



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Campaign Legal Center  
Brendan M. Fischer  
1411 K Street, N.W., Suite 1400  
Washington, DC 20005

**MAR 16 2018**

RE: MUR 7260  
Thomas E. Price  
Price for Congress and Paul Kilgore  
in his official capacity as treasurer

Dear Mr. Fischer:

This is in reference to the complaint you filed with the Federal Election Commission on July 7, 2017, concerning allegations that Tom Price and Price for Congress Paul Kilgore in his official capacity as treasurer violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"), by converting campaign funds to personal use. Based on that complaint, on March 6, 2018, the Commission found that there is no reason to believe that Tom Price and Price for Congress Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30114(b)(1) and 11 C.F.R. § 113.1(g)(1). Accordingly, the Commission closed its file in this matter.

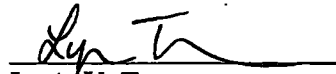
Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

BY:   
Lynn Y. Tran  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4 **RESPONDENTS:** Tom Price

MUR 7260

5 Price for Congress and Paul Kilgore,  
6 in his official capacity as treasurer

7 **I. INTRODUCTION**

8 The Complaint in this matter alleges that Representative Tom Price and his principal  
9 campaign committee, Price for Congress and Paul Kilgore in his official capacity as treasurer  
10 (the "Committee"), violated the Federal Election Campaign Act of 1971 (the "Act") by  
11 converting campaign funds to personal use when the Committee disbursed \$40,000 to America  
12 Rising Corporation for opposition research and grassroots lobbying activities to promote Price's  
13 confirmation as Secretary of Health and Human Services (HHS).<sup>1</sup>

14 Based on the available information, the Commission finds no reason to believe Tom Price  
15 and Price for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C.  
16 § 30114(b)(1) and 11 C.F.R. § 113.1(g)(1) in connection with the payments to America Rising  
17 Corp.

18 **II. FACTS**

19 On November 29, 2016, Tom Price, Representative for Georgia's 6th Congressional  
20 District, was nominated for Secretary of Health and Human Services ("HHS Secretary").<sup>2</sup> On  
21 January 18 and 24, 2017, the United States Senate held confirmation hearings on Price's  
22 nomination. According to the complaint, the hearings were "tough," "heated" and "focused on

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<sup>1</sup> 52 U.S.C. § 30114(b)(1) and 11 C.F.R. § 113.1(g)(1).

<sup>2</sup> Compl. at 1.

1 ethical issues.”<sup>3</sup> On January 26, 2017, Price’s authorized campaign committee, Price for  
2 Congress, paid \$40,000 to America Rising Corporation.<sup>4</sup> The purpose of the disbursement was  
3 reported in the Committee’s disclosure reports as “media research.”<sup>5</sup> Around that same time in  
4 late January, a different entity called America Rising Squared began disseminating videos and  
5 blog postings supporting Price’s confirmation.<sup>6</sup> On February 1, 2017, the Senate Health,  
6 Education, Labor, and Pensions Committee voted to recommend Price’s nomination, and Price  
7 was confirmed as HHS Secretary on February 10, 2017.

8 The Complaint alleges that the Committee’s payment to America Rising Corp. was for  
9 opposition research and grassroots lobbying to promote Price’s nomination for HHS Secretary,  
10 in violation of the Act’s prohibition on converting campaign funds to “personal use” by a  
11 candidate. Complainants argue that the payments “amounted to the use of campaign funds to  
12 help Rep. Price get his next job.”<sup>7</sup> To support its allegations, the Complaint points to a *Slate*  
13 article reporting that Price and three other presidential nominees “tapped America Rising  
14 Advanced Research (American Rising Squared)” to promote their Senate confirmations.<sup>8</sup> The  
15 same article quotes Brian Rogers, the head of America Rising Squared as stating, “[America

<sup>3</sup> *Id.* Price served as the Representative for Georgia’s 6th Congressional District since elected in 2004.

<sup>4</sup> See 2017 April Quarterly Report (Apr. 14, 2017); Compl. at 2-3.

<sup>5</sup> See 2017 April Quarterly Report.

<sup>6</sup> Compl. at 3. America Rising Corp. is a for-profit, C-corporation that sells research and communication services to political and issue-oriented advocacy organizations, as well as media research services to campaigns, and America Rising Squared is a non-profit, social welfare entity organized under Section 501(c)(4) of the Internal Revenue Code. Resp. at 3. America Rising Corp. was formerly known as America Rising LLC; on January 1, 2017 the LLC converted to a C-corporation. *Id.*

<sup>7</sup> Compl. at 6.

<sup>8</sup> *Id.* at 3. Both the Complaint and the July 3, 2017 *Slate* article suggest that payments Price made to America Rising Corp. were made to America Rising Squared. See [http://www.slate.com/articles/news\\_and\\_politics/politics/2017/07/trump\\_s\\_cabinet\\_nominees\\_were\\_so\\_toxic\\_they\\_needed\\_outside\\_help\\_from\\_america.html](http://www.slate.com/articles/news_and_politics/politics/2017/07/trump_s_cabinet_nominees_were_so_toxic_they_needed_outside_help_from_america.html).

1 Rising Squared] was necessary for these nominees, since they faced a wall of obstruction from  
2 the Democratic Party.”<sup>9</sup>

3 Respondents deny the allegations and state that America Rising Corp. was engaged by  
4 the Committee “to monitor what was being said about Dr. Price in various media sources.”<sup>10</sup>  
5 They assert that the expenditures for the media research services provided by America Rising  
6 Corp. were directly related to Price’s “campaign or officeholder activities” and therefore not  
7 “personal use.”<sup>11</sup> Respondents argue that there was no guarantee that Price would be confirmed  
8 as HHS Secretary, and since he was a sitting Federal officeholder while going through the  
9 nomination process, he was facing increased media scrutiny of his congressional record, work as  
10 House Budget Committee Chair, and his adherence to the requirements of the Stop Trading on  
11 Congressional Knowledge (STOCK) Act of 2012.<sup>12</sup> Respondents also argue that “from a legal  
12 perspective” the allegations are “wholly off base” because the Commission precedent is “clear  
13 that the use of campaign funds for expenses related to media research, monitoring media  
14 narratives and responding to press narratives” are expenses that would not exist irrespective of  
15 the candidate’s campaign or duties as a Federal officeholder and therefore can be paid for with  
16 campaign funds.<sup>13</sup> The Respondents acknowledge that the media coverage occurred “at a time  
17 when Dr. Price was under consideration for confirmation,” but argue that the coverage “related

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<sup>9</sup> Compl. at 6.

<sup>10</sup> Resp. at 3.

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

<sup>12</sup> *Id.* at 11. The Stop Trading on Congressional Knowledge (STOCK) Act of 2012 (Pub.L. 112-105, S. 2038, 126 Stat. 291, enacted by Congress on April 4, 2012, reaffirms that Members and employees of Congress are prohibited from using material non-public information derived from the individual’s position or gained from performance of the individual’s official duties for personal benefit.

<sup>13</sup> Resp. at 8-9 (citing to Advisory Opinions 2008-07 (Vitter) (Sep. 9, 2008); 2006-35 (Kolbe) (Jan. 26, 2007); 1998-01 (Hilliard) (Feb. 27, 1998); 1997-12 (Costello) (Aug. 15, 1997); and 1996-24 (Cooley) (June 27, 1996)).

1 to his position and voting record as a Member of Congress, directly impacted his political  
2 standing in Georgia's 6th Congressional District and his ability to pursue potential re-election."<sup>14</sup>  
3 For these reasons, Respondents assert that the Committee was entitled to retain the services of  
4 America Rising Corp. and to pay them with Committee funds.<sup>15</sup>

5 Respondents also contend that they did not fund America Rising Squared's advocacy on  
6 behalf of Price.<sup>16</sup> Though America Rising Corp. and America Rising Squared occasionally  
7 engage in joint projects, Respondents explain that they are two separate entities and that Price  
8 made no payments to America Rising Squared for its activities in support of his nomination.  
9 Respondents submit an affidavit from America Rising Corp's Chief Financial Officer, Scott  
10 Cutter, stating that the Committee paid America Rising Corp. \$40,000 in January 2017 for media  
11 research services and attesting that none of the funds America Rising Corp. received from the  
12 Committee were directly or indirectly passed through to America Rising Squared or used to  
13 facilitate any activities undertaken by America Rising Squared.<sup>17</sup>

### 14 III. LEGAL ANALYSIS

15 The Act provides that campaign funds "shall not be converted by any person to personal  
16 use," and defines personal use as using funds "to fulfill any commitment, obligation, or expense  
17 of a person that would exist irrespective of the candidate's election campaign or individual's  
18 duties as holder of Federal office."<sup>18</sup> The Act and its implementing regulation enumerates the

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<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Resp. at Ex. B, Affidavit of Scott Cutter ("Cutter Aff.") (Sep. 11, 2017).

<sup>18</sup> 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); see 11 C.F.R. § 113.2.

1 types of disbursements that are *per se* personal use.<sup>19</sup> These include household food items or  
2 supplies, tuition payments other than those associated with training campaign staff, utility  
3 payments for any part of any personal residence of the candidate, salary payments to a member  
4 of the candidate's family unless the family member is providing *bona fide* services and the  
5 payments are not in excess of the fair market value, and vacations or non-campaign related  
6 trips.<sup>20</sup> For all other disbursements, the regulation provides that the Commission shall determine  
7 on a case-by-case basis whether a given disbursement is personal use by applying the  
8 "irrespective test" formulated in the statute.<sup>21</sup> Meal, travel, and vehicle expenses are examples of  
9 disbursements that may be determined to be personal use after applying the irrespective test.<sup>22</sup>

10 The expenses here require a case-by-case analysis because they are not specifically  
11 enumerated in the Act and its regulations.<sup>23</sup> The Commission has previously concluded that  
12 "candidates and officeholders may receive heightened scrutiny and attention because of their  
13 status as candidates and officeholders," and the "need for a candidate to respond to allegations  
14 carried in the news media which result from this elevated scrutiny would not exist irrespective of  
15 the candidate's campaign or officeholder status."<sup>24</sup> Thus the Commission has approved the use  
16 of campaign funds to pay certain specific expenses incurred in connection with responding to  
17 media inquiries or press coverage that is related to a candidate's or federal officeholder's

<sup>19</sup> *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

<sup>20</sup> *Id.*; 11 C.F.R. § 113.1(g)(1)(i)(A), (D), (E)(1), (F), (H), (J).

<sup>21</sup> 11 C.F.R. § 113.1(g)(1)(ii).

<sup>22</sup> *Id.*

<sup>23</sup> See AO 2008-07; AO 1997-12 at 5 (permitting campaign funds to be used to respond to alleged wrongful conduct by candidate and federal officeholder that was reported in the media); AO 1996-24 at 4 (permitting a candidate to use campaign funds to publicly respond to press allegations of improper or wrongful conduct that arose in the context of a campaign).

<sup>24</sup> See AO 2006-35; AO 1997-12; AO 1996-24.

1 campaign activities or duties as an officeholder.<sup>25</sup> The Commission has specifically approved:  
2 1) the review of press clippings; 2) drafting and revision of press releases; 3) seeking legal and  
3 political advice on media matters; 4) independent investigation of factual allegations regarding  
4 media narratives; 5) funding of legal and factual research on media items; and 6) formulation of  
5 responses to press inquiries.<sup>26</sup>

6 For example, in Advisory Opinion 2008-07 (Vitter), the Commission determined that it  
7 was permissible to use campaign funds to pay for public relations consulting fees incurred by a  
8 federal official responding to media inquiries resulting from a Senate Ethics Committee  
9 investigation even though the activities that were the focus of the media inquiries were unrelated  
10 to his candidacy or duties as a federal officeholder. The Commission concluded that the  
11 heightened scrutiny of his conduct was a result of his status as a federal officeholder.<sup>27</sup>

12 Similarly, in MUR 6128 (Craig for U.S. Congress) the Commission determined that the use of  
13 campaign funds to pay consulting fees for public relations specialists who were retained to  
14 provide substantive responses to press inquiries about a federal officeholder's state conviction  
15 and the legal efforts to overturn this conviction did not amount to personal use because the  
16 inquiries stemmed from his status as a federal officeholder.<sup>28</sup> In Advisory Opinion 2001-09  
17 (Kerrey), the Commission concluded that it was permissible for a former Senator to use his  
18 campaign funds to pay media consultants to respond to inquiries about his activity during the  
19 Vietnam War because the media would not have focused its attention on the individual, had he

<sup>25</sup> See AO 2006-35; *see also* AO 2008-07; AO 1997-12; AO 1996-24.

<sup>26</sup> AO 2006-35; AO 1997-12; AO 1996-24; AO 2001-09; AO 1998-01.

<sup>27</sup> AO 2008-07.

<sup>28</sup> MUR 6128 (Craig for U.S. Senate) Factual & Legal Analysis at 12 (Jun. 30, 2009).

1 not been a “prominent” former Senator who was a “strong contender” for the 1992 Presidential  
2 nomination and a “potential candidate” in the 2000 Presidential and Senate elections.<sup>29</sup>

3 The Commission has not previously dealt with the use of campaign funds for media  
4 services needed because of increased scrutiny of a federal officeholder that results from  
5 nomination hearings before the U.S. Senate. However, the facts here are similar to the  
6 circumstances presented in AOs 2008-07, 2001-09, and MUR 6128, where the Commission  
7 approved the use of campaign funds to pay for consulting fees incurred to respond to media  
8 reports and inquiries about a federal officeholder’s job performance or conduct.<sup>30</sup> Price’s  
9 nomination for a cabinet position was the subject of heightened scrutiny by the press because of  
10 his status as a federal officeholder, and the specific focus of that scrutiny was his performance as  
11 a Member of Congress. Therefore, consistent with the principles of the previous matters, the  
12 nexus between Price and the activities paid for with campaign funds appears sufficient to satisfy  
13 the Commission’s standard that the related expenditures would not exist “irrespective” of Price’s  
14 position.

15 There is also no evidence to support the Complaint’s suggestion that the funds the  
16 Committee paid to America Rising Corp. were used to fund the videos and blogs supporting the  
17 confirmation of Price as HHS Secretary that were produced by America Rising Squared. The  
18 publicly available information supports Respondents’ assertion that America Rising Corp. and  
19 America Rising Squared are two different entities that engaged in different missions and  
20 business models. The Chief Financial Officer of America Rising Corp. provides a sworn  
21 statement that funds paid to America Rising Corp. by the Committee were used solely for

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<sup>29</sup> Advisory Op. 2001-09 at 3-4 (Kerrey) (July 17, 2001).

<sup>30</sup> See e.g., AO 1996-24; AO 1998-01; AO 2001-09.



1 services to monitor media coverage of Price's conduct as a federal officeholder, and were not  
2 used directly or indirectly to pay America Rising Squared, or any other organization, for their  
3 activities.<sup>31</sup> The Response attaches a copy of the cancelled check made out to "America Rising  
4 Corp." for "Research Services" and dated January 26, 2017. The disbursement to America  
5 Rising Corp. was timely disclosed by the Committee and itemized as "media research" in its  
6 2017 April Quarterly Report.<sup>32</sup> Thus the facts do not support the allegation that the campaign  
7 funds disbursed to America Rising Corp. were converted to Price's personal use.

8 Because the available information suggests that the funds were used in a manner that is  
9 permissible under the Act and Commission regulations, the Commission finds no reason to  
10 believe Tom Price and Price for Congress and Paul Kilgore in his official capacity as treasurer  
11 violated 52 U.S.C. § 30114(b)(1) and 11 C.F.R. § 113.1(g)(1).

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<sup>31</sup> Cutter Aff. at 1-2.

<sup>32</sup> See note 4 supra.