



**FEDERAL ELECTION COMMISSION**  
**1050 FIRST STREET, N.E.**  
**WASHINGTON, D.C. 20463**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 Make America Great Again PAC f/k/a ) MUR 7784  
 Donald J. Trump for President, Inc., *et al.* )  
 )

**STATEMENT OF REASONS OF CHAIRMAN ALLEN J. DICKERSON  
 AND COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

This Matter arose from a Complaint alleging that Make America Great Again PAC f/k/a Donald J. Trump for President, Inc.<sup>1</sup> and Bradley T. Crate in his official capacity as treasurer (“Trump Committee”) and Trump Make America Great Again Committee (“TMAGA Committee”)<sup>2</sup> (together, “Committees”) violated the Federal Election Campaign Act of 1971 (“FECA” or “Act”) by misreporting payments to two vendors—American Made Media Consultants, LLC (“AMMC”)<sup>3</sup> and Parscale Strategy, LLC—in order to conceal payments to sub-vendors and employees. But the legal support for enforcement here is remarkably thin, and the only arguable factual support comes from inferences based upon media reports citing anonymous sources. We will not pursue enforcement-by-rumor, particularly on a tenuous legal theory. Accordingly, we declined to find reason to believe the Committees violated the Act by misreporting the payees or purposes of payments to AMMC or Parscale Strategy, and instead voted to dismiss this matter as an exercise of prosecutorial discretion pursuant to *Heckler v. Chaney*.<sup>4</sup> We issue this statement of reasons as contemplated by the courts.<sup>5</sup>

<sup>1</sup> Donald J. Trump for President has converted to a multicandidate committee, Make America Great Again PAC, but at all times relevant to the Complaint it operated as Trump’s principal campaign committee. First Gen’l Counsel’s Rept. (“FGCR”) at 3 & n.1; Supp’l Committees’ Resp. at 1, n.1.

<sup>2</sup> TMAGA Committee is a joint-fundraising committee comprised of the Trump Committee, Save America (a leadership PAC), and the Republican National Committee (“RNC”). FGCR at 3.

<sup>3</sup> American Made Media Holding Corporation, Inc. (“AMMHC”) is the holding company for AMMC and operates exclusively through AMMC. *Id.* at 4, n.3. Though not named as respondents, AMMC and AMMHC filed a joint response in this matter. For brevity, this statement refers only to AMMC.

<sup>4</sup> 470 U.S. 821 (1985).

<sup>5</sup> See, e.g., *Nat’l Republican Senatorial Comm. v. FEC*, 966 F.2d 1471, 1476 (D.C. Cir. 1992); *Campaign Legal Ctr. & Democracy 21 v. FEC*, 952 F.3d 352, 355 (D.C. Cir. 2020).

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 2 of 13

## I. FACTUAL BACKGROUND

At all times relevant to the Complaint, each Committee was an authorized committee of presidential candidate Donald J. Trump.<sup>6</sup>

### a. AMMC

AMMC is a Delaware corporation.<sup>7</sup> Each Committee contracted with AMMC for media and ad-placement services, including “media sub-vendor planning and coordination services,” during the 2020 presidential election cycle.<sup>8</sup> Under its non-exclusive agreements with the Committees,<sup>9</sup> AMMC contracts directly with media sub-vendors and is responsible for managing all sub-vendor relationships on the Committees’ behalf.<sup>10</sup> AMMC invoices the Committees for services, including any fees or costs that third-parties or sub-vendors charge to AMMC.<sup>11</sup> The Committees pay AMMC, and AMMC is responsible for paying its sub-vendors.<sup>12</sup>

Between April 2018 and November 20, 2020, the Trump Committee reported approximately \$519 million in disbursements to AMMC for “placed media,” “online advertising,” “SMS advertising,” and other similar purposes.<sup>13</sup> Between November 2018 and December 2020, the TMAGA Committee reported approximately \$255 million in disbursements to AMMC for “online advertising,” “digital list rental services,” and other similar purposes.<sup>14</sup> The RNC reported one disbursement of \$141,211.63 to AMMC in 2019 for “list acquisition.”<sup>15</sup> No other federal committee reported disbursements to AMMC between April 2018 and December 2020.<sup>16</sup>

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<sup>6</sup> See Committees’ Resp., Crate Decl. ¶ 1.

<sup>7</sup> FGCR at 3.

<sup>8</sup> *Id.* at 9; see also AMMC Resp., Dollman Decl. ¶ 5.

<sup>9</sup> AMMC provided its contract with the Trump Committee, AMMC Resp., Dollman Decl. Attachment, and stated that it has an “identical agreement with the [TMAGA] Committee.” AMMC Resp. at 2, n.2.

<sup>10</sup> FGCR at 9 & n.38; see also AMMC Resp., Dollman Decl. ¶¶ 7, 8 & Attachment.

<sup>11</sup> Committees’ Resp. at 6 (citing Crate Decl. ¶¶ 6-7); AMMC Resp., Dollman Decl. ¶ 10.

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

<sup>13</sup> FGCR at 4-5; see also Federal Election Commission Disbursements: Filtered Results, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00580100&recipient\\_name=American+Made+Media+Consultants&min\\_date=04%2F01%2F2018&max\\_date=11%2F20%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00580100&recipient_name=American+Made+Media+Consultants&min_date=04%2F01%2F2018&max_date=11%2F20%2F2020) (disbursements by Trump Committee to AMMC between Apr. 1, 2018 and Nov. 20, 2020).

<sup>14</sup> FGCR at 5; see also Federal Election Commission Disbursements: Filtered Results, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00618371&recipient\\_name=American+Made+Media+Consultants&min\\_date=04%2F01%2F2018&max\\_date=11%2F20%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00618371&recipient_name=American+Made+Media+Consultants&min_date=04%2F01%2F2018&max_date=11%2F20%2F2020) (disbursements by TMAGA Committee to AMMC between Apr. 1, 2018 and Nov. 20, 2020).

<sup>15</sup> FGCR at 5; see also Federal Election Commission Disbursements: Filtered Results, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00003418&recipient\\_name=American+Made+Media+Consultants&min\\_date=04%2F01%2F2018&max\\_date=11%2F20%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00003418&recipient_name=American+Made+Media+Consultants&min_date=04%2F01%2F2018&max_date=11%2F20%2F2020) (disbursement by RNC to AMMC between Apr. 1, 2018 and Nov. 20, 2020).

<sup>16</sup> FGCR at 5.

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 3 of 13

Complainant alleges that AMMC made payments to Trump advisors and family members, and that persons holding senior roles with the Trump Committee—including Lara Trump, John Pence, Sean Dollman, Alex Cannon, Jared Kushner, and Bradley Parscale—also served in key roles at AMMC or were otherwise involved in AMMC’s creation or operation.<sup>17</sup> The Committees do not dispute that AMMC is “a private company run by individuals whom the [Trump] Campaign knows and trusts,”<sup>18</sup> including Sean Dollman as AMMC’s president and treasurer.<sup>19</sup> The Committees also stipulate that Dollman has dual employment with the Trump Committee and AMMC.<sup>20</sup> In their contracts with AMMC, each Committee “expressly consented to Mr. Dollman serving as both an employee of the Campaign and a representative of AMMC, provided that, in all matters relating to the performance of Services under the Agreement, Mr. Dollman is considered to be acting in his capacity as representative of AMMC, and not as an employee of [the Trump Committee].”<sup>21</sup>

### **b. Parscale Strategy**

Parscale Strategy is a Texas LLC.<sup>22</sup> Since February 2017, Parscale Strategy has provided political strategy and digital marketing consulting services to the Committees under services agreements.<sup>23</sup> Parscale Strategy invoices the Committees for its services monthly, and the Committees remit payment for those services to Parscale Strategy.<sup>24</sup> The Complaint alleges that the Trump Committee reported payments to Parscale Strategy for “strategy consulting” and “consulting and media services,” and that the TMAGA Committee has also reported payments to Parscale Strategy.<sup>25</sup> The record indicates that Parscale Strategy has approximately fifteen W-2 employees, including Lara Trump and Kimberly Guilfoyle.<sup>26</sup>

### **c. OGC Recommendation**

Based on the foregoing, the Office of General Counsel (“OGC”) proposed finding reason to believe that, in violation of 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b): (1) the Trump Committee misreported (a) the payees of payments to AMMC

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<sup>17</sup> FGCR at 3-6.

<sup>18</sup> *Id.* at 8-9. *See also* Committees’ Resp. at 5 (citing Crate Decl. ¶ 2).

<sup>19</sup> Committees’ Resp. at 6 (citing Crate Decl. ¶ 5).

<sup>20</sup> *Id.* at 6, 13 (citing Crate Decl. ¶ 5).

<sup>21</sup> *Id.* at 6 (cleaned up); *see also* AMMC Resp., Dollman Decl. Attachment at 7; FGCR at 9-10.

<sup>22</sup> *See* Compl. ¶ 49; Committees’ Resp. at 7.

<sup>23</sup> Crate Decl. ¶ 9.

<sup>24</sup> *Id.* ¶¶ 9-10.

<sup>25</sup> FGCR at 8.

<sup>26</sup> Committees’ Resp. at 7 (citing Compl. ¶ 54).

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 4 of 13

and Parscale Strategy<sup>27</sup> and (b) the purpose of payments to Parscale Strategy;<sup>28</sup> and, (2) the TMAGA Committee misreported the payees of payments to AMMC.<sup>29</sup>

## II. LEGAL FRAMEWORK

Under 52 U.S.C. § 30104(b)(5)(A), political committees must report “the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.”<sup>30</sup> Commission implementing regulations generally restate these requirements<sup>31</sup> and—in the context of authorized committees—state that “purpose means a brief statement or description of why the disbursement was made.”<sup>32</sup> The regulations further list some illustrative examples of what constitutes an adequate description of “purpose” in this context.<sup>33</sup>

## III. ANALYSIS

### a. PAYEES OF PAYMENTS TO AMMC AND PARSCALE STRATEGY

“Neither the Act nor the Commission’s relevant implementing regulations address the concepts of ultimate payees, vendors, agents, contractors, or subcontractors in the context of payee reporting.”<sup>34</sup> The Commission has issued policy guidance requiring committees to identify “ultimate payees” in three scenarios, but this policy explicitly does *not* cover “situations in which a vendor, acting as the committee’s agent, purchases goods and services on the committee’s behalf from sub[-]vendors.”<sup>35</sup>

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<sup>27</sup> FGCR at 26, ¶ 1.

<sup>28</sup> *Id.* ¶ 3.

<sup>29</sup> *Id.* ¶ 2.

<sup>30</sup> 52 U.S.C. § 30104(b)(5)(A).

<sup>31</sup> *E.g.*, 11 C.F.R. § 104.3 (b)(4)(i) (under “itemization of disbursements by authorized committees,” requiring reporting of “[e]ach person to whom an expenditure . . . in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee’s operating expenses, together with the date, amount and purpose of each expenditure.”).

<sup>32</sup> 11 C.F.R. § 104.3(b)(4)(i)(A).

<sup>33</sup> *Id.* (“Examples of statements or descriptions which meet the requirements of this paragraph include [] dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of this paragraph.”).

<sup>34</sup> Factual & Legal Analysis (“FLA”) at 14, MUR 7923 (Friends of David Schweikert) (citations omitted).

<sup>35</sup> Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625-40,627 (July 8, 2013) (providing for ultimate-payee reporting (1) when committees reimburse individuals who pay certain committee expenses; (2) when committees pay certain credit card bills; and (3) when candidates use personal funds to pay committee expenses.).

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 5 of 13

As a general matter, “the Commission has concluded that a committee need not separately report its consultant’s payments to other persons—such as those payments for services or goods used in the performance of the consultant’s contract with the committee.”<sup>36</sup> For instance, in MUR 6894 (Russell for Congress), the Commission declined to find reason to believe that a committee violated 52 U.S.C. § 30104(b) by failing to disclose a media buy that its media vendor, TCI, purchased to air campaign ads. The committee had “hired TCI to produce and distribute advertising, incurred fees with TCI, paid TCI, and properly disclosed its payments to TCI on its disclosure reports.”<sup>37</sup> Thus, the “alleged unreported disbursements were in fact reported to the Commission,” because “[t]he [c]ommittee disclosed payments it made directly to TCI.”<sup>38</sup>

In contrast, the Commission has determined “that merely reporting the immediate recipient of a committee’s payment will not satisfy the requirements of section 30104(B)(5) *when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds.*”<sup>39</sup> In other words, the Commission has required identification of sub-vendors or other ultimate payees “when the committee has previously instructed the payee to pass payments along to a third party that was not involved in the provision of services by the payee.”<sup>40</sup>

For example, in MUR 4872 (Jenkins for Senate), the committee hired a phone-banking vendor, Impact Mail, but after learning that Impact Mail appeared as “David Duke” on caller ID, “directed that Impact Mail be paid through Courtney Communications, the campaign’s media firm.”<sup>41</sup> Although the media firm “was not involved in the provision of services by Impact Mail . . . Jenkins decided to make disbursements for the services through Courtney Communications because he did not want his campaign to be associated with Impact Mail and did not want Impact Mail listed on the Jenkins Committee’s disclosure reports.”<sup>42</sup>

The Commission considered that, as the entity that “provided media services for [the committee],” Courtney Communications “was paid and directed to pay in turn various other vendors, *e.g.*, television and radio stations,” and the committee “did not further itemize payments Courtney made to these and to other third party vendors.”<sup>43</sup>

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<sup>36</sup> FLA at 12, MUR 6510 (Kirk for Senate). *See also, e.g.*, FGCR at 4, MUR 2612 (Bush for President) (“The Commission [has] concluded that a consultant may be viewed as a vendor of media services to a committee, and that a committee may report payments to such consultants as committee expenditures without further itemization of the other entities that receive payments from these consultants in connection with their services under committee contracts.”) (emphasis original).

<sup>37</sup> FLA at 1, MUR 6894 (Russell for Congress).

<sup>38</sup> *Id.* at 2.

<sup>39</sup> FLA at 8-9, MUR 6724 (Bachmann for President) (emphasis added).

<sup>40</sup> *Id.* at 9, n.39 (citations omitted).

<sup>41</sup> Conciliation Agreement at 3, MUR 4872 (Jenkins for Senate 1996).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 6 of 13

The Commission distinguished such permissible arrangements from the facts in Jenkins, because “Impact Mail was not an ‘ultimate vendor’ or sub vendor of Courtney Communications.”<sup>44</sup> Instead, the “committee contracted directly with Impact Mail,” and “Courtney’s only role . . . was to serve as a conduit for payment to Impact Mail so as to conceal the transaction with Impact Mail.”<sup>45</sup> Thus, the Commission concluded that the committee should have reported Impact Mail as the payee for the phone banking, not Courtney Communications.

Other instances where the Commission has pursued enforcement in this context involve similar facts. In MUR 6724 (Bachmann for President), a referral from the Office of Congressional Ethics concluded—and “the weight of the evidence” confirmed—that a committee “routed payments through [media vendor] C&M to avoid disclosing [] the intended recipient” (Iowa state senator Sorenson, whom the committee believed it could not pay under state ethics rules).<sup>46</sup> The committee had “made the decision to hire Sorenson and negotiated the terms of his compensation, and *only out of a desire to conceal payments to Sorenson* did it ultimately agree to route the money through C&M.”<sup>47</sup> There was also no indication that Sorenson had any contract with C&M, Sorenson denied being employed by C&M, and “it d[id] not appear that C&M exercised any independent control over the funds it received from the [c]ommittee that were earmarked for Sorenson.”<sup>48</sup> Thus, the Commission found reason to believe that “the [c]ommittee used C&M merely to serve as a conduit for payment,”<sup>49</sup> thereby violating 52 U.S.C. § 30104(b)(5).

The Commission reached a similar result in MUR 6800 (Ron Paul 2012 Presidential Campaign Committee), where the committee paid Sorenson through a “business entity,” ICT.<sup>50</sup> There, as in Bachmann, the committee “made the decision to hire Sorenson and negotiated the terms of his compensation, and Sorenson took no direction from ICT nor performed any work for ICT.”<sup>51</sup> Sorenson’s sworn admissions in a parallel criminal proceeding confirmed all of this.<sup>52</sup> Thus, the Commission found reason to believe the committee violated 52 U.S.C. § 30104(b)(5).<sup>53</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 4.

<sup>46</sup> FLA at 10, MUR 6724 (Bachmann for President).

<sup>47</sup> *Id.* (emphasis added).

<sup>48</sup> *Id.* at 10-11 (quotation marks omitted).

<sup>49</sup> *Id.* at 11.

<sup>50</sup> FLA-Committee at 4, MUR 6800 (Ron Paul 2012 Presidential Campaign Comm.).

<sup>51</sup> *Id.* at 10.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* Though it pre-dates the express articulation of the “mere conduit” standard, the Commission also pursued a payee-reporting violation in MUR 3847 (Stockman), where OGC concluded that a committee routed payment through a consultancy that: (1) did not “exist[] as an independent legal entity” from the committee; (2) had no contract with the committee; and (3) was not even known to sub-vendors to whom it remitted payment. Gen’l Counsel’s Br. at 34-37 (PDF at 1449-1452), MUR 3847 (Stockman).

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 7 of 13

In light of the foregoing, we declined to find reason to believe that either Committee misreported payees of payments to AMMC, or that the Trump Committee misreported payees of payments to Parscale Strategy. That is because there is no indication that either AMMC or Parscale Strategy was a “mere conduit” for payment of funds to a third-party that was “not involved in the provision of services by the payee.”<sup>54</sup> Rather, the responses credibly explain that each vendor paid its respective sub-vendors and employees for services provided in performing the vendors’ contracts with the Committees, and support these explanations with declarations from those with knowledge and relevant documentation, including the relevant contract terms.<sup>55</sup>

Thus, the record reflects unremarkable arrangements between committees and vendors for media placement, media consulting, and other related services, such as Russell.<sup>56</sup> Absent are facts like those in Jenkins, Bachmann, or Paul, where payment was made to a vendor that was not involved in providing services to the committee in an attempt to disguise the intended recipient of funds. If anything, the record suggests the opposite: there is no indication that AMMC, Parscale Strategy, or their respective sub-vendors or employees attempted to hide their work for the Committees. And—unlike in Jenkins, Bachmann, and Paul—the record here indicates that AMMC, Parscale Strategy, and their respective sub-vendors and employees were very much involved in the provision of services under those contracts. Thus, we find little support for pursuing enforcement action.

As the Committees and AMMC note,<sup>57</sup> this is consistent with the longstanding practice whereby presidential campaigns contract with vendors to coordinate suites of services including media consulting. The Commission has explicitly acknowledged

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<sup>54</sup> *E.g.*, FLA at 9, n.39, MUR 6724 (Bachmann for President) (citations omitted).

<sup>55</sup> *E.g.*, Committees’ Resp. at 5-7, 10-11 & Crate Decl.; AMMC Resp. at 2-3, Dollman Decl. & Attachment.

<sup>56</sup> OGC’s enforcement proposal leans heavily on a 1983 advisory opinion advising that a committee need not itemize sub-vendors for a media vendor with “a legal existence [] separate and distinct from the operations of the Committee,” whose “principals d[id] not hold any staff position with the Committee,” where the parties conducted “arms-length” contract negotiations, and the vendor was not “required to devote its ‘full efforts’ to the contract.” AO 1983-25 (Mondale for President) at 3; *see also* FGCR at 17-18. The Commission has since articulated the “mere conduit” standard, and, as an advisory opinion limited to its facts, *see* 52 U.S.C. § 30108(c), Mondale does not establish minimum requirements absent which sub-vendors must be itemized. But even if it had, the record indicates that AMMC and Parscale Strategy need not disclose any sub-vendors, as they (1) are independent legal entities that are distinct from each Committee (Compl. ¶¶ 13, 49; Committees’ Resp. at 13; AMMC Resp. at 3 (citing Dollman Decl.); Committees’ Supp’l Resp. at 1 & n.2), (2) are represented by their own counsel (Committees’ Resp. at 13 (citing Crate Decl. ¶¶ 3, 9), 6, 7; AMMC Resp. at 2 (citing Dollman Decl. ¶ 6); Supp’l Committees’ Resp. at 1, n.2), (3) provided services to the Committees under non-exclusive contracts (Committees’ Resp. at 6 (citing Crate Decl. ¶¶ 3-4), 7, 13; AMMC Resp. at 2 & n.2 (citing Dollman Decl. ¶¶ 5, 7), 3), and (4) maintained contractual and management responsibility over their respective sub-vendors and employees (Committees’ Resp. at 6, 13 (citing Crate Dec. ¶ 4); AMMC Resp. at 2-3 (citing Dollman Decl. ¶ 8)).

<sup>57</sup> Committees’ Resp. at 2-3; AMMC Resp. at 4-5; Committees’ Supp’l Resp. at 2-4.

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 8 of 13

this practice. For example, in its Title 26 audit, the Commission noted that Ronald Reagan’s 1984 campaign coordinated media buys through an in-house company, the Tuesday Team, which had just two clients (the campaign and the RNC) and existed solely for purposes of the 1984 campaign, finding no fault with this arrangement.<sup>58</sup> The Commission similarly acquiesced when Bill Clinton’s 1996 campaign acquired numerous services through the November 5 Group, an incorporated media vendor established by key campaign consultants and advisors.<sup>59</sup> The Commission also explicitly acknowledged that George W. Bush’s 2004 campaign did not report payments to sub-vendors paid by its media consultant, Maverick Media, and raised no quarrel with that circumstance.<sup>60</sup> Respondents point to credible reports of comparable arrangements by campaigns including George H.W. Bush (1992), Barack Obama (2008 and 2012), Hillary Clinton (2016), Mitt Romney (2012), and Joe Biden (2020), and filings with the Commission corroborate those reports.<sup>61</sup> The Commission has not required further itemization of payments in these circumstances—even in the context of public-financing audits, which several of these committees underwent.<sup>62</sup> Thus, it would be a marked departure from prior practice to do so here.

We decline OGC’s invitation to depart from this historical practice based on news articles, for at least two reasons. First, the reports OGC relies upon are imprecise and credit “anonymous sources” for key assertions. In fact, media reports citing “anonymous sources” provide the *only* support for OGC’s conclusions that (1) Jared Kushner “approved” the creation of AMMC as “a campaign shell company,” (2) Trump Committee counsel suggested creating a “pass-through company” to buy TV ads,<sup>63</sup> and (3) Parscale Strategy was “used to make payments out of public view” to Kimberly Guilfoyle and Lara Trump.<sup>64</sup> Unsourced reports are not a proper basis for

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<sup>58</sup> Statement of Reasons at 3-5 & n.3, Title 26 Audit (Reagan-Bush ‘84 Primary Comm.), *available at* <https://www.fec.gov/resources/legal-resources/enforcement/audits/1984/Title26/84RonaldReaganPrimary.pdf> (visited June 5, 2022).

<sup>59</sup> *See, e.g.*, FGCR at 31 & n.29, MUR 4544 (Clinton-Gore ‘96 Primary Comm.), *available at* <https://www.fec.gov/files/legal/murs/4544/00002919.pdf> (visited June 5, 2022).

<sup>60</sup> *See* FLA at 6, n.5, MUR 5502 (Martinez for Senate) (“The Bush Committee’s disclosure reports show no payments to either Stevens-Schriefer or Red October. However, it appears that Stevens-Schriefer and Red October provided services to the Bush Committee through a third firm, Maverick Media, which served as the Bush Committee’s principal media consultant.”).

<sup>61</sup> Committees’ Resp. at 2-5 (citations omitted); AMMC Resp. at 4-5 (citations omitted).

<sup>62</sup> *See* Title 26 Audits of Reagan-Bush ‘84; Bush-Quayle ‘92; Clinton/Gore ‘96; and Bush-Cheney ‘04.

<sup>63</sup> FGCR at 5-6 & nn.19, 20, 24 (citing Tom LoBianco & Dave Levinthal, *Jared Kushner Helped Create a Trump Campaign Shell Company that Secretly Paid the President’s Family Members and Spent \$617 Million in Reelection Cash*, BUS. INSIDER (Dec. 18, 2020), <https://www.businessinsider.com/jared-kushner-trump-campaign-shell-company-family-ammc-lara-2020-12>).

<sup>64</sup> FGCR at 20 (citing Danny Hakim & Glenn Thrush, *How the Trump Campaign Took Over the G.O.P.*, N.Y. TIMES (Mar. 9, 2020), <https://www.nytimes.com/2020/03/09/us/trump-campaign-brad-parscale.html>) (“[a]ccording to two people with knowledge of the matter, Parscale Strategy has also been used to make payments out of public view to Lara Trump, the wife of the president’s son Eric, and Kimberly Guilfoyle, the girlfriend of Donald Trump Jr., who have been surrogates on the stump and also taken on broader advisory roles.”).



MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 9 of 13

Commission enforcement action<sup>65</sup> (particularly where, as here, they are heavily characterized, conclusory, and laden with innuendo).

Second, the bulk of the articles' factual allegations, shorn of their imprecise characterization, would not persuade us to pursue enforcement here, even if they were true. After all, involvement by senior committee personnel in AMMC's or Parscale Strategy's decisions or operations<sup>66</sup> would not establish that either vendor is "merely a conduit for the intended recipient of the funds"<sup>67</sup> disbursed by either Committee. Quite the contrary: the Committees reported disbursements to these vendors for purposes consistent with the services contracted for. Moreover, it is perfectly reasonable for a committee to have input in its vendors' decisions, particularly on media strategy. And there is nothing wrong with an individual serving in more than one capacity related to a presidential campaign; decades of established practice show that a candidate's trusted advisors often wear "many hats" in the context of a campaign. Thus, if some individuals were involved in Committee operations as well as those of Parscale Strategy or AMMC, this would not persuade us to pursue enforcement action here.

That a vendor (or its sub-vendors or employees) has ties to a candidate does not change the fact that "a committee need not separately report its consultant's payments to other persons—such as those payments for services or goods used in the performance of the consultant's contract with the committee."<sup>68</sup> The Commission rejected that notion in MUR 6510 (Kirk for Senate), which involved allegations that a committee misreported payments to its media vendor because the vendor used a sub-vendor that was owned by (and paid a salary to) the candidate's live-in girlfriend.<sup>69</sup> On these facts, the Commission reiterated that "neither the Act nor the Commission's regulations require authorized committees to report expenditures or disbursements to their vendors' sub-vendors," and declined to find reason to believe the committee misreported payees.<sup>70</sup> In short, alleged personal ties between Donald Trump and Parscale Strategy, AMMC, or their employees or sub-vendors do not change the Committees' reporting obligations.

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<sup>65</sup> *See, e.g.*, FLA at 6 & n.8, MUR 5845 (Citizens for Truth) (citations omitted); 11 C.F.R. § 111.4(c) ("All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. § 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief."), (d)(2) ("Statements [in a complaint] which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements."). That the Commission may not consider anonymous complaints, 52 U.S.C. § 30109(a)(1), further counsels against pursuing enforcement action based upon anonymous sources alone.

<sup>66</sup> FGCR at 16-17.

<sup>67</sup> FLA at 8-9, MUR 6724 (Bachmann for President) (emphasis added).

<sup>68</sup> FLA at 12, MUR 6510 (Kirk of Senate).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 11-12, 13 (citations omitted).

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 10 of 13

## b. PURPOSE OF PAYMENTS TO PARSCALE STRATEGY

Commission policy guidance directs filers reporting disbursement purposes to ask, “Could a person not associated with the committee easily discern why the disbursement was made when reading the name of the recipient and the purpose?”<sup>71</sup> In the context of consultants, this policy observes that “a person not associated with [a] committee could not easily discern the purpose of a disbursement made to a vendor for ‘Consulting’ (unless the vendor’s name makes the purpose clear, *e.g.*, Smith Fundraising Consulting, Inc.)”<sup>72</sup> On the other hand, “if the committee were to provide additional detail with respect to the type of consulting the vendor provided (*e.g.*, ‘Fundraising Consulting’), an unassociated person would have no difficulty discerning the purpose of the disbursement.”<sup>73</sup>

OGC proposes finding reason to believe that “payments to Parscale Strategy for what appears to have been . . . salary payments to various Trump Committee staff” were incorrectly disclosed as “strategy consulting,” “video production services,” “photography services,” and “consulting—management/strategy/communications/political/digital.”<sup>74</sup> But these entries plainly allow a person not associated with the Trump Committee to easily discern the purpose of these disbursements, and are expressly anticipated by our guidance. Indeed, these descriptions of consulting services offer precisely the sort of “additional detail with respect to the type of consulting the vendor provided” that the policy contemplates.<sup>75</sup> And the Commission’s website expressly lists “photography services” as an example of an “adequate purpose of disbursement.”<sup>76</sup>

Nevertheless, OGC suggests that this matter is analogous to MURs 7291 and 7449 (DNC Services Corp., *et al.*). There, the Commission found reason to believe<sup>77</sup> that Hillary for America (“HFA”), the authorized committee of Hillary Clinton’s 2016 presidential campaign, misreported the purpose of payments to Perkins Coie LLP as “legal services” when, in fact, Perkins Coie used the funds to purchase opposition

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<sup>71</sup> “Purpose of Disbursement” Entries for Filings With the Commission, 72 Fed. Reg. 887, 888 (Jan. 9, 2007).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> FGCR at 24.

<sup>75</sup> *See, e.g.*, “Purpose of Disbursement” Entries for Filings With the Commission, 72 Fed. Reg. at 888.

<sup>76</sup> Federal Election Commission, “Purposes of Disbursement,” <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (visited June 5, 2022).

<sup>77</sup> The initial vote finding reason to believe HFA misreported the purpose of funds paid to Fusion GPS through Perkins Coie LLP predates our service on the Commission. Certification, MURs 7291/7449 (DNC Services Corp.) (July 23, 2019). Two of us did not support proceeding to the pre-probable-cause stage, Certification, MURs 7291/7449 (DNC Services Corp.) (July 27, 2021), and declined to find probable cause to believe HFA misreported the purpose of payments to Perkins Coie, Certification, MURs 7291/7449 (HFA: OGC Notice to Comm’n Following Probable Cause Brief) (Dec. 16, 2021).

MUR 7784 (MAGA PAC, *et al.*)

Statement of Reasons

Page 11 of 13

research from a third-party, Fusion GPS.<sup>78</sup> HFA offered no details about how the opposition research supported the firm’s legal work for the committee. Applying the policy guidance, the Commission concluded that “[a] person reading the Committee’s disclosure reports could not have discerned that the Committee was disbursing funds for anything other than legal services by reading the name of the recipient (*i.e.*, Perkins Coie) together with the reported purpose (*i.e.*, legal services or legal or compliance consulting).”<sup>79</sup> Thus, the Commission found reason to believe that HFA violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to properly disclose the purpose of payments to Perkins Coie LLP.<sup>80</sup> This matter is distinguishable because—as stated above—the Trump Committee provided adequate purpose descriptors for its payments to Parscale Strategy, and no additional information is needed to understand what these payments were used for.

OGC’s reliance upon that inapposite MUR highlights the flaw in its enforcement theory: it rests on the assumption that, because Lara Trump, Kimberly Guilfoyle, and unidentified “others”<sup>81</sup> were allegedly paid “salaries,” and because they were doing work for the Trump Committee, they were necessarily Trump Committee employees. The response, however, credibly explains that Lara Trump and Kimberly Guilfoyle were Parscale Strategy employees, and that Parscale Strategy was a Trump Committee vendor.<sup>82</sup> That some observers may have perceived an association between these individuals and the Trump Committee is unsurprising given the explanation that they performed work for that Committee as Parscale Strategy employees. It does not, however, convert payments to Parscale Strategy for the very services that firm provided (and that the Trump Committee reported) into “payments for Trump Committee staff salaries.”<sup>83</sup> That portions of those payments were used to compensate Parscale Strategy employees, if true, is unremarkable. It is also consistent with the fact that the Trump Committee did not disclose any disbursements to these individuals for payroll in the 2020 election cycle.<sup>84</sup>

For many of the same reasons already discussed, we decline the invitation to reach a different result based upon media reports. Reports of “salary” payments to Lara Trump and Guilfoyle are largely consistent with the notion that these individuals were paid salaries *as Parscale Strategy employees*, and reports suggesting that these individuals were instead employed by the Trump Committee do not identify the

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<sup>78</sup> FGCR at 24; *see also* FLA at 7-8, MURs 7291/7449 (HFA).

<sup>79</sup> FLA at 8, MURs 7291/7449 (HFA) (citing 72 Fed. Reg. at 888).

<sup>80</sup> *Id.* at 8-9.

<sup>81</sup> FGCR at 23. OGC further cites allegations in the Complaint (which, in turn, cite anonymous sources in news articles) for the proposition that Brad Parscale received a “salary” for work as a member of “Trump Committee staff” via payments to Parscale Strategy. FGCR at 8. But the FGCR does not rely upon that factual assumption in its enforcement recommendation. FGCR at 21-24. And even if it had, it would be unpersuasive for the same reasons as the allegations regarding Lara Trump and Guilfoyle.

<sup>82</sup> *See, e.g., supra* n.55.

<sup>83</sup> *See* FGCR at 24.

<sup>84</sup> FGCR at 8.

sources of these allegations. Accordingly, we declined to find reason to believe that the Trump Committee misrepresented the purpose of payments to Parscale Strategy. Instead, given the absence of support for enforcement, we dismissed the allegation that the Trump Committee misrepresented the purpose of payments to Parscale Strategy under *Heckler v. Chaney*.

#### IV. CONCLUSION

When exercising our discretion under *Heckler*, we “must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies,” and more.<sup>85</sup>

For the reasons given above, we find insufficient factual or legal support for OGC’s theory of enforcement and do not believe the Commission would ultimately be successful in pursuing it. This is especially the case because OGC’s proposed theory is predicated upon factual assumptions about which the record is—at the very best—ambiguous and, to a material extent, based upon anonymous sources in press reports. We foresee significant litigation risk if we were to act on such reports and, as importantly, we decline to permit the investigatory resources of the federal government to be mobilized on such a basis. This is particularly so here, where the size and scope of the proposed investigation could quickly consume an outsized share of the resources available to the Commission.

Additionally, the regulatory environment is uncertain at best. Indeed, a rulemaking petition on “Subvendor Reporting” is currently pending before the Commission, emphasizing that—though some might prefer otherwise—the law does not require such reporting today.<sup>86</sup> Moreover, numerous campaigns have used similar vendor arrangements in the past, and the Commission has declined to pursue enforcement action. In the context of payee-reporting, the Commission has not pursued violations except on very different facts (*i.e.*, where a “committee has previously instructed the payee to pass payments along to a third party that was not involved in the provision of services by the payee”).<sup>87</sup> And in the purpose-reporting context, the Commission may enforce where a “person reading the Committee’s disclosure reports could not have discerned [why] the Committee was disbursing funds,”<sup>88</sup> which is plainly not the case here.

Given the thin legal and factual support for enforcement and the Commission’s past acquiescence in similar circumstances, we concluded that this matter did not

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<sup>85</sup> *Heckler*, 470 U.S. at 831.

<sup>86</sup> Rulemaking Petition: Subvendor Reporting, 86 Fed. Reg. 42,753 (Aug. 5, 2021).

<sup>87</sup> FLA at 9, n.39 MUR 6724 (Bachmann for President) (citing Conciliation Agreement at 3, MUR 4872 (Jenkins)).

<sup>88</sup> FLA at 8, MURs 7291/7449 (HFA); 72 Fed. Reg. at 888.

MUR 7784 (MAGA PAC, *et al.*)  
Statement of Reasons  
Page 13 of 13

warrant further use of the Commission's limited resources. Accordingly, we declined to find reason to believe that either Committee violated the Act and, instead, elected to dismiss this matter as an exercise of prosecutorial discretion under *Heckler*.

June 9, 2022

Date

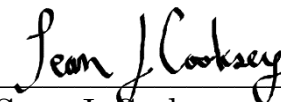


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Allen Dickerson  
Chairman

June 9, 2022

Date

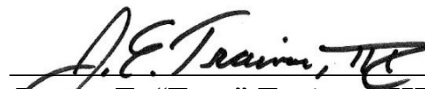


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Sean J. Cooksey  
Commissioner

June 9, 2022

Date



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James E. "Trey" Trainor, III  
Commissioner