



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

Via Electronic Mail

April 24, 2024

Joseph A. Vanderhulst
Langdon Law, LLC
1201 Main Street, Suite 2
Cincinnati, OH 45202
joseph@langdonlaw.com

RE: MUR 8244

Dear Mr. Vanderhulst:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting CatholicVote.org may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 16, 2024, the Commission found reason to believe that CatholicVote.org violated 52 U.S.C. § 30104(g)(1), a provision of the Act, and 11 C.F.R. § 109.10(d), a provision of the Commission's regulations, by failing to timely file a 24-Hour Report regarding \$300,000 in independent expenditures. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of 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 as a way to resolve this matter at an early stage and without the need for briefing the issue of whether the Commission should find probable cause to believe that CatholicVote.org violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@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 you are not interested in pre-probable

Joseph A. Vanderhulst
MUR 8244 (CatholicVote.org)
Page 2

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.

If CatholicVote.org intends to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,

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

Sean J. Cooksey
Chairman

Enclosures
Factual and Legal Analysis



FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** CatholicVote.org**MUR 8244****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).

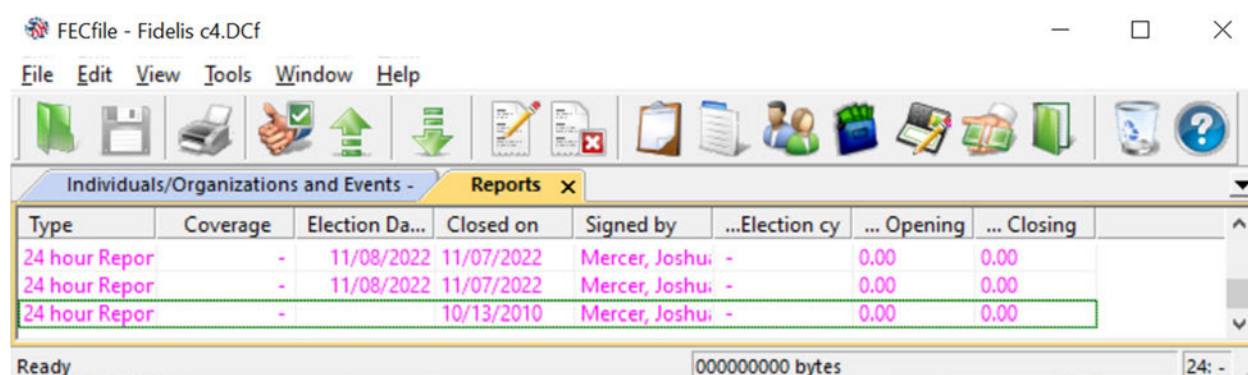
¹⁸ See *FECFile: the FEC’s Free Software*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/filing-reports/fecfile-software/> (last visited Mar. 26, 2024).

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". 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 shows "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 (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).

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

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

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

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

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

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

²⁸ 11 C.F.R. § 100.19(c), (d)(2).

²⁹ *Id.* § 104.18(e)(1).

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

³¹ 11 C.F.R. § 111.35(d)(6).

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
6 to filers that simply neglect that responsibility, the Commission’s regulations explicitly
7 contemplate error on the part of a filer when using the FECFile software, and state that such user
8 error is *not* the kind of unforeseen circumstances beyond the control of a filer that might excuse
9 an otherwise apparent violation.³⁷ Further, the Commission has historically pursued violations of
10 this type.³⁸ Accordingly, the Commission finds reason to believe that CatholicVote.org violated
11 52 U.S.C. § 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.