

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: December 9, 2009

ANALYST: Rhiannon Magruder

- I. COMMITTEE: Americans for Democratic Action Inc. Political
Action Committee
C00112680
Valerie Dulk Jacobs, Treasurer
1625 K Street, NW, Suite 210
Washington, DC 20006
- II. RELEVANT STATUTES: 2 U.S.C. § 434a
11 CFR § 104.5(c)(1)
11 CFR § 111.31
- III. BACKGROUND:

Failure to File Reports and Late Filing

The Americans for Democratic Action Inc. Political Action Committee ("the Committee") failed to timely disclose \$36,490.19 in total receipts and \$38,641.73 in total disbursements during the 2007-2008 election cycle (Attachments 2 and 3).

The Committee timely filed the 2008 August Monthly, 2008 September Monthly and 2008 October Monthly Reports, which each disclosed \$0.00 in total receipts and \$0.00 in total disbursements (Attachment 2). The Committee subsequently received Notices of Failure to File (RQ-7s) for the 2008 12 Day Pre-General, 2008 30 Day Post-General and 2008 Year End Reports (Attachment 4).¹

On September 17, 2009, a Reports Analysis Division (RAD) Analyst left a voicemail message for Mr. Don Kusler, a committee representative, regarding the Committee's chronic failure to file reports. On the same day, Mr. Kusler returned the Analyst's call. The Analyst advised him to file all missing reports and also mentioned that the issue may be referred for

¹ On 12/19/08, the Committee filed the 2008 December Monthly Report (M12) covering 11/1/08-11/30/08, which disclosed no activity. The coverage dates of 11/1/08-11/24/08 were required to be filed as part of the 2008 30 Day Post-General Report. The coverage dates of 11/25/08-11/30/08 were required to be filed as part of the 2008 Year End Report.

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further action by the Commission. Mr. Kusler indicated that he would promptly file all missing reports (Attachment 5).

On September 18, 2009, Mr. Kusler called a RAD Analyst for further information on filing the missing reports. The Analyst advised him to file any missing reports covering October 1, 2008 through December 31, 2008, among others. The Analyst offered to go over the coverage period for each report, but Mr. Kusler indicated that was unnecessary. Mr. Kusler then mentioned that the Committee's Treasurer had recently resigned and new information would need to be provided. The Analyst advised him to file an amended Statement of Organization (FEC Form 1) listing a new treasurer. Mr. Kusler indicated he would file the missing reports and an amended Form 1 the following week (Attachment 5).

On November 9, 2009, Mr. Kusler called the RAD Analyst for technical assistance on filing amended reports. The Analyst walked him through the process (Attachment 5).

On November 16, 2009, the Committee filed the Amended 2008 August Monthly, Amended 2008 September Monthly, Amended 2008 October Monthly, 2008 November Monthly, Amended 2008 December Monthly and 2008 Year End Reports. The reports disclosed additional receipts of \$36,490.19 and additional disbursements of \$38,641.73 (Attachment 2). On that same day, Mr. Kusler called to inform the RAD Analyst that the Committee had filed several new and amended reports. The Analyst confirmed receipt (Attachment 5).

On December 8, 2009, RAD Management called Mr. Kusler to inform him that the Committee's failure to timely file the above reports was being referred for further Commission action, and asked whether he would like to provide a written explanation for the public record. Mr. Kusler stated that the Committee's failure to timely report the activity as required resulted from a change in personnel. He indicated that he noticed the omissions while looking through the Committee's previously filed reports, and then got in touch with the FEC to correct the problems, which resulted in the November 2009 filings. Mr. Kusler stated he would fax a written statement to RAD by Wednesday, December 9.

On December 9, 2009, Mr. Kusler faxed a statement to RAD that stated, in part,

"...[T]he Americans for Democratic Action PAC has, over the past 6 weeks or so, filed a large number of amendments dating back to the beginning of 2004. These filings are the result of an internal audit of our filings triggered by an inquiry by the FEC into filings that the ADA PAC was late filing or had failed to file since November of 2008. Additionally, the FEC inquiry and subsequent internal audit were on the heels of a personnel change with the committee.

The initial assessment that I conducted revealed inconsistencies in filings dating back several years and led me to do a complete, line by line, audit to update and amend filings to bring the committee and the filings in order. The process took several weeks and resulted in the need to file amendments for each monthly filing dating back to early 2004. This flurry of filings then, or course, led us to the FEC's latest call to the committee and this statement. Throughout this process, I

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worked with [RAD Analysts] to ensure that the FEC was aware of what the committee's corrective actions were.

That being said, the ADA PAC and its filings are now up-to-date and in order and our filing procedures have been updated to ensure that future filings are timely and accurate going forward.”²

To date, no further communication has been received from the Committee regarding this matter.

² Image number to be assigned.

Americans for Democratic Action Inc. Political Action Committee (C00112680)

Overview of Reports as Filed by Committee¹

Report Type	Coverage Dates	Date Filed	Receipts	Disbursements	Image No.
2008 August Monthly	7/1/08-7/31/08	8/19/08	\$0.00	\$0.00	28932480189
Amended 2008 August Monthly	7/1/08-7/31/08	11/16/09	\$15,411.17	\$12,500.00	29935450894
Variance Amount			\$15,411.17	\$12,500.00	
2008 September Monthly	8/1/08-8/30/08	9/17/08	\$0.00	\$0.00	28932998899
Amended 2008 September Monthly	8/1/08-8/30/08	11/16/09	\$1,151.06	\$0.00	29935450909
Variance Amount			\$1,151.06	\$0.00	
2008 October Monthly	9/1/08-9/30/08	10/20/08	\$0.00	\$0.00	28992688642
Amended 2008 October Monthly	9/1/08-9/30/08	11/16/09	\$713.79	\$3,012.90	29993323361
Variance Amount			\$713.79	\$3,012.90	
2008 November Monthly ²	10/1/08-10/31/08	11/16/09	\$13,839.76	\$21,628.83	29935451245
Variance Amount			\$13,839.76	\$21,628.83	
2008 December Monthly	11/1/08-11/30/08	12/19/08	\$0.00	\$0.00	28935206039
Amended 2008 December Monthly	11/1/08-11/30/08	11/16/09	\$346.10	\$0.00	29935451268
Variance Amount			\$346.10	\$0.00	

¹ The Committee was required to file a 2008 12 Day Pre-General Report covering 10/1/08-10/15/08, a 2008 30 Day Post-General Report covering 10/16/08-11/24/08, and a 2008 Year End Report covering 11/25/08-12/31/08. Instead, the Committee filed a 2008 November Monthly Report covering 10/1/08-10/31/08, a 2008 December Monthly Report covering 11/1/08-11/30/08, and a 2008 Year End Report covering 12/1/08-12/31/08.

² This report was not previously filed. The variance amount assumes the Committee previously disclosed no activity for this period.

Americans for Democratic Action Inc. Political Action Committee (C00112680)

Overview of Reports as Filed by Committee (cont.)

Report Type	Coverage Dates	Date Filed	Receipts	Disbursements	Image No.
2008 Year End ³	12/1/08-12/31/08	11/16/09	\$5,028.31	\$1,500.00	29935451274
Variance Amount			\$5,028.31	\$1,500.00	
TOTAL VARIANCE AMOUNT			\$36,490.19	\$38,641.73	

³ This report was not previously filed. The variance amount assumes the Committee previously disclosed no activity for this period.

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Americans for Democratic Action Inc. Political Action Committee (C00112680)

Administrative Fine Estimated Penalty Amounts

Required Report	Date Activity Disclosed	Receipts	Disbursements	Estimated Penalty Amount
2008 August Monthly	11/16/09	\$15,411.17	\$12,500.00	\$900.00
2008 September Monthly	11/16/09	\$1,151.06	\$0.00	\$250.00
2008 October Monthly	11/16/09	\$713.79	\$3,012.90	\$500.00
2008 12 Day Pre-General ⁴	11/16/09	\$7,679.03	\$14,616.91	\$900.00
2008 30 Day Post-General ⁵	11/16/09	\$6,437.61	\$7,011.92	\$500.00
2008 Year End ⁶	11/16/09	\$5,097.53	\$1,500.00	\$300.00
TOTAL		\$36,490.19	\$38,641.73	\$3,350.00

⁴ Activity disclosed on 2008 November Monthly Report. See Attachment 2, Footnote 1. Not all activity reported on the 2008 November Monthly Report was itemized; therefore, RAD calculated and assigned a portion of the unitemized activity to the 2008 12 Day Pre-General Report based on a per diem rate.

⁵ Activity disclosed on 2008 November Monthly and 2008 December Monthly Reports. See Attachment 2, Footnote 1. Not all activity reported on the 2008 November and December Monthly Reports was itemized; therefore, RAD calculated and assigned a portion of the unitemized activity on each report to the 2008 30 Day Post-General Report based on a per diem rate.

⁶ Activity disclosed on 2008 December Monthly and 2008 Year End Reports. See Attachment 2, Footnote 1. Not all activity reported on the 2008 December Monthly Report was itemized; therefore, RAD calculated and assigned a portion of the unitemized activity to the 2008 Year End Report on a per diem rate.

Americans for Democratic Action Inc. Political Action Committee (C00112680)

Summary of Notices of Failure to File Notices (RQ-7s) Sent by RAD

Required Report	Required Coverage Dates	RQ-7 Mail Date	Image No.	Date Report Filed
2008 12 Day Pre-General	10/1/08-10/15/08	11/7/08	28039914290	11/16/09 ¹
2008 30 Day Post-General	10/16/08-10/31/08 ²	12/22/08	28039963841	11/16/09 ³
2008 Year End	12/1/08-12/31/08 ⁴	2/19/09	29030040124	11/16/09

¹ Activity disclosed on 2008 November Monthly Report. See Attachment 2, Footnote 1.

² The RQ-7 inadvertently referenced the full coverage period of the required 2008 30 Day Post-General Report (10/16/08-11/24/08). At the time the RQ-7 was sent, the Committee had filed the 2008 December Monthly Report covering 11/1/08-11/30/08. Therefore, the RQ-7 should have only referenced the missing coverage period of 10/16/08-10/31/08.

³ Activity disclosed on 2008 November Monthly Report. See Attachment 2, Footnote 1.

⁴ See Attachment 2, Footnote 1. At the time the RQ-7 was sent, the Committee had filed the 2008 December Monthly Report covering 11/1/08-11/30/08. Therefore, the RQ-7 only referenced the missing coverage period of 12/1/08-12/31/08.