



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 2023

Via Electronic Mail

Lamb@sandlerreiff.com

James C. Lamb
Sandler, Reiff, Lamb, Rosenstein
& Birkenstock P.C.
1090 Vermont Avenue N.W.
Suite 750
Washington, D.C. 20005

RE: MUR 8175 (formerly RR 23L-15)
Straight Talk Politics PAC and
Wesley Smith in his official capacity
as treasurer

Dear Mr. Lamb:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Straight Talk Politics PAC and Wesley Smith in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 3, 2023, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On October 3, 2023, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c), a provision of the Act and the Commission's regulations. 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 the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation

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to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of 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 your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

If the Committee is interested in engaging in pre-probable cause conciliation, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1618 or (800) 424-9530, 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 the Committee 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/respondent.guide.pdf>.

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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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
Vice-Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Straight Talk Politics PAC and Wesley Smith **MUR 8175**
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated from information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities.¹ The Reports Analysis Division (“RAD”) referred Straight Talk Politics PAC and Wesley Smith in his official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for failing to timely file a 24-Hour Report to support one independent expenditure (“IE”) totaling \$525,000, as disclosed on its 2022 30-Day Post-General Report (“Post-General Report”).² On November 28, 2022, the Committee filed a 24-Hour Report to support one IE, totaling \$525,000, that was disseminated on October 25, 2022.³ The IE at issue opposed U.S. Senate candidate JD Vance in the 2022 general election.⁴ On November 29, 2022, the Committee filed its Post-General Report that included a Schedule E (Itemized IE) disclosing two IEs, one of which is the \$525,000 IE at issue.⁵

The Committee acknowledges its inadvertent failure to timely file its 24-Hour Report but claims that the report was filed immediately upon discovery of the issue.⁶ The Committee

¹ See 52 U.S.C. § 30109(a)(2).

² RAD Referral at 1, Straight Talk Politics PAC (Feb. 23, 2023) (“Referral”).

³ 24-Hour IE Report, Straight Talk Politics PAC (Nov. 28, 2022), <https://docquery.fec.gov/pdf/781/202211289547061781/202211289547061781.pdf>.

⁴ *Id.*

⁵ 2022 30-Day Post-General Report, Straight Talk Politics PAC (Nov. 29, 2022), <https://docquery.fec.gov/pdf/275/202211299547069275/202211299547069275.pdf>.

⁶ Resp. at 1 (May 26, 2023).

argues that it has implemented new policies and procedures to avoid future violations and requests that the Commission either take no further action in the matter, or in the alternative, refer the matter to the Alternative Dispute Resolution Office (“ADRO”).⁷ The circumstances of the violation do not support dismissal of the matter or referral to ADRO.

Accordingly, the Commission opens a matter under review and finds reason to believe that Straight Talk Politics PAC and Wesley Smith in his official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 104.4(c) of the Commission’s regulations by failing to timely report independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before an election.

II. FACTUAL BACKGROUND

Straight Talk Politics PAC is a hybrid PAC with a non-contribution account that registered with the Commission on April 7, 2020.⁸ The Committee made IEs in opposition to two Republican Senate candidates, Joseph Matthew O’Dea and JD Vance, in the November 8, 2022, general election.⁹

On November 28, 2022, the Committee filed a 24-Hour Report to support one IE, totaling \$525,000, that was disseminated on October 25, 2022, in opposition to JD Vance.¹⁰ On November 29, 2022, the Committee filed the Post-General Report that included a Schedule E

⁷ *Id.*

⁸ Statement of Organization, Straight Talk Politics PAC (Apr. 7, 2023), <https://docquery.fec.gov/pdf/283/202004079216607283/202004079216607283.pdf>.

⁹ O’Dea lost the Colorado general election. Vance won the Ohio general election.

¹⁰ 24-Hour IE Report, Straight Talk Politics PAC (Nov. 28, 2022), <https://docquery.fec.gov/pdf/781/202211289547061781/202211289547061781.pdf>.

(Itemized IEs) disclosing two IEs, one of which was the \$525,000 IE at issue.¹¹ On February 6, 2023, a Request for Additional Information (“RFAI”) was sent to the Committee concerning the Post-General Report.¹² The RFAI notes that the Committee may have failed to timely file one or more of the required 24-Hour Reports of IEs.¹³ A chart was included with the RFAI identifying one IE, totaling \$525,000, for which a 24-Hour Report had not been timely filed.¹⁴

On March 8, 2023, the Committee filed a Form 99 in response to the RFAI stating that it had inadvertently failed to file the 24-Hour Report disclosing the \$525,000 IE.¹⁵ It further stated that the report was filed immediately upon discovering the error and that the Committee has “implemented policies and procedures to ensure that such an oversight does not occur again.”¹⁶

The Referral notes that since March 14, 2023, RAD logged four communications with representatives of the Committee regarding efforts to help the Committee voluntarily comply with the Act.¹⁷ RAD was able to successfully connect with the Committee on one occasion and notified Brandon Philipczyk, a compliance consultant, that the matter would be referred to another office at the Commission for further review.¹⁸ To date, no further communications have been received from the Committee regarding the matter.¹⁹

¹¹ 2022 30-Day Post-General Report, Straight Talk Politics PAC (Nov. 29, 2022), <https://docquery.fec.gov/pdf/275/202211299547069275/202211299547069275.pdf>.

¹² RFAI, Straight Talk Politics PAC (Feb. 28, 2023).

¹³ *Id.*

¹⁴ *Id.*, Attach.

¹⁵ Referral at 2; Straight Talk Politics PAC, Form 99 (Mar. 8, 2023).

¹⁶ Referral at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

The Committee's latest disclosure report, its 2023 Mid-Year Report, indicates that it has no debts or obligations and an ending cash-on-hand balance of \$22,155.65.²⁰ The Committee argues that it is a "new committee with a stellar record" and therefore requests that the Commission take no further action, or in the alternative, refer the Matter to ADRO.²¹

III. LEGAL ANALYSIS

Political committees must file periodic reports disclosing their receipts and disbursements.²² 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.²³ In addition, committees that make independent expenditures aggregating \$1,000 or more with respect to a given 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.²⁴

Although the independent expenditures were made after the 20th day, but more than 24 hours before the election, and the aggregate amounts with respect to each of the candidates were

²⁰ 2022 Mid-Year Report, Straight Talk Politics PAC (July 10, 2023), <https://docquery.fec.gov/pdf/466/202307109582480466/202307109582480466.pdf>.

²¹ *Id.*

²² 52 U.S.C. § 30104(a).

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

²⁴ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c). The Act and Commission regulations include a separate requirement to file 48-hour reports for independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

\$1,000 or more, the Committee did not file the associated 24-Hour Report for the IE disseminated on October 25, 2022, until November 28, 2022, after the election had occurred, and more than a month after the applicable 24-Hour Reporting deadline had passed.

The Committee acknowledges its inadvertent failure to timely file the 24-Hour Report and states that the report was immediately filed upon discovery of the issue.²⁵ The Response asserts that Straight Talk Politics is a “new committee with a stellar record” and that it has “implemented policies and procedures to ensure that such an oversight does not occur again.”²⁶ Specifically, the Response notes that the Committee also made four other IEs that were timely filed and that it has implemented new policies and procedures since November 2022.²⁷ Therefore, it argues that the Commission take no further action, or in the alternative, refer the Matter to ADRO.²⁸

Notwithstanding the fact that the Committee asserts the failure to file the timely 24-Hour Report was inadvertent, the Committee is still responsible for its failure to timely file this required disclosure. Further, the Committee requests that the Commission handle this matter through ADRO.²⁹ Resolution through ADRO is not appropriate here as the Committee failed to disclose the IEs until after the election was held and the amount in violation is \$525,000. Consistent with prior MURs involving similar violations,³⁰ the Commission finds reason to

²⁵ Resp. at 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See First General Counsel’s Report (“First GCR”) at 5-6, MUR 8012 (Black Voters Matter); Certification (“Cert.”) (June 9, 2022), MUR 8012 (Black Voters Matter); First GCR at 5, MUR 7436 (Warrior PAC); Cert. (July 18, 2018), MUR 7436 (Warrior PAC); First GCR at 5, MUR 7276 (Right to Rise USA); Cert. (Sept. 13, 2017),

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believe that Straight Talk Politics PAC and Wesley Smith in his official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c).