

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

RAD REFERRAL: 23L-15
DATE OF REFERRAL: May 2, 2023
DATE ACTIVATED: June 8, 2023

EXPIRATION OF SOL: October 26, 2027
ELECTION CYCLE: 2022

SOURCE: Internally Generated

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

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(17)
52 U.S.C. § 30104(b)
52 U.S.C. § 30104(g)(1)
11 C.F.R. § 100.22(a), (b)
11 C.F.R. § 104.4(c)
11 C.F.R. § 109.10(d)
11 C.F.R. § 111.44

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

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 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”).¹ On November 28, 2022, the Committee filed a 24-Hour Report to support one IE, totaling \$525,000,

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

1 that was disseminated on October 25, 2022.² The IE at issue opposed U.S. Senate candidate
2 JD Vance in the 2022 general election.³ On November 29, 2022, the Committee filed its Post-
3 General Report that included a Schedule E (Itemized IE) disclosing two IEs, one of which is the
4 \$525,000 IE at issue.⁴

5 The Committee acknowledges its inadvertent failure to timely file its 24-Hour Report but
6 claims that the report was filed immediately upon discovery of the issue.⁵ The Committee
7 argues that it has implemented new policies and procedures to avoid future violations and
8 requests that the Commission either take no further action in the matter, or in the alternative,
9 refer the matter to the Alternative Dispute Resolution Office (“ADRO”).⁶ The circumstances of
10 the violation do not support dismissal of the matter or referral to ADRO.

11 Accordingly, we recommend that the Commission find reason to believe that Straight
12 Talk Politics PAC and Wesley Smith in his official capacity as treasurer violated 52 U.S.C.
13 § 30104(g)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and
14 11 C.F.R. § 104.4(c) of the Commission’s regulations by failing to timely report independent
15 expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before
16 an election. In addition, we recommend that the Commission enter into pre-probable cause
17 conciliation and approve a proposed conciliation agreement

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

³ *Id.*

⁴ 2022 30-Day Post-General Report, Straight Talk Politics PAC (Nov. 29, 2022),
<https://docquery.fec.gov/pdf/275/202211299547069275/202211299547069275.pdf>.

⁵ Resp. at 1 (May 26, 2023).

⁶ *Id.*

1 **II. FACTUAL BACKGROUND**

2 Straight Talk Politics PAC is a hybrid PAC with a non-contribution account that
3 registered with the Commission on April 7, 2020.⁷ The Committee made IEs in opposition to
4 two Republican Senate candidates, Joseph Matthew O'Dea and JD Vance, in the November 8,
5 2022, general election.⁸

6 On November 28, 2022, the Committee filed a 24-Hour Report to support one IE, totaling
7 \$525,000, that was disseminated on October 25, 2022, in opposition to JD Vance.⁹ On
8 November 29, 2022, the Committee filed the Post-General Report that included a Schedule E
9 (Itemized IEs) disclosing two IEs, one of which was the \$525,000 IE at issue.¹⁰ On February 6,
10 2023, a Request for Additional Information ("RFAI") was sent to the Committee concerning the
11 Post-General Report.¹¹ The RFAI notes that the Committee may have failed to timely file one or
12 more of the required 24-Hour Reports of IEs.¹² A chart was included with the RFAI identifying
13 one IE, totaling \$525,000, for which a 24-Hour Report had not been timely filed.¹³

14 On March 8, 2023, the Committee filed a Form 99 in response to the RFAI stating that it
15 had inadvertently failed to file the 24-Hour Report disclosing the \$525,000 IE.¹⁴ It further stated

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

⁸ O'Dea lost the Colorado general election. Vance won the Ohio general election.

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

¹⁰ 2022 30-Day Post-General Report, Straight Talk Politics PAC (Nov. 29, 2022),
<https://docquery.fec.gov/pdf/275/202211299547069275/202211299547069275.pdf>.

¹¹ RFAI, Straight Talk Politics PAC (Feb. 28, 2023).

¹² *Id.*

¹³ *Id.*, Attach.

¹⁴ Referral at 2; Straight Talk Politics PAC, Form 99 (Mar. 8, 2023).

1 that the report was filed immediately upon discovering the error and that the Committee has
2 “implemented policies and procedures to ensure that such an oversight does not occur again.”¹⁵

3 The Referral notes that since March 14, 2023, RAD logged four communications with
4 representatives of the Committee regarding efforts to help the Committee voluntarily comply
5 with the Act.¹⁶ RAD was able to successfully connect with the Committee on one occasion and
6 notified Brandon Philipczyk, a compliance consultant, that the matter would be referred to
7 another office at the Commission for further review.¹⁷ To date, no further communications have
8 been received from the Committee regarding the matter.¹⁸

9 The Committee’s latest disclosure report, its 2023 Mid-Year Report, indicates that it has
10 no debts or obligations and an ending cash-on-hand balance of \$22,155.65.¹⁹ The Committee
11 argues that it is a “new committee with a stellar record” and therefore requests that the
12 Commission take no further action, or in the alternative, refer the Matter to ADRO.²⁰

13 **III. LEGAL ANALYSIS**

14 Political committees must file periodic reports disclosing their receipts and
15 disbursements.²¹ An independent expenditure is an expenditure that expressly advocates the

15 Referral at 2.

16 *Id.*

17 *Id.*

18 *Id.*

19 2022 Mid-Year Report, Straight Talk Politics PAC (July 10, 2023),
<https://docquery.fec.gov/pdf/466/202307109582480466/202307109582480466.pdf>.

20 *Id.*

21 52 U.S.C. § 30104(a).

1 election or defeat of a clearly identified federal candidate, and is not made in concert or
2 cooperation with or at the request or suggestion of such candidate, the candidate's authorized
3 political committee, or their agents.²² In addition, committees that make independent
4 expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but
5 more than 24 hours before the date of that election must file a 24-hour report to disclose such
6 independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following
7 the date on which a communication is publicly distributed or otherwise publicly disseminated.²³

8 Although the independent expenditures were made after the 20th day, but more than 24
9 hours before the election, and the aggregate amounts with respect to each of the candidates were
10 \$1,000 or more, the Committee did not file the associated 24-Hour Report for the IE
11 disseminated on October 25, 2022, until November 28, 2022, after the election had occurred, and
12 more than a month after the applicable 24-Hour Reporting deadline had passed.

13 The Committee acknowledges its inadvertent failure to timely file the 24-Hour Report
14 and states that the report was immediately filed upon discovery of the issue.²⁴ The Response
15 asserts that Straight Talk Politics is a "new committee with a stellar record" and that it has
16 "implemented policies and procedures to ensure that such an oversight does not occur again."²⁵
17 Specifically, the Response notes that the Committee also made four other IEs that were timely
18 filed and that it has implemented new policies and procedures since November 2022.²⁶

²² *Id.* § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of "expressly advocating").

²³ 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).

²⁴ Resp. at 1.

²⁵ *Id.*

²⁶ *Id.*

1 Therefore, it argues that the Commission take no further action, or in the alternative, refer the
2 Matter to ADRO.²⁷

3 Notwithstanding the fact that the Committee asserts the failure to file the timely 24-Hour
4 Report was inadvertent, the Committee is still responsible for its failure to timely file this
5 required disclosure. Further, the Committee requests that the Commission handle this matter
6 through ADRO.²⁸ Resolution through ADRO is not appropriate here as the Committee failed to
7 disclose the IEs until after the election was held and the amount in violation is \$525,000.²⁹
8 Consistent with our recommendations in prior MURs with similar violations,³⁰ we recommend
9 that the Commission find reason to believe that Straight Talk Politics PAC and Wesley Smith in
10 his official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c).

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²⁷ *Id.*

²⁸ *Id.*

²⁹ Where the 24-hour reports were not filed until after the election and the independent expenditures were not disclosed on the committee's monthly, quarterly, or pre-election report more than five business days prior to the applicable election,

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), MUR 7276 (Right to Rise USA).

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V. RECOMMENDATIONS

1. Open a Matter Under Review;
2. Find 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) and 11 C.F.R. § 104.4(c);
3. Enter into conciliation with Straight Talk Politics PAC and Wesley Smith in his official capacity as treasurer prior to a finding of probable cause to believe;
4. Approve the attached Factual and Legal Analysis;
5. Approve the attached Conciliation Agreement; and

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6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

9/6/2023

Date

Adrienne C. Baranowicz

Adrienne Baranowicz
Deputy Associate General Counsel
for Enforcement

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Kimberly D. Hart

Kimberly D. Hart
Attorney

Attachments:

- 1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Straight Talk Politics PAC and Wesley Smith **MUR**
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.*

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

5 Accordingly, the Commission opens a matter under review and finds reason to believe
6 that Straight Talk Politics PAC and Wesley Smith in his official capacity as treasurer violated
7 52 U.S.C. § 30104(g)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”),
8 and 11 C.F.R. § 104.4(c) of the Commission’s regulations by failing to timely report independent
9 expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before
10 an election.

11 **II. FACTUAL BACKGROUND**

12 Straight Talk Politics PAC is a hybrid PAC with a non-contribution account that
13 registered with the Commission on April 7, 2020.⁸ The Committee made IEs in opposition to
14 two Republican Senate candidates, Joseph Matthew O’Dea and JD Vance, in the November 8,
15 2022, general election.⁹

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17 \$525,000, that was disseminated on October 25, 2022, in opposition to JD Vance.¹⁰ On
18 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.

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11 representatives of the Committee regarding efforts to help the Committee voluntarily comply
12 with the Act.¹⁷ RAD was able to successfully connect with the Committee on one occasion and
13 notified Brandon Philipczyk, a compliance consultant, that the matter would be referred to
14 another office at the Commission for further review.¹⁸ To date, no further communications have
15 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.*

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

5 **III. LEGAL ANALYSIS**

6 Political committees must file periodic reports disclosing their receipts and
7 disbursements.²² An independent expenditure is an expenditure that expressly advocates the
8 election or defeat of a clearly identified federal candidate, and is not made in concert or
9 cooperation with or at the request or suggestion of such candidate, the candidate’s authorized
10 political committee, or their agents.²³ In addition, committees that make independent
11 expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but
12 more than 24 hours before the date of that election must file a 24-hour report to disclose such
13 independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following
14 the date on which a communication is publicly distributed or otherwise publicly disseminated.²⁴

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16 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 \$1,000 or more, the Committee did not file the associated 24-Hour Report for the IE
2 disseminated on October 25, 2022, until November 28, 2022, after the election had occurred, and
3 more than a month after the applicable 24-Hour Reporting deadline had passed.

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6 asserts that Straight Talk Politics is a “new committee with a stellar record” and that it has
7 “implemented policies and procedures to ensure that such an oversight does not occur again.”²⁶
8 Specifically, the Response notes that the Committee also made four other IEs that were timely
9 filed and that it has implemented new policies and procedures since November 2022.²⁷
10 Therefore, it argues that the Commission take no further action, or in the alternative, refer the
11 Matter to ADRO.²⁸

12 Notwithstanding the fact that the Committee asserts the failure to file the timely 24-Hour
13 Report was inadvertent, the Committee is still responsible for its failure to timely file this
14 required disclosure. Further, the Committee requests that the Commission handle this matter
15 through ADRO.²⁹ Resolution through ADRO is not appropriate here as the Committee failed to
16 disclose the IEs until after the election was held and the amount in violation is \$525,000.
17 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),

MUR ___ (Straight Talk Politics PAC)

Factual & Legal Analysis

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

MUR 7276 (Right to Rise USA).