	Blake Masters
Nov. 6, 2022	\$165,000	Majority Strategies	J.D. Vance

3 CatholicVote.org filed two 24-Hour Reports on November 7, 2022: One reporting four other
 4 independent expenditures which are not at issue in this matter⁵ and the other essentially blank
 5 and listing no independent expenditures.⁶ The Blank 24-Hour Report reflected a date of
 6 October 13, 2010, despite being filed on November 7, 2022.⁷

7 Each of the independent expenditures listed in the table above was reported on
 8 CatholicVote.org's 2022 Year-End Report.⁸ On February 27, 2023, RAD sent CatholicVote.org
 9 a Request for Additional Information regarding, *inter alia*, the \$300,000 in independent
 10 expenditures for which there was no corresponding 24-Hour Report.⁹ CatholicVote.org's
 11 counsel, Joseph Vanderhulst, called the assigned RAD analyst and stated that CatholicVote.org
 12 had filed the requisite 24-Hour Report on November 7, 2022, and received a confirmation receipt

⁴ Referral, Attach 3 at 3 (Nov. 13, 2023) (RAD Referral to ADRO (July 5, 2023) [hereinafter Referral to ADRO]).

⁵ CatholicVote.org, 24-Hour Report of Independent Expenditures (Nov. 7, 2022), <https://docquery.fec.gov/pdf/348/202211079546723348/202211079546723348.pdf> (disclosing four independent expenditures totaling \$12,803.38 to RumbleUp in support of different candidates).

⁶ CatholicVote.org, 24-Hour Report of Independent Expenditures (dated Oct. 13, 2010; filed Nov. 7, 2022) [hereinafter Blank 24-Hour Report], <https://docquery.fec.gov/pdf/558/202211079546727558/202211079546727558.pdf>.

⁷ *Id.*

⁸ CatholicVote.org, 2022 Year-End Report, Sched. 5-E at 4-5 (Jan. 31, 2023), <https://docquery.fec.gov/pdf/624/202301319575452624/202301319575452624.pdf>. The Commission's regulations state that every person other than a political committee that makes independent expenditures aggregating more than \$250 must file a quarterly disclosure report "for any quarterly period during which any such independent expenditures that aggregate in excess of \$250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made." 11 C.F.R. § 109.10(b).

⁹ CatholicVote.org, Request for Additional Information at 1-2 & Attach. at 2 (Feb. 27, 2023), <https://docquery.fec.gov/pdf/784/202302270300174784/202302270300174784.pdf>.

1 email upon submitting that filing.¹⁰ He also stated that the filing appeared accurate in
2 CatholicVote.org's reporting software prior to the filing.¹¹ On April 20, 2023, CatholicVote.org
3 filed a new 24-Hour Report regarding the three November 6, 2022 independent expenditures that
4 stated:

5 This amendment is filed in response to the Request for Additional
6 Information dated 27 Feb. 2023 indicating that a 24-hour report
7 had not been timely filed for the independent expenditures
8 included in this filing. According to the analyst, the original 24-
9 hour report that was [filed] by the organization on 7 Nov. 2022
10 shows up as blank in the FEC's database. All of our records and
11 receipts, however, indicate that the 24-hour report was timely filed
12 with complete information. Our FECfile datafile includes the full
13 details entered into the report and the [verification] did not list any
14 errors and we did not receive any fail errors from FECfile. We
15 created a print preview of the 24-hour report before filing that
16 includes all of the information pertaining to the independent
17 expenditures on this report and is not blank. We have a copy of
18 this print-out that shows the date and time it was created. And we
19 received an email receipt on 7 Nov. 2022 showing proof of filing
20 after we uploaded the report through FECfile. We followed all
21 instructions for filing provided in the FECfile Manual and had no
22 way of knowing that the report shows up as blank in the FEC's
23 database.¹²

24 In response to OGC's notification of the Referral, CatholicVote.org filed a Response
25 reiterating that the Blank 24-Hour Report was the result of an "unknown technological error,"
26 that CatholicVote.org timely submitted the filing with all required information, and that the filing
27 appeared complete and correct in CatholicVote.org's FECFile software at the time it was filed.¹³
28 Vanderhulst signed both the Response and a standalone declaration on its signature page stating,
29 "Under 28 U.S. 1746, I declare under penalty of perjury that the factual statements in the

¹⁰ Referral to ADRO at 2; *id.*, Attach. 2 [REDACTED]

¹¹ *Id.*

¹² CatholicVote.org, 24-Hour Report of Independent Expenditures at 2 (Apr. 20, 2023), <https://docquery.fec.gov/pdf/326/202304209581194326/202304209581194326.pdf>.

¹³ Resp. at 1-2 (Dec. 12, 2023).

foregoing are true and correct.”¹⁴ The individual who signed both the Blank 24-Hour Report and the subsequent filing, Joshua Mercer, did not submit a statement.

Attached to the Response are a PDF file that CatholicVote.org states represents the “print preview” of the 24-Hour Report it generated upon finalizing the filing, and screenshots CatholicVote.org states show the metadata associated with the “print preview.”¹⁵ The “print preview” displays the three independent expenditures that were missing from the Blank 24-Hour Report appearing on the Commission’s website, but the form bears no date on the signature line. The images appearing to reflect that file’s metadata indicate that it was created on November 7, 2022, at 10:06 PM.¹⁶ The Blank 24-Hour Report available on the Commission’s website indicates that it was filed at 10:15 PM.¹⁷

FECFile is the Commission’s free software that committees can use for electronic filing.¹⁸ It is the program that CatholicVote.org used to prepare and submit its filings with the Commission.¹⁹ Also attached to the Response is a copy of CatholicVote.org’s FECFile data file, which contains all reports filed by CatholicVote.org, as well as draft, unfilled reports.²⁰ At the bottom of the list of reports are two 24-Hour Reports: next-to-last is a 24-Hour Report that appears (after opening the file and reviewing its contents) to be the file depicted in the “print

¹⁴ *Id.* at 4.

¹⁵ *Id.*, Attachs. 1-6.

¹⁶ *Id.*, Attachs. 1-6.

¹⁷ Blank 24-Hour Report at 1 (displaying “11/07/2022 22:15” in the top right corner of the document).

¹⁸ *See FECFile: the FEC’s Free Software*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/filing-reports/fecfile-software/> (last visited Mar. 26, 2024).

¹⁹ Resp. at 1 (“In filing its independent expenditure reports, CatholicVote.org uses the FECFile software provided by the FEC . . .”).

²⁰ CatholicVote.org, FECFile Data File (transmitted to the Commission via Email from James Vanderhulst, Couns., CatholicVote.org (Dec. 8, 2023, 3:21 PM) [hereinafter FECFile Data File] [REDACTED] The data file contains a list of CatholicVote.org’s completed and draft reports and associated data such as the type of report, date each report was finalized, and by whom the report was signed. The file allows the user to access the contents of each of the listed reports by generating a “print preview” of the selected document.

preview” discussed above, reflecting the \$300,000 in independent expenditures disseminated by CatholicVote.org on November 6, 2022.²¹ Last in the list is a 24-Hour Report reflecting no independent expenditures and closed on October 13, 2010, the date reflected on the Blank 24-Hour Report that appears on the Commission’s website.²²

Fig. 1: Screenshot of CatholicVote.org FECFile Data File

Type	Coverage	Election Da...	Closed on	Signed by	...Election cy	... Opening	... Closing
24 hour Repor	-	11/08/2022	11/07/2022	Mercer, Joshu: -	-	0.00	0.00
24 hour Repor	-	11/08/2022	11/07/2022	Mercer, Joshu: -	-	0.00	0.00
24 hour Repor	-		10/13/2010	Mercer, Joshu: -	-	0.00	0.00

In 24-Hour Reports filed on Form 5, information about individual independent expenditures is itemized on Schedule 5-E; Form 5 itself, which constitutes the first page of the filing, displays only basic information about the filing entity, the type of report filed, and the aggregate total of independent expenditures itemized in Schedule 5-E.²³ The automated email generated by the Commission’s Web Check program for validating electronic filings²⁴ associated

²¹ *Id.* The individual reports reflected in Fig. 1, *infra*, can be viewed by clicking the printer icon in the FECFile ribbon, which renders a PDF version of the report in question. The PDF rendering of the second-to-last 24-Hour Report is attached hereto as Exhibit 1.

²² The PDF rendering of the last 24-Hour Report is attached hereto as Exhibit 2.

²³ See FEC Form 5 Report of Independent Expenditures Made and Contributions Received, <https://www.fec.gov/resources/cms-content/documents/policy-guidance/fecfrm5.pdf> (last visited Mar. 26, 2024).

²⁴ The Web Check program is provided to filers by the Commission at no charge pursuant to 11 C.F.R. § 104.18(e)(1), which requires that filers “check the report against the Commission’s validation program before it is submitted.”

with the Blank 24-Hour Report states that the report “PASSED validation with Warnings!”; those warnings state, *inter alia*, that “No Schedules have been provided with” the filing.²⁵

Fig. 2: Excerpt From Web Check Automated Email

WARNING Messages...

Form{Item}: F5N

Field Name: #021 Report Coverage From Date

Warning Conditionally Required field is Empty

Form{Item}: F5N

Field Name: #022 Report Coverage Through Date

Warning Conditionally Required field is Empty

Form{Item}: F5N

Field Name: #001

Warning No Schedules have been provided with Filing F5N

The automated email appears to have been sent to both CatholicVote.org's counsel and the individual who signed the report at the time of filing.²⁶

III. LEGAL ANALYSIS

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 of such candidate, the candidate's authorized political committee, or their agents.²⁷ Persons that make independent expenditures aggregating \$1,000 or more with respect to a given

²⁵ Email from FEC EFileing (noreply-efiling@fec.gov) to FEC EFileing Info (FECEFIInfo@salientcrgt.cm) (Nov. 7, 2022, 10:15 PM) [hereinafter Web Check Email] (reflecting automated email generated by the Web Check validation program for the Blank 24-Hour Report).

²⁶ Web Check Email (reflecting two email addresses: “cv@vanderhulstlaw.com” and “mercerc@catholicvote.org.”; see Email from Debbie Chacona, Ass't Staff Dir., RAD, FEC, to Justine A. di Giovanni, Att'y, FEC (Mar. 19, 2024, 12:56 PM) (confirming that the validation emails are sent to filers and that the Electronic Filing Office keeps records of these communications).

²⁷ 52 U.S.C. § 30101(17); see also 11 C.F.R. § 100.22(a), (b) (providing definition of “expressly advocating”).

election after the 20th day, but more than 24 hours, before the date of that election must file a 24-Hour Report to disclose such independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated.²⁸

Commission regulations state that a document filed electronically “is timely filed when it is received and validated by the . . . Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date.”²⁹ Further, “[e]ach . . . person who submits an electronic report shall check the report against the Commission’s validation program, before it is submitted, to ensure that the files submitted meet the Commission’s format specifications and can be read by the Commission’s computer system.”³⁰ The Commission has previously held that software difficulties do not “alleviate [a committee’s] responsibility to adhere to the Act’s specific requirement[s],”³¹ and in connection with the Commission’s Administrative Fines program, the regulations state that “[a] committee’s failure to use filing software properly” “will not be considered [circumstances] reasonably unforeseen and beyond the control of [a] respondent” sufficient to establish a basis on which to challenge an alleged violation or civil money penalty assessed by the Commission.³²

Here, the Committee made \$300,000 in independent expenditures payable to Majority Strategies on November 6, 2022, which was after the 20th day, but more than 24 hours before the general election that was scheduled for November 8, 2022.³³ As such, the Committee was

²⁸ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d).

²⁹ 11 C.F.R. § 100.19(c), (d)(2).

³⁰ *Id.* § 104.18(e)(1).

³¹ Factual & Legal Analysis at (“F&LA”) 4, MUR 6527 (John Edwards for President).

³² 11 C.F.R. § 111.35(d).

³³ Referral to ADRO at 1.

1 required to file a 24-Hour Report by November 7, 2022. While the Committee submitted two
2 24-Hour Reports on November 7, 2022, the second of these, which Respondents state should
3 have included the independent expenditures at issue, appears blank on the Commission's website
4 aside from identifying the filer and listing a date of October 13, 2010, and does not contain the
5 requisite information about the \$300,000 in independent expenditures.³⁴

6 The Committee has presented information that suggests that it did prepare a report
7 containing the required information, and that it attempted to submit that information on a timely
8 basis. However, the automated Web Check validation email associated with the Blank 24-Hour
9 Report indicates that the report was filed with no Schedules containing information regarding the
10 transactions referenced therein;³⁵ in other words, the report was blank at the time it was filed.
11 After submitting the Report, an email with an alert as to the missing schedules was then sent to
12 CatholicVote.org's counsel and the individual whose name appears on the Blank 24-Hour
13 Report.³⁶ A review of CatholicVote.org's FECFile data file reflects that a complete 24-Hour
14 Report that CatholicVote.org intended to file and the Blank 24-Hour Report that was actually
15 filed with the Commission are displayed on consecutive lines in the FECFile software. Based on
16 the available information, it appears that the individual filing on CatholicVote.org's behalf
17 opened the correct report, captured a PDF of it with print preview, and then ultimately selected
18 the incorrect report to file with the Commission. While the attachments to the Response appear
19 to reflect metadata relating to the "print preview" of the Committee's finalized 24-Hour Report,³⁷

³⁴ Blank 24-Hour Report.

³⁵ *Supra* note 25 and accompanying text.

³⁶ *Supra* notes 25-26 and accompanying text.

³⁷ This Office cannot confirm the authenticity of the attachments merely through a review of PDF documents. We do not recommend the Commission find that screenshots purporting to represent metadata, rather than the production of actual metadata (*e.g.*, in native XML format for PDF files), represent dispositive information about that document for purposes of compliance with the Act.

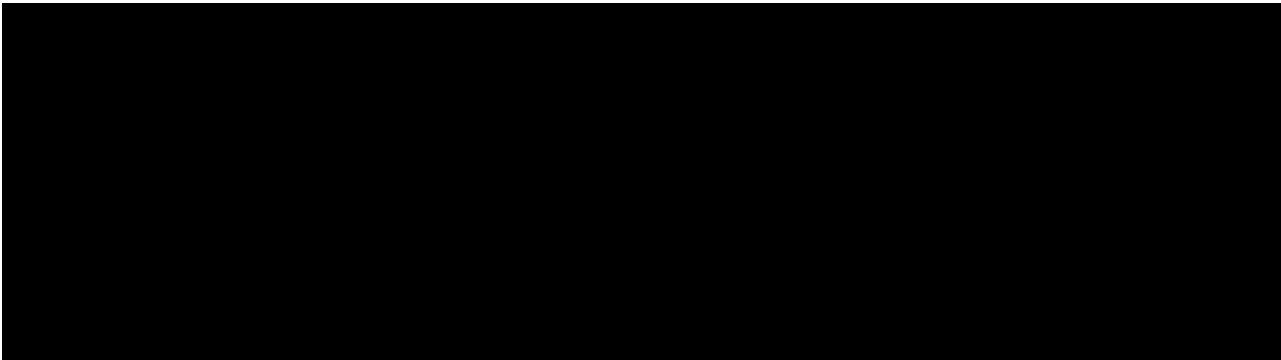
1 that information does not speak to whether the report was, in fact, filed with the Commission in
2 the state it appears in the attachment, or that this specific document was the one ultimately
3 uploaded by the Committee.

4 Though it appears that CatholicVote.org did intend to file a 24 Hour Report as opposed to
5 filers that simply neglect that responsibility, the Commission's regulations explicitly contemplate
6 error on the part of a filer when using the FECFile software, and state that such user error is *not*
7 the kind of unforeseen circumstances beyond the control of a filer that might excuse an otherwise
8 apparent violation.³⁸ Further, the Commission has historically pursued violations of this type.³⁹
9 Accordingly, we recommend the Commission find reason to believe that CatholicVote.org
10 violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 109.10(d) by failing to timely file a 24-Hour
11 Report of independent expenditures aggregating \$300,000.

³⁸ 11 C.F.R. § 111.35(d) (providing that a "committee's failure to use filing software properly" is not a circumstance that will "be considered reasonably unforeseen and beyond the control of respondent").

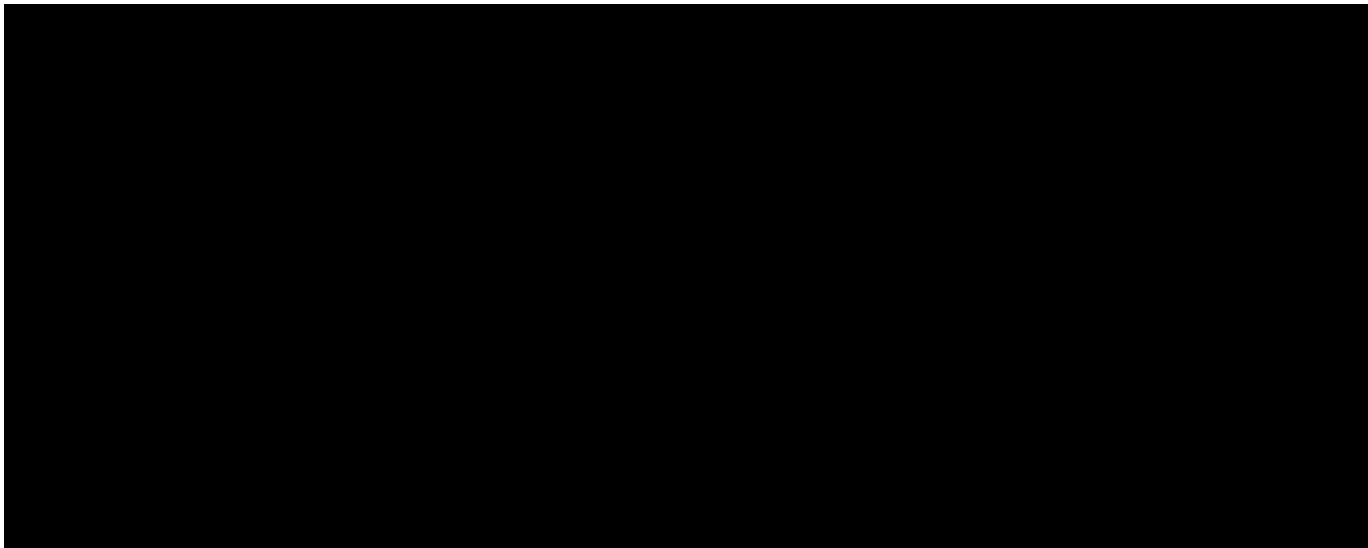
³⁹ See, e.g., F&LA at 1, 4, MUR 7971 (RR 21L-42) (Ind. Democratic Cong. Victory Comm.) (finding reason to believe in a RAD referral where the respondent claimed that failure to disclose approximately \$1 million in disbursements was the result of a "data transfer issue" between its financial tracking software and its filing software); Certification ("Cert.") ¶ 2.b, d (Mar. 24, 2022), MUR 7971 (finding reason to believe and authorizing pre-probable cause conciliation); F&LA at 3, 5, MUR 7054 (RR 16L-02) (Oakland Cnty. Democratic Party) (finding reason to believe in a RAD referral where the respondent stated that the reporting errors were due to information not properly transferred from QuickBooks to their reporting software); Cert. ¶ 2.a, d (Apr. 28, 2016), MUR 7054.

1
2
3
4
5



6 **V. RECOMMENDATIONS**

- 7 1. Open a Matter Under Review;
- 8 2. Find reason to believe that CatholicVote.org violated 52 U.S.C. § 30104(g)(1) and
9 11 C.F.R. § 109.10(d) by failing to timely file a 24-Hour Report;
- 10 3. Approve the attached Factual and Legal Analysis;
- 11 4. Authorize pre-probable cause conciliation with CatholicVote.org;
- 12 5. Approve the attached proposed conciliation agreement; and



6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

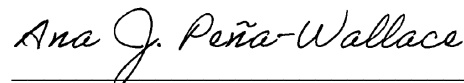
Charles Kitcher
Associate General Counsel for Enforcement



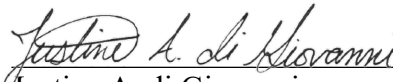
March 27, 2024

Date

Claudio J. Pavia
Deputy Associate General Counsel for Enforcement



Ana J. Peña-Wallace
Assistant General Counsel



Justine A. di Giovanni
Attorney

Attachments:

1. Exhibit 1 – PDF Rendering of Second-to-Last 24-Hour Report from CatholicVote.org's FECFile data file
2. Exhibit 2 – PDF Rendering of Last 24-Hour Report from CatholicVote.org's FECFile data file
3. Factual and Legal Analysis

FEC FORM 5**REPORT OF INDEPENDENT EXPENDITURES MADE AND CONTRIBUTIONS RECEIVED**
To Be Used by Persons (Other than Political Committees)

1. (a) Name of Individual, Organization or Corporation CatholicVote.org	
(b) Address (number and street) <input type="checkbox"/> check if different than previously reported PO Box 259837	
(c) City, State and ZIP Code Madison WI 53725	
2. Occupation and Name of Employer (for Individual Filers Only)	3. FEC Identification Number C C90011800

4. TYPE OF REPORT (check appropriate boxes):

(a) ☐ April 15 Quarterly Report☐ July 15 Quarterly Report☒ 24-Hour Report☐ October 15 Quarterly Report☐ 48-Hour Report☐ January 31 Year-End Reportb) Is this Report an amendment? ☒ No ☐ Yes, it amends the report filed on

M	M	/	D	D	/	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---	---

5. COVERING PERIOD:

FROM

M	M	/	D	D	/	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---	---

THROUGH

M	M	/	D	D	/	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---	---

6. TOTAL CONTRIBUTIONS.....

										0.00
--	--	--	--	--	--	--	--	--	--	------

7. TOTAL INDEPENDENT EXPENDITURES

										300000.00
--	--	--	--	--	--	--	--	--	--	-----------

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or any political party committee or its agent.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

SIGNATURE

DATE

Mercer, Joshua, , ,

Mercer, Joshua, , ,

11/07/2022

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 52 U.S.C. § 30109.

For further information, contact the Federal Election Commission at 800-424-9530 or visit www.fec.gov.

ATTACHMENT 1

SCHEDULE 5-E
ITEMIZED INDEPENDENT EXPENDITURES

PAGE	2	OF	2
FOR LINE 7 OF FORM 5			

NAME OF FILER (In Full)

CatholicVote.org

Full Name (Last, First, Middle Initial) of Payee
Majority Strategies

Date of Public Distribution/Dissemination

M M M	D D D	Y Y Y Y Y Y
11	06	2022

Mailing Address 12854 Kenan Dr
Ste 145

Amount

City	State	Zip Code
Jacksonville	FL	32258

Amount
41500.00

Transaction ID : F57.4929

Purpose of Expenditure
Digital advertising (production and placement)

Category/
Type

Office Sought: ☐ House State: NV
☒ Senate District: 00
☐ President

Name of Federal Candidate Supported or Opposed by Expenditure:
LAXALT, ADAM, , ,

Check One: ☒ Support ☐ Oppose

Calendar Year-To-Date Per Election
for Office Sought

55910.00

Disbursement For: ☐ Primary ☒ General
2022 ☐ Other (specify) ▶

Full Name (Last, First, Middle Initial) of Payee
Majority Strategies

Date of Public Distribution/Dissemination

M M M	D D D	Y Y Y Y Y Y
11	06	2022

Mailing Address 12854 Kenan Dr
Ste 145

Amount

City	State	Zip Code
Jacksonville	FL	32258

Amount
93500.00

Transaction ID : F57.4930

Purpose of Expenditure
Digital advertising (production and placement)

Category/
Type

004

Office Sought: ☐ House State: AZ
☒ Senate District: 00
☐ President

Name of Federal Candidate Supported or Opposed by Expenditure:
MASTERS, BLAKE, , ,

Check One: ☒ Support ☐ Oppose

Calendar Year-To-Date Per Election
for Office Sought

113891.68

Disbursement For: ☐ Primary ☒ General
2022 ☐ Other (specify) ▶

Full Name (Last, First, Middle Initial) of Payee
Majority Strategies

Date of Public Distribution/Dissemination

M M M	D D D	Y Y Y Y Y Y
11	06	2022

Mailing Address 12854 Kenan Dr
Ste 145

Amount

City	State	Zip Code
Jacksonville	FL	32258

Amount
165000.00

Transaction ID : F57.4931

Purpose of Expenditure
Digital advertising (production and placement)

Category/
Type

004

Office Sought: ☐ House State: OH
☒ Senate District: 00
☐ President

Name of Federal Candidate Supported or Opposed by Expenditure:
VANCE, J D, , ,

Check One: ☒ Support ☐ Oppose

Calendar Year-To-Date Per Election
for Office Sought

165144.10

Disbursement For: ☐ Primary ☒ General
2022 ☐ Other (specify) ▶

(a) **SUBTOTAL** of Itemized Independent Expenditures.....▶

300000.00

(b) **SUBTOTAL** of Unitemized Independent Expenditures▶

(c) **TOTAL** Independent Expenditures.....▶
(carry total from last page forward to Line 7)

300000.00

ATTACHMENT 1

FEC FORM 5**REPORT OF INDEPENDENT EXPENDITURES MADE AND CONTRIBUTIONS RECEIVED**
To Be Used by Persons (Other than Political Committees)

1. (a) Name of Individual, Organization or Corporation CatholicVote.org	
(b) Address (number and street) <input type="checkbox"/> check if different than previously reported PO Box 259837	
(c) City, State and ZIP Code Madison WI 53725	3. FEC Identification Number C C90011800
2. Occupation and Name of Employer (for Individual Filers Only)	

4. TYPE OF REPORT (check appropriate boxes):

(a) ☐ April 15 Quarterly Report☐ July 15 Quarterly Report☒ 24-Hour Report☐ October 15 Quarterly Report☐ 48-Hour Report☐ January 31 Year-End Reportb) Is this Report an amendment? ☒ No ☐ Yes, it amends the report filed on

M	M	/	D	D	/	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---	---

5. COVERING PERIOD:

FROM

M	M	/	D	D	/	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---	---

THROUGH

M	M	/	D	D	/	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---	---

6. TOTAL CONTRIBUTIONS.....

										0.00
--	--	--	--	--	--	--	--	--	--	------

7. TOTAL INDEPENDENT EXPENDITURES

										0.00
--	--	--	--	--	--	--	--	--	--	------

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or any political party committee or its agent.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

SIGNATURE

DATE

Mercer, Joshua, , ,

Mercer, Joshua, , ,

10/13/2010

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 52 U.S.C. §30109.

For further information, contact the Federal Election Commission at 800-424-9530 or visit www.fec.gov.

ATTACHMENT 2

FEC Schedule 5 (REV. 09/2013)

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** CatholicVote.org**MUR** _____**I. INTRODUCTION**

The Reports Analysis Division (“RAD”) referred CatholicVote.org, a membership organization, to the Office of General Counsel (“OGC”) for allegedly failing to timely file a 24-Hour Report regarding three independent expenditures totaling \$300,000 disseminated two days prior to the 2022 general election.¹ CatholicVote.org filed a 24-Hour Report the day after the expenditures were disseminated, but it appears blank on the Commission’s website other than listing CatholicVote.org as the filer. CatholicVote.org maintains that the version of the report it submitted did contain the total independent expenditures as well as the itemized independent expenditures. The Response states that the blank filing (the “Blank 24-Hour Report”) was the result of an unknown technological error and that CatholicVote.org saved a “print preview” of the filing before submission that appeared complete and accurate; the Response provides documentation in support, including CatholicVote.org’s FECFile data file, copies of the “print preview” of the report it states it filed with the Commission, and screenshots of what the Response states is the metadata associated with that print preview file. However, information in CatholicVote.org’s FECFile data file and records of the Web Check validation program maintained by the Commission indicate that the report the Committee filed with the Commission

¹ RAD initially referred CatholicVote.org to the Alternative Dispute Resolution Office (“ADRO”). Referral at 1 (July 5, 2023). On August 8, 2023, CatholicVote.org agreed to participate in the Alternative Dispute Resolution (“ADR”) process, but, on November 10, 2023, it withdrew as the result of an impasse. Transfer Memo at 1 and Attach. 1 (CatholicVote.org, Commitment to Participate in ADR # 1124 (Aug. 8, 2023)). Accordingly, RAD transferred the matter to OGC for further action. Transfer Memo at 1.

was blank and, further, that CatholicVote.org received a confirmation email at the validation stage with a warning that the report contained no itemized transaction data.

Accordingly, the Commission finds reason to believe that CatholicVote.org violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 109.10(d) by failing to timely file a 24-Hour Report regarding \$300,000 in independent expenditures.

II. FACTUAL BACKGROUND

CatholicVote.org is a membership organization;² since 2010, it has made over \$2 million in independent expenditures.³ On November 6, 2022, it made three independent expenditures aggregating \$300,000 in support of different candidates, payable to Majority Strategies, as follows:⁴

Date	Amount	Recipient	Candidate Supported
Nov. 6, 2022	\$41,500	Majority Strategies	Adam Laxalt
Nov. 6, 2022	\$93,500	Majority Strategies	Blake Masters
Nov. 6, 2022	\$165,000	Majority Strategies	J.D. Vance

² Though CatholicVote.org filed two Statements of Organization in 2012 on which it checked the box indicating that it was a separate segregated fund, it subsequently filed a statement with the Commission in which it stated that the previous filings were in error and that CatholicVote.org had not intended to establish itself as a political committee. CatholicVote.org, Original Statement of Organization at 2 (Apr. 15, 2012), <https://docquery.fec.gov/pdf/882/12951424882/12951424882.pdf> (checking box reading “This committee is a separate segregated fund”); CatholicVote.org, Amended Statement of Organization at 2 (Sept. 4, 2012), <https://docquery.fec.gov/pdf/018/12952868018/12952868018.pdf> (same); CatholicVote.org, Miscellaneous Text (Mar. 13, 2024), <https://docquery.fec.gov/pdf/853/202403139622406853/202403139622406853.pdf> (“The entity associated with ID C90011800 is a Form 5 independent expenditure filer and is not a committee. Any previous Form 1 filing was filed in error and should be ignored.”).

³ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C90011800&is_notice=false&most_recent=true (last visited Mar. 26, 2024) (reflecting all independent expenditures by CatholicVote.org, totaling \$2,083,842.77 between October 12, 2010, and November 28, 2022).

⁴ Referral, Attach 3 at 3 (Nov. 13, 2023) (RAD Referral to ADRO (July 5, 2023) [hereinafter Referral to ADRO]).

CatholicVote.org filed two 24-Hour Reports on November 7, 2022: One reporting four other independent expenditures which are not at issue in this matter⁵ and the other essentially blank and listing no independent expenditures.⁶ The Blank 24-Hour Report reflected a date of October 13, 2010, despite being filed on November 7, 2022.⁷

Each of the independent expenditures listed in the table above was reported on CatholicVote.org's 2022 Year-End Report.⁸ On February 27, 2023, RAD sent CatholicVote.org a Request for Additional Information regarding, *inter alia*, the \$300,000 in independent expenditures for which there was no corresponding 24-Hour Report.⁹ CatholicVote.org's counsel, Joseph Vanderhulst, called the assigned RAD analyst and stated that CatholicVote.org had filed the requisite 24-Hour Report on November 7, 2022, and received a confirmation receipt email upon submitting that filing.¹⁰ He also stated that the filing appeared accurate in CatholicVote.org's reporting software prior to the filing.¹¹ On April 20, 2023, CatholicVote.org

⁵ CatholicVote.org, 24-Hour Report of Independent Expenditures (Nov. 7, 2022), <https://docquery.fec.gov/pdf/348/202211079546723348/202211079546723348.pdf> (disclosing four independent expenditures totaling \$12,803.38 to RumbleUp in support of different candidates).

⁶ CatholicVote.org, 24-Hour Report of Independent Expenditures (dated Oct. 13, 2010; filed Nov. 7, 2022) [hereinafter Blank 24-Hour Report], <https://docquery.fec.gov/pdf/558/202211079546727558/202211079546727558.pdf>.

⁷ *Id.*

⁸ CatholicVote.org, 2022 Year-End Report, Sched. 5-E at 4-5 (Jan. 31, 2023), <https://docquery.fec.gov/pdf/624/202301319575452624/202301319575452624.pdf>. The Commission's regulations state that every person other than a political committee that makes independent expenditures aggregating more than \$250 must file a quarterly disclosure report "for any quarterly period during which any such independent expenditures that aggregate in excess of \$250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made." 11 C.F.R. § 109.10(b).

⁹ CatholicVote.org, Request for Additional Information at 1-2 & Attach. at 2 (Feb. 27, 2023), <https://docquery.fec.gov/pdf/784/202302270300174784/202302270300174784.pdf>.

¹⁰ Referral to ADRO at 2.

¹¹ *Id.*

1 filed a new 24-Hour Report regarding the three November 6, 2022 independent expenditures that
2 stated:

3 This amendment is filed in response to the Request for Additional
4 Information dated 27 Feb. 2023 indicating that a 24-hour report
5 had not been timely filed for the independent expenditures
6 included in this filing. According to the analyst, the original 24-
7 hour report that was [filed] by the organization on 7 Nov. 2022
8 shows up as blank in the FEC's database. All of our records and
9 receipts, however, indicate that the 24-hour report was timely filed
10 with complete information. Our FECfile datafile includes the full
11 details entered into the report and the [verification] did not list any
12 errors and we did not receive any fail errors from FECfile. We
13 created a print preview of the 24-hour report before filing that
14 includes all of the information pertaining to the independent
15 expenditures on this report and is not blank. We have a copy of
16 this print-out that shows the date and time it was created. And we
17 received an email receipt on 7 Nov. 2022 showing proof of filing
18 after we uploaded the report through FECfile. We followed all
19 instructions for filing provided in the FECfile Manual and had no
20 way of knowing that the report shows up as blank in the FEC's
21 database.¹²

22 In response to OGC's notification of the Referral, CatholicVote.org filed a Response
23 reiterating that the Blank 24-Hour Report was the result of an "unknown technological error,"
24 that CatholicVote.org timely submitted the filing with all required information, and that the filing
25 appeared complete and correct in CatholicVote.org's FECFile software at the time it was filed.¹³
26 Vanderhulst signed both the Response and a standalone declaration on its signature page stating,
27 "Under 28 U.S. 1746, I declare under penalty of perjury that the factual statements in the

¹² CatholicVote.org, 24-Hour Report of Independent Expenditures at 2 (Apr. 20, 2023), <https://docquery.fec.gov/pdf/326/202304209581194326/202304209581194326.pdf>.

¹³ Resp. at 1-2 (Dec. 12, 2023).

foregoing are true and correct.”¹⁴ The individual who signed both the Blank 24-Hour Report and the subsequent filing, Joshua Mercer, did not submit a statement.

Attached to the Response are a PDF file that CatholicVote.org states represents the “print preview” of the 24-Hour Report it generated upon finalizing the filing, and screenshots CatholicVote.org states show the metadata associated with the “print preview.”¹⁵ The “print preview” displays the three independent expenditures that were missing from the Blank 24-Hour Report appearing on the Commission’s website, but the form bears no date on the signature line. The images appearing to reflect that file’s metadata indicate that it was created on November 7, 2022, at 10:06 PM.¹⁶ The Blank 24-Hour Report available on the Commission’s website indicates that it was filed at 10:15 PM.¹⁷

FECFile is the Commission’s free software that committees can use for electronic filing.¹⁸ It is the program that CatholicVote.org used to prepare and submit its filings with the Commission.¹⁹ Also attached to the Response is a copy of CatholicVote.org’s FECFile data file, which contains all reports filed by CatholicVote.org, as well as draft, unfiled reports.²⁰ At the bottom of the list of reports are two 24-Hour Reports: next-to-last is a 24-Hour Report that

¹⁴ *Id.* at 4.

¹⁵ *Id.*, Attachs. 1-6.

¹⁶ *Id.*, Attachs. 1-6.

¹⁷ Blank 24-Hour Report at 1 (displaying “11/07/2022 22:15” in the top right corner of the document).

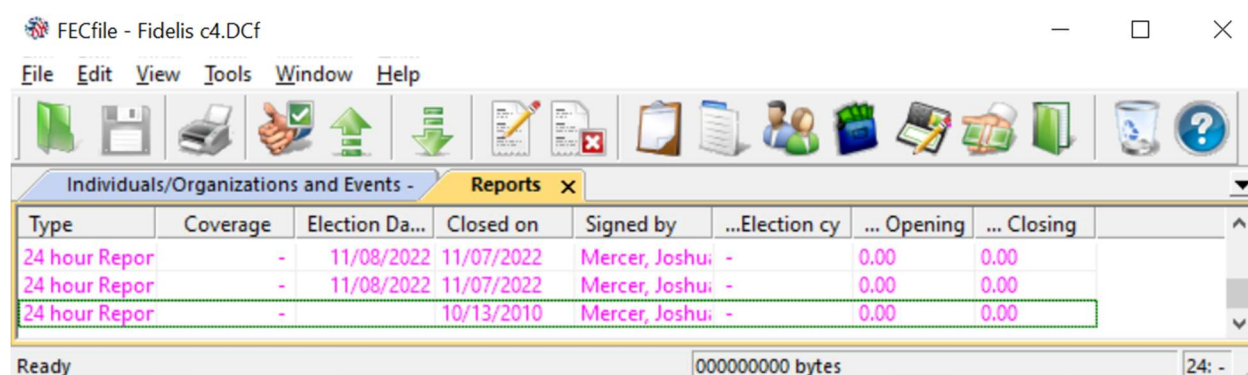
¹⁸ See *FECFile: the FEC’s Free Software*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/filing-reports/fecfile-software/> (last visited Mar. 26, 2024).

¹⁹ Resp. at 1 (“In filing its independent expenditure reports, CatholicVote.org uses the FECFile software provided by the FEC . . .”).

²⁰ CatholicVote.org, FECFile Data File (transmitted to the Commission via Email from James Vanderhulst, Couns., CatholicVote.org (Dec. 8, 2023, 3:21 PM) [hereinafter FECFile Data File]. The data file contains a list of CatholicVote.org’s completed and draft reports and associated data such as the type of report, date each report was finalized, and by whom the report was signed. The file allows the user to access the contents of each of the listed reports by generating a “print preview” of the selected document.

appears (after opening the file and reviewing its contents) to be the file depicted in the “print preview” discussed above, reflecting the \$300,000 in independent expenditures disseminated by CatholicVote.org on November 6, 2022.²¹ Last in the list is a 24-Hour Report reflecting no independent expenditures and closed on October 13, 2010, the date reflected on the Blank 24-Hour Report that appears on the Commission’s website.

Fig. 1: Screenshot of CatholicVote.org FECFile Data File



The screenshot shows a software window titled "FECfile - Fidelis c4.DCf". The ribbon includes "File", "Edit", "View", "Tools", "Window", and "Help". The "Tools" ribbon is active, showing various icons. Below the ribbon, there are two tabs: "Individuals/Organizations and Events -" and "Reports x". The "Reports" tab is selected, displaying a table with the following data:

Type	Coverage	Election Da...	Closed on	Signed by	...Election cy	... Opening	... Closing
24 hour Repor	-	11/08/2022	11/07/2022	Mercer, Joshu	-	0.00	0.00
24 hour Repor	-	11/08/2022	11/07/2022	Mercer, Joshu	-	0.00	0.00
24 hour Repor	-		10/13/2010	Mercer, Joshu	-	0.00	0.00

The status bar at the bottom indicates "Ready" and "000000000 bytes".

In 24-Hour Reports filed on Form 5, information about individual independent expenditures is itemized on Schedule 5-E; Form 5 itself, which constitutes the first page of the filing, displays only basic information about the filing entity, the type of report filed, and the aggregate total of independent expenditures itemized in Schedule 5-E.²² The automated email generated by the Commission’s Web Check program for validating electronic filings²³ associated

²¹ *Id.* The individual reports reflected in Fig. 1, *infra*, can be viewed by clicking the printer icon in the FECFile ribbon, which renders a PDF version of the report in question.

²² See FEC Form 5 Report of Independent Expenditures Made and Contributions Received, <https://www.fec.gov/resources/cms-content/documents/policy-guidance/fecfrm5.pdf> (last visited Mar. 26, 2024).

²³ The Web Check program is provided to filers by the Commission at no charge pursuant to 11 C.F.R. § 104.18(e)(1), which requires that filers “check the report against the Commission’s validation program before it is submitted.”

with the Blank 24-Hour Report states that the report “PASSED validation with Warnings!”; those warnings state, *inter alia*, that “No Schedules have been provided with” the filing.²⁴

Fig. 2: Excerpt From Web Check Automated Email

WARNING Messages...

Form{Item}: F5N

Field Name: #021 Report Coverage From Date

Warning Conditionally Required field is Empty

Form{Item}: F5N

Field Name: #022 Report Coverage Through Date

Warning Conditionally Required field is Empty

Form{Item}: F5N

Field Name: #001

Warning No Schedules have been provided with Filing F5N

The automated email appears to have been sent to both CatholicVote.org’s counsel and the individual who signed the report at the time of filing.²⁵

III. LEGAL ANALYSIS

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 of such candidate, the candidate’s authorized political committee, or their agents.²⁶ Persons that make independent expenditures aggregating \$1,000 or more with respect to a given

²⁴ Email from FEC EFiling (noreply-efiling@fec.gov) to FEC EFiling Info (FECEInfo@salientcrgt.cm) (Nov. 7, 2022, 10:15 PM) [hereinafter Web Check Email] (reflecting automated email generated by the Web Check validation program for the Blank 24-Hour Report).

²⁵ Web Check Email (reflecting two email addresses: “cv@vanderhulstlaw.com” and “mercer@catholicvote.org.”)

²⁶ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (providing definition of “expressly advocating”).

election after the 20th day, but more than 24 hours, before the date of that election must file a 24-Hour Report to disclose such independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated.²⁷

Commission regulations state that a document filed electronically “is timely filed when it is received and validated by the . . . Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date.”²⁸ Further, “[e]ach . . . person who submits an electronic report shall check the report against the Commission’s validation program, before it is submitted, to ensure that the files submitted meet the Commission’s format specifications and can be read by the Commission’s computer system.”²⁹ The Commission has previously held that software difficulties do not “alleviate [a committee’s] responsibility to adhere to the Act’s specific requirement[s],”³⁰ and in connection with the Commission’s Administrative Fines program, the regulations state that “[a] committee’s failure to use filing software properly” “will not be considered [circumstances] reasonably unforeseen and beyond the control of [a] respondent” sufficient to establish a basis on which to challenge an alleged violation or civil money penalty assessed by the Commission.³¹

Here, the Committee made \$300,000 in independent expenditures payable to Majority Strategies on November 6, 2022, which was after the 20th day, but more than 24 hours before the

²⁷ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d).

²⁸ 11 C.F.R. § 100.19(c), (d)(2).

²⁹ *Id.* § 104.18(e)(1).

³⁰ Factual & Legal Analysis at (“F&LA”) 4, MUR 6527 (John Edwards for President).

³¹ 11 C.F.R. § 111.35(d).

1 general election that was scheduled for November 8, 2022.³² As such, the Committee was
2 required to file a 24-Hour Report by November 7, 2022. While the Committee submitted two
3 24-Hour Reports on November 7, 2022, the second of these, which Respondents state should
4 have included the independent expenditures at issue, appears blank on the Commission's website
5 aside from identifying the filer and listing a date of October 13, 2010, and does not contain the
6 requisite information about the \$300,000 in independent expenditures.³³

7 The Committee has presented information that suggests that it did prepare a report
8 containing the required information, and that it attempted to submit that information on a timely
9 basis. However, the automated Web Check validation email associated with the Blank 24-Hour
10 Report indicates that the report was filed with no Schedules containing information regarding the
11 transactions referenced therein;³⁴ in other words, the report was blank at the time it was filed.
12 After submitting the Report, an email with an alert as to the missing schedules was then sent to
13 CatholicVote.org's counsel and the individual whose name appears on the Blank 24-Hour
14 Report.³⁵ A review of CatholicVote.org's FECFile data file reflects that a complete 24-Hour
15 Report that CatholicVote.org intended to file and the Blank 24-Hour Report that was actually
16 filed with the Commission are displayed on consecutive lines in the FECFile software. Based on
17 the available information, it appears that the individual filing on CatholicVote.org's behalf
18 opened the correct report, captured a PDF of it with print preview, and then ultimately selected
19 the incorrect report to file with the Commission. While the attachments to the Response appear

³² Referral to ADRO at 1.

³³ Blank 24-Hour Report.

³⁴ *Supra* note 24 and accompanying text.

³⁵ *Supra* notes 24-25 and accompanying text.

1 to reflect metadata relating to the “print preview” of the Committee’s finalized 24-Hour Report,³⁶
 2 that information does not speak to whether the report was, in fact, filed with the Commission in
 3 the state it appears in the attachment, or that this specific document was the one ultimately
 4 uploaded by the Committee.

5 Though it appears that CatholicVote.org did intend to file a 24 Hour Report as opposed to
 6 filers that simply neglect that responsibility, the Commission’s regulations explicitly contemplate
 7 error on the part of a filer when using the FECFile software, and state that such user error is *not*
 8 the kind of unforeseen circumstances beyond the control of a filer that might excuse an otherwise
 9 apparent violation.³⁷ Further, the Commission has historically pursued violations of this type.³⁸
 10 Accordingly, the Commission finds reason to believe that CatholicVote.org violated 52 U.S.C.
 11 § 30104(g)(1) and 11 C.F.R. § 109.10(d) by failing to timely file a 24-Hour Report of
 12 independent expenditures aggregating \$300,000.

³⁶ The Commission cannot confirm the authenticity of the attachments merely through a review of PDF documents. Screenshots purporting to represent metadata, rather than actual metadata (*e.g.*, in native XML format for PDF files), do not represent dispositive information about that document for purposes of compliance with the Act.

³⁷ 11 C.F.R. § 111.35(d) (providing that a “committee’s failure to use filing software properly” is not a circumstance that will “be considered reasonably unforeseen and beyond the control of respondent”).

³⁸ *See, e.g.*, F&LA at 1, 4, MUR 7971 (RR 21L-42) (Ind. Democratic Cong. Victory Comm.) (finding reason to believe in a RAD referral where the respondent claimed that failure to disclose approximately \$1 million in disbursements was the result of a “data transfer issue” between its financial tracking software and its filing software); Certification (“Cert.”) ¶ 2.b, d (Mar. 24, 2022), MUR 7971 (finding reason to believe and authorizing pre-probable cause conciliation); F&LA at 3, 5, MUR 7054 (RR 16L-02) (Oakland Cnty. Democratic Party) (finding reason to believe in a RAD referral where the respondent stated that the reporting errors were due to information not properly transferred from QuickBooks to their reporting software); Cert. ¶ 2.a, d (Apr. 28, 2016), MUR 7054.