

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

RAD REFERRAL: 23L-04
DATE OF REFERRAL: February 23, 2023
DATE ACTIVATED: May 1, 2023

EXPIRATION OF SOL: May 7, 2027
ELECTION CYCLE: 2022

SOURCE: Internally Generated

RESPONDENT: OkieWay and Steven Martin 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)
11 C.F.R. § 100.22(a), (b)
11 C.F.R. § 104.4
11 C.F.R. § 109.10(d)
11 C.F.R. § 111.44

INTERNAL REPORTS CHECKED: Disclosure Reports
RAD Referral Materials

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred OkieWay and Steven Martin in his official capacity as treasurer (the “Committee”) to the Office of General Counsel for failing to file one pre-election 48-Hour Report of Independent Expenditures in connection with the June 28, 2022 Oklahoma United States Senate special primary election, in accordance with the *2021-2022 RAD Review and Referral Procedures (Standard 7)*.¹ The unreported independent expenditure at issue supported U.S. Senate candidate Lucas Holland in the Oklahoma primary

¹ Referral at 1 (Feb. 23, 2023).

1 election in advance of the special election and totaled \$344,875. It was disbursed on May 7,
2 2022, and was not disclosed until the Committee filed its 2022 July Quarterly Report.² The
3 Committee admits that it failed to timely file the requisite 48-Hour Report for the \$344,875
4 independent expenditure, but argues that the Commission should dismiss the matter or issue a
5 caution letter because it was a one-time mistake caused by the departure of a staff member of the
6 compliance firm OkieWay retained to submit its disclosure reports to the Commission and the
7 firm has reviewed its processes and made changes to ensure all pending compliance and
8 reporting items are properly noted and communicated to other staff when a member departs.

9 Accordingly, we recommend that the Commission find reason to believe that OkieWay
10 and Steven Martin in his official capacity as treasurer violated 52 U.S.C. § 30104(g), enter into
11 pre-probable cause conciliation, and approve the attached conciliation agreement.

12 **II. FACTUAL BACKGROUND**

13 OkieWay is an independent expenditure-only political committee that registered with the
14 Commission on January 7, 2022.³ The Committee made independent expenditures supporting a
15 single candidate, Lucas Holland, in the Oklahoma Republican primary election held on June 28,
16 2022.⁴

17 On July 15, 2022, the Committee filed its 2022 July Quarterly Report covering the period
18 from April 1, 2022, through June 30, 2022.⁵ The report included a Schedule E (Itemized

² OkieWay, 2022 July Quarterly Report (July 15, 2022) [hereinafter 2022 July Quarterly Report], <https://docquery.fec.gov/pdf/820/202207159521878820/202207159521878820.pdf>.

³ OkieWay, Statement of Organization (Jan. 7, 2022), <https://docquery.fec.gov/pdf/628/202201079474888628/202201079474888628.pdf>.

⁴ Holland lost the Republican primary election. Because no candidate received enough primary election votes to win outright, candidates Markwayne Mullin and T.W. Shannon advanced to the Republican primary runoff election held on an August 23, 2022.

⁵ 2022 July Quarterly Report.

1 Independent Expenditures) disclosing a previously unreported independent expenditure totaling
2 \$344,875 made on May 7, 2022 in support of a Holland.⁶ Also on July 15, 2022, the Committee
3 filed one untimely 48-Hour Report to support the \$344,875 independent expenditure that it had
4 disseminated on May 7, 2022.⁷

5 On August 7, 2022, RAD sent a Request for Additional Information (“RFAI”) to the
6 Committee referencing the 2022 July Quarterly Report and noting that the Committee may have
7 failed to timely file one or more of the required 48-Hour Reports of independent expenditures.⁸
8 The RFAI included a chart that identified one independent expenditure totaling \$344,875, for
9 which a 48-Hour Report had not been timely filed.⁹

10 On August 15, 2022, the Committee filed a Form 99 (Miscellaneous Electronic
11 Submission) in response to the RFAI regarding the 2022 July Quarterly Report.¹⁰ On the Form
12 99, the Committee stated:

13 OkieWay inadvertently failed to timely file one 48hr Independent
14 Expenditure Notifications [*sic*] later disclosed in the 2022 July
15 Quarterly report. In this instance, the information and notifications
16 of the expenditures were not conveyed in a timely manner from the
17 accounting manager who disbursed the payments to the
18 compliance team filing the reports. The accounting manager
19 subsequently transitioned to another position outside of the firm
20 shortly thereafter, thus contributing to the delay in information
21 transmittal and notification of the issue. As soon as the
22 compliance team realized the omission, the report was filed
23 immediately to ensure that it was placed on the public record.

⁶ *Id.* at 20-21.

⁷ OkieWay, 48 Hour Report (July 15, 2022), <https://docquery.fec.gov/pdf/146/202207159521570146/202207159521570146.pdf>.

⁸ OkieWay, Request for Additional Information (Aug. 7, 2022), <https://docquery.fec.gov/pdf/018/202208240300152018/202208240300152018.pdf>.

⁹ *Id.*

¹⁰ OkieWay, Miscellaneous Text Submission (Aug. 15, 2022), <https://docquery.fec.gov/pdf/981/202208159525397981/202208159525397981.pdf>.

1 OkieWay takes the Federal Election Campaign Act seriously, and
2 has always acted in good faith to follow all applicable regulations
3 and deadlines. The Committee has reviewed its process
4 thoroughly, has strengthened the procedures in place for these 24-
5 and 48-hour filings, and taken internal remedial actions to ensure
6 that these issues are prevented in the future.¹¹

7 Since September 21, 2022, RAD has logged two telephone communications with a
8 representative of the Committee which reflect efforts to help the Committee voluntarily comply
9 with the Act.¹² In those conversations, the Committee confirmed that they had responded to the
10 RFAI via the August 15, 2022 Form 99.¹³ RAD advised the Committee that it may file a Form
11 99 with any additional clarifying information for the public record and that the matter may be
12 referred to another office at the Commission for further review.¹⁴ As of the date of the Referral,
13 no further communications with Committee regarding this matter had occurred.¹⁵

14 The Committee's response to the Referral does not contest that the 48-Hour Report was
15 not timely filed.¹⁶ The Committee asserts that all other 24- and 48-hour Reports were filed on
16 time and this omission was a one-time mistake caused by the departure of a staff member of the
17 compliance firm OkieWay had retained.¹⁷ The Committee states that when the compliance firm

¹¹ *Id.*

¹² Referral, Attach 2.

On December 15, 2022, the RAD analyst spoke with the Committee regarding its continuing reporting obligations while the outstanding issue of a missing 48-Hour Report on the 2022 July Quarterly Report still had not been resolved. *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Referral at 1.

¹⁶ Resp. at 1 (Apr. 10, 2023).

¹⁷ *Id.* at 1-2.

1 was preparing the July Quarterly Report, it identified the missed report and filed it immediately
2 and did not wait for the Commission to notify it of the missed report.¹⁸

3 In explaining why the single expenditure of \$344,875 was not included on a 48-Hour
4 Report that should have been filed by May 7, 2022, the Committee states that the oversight
5 occurred when the compliance firm's staff member who managed the expenditures of OkieWay
6 at the time of the May disbursement left the firm for another opportunity.¹⁹ The departing staff
7 member did not communicate to other compliance staff that a 48-Hour Report was needed and
8 the staff member who took over the account and timely filed reports for July 2022 was unaware
9 that the \$344,875 disbursement had not been included on the 48-Hour Report filed May 7,
10 2022.²⁰

11 The Committee states that it retained a professional and experienced compliance firm to
12 assist with the reports it files with the Commission.²¹ The Committee asserts that the compliance
13 firm works with dozens of other committees and has various processes in place to help ensure its
14 clients comply with the Act and that staff of the firm have been regular attendees of various
15 Commission trainings and conferences.²² The Committee contends that since this reporting error
16 occurred, the compliance firm has reviewed its process thoroughly and developed a new process
17 related to departing staff to ensure all pending compliance and reporting items are properly noted
18 and communicated to other staff.²³

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.* at 2.

22 *Id.*

23 *Id.*

1 On August 15, 2022, OkieWay paid its final winding down expenses, had no cash on
2 hand, and filed a Termination Report covering the period of July 1, 2022 through August 15,
3 2022.²⁴ On August 24, 2022, RAD informed the Committee they would not be permitted to
4 terminate until all outstanding issues with the 2022 July Quarterly Report were resolved.²⁵

5 The Committee states it is now defunct and, as a single-candidate independent
6 expenditure-only political committee that supported an unsuccessful candidate, has no ability to
7 raise additional funds.²⁶ Respondent requests that the Commission dismiss the matter or,
8 alternatively, approve pre-probable cause conciliation consistent with the resolution of MURs
9 with similar violations.²⁷

10 **III. LEGAL ANALYSIS**

11 Political committees must file periodic reports disclosing their receipts and
12 disbursements.²⁸ An independent expenditure is an expenditure that expressly advocates the
13 election or defeat of a clearly identified federal candidate, and is not made in concert or
14 cooperation with or at the request or suggestion of such candidate, the candidate's authorized
15 political committee, or their agents.²⁹ In addition to a political committee's regular reporting
16 obligations, the Act further requires additional independent expenditure reporting within 24
17 hours of the expenditure when a person makes or contracts to make independent expenditures

²⁴ Referral at 2; Resp. at 2; OkieWay, Termination Report (Aug. 15, 2022), <https://docquery.fec.gov/pdf/982/202208159525397982/202208159525397982.pdf>.

²⁵ Referral at 2; OkieWay, Request for Additional Information (Aug. 24, 2022), <https://docquery.fec.gov/pdf/018/202208240300152018/202208240300152018.pdf>.

²⁶ Resp. at 2.

²⁷ *Id.*

²⁸ 52 U.S.C. § 30104(a).

²⁹ *Id.* § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (providing definition of “expressly advocating”).

1 aggregating \$1,000 or more after the 20th day but more than 24 hours before the date of an
2 election.³⁰

3 Further, a political committee that makes or contracts to make independent expenditures
4 aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day
5 prior to the election, must file a report describing those expenditures within 48 hours.³¹ These
6 reports must be filed within 48 hours “following the date on which a communication that
7 constitutes an independent expenditure is publicly distributed or otherwise publicly
8 disseminated.”³² In 2022, the 20-day period for the Oklahoma special election began on June 8,
9 2022,³³ thus, an independent expenditure made by a political committee before that date
10 aggregating \$10,000 or more triggered the obligation to file a 48-Hour Report.

11 Respondent does not dispute that the Committee failed to timely file the necessary 48-
12 Hour Report, which was due by May 7, 2022, but was not filed until July 15, 2022. Respondent
13 argues that the missed filing was an inadvertent oversight by its professional compliance firm,
14 who has processes in place to help ensure its clients comply with the Act and who has developed
15 a new process since this incident to ensure all pending compliance and reporting items are
16 properly noted and communicated to other staff.³⁴ Notwithstanding the fact that the Committee
17 asserts the failure to file the timely 48-Hour Report was inadvertent, the Committee is still
18 responsible for its failure to timely file this required disclosure. Consistent with our

³⁰ See 52 U.S.C. § 30104(g); 11 C.F.R. § 109.10(d).

³¹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

³² 11 C.F.R. § 104.4(b), (c).

³³ See *24- and 48-Hour Reports of Independent Expenditures Periods: Special Elections (2022)*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/2022-reporting-dates/24-and-48-hour-reports-independent-expenditures-periods-special-elections-2022/> (last visited Aug. 7, 2023).

³⁴ Resp. at 2.

1 recommendations in prior MURs with similar violations, we recommend that the Commission
2 find reason to believe that OkieWay and Steven Martin in his official capacity as treasurer
3 violated 52 U.S.C. § 30104(g).

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9 **V. RECOMMENDATIONS**

- 10 1. Open a Matter Under Review;
- 11 2. Find reason to believe that OkieWay and Steven Martin in his official capacity as
12 treasurer violated 52 U.S.C. § 30104(g)(2);
- 13 3. Enter into conciliation with OkieWay and Steven Martin in his official capacity as
14 treasurer prior to a finding of probable cause to believe;
- 15 4. Approve the attached Factual and Legal Analysis;
- 16 5. Approve the attached conciliation agreement; and

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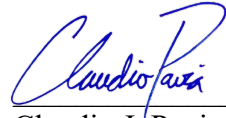
6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel


Charles Kitcher
Associate General Counsel for Enforcement

August 8, 2023

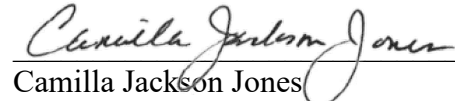
Date



Claudio J. Pavia
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