

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **RR 23L-08**

4 DATE REFERRED: Mar. 9, 2023

5 DATE OF NOTIFICATION: Mar. 10, 2023

6 DATE OF LAST RESPONSE: Mar. 15, 2023

7 DATE ACTIVATED: May 4, 2023

8 EXPIRATION OF SOL: July 22-Dec. 1, 2027

9 ELECTION CYCLE: 2022

10 **SOURCE:**

Internally Generated

11 **RESPONDENT:**

12 Spencer Toder for Senate and Spencer Toder in his  
13 official capacity as treasurer<sup>1</sup>

14 **RELEVANT STATUTES  
15 AND REGULATIONS:**

52 U.S.C. § 30104(b)(4)

16 11 C.F.R. § 104.3(b)

17 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

18 **FEDERAL AGENCIES CHECKED:**

None

19 **I. INTRODUCTION**

20 The Reports Analysis Division (“RAD”) referred Spencer Toder for Senate and Spencer  
21 Toder in his official capacity as treasurer (the “Committee”) to the Office of General Counsel  
22 (“OGC”) for failing to timely and accurately disclose on its disclosure reports an aggregate of  
23 \$521,598.14 in disbursements, in violation of the Federal Election Campaign Act of 1971, as  
24 amended (the “Act”). In its Response, the Committee states that it erroneously missed the  
25 disbursements in its original report because of the mid-month filing of the report, which did not  
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<sup>1</sup> Nicholas Zateslo was the treasurer during the time of the activity at issue. *See* Spencer Toder for Senate, Amended Statement of Organization (Mar. 19, 2022). On January 24, 2023, Spencer Toder for Senate filed an amended Statement of Organization naming Toder as treasurer.

1 coincide with the Committee's receipt of its month-end bank statements, and the failure of its  
2 compliance software.

3 We recommend that the Commission open a Matter Under Review ("MUR") and find  
4 reason to believe that the Committee violated 52 U.S.C. § 30104(b)(4) and 11 C.F.R. § 104.3(b)  
5 by failing to report disbursements totaling \$521,598.14 on its original 2022 12-Day Pre-Primary  
6 Report. We further recommend that the Commission authorize pre-probable cause conciliation  
7 with the Committee.

## 8 **II. FACTUAL BACKGROUND**

9 Spencer Toder was a candidate for U.S. Senate in Missouri in 2022,<sup>2</sup> and the Committee  
10 is his principal campaign committee, with Nicholas Zateslo as treasurer until January 24, 2023,  
11 when Toder took over the position.<sup>3</sup>

### 12 **A. Failure to Timely and Accurately Disclose Financial Activity Relating to** 13 **the 2022 Primary Election**

14  
15 On July 22, 2022, the Committee filed a 2022 12-Day Pre-Primary Report covering the  
16 period from July 1, 2022 to July 13, 2022.<sup>4</sup> The Report disclosed no disbursements on Line 17  
17 (Operating Expenditures) or Line 19(a) (Loan Repayments of Loans Made or Guaranteed by the  
18 Candidate) of the Detailed Summary Page.<sup>5</sup> On December 1, 2022, 132 days later and after the  
19 primary, the Committee filed an amendment to its original 2022 12-Day Pre-Primary Report,

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<sup>2</sup> See Spencer Ross Toder, Statement of Candidacy (Apr. 15, 2021). Toder lost the Democratic primary election on August 2, 2022. See *Missouri Secretary of State*, Missouri Election Results, Primary Election August 2, 2022, <https://www.sos.mo.gov/elections/results> (last visited July 18, 2023).

<sup>3</sup> See Spencer Toder for Senate, Amended Statement of Organization (Mar. 19, 2022); Spencer Toder for Senate Amended Statement of Organization (Jan. 24, 2023).

<sup>4</sup> Referral at 1 (June 22, 2023).

<sup>5</sup> *Id.*

1 disclosing \$21,598.14 in operating expenditures and \$500,000 in candidate loan repayments, a  
2 total increase of \$521,598.14 in disbursements from the original report.<sup>6</sup>

3 RAD issued a Request for Additional Information (“RFAI”) to the Committee on  
4 December 6, 2022, referencing the Committee’s Amended 2022 12-Day Pre-Primary Report.<sup>7</sup>  
5 The RFAI asked the Committee to clarify the substantial increase in disbursements disclosed on  
6 its Amended 2022 12-Day Pre-Primary Report and explain why it failed to include this  
7 information in its original report.<sup>8</sup>

## 8 **B. Responses**

9  
10 On December 27, 2022, the Committee responded to the RFAI by filing a Miscellaneous  
11 Electronic Submission (“Form 99”).<sup>9</sup> The Form 99 stated that, with respect to the 12-Day Pre-  
12 Primary Report, it appears that the loans and expenses did not upload properly into the  
13 Commission’s reporting system.<sup>10</sup>

14 On March 15, 2023, the Committee submitted a Response to RAD’s Referral, stating that  
15 the Committee usually processes bank statements at the end of each month, and because of the  
16 “fast-paced nature” of filing the 12-Day Pre-Primary Report in the middle of the month, which  
17 covers the period of July 1 to July 13, 2022, the Committee failed to include the disbursements.<sup>11</sup>  
18 The Committee also claims that its compliance software, which was supposed to issue a warning  
19 for a possible RFAI based on inputted information, failed to produce the warning.<sup>12</sup>

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6 *Id.*

7 *Id.* at 2.

8 RFAI (Dec. 6, 2022), <https://docquery.fec.gov/pdf/708/202212060300162708/202212060300162708.pdf>.

9 *See* Toder for Senate, Form 99 (Dec. 27, 2022), <https://docquery.fec.gov/dcdev/fectxt/1673539.txt>.

10 *Id.*

11 Comm. Resp. at 1 (Mar. 15, 2023).

12 *Id.*

1 **III. LEGAL ANALYSIS**

2 The Act requires committee treasurers to file reports of receipts and disbursements in  
3 accordance with the provisions of 52 U.S.C. § 30104.<sup>13</sup> These reports must include, *inter alia*,  
4 the total amount of receipts and disbursements, including the appropriate itemizations, where  
5 required.<sup>14</sup> In addition to the regular quarterly reports, in any year where there is an election for  
6 which a candidate is seeking election, or nomination for election, the treasurer of an authorized  
7 committee shall file a pre-election report, which shall be filed no later than the 12th day before  
8 an election.<sup>15</sup> The pre-election report must disclose all receipts and disbursements as of the 20th  
9 day before a primary or general election.<sup>16</sup>

10 Here, the Committee acknowledges that it failed to include disbursements on its original  
11 2022 12-Day Pre-Primary Report.<sup>17</sup> On its Amended 2020 12-Day Pre-Primary Report, filed  
12 132 days later and after the primary, the Committee disclosed additional disbursements totaling  
13 \$521,598.14.<sup>18</sup> Therefore, the Committee did not comply with the Act's reporting requirements  
14 when it failed to timely and accurately report \$521,598.14 in aggregate disbursements.

15 In response to the Referral, the Committee claims the omissions made on its original  
16 2022 12-Day Pre-Primary Report were errors resulting from its internal processing system that  
17 relied on month-end statements and a software failure.<sup>19</sup> Although the loan repayments were not

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<sup>13</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>14</sup> 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

<sup>15</sup> 52 U.S.C. § 30104(a)(2)(i); 11 C.F.R. § 104.5(a)(2).

<sup>16</sup> 11 C.F.R. § 104.5(a)(2)(i)(B); *see also* 52 U.S.C. § 30104(b)(2), (4).

<sup>17</sup> Comm. Resp. at 1.

<sup>18</sup> Referral at 2; *compare* original 2022 12-Day Pre-Primary Report at 4, *with* Amended 2022 12-Day Pre-Primary Report at 4.

<sup>19</sup> Comm. Resp. at 1.

1 included in the 12-Day Pre-Primary Report, the Committee requests that the Commission impose  
2 no penalty and that the campaign committee be allowed to terminate because the omission was  
3 an error and the Committee has been “forthright and honest in reporting this data entry mistake  
4 and . . .proactively reported the error without prompt.”<sup>20</sup>

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6 In circumstances involving committees that made inadvertent  
7 reporting errors by omitting receipts and disbursements, the Commission has consistently found  
8 reason to believe and engaged in pre-probable cause conciliation, incorporating the self-reported  
9 nature of the reporting violations.<sup>22</sup>

10 Accordingly, we recommend that the Commission find reason to believe that the  
11 Committee and Spencer Toder in his official capacity as treasurer violated 52 U.S.C.  
12 § 30104(b)(4) and 11 C.F.R. § 104.3(b) by failing to timely and accurately report disbursements.

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<sup>20</sup> *Id.*

<sup>21</sup>

<sup>22</sup> *See, e.g.*, Conciliation Agreement, MUR 8070 (Democratic Executive Committee of Florida); Conciliation Agreement, MUR 8061 (Republican Party of Minnesota—Federal); Conciliation Agreement, MUR 8050 (Montana Democratic Party).

RR 23L-08 (Spencer Toder for Senate)

First General Counsel's Report

Page 6 of 7

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1 **V. RECOMMENDATIONS**

- 2 1. Open a Matter Under Review;
- 3 2. Find reason to believe that Spencer Toder for Senate and Spencer Toder in his  
4 official capacity as treasurer violated 52 U.S.C. § 30104(b)(4) and 11 C.F.R.  
5 § 104.3(b) by failing to timely and accurately report disbursements;
- 6 3. Enter into conciliation with Spencer Toder for Senate and Spencer Toder in his  
7 official capacity as treasurer prior to a finding of probable cause to believe;
- 8 4. Approve the attached Factual and Legal Analysis;
- 9 5. Approve the attached Conciliation Agreement; and
- 10 6. Approve the appropriate letter.

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Lisa J. Stevenson  
Acting General Counsel

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Charles Kitcher  
Associate General Counsel for Enforcement

16 July 19, 2023

17 Date

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Claudio J. Pavia  
Deputy Associate General Counsel for Enforcement

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Mark Allen  
Assistant General Counsel

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Rocelyn Halili  
Attorney

25 Attachments:

- 26 1. Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Spencer Toder for Senate MUR \_\_\_\_\_  
and Spencer Toder in his  
official capacity as treasurer<sup>1</sup>

**I. INTRODUCTION**

The Reports Analysis Division (“RAD”) referred Spencer Toder for Senate and Spencer Toder in his official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for failing to timely and accurately disclose on its disclosure reports an aggregate of \$521,598.14 in disbursements, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). In its Response, the Committee states that it erroneously missed the disbursements in its original report because of the mid-month filing of the report, which did not coincide with the Committee’s receipt of its month-end bank statements, and the failure of its compliance software.

For reasons discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b)(4) and 11 C.F.R. § 104.3(b) by failing to report disbursements totaling \$521,598.14 on its original 2022 12-Day Pre-Primary Report.

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<sup>1</sup> Nicholas Zateslo was the treasurer during the time of the activity at issue. *See* Spencer Toder for Senate, Amended Statement of Organization (Mar. 19, 2022). On January 24, 2023, Spencer Toder for Senate filed an amended Statement of Organization naming Toder as treasurer.

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3 is his principal campaign committee, with Nicholas Zateslo as treasurer until January 24, 2023,  
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<sup>5</sup> *Id.*

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1 its Amended 2022 12-Day Pre-Primary Report and explain why it failed to include this  
2 information in its original report.<sup>8</sup>

### 3 **B. Responses**

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13 for a possible RFAI based on inputted information, failed to produce the warning.<sup>12</sup>

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18 required.<sup>14</sup> In addition to the regular quarterly reports, in any year where there is an election for

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<sup>10</sup> *Id.*

<sup>11</sup> Comm. Resp. at 1 (Mar. 15, 2023).

<sup>12</sup> *Id.*

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<sup>14</sup> 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

1 which a candidate is seeking election, or nomination for election, the treasurer of an authorized  
2 committee shall file a pre-election report, which shall be filed no later than the 12th day before  
3 an election.<sup>15</sup> The pre-election report must disclose all receipts and disbursements as of the 20th  
4 day before a primary or general election.<sup>16</sup>

5 Here, the Committee acknowledges that it failed to include disbursements on its original  
6 2022 12-Day Pre-Primary Report.<sup>17</sup> On its Amended 2020 12-Day Pre-Primary Report, the  
7 Committee disclosed additional disbursements totaling \$521,598.14.<sup>18</sup> Therefore, the Committee  
8 did not comply with the Act’s reporting requirements when it failed to timely and accurately  
9 report \$521,598.14 in aggregate disbursements.

10 In response to the Referral, the Committee claims the omissions made on its original  
11 2022 12-Day Pre-Primary Report were errors resulting from its internal processing system that  
12 relied on month-end statements and a software failure.<sup>19</sup> Although the loan repayments were not  
13 included in the 12-Day Pre-Primary Report, the Committee requests that the Commission impose  
14 no penalty and that the campaign committee be allowed to terminate because the omission was  
15 an error and the Committee has been “forthright and honest in reporting this data entry mistake  
16 and . . . proactively reported the error without prompt.”<sup>20</sup>

17 In circumstances involving committees that made inadvertent reporting errors by omitting  
18 receipts and disbursements, the Commission has consistently found reason to believe and

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<sup>15</sup> 52 U.S.C. § 30104(a)(2)(i); 11 C.F.R. § 104.5(a)(2).

<sup>16</sup> 11 C.F.R. § 104.5(a)(2)(i)(B); *see also* 52 U.S.C. § 30104(b)(2), (4).

<sup>17</sup> Comm. Resp. at 1.

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<sup>19</sup> Comm. Resp. at 1.

<sup>20</sup> *Id.*

1 engaged in pre-probable cause conciliation, incorporating the self-reported nature of the  
2 reporting violations.<sup>21</sup>

3           Accordingly, the Commission finds reason to believe that the Committee and Spencer  
4 Toder in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(4) and 11 C.F.R.  
5 § 104.3(b) by failing to timely and accurately report disbursements.

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<sup>21</sup>       *See, e.g.*, Conciliation Agreement, MUR 8070 (Democratic Executive Committee of Florida); Conciliation Agreement, MUR 8061 (Republican Party of Minnesota—Federal); Conciliation Agreement, MUR 8050 (Montana Democratic Party).