

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Unknown Owner of "Trump 2020") MUR 7280
 Facebook Page)
)

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

10 We recommend that the Commission: (1) substitute the name Derek Utley in the place of
11 "Unknown Owner of 'Trump 2020' Facebook Page"; (2) take no further action; (3) approve the
12 appropriate letters; and (4) close the file.

13 II. BACKGROUND

14 This matter involves allegations that the Unknown Owner of a Facebook page named
15 Elect Trump 2020 (“Trump 2020”) made at least \$34,100 in independent expenditures in support
16 of President Trump’s 2020 reelection campaign by paying to place communications containing
17 express advocacy on Facebook.¹ On June 4, 2019, the Commission found reason to believe that
18 the Unknown Respondent violated 52 U.S.C. § 30104(b)(4)(H)(iii) or (c) by failing to report
19 independent expenditures, as well as 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing
20 to include disclaimers on its paid express advocacy advertisements.²

Following the Commission’s reason to believe finding, the Office of the General Counsel conducted an investigation to determine the source and cost of advertisements from the Trump 2020 Facebook page (“Trump 2020 Page”). As a result of our investigation, we have determined

¹ Compl. at 1 (Sept. 26, 2017); *see also id.* at 2 n.1 (noting web address for Respondent's page as <https://www.facebook.com/ElectTrump2020>).

² Certification ¶ 1-2 (June 5, 2019).

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1 that the actual amount spent on the Trump 2020 Page was only \$483. Based upon that amount in
 2 violation and the Commission’s treatment of other matters involving similar facts, we
 3 recommend that the Commission take no further action in this matter. We also recommend that
 4 the Commission close the file.

5 **III. RESULTS OF INVESTIGATION**

6 The Complaint in this matter was based on an article published on *Vice News* claiming
 7 that, since November 2016, an Unknown Respondent made at least \$34,100 in payments to
 8 Facebook to promote content on the Trump 2020 Page and nine other unidentified “pro-Trump”
 9 Facebook pages.³ The article indicated that this Unknown Respondent spent at least “a few
 10 thousand dollars” specifically on the Trump 2020 Page and implied that it began advertising
 11 shortly after the 2016 election.⁴ The article provided limited information about who the
 12 Unknown Respondent might be, stating only that the person was the “page’s owner” and
 13 “identified himself as a Wisconsin businessman but declined to be named.”⁵

14 The Commission served a subpoena on Facebook seeking records relating to the owner of
 15 the Trump 2020 Page and information regarding the amount spent on the page and the content of
 16 those ads. In response, Facebook produced documents showing that the creator of the Trump
 17 2020 account was based in Kentucky.⁶ Shortly after providing this initial
 18 response, however, counsel for Facebook explained in a phone call with this Office that although

³ Compl. at 2 (citing Alex Thompson and Noah Kulwin, *No One is Tracking the Illegal Political Ads in Your Facebook Feed*, VICE NEWS (Sep. 25, 2017) [hereinafter *Vice News Article*], <https://news.vice.com/story/facebook-political-ads>).

⁴ See *Vice News Article* (“The ‘Trump 2020’ Facebook page launched on Nov. 10, 2016, two days after the presidential election. With a few thousand dollars in paid promotion and savvy management, the page grew fast, to 360,000 likes in less than a year.”).

⁵ *Id.*

⁶ See Resp. to Subpoena of Facebook, Inc. (Nov. 4, 2019) (“Facebook Resp.”).

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1 he was its creator, did not purchase any advertisements on behalf of the Trump 2020
 2 Page. In response to that discussion, Facebook produced additional records showing that an
 3 individual named Derek Utley, based in Wisconsin, purchased a total of \$483 in advertisements
 4 on behalf of the Trump 2020 Page.⁷

5 Facebook’s produced records show that Utley purchased advertisements in the eight-
 6 month period between July 2017 and February 2018.⁸ The *Vice News* article was published on
 7 September 25, 2017, when all but approximately \$53 of these ads had already been purchased.⁹
 8 While all of the advertisements were published on the Trump 2020 Page, a number of
 9 advertisements, totaling \$190, also promoted Bobby Lawrence, who was briefly a candidate in
 10 the 2018 Pennsylvania Senate race.¹⁰ In particular, Utley spent \$190 reposting solicitations from
 11 Lawrence’s campaign, which stated:

12 Friends, please donate to and support conservative candidate
 13 Bobby Lawrence. He is running for US Senate in Pennsylvania
 14 against swamp Democrat Bob Casey. Bobby Lawrence is a
 15 common-sense America first conservative, who supports President
 16 Trump’s agenda, and wants to take real policy action in
 17 Washington D.C. He has been a lifelong small business owner and
 18 understands the concerns of every day Americans. He’s not the
 19 establishment, won’t cave to the establishment ways and will tell it
 20 like it is. While asking for donations is unpopular, he will be
 21 putting the money towards many rallies and in-person events
 22 where the people have the ability to hear his message and not on
 23 useless tv ads.

⁷ See Email from John Roche, counsel to Facebook, to Amanda Andrade, Fed. Election Comm’n (Dec. 12, 2019 1:27 PM) (explaining that the second production “consists of basic subscriber information for the ad payment account that ran ads on ElectTrump2020”); Resp. to Subpoena of Facebook, Inc. (Dec. 12, 2019) (“Supp. Facebook Resp.”) (providing subscriber information for Derek Utley).

⁸ See Facebook Resp.; Supp. Facebook Resp.

⁹ See *Vice News* Article; Facebook Resp.

¹⁰ Lawrence’s campaign committee raised just over \$12,000 in the 2018 election cycle and it appears he dropped out of the race prior to the primary election.

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1 <http://bobbylawrence.us/donate>.

2 Paid for and authorized by Bobby Lawrence for US Senate.¹¹

3 Another advertisement, which linked to the site, <https://www.facebook.com/Lawrence4Senate/>,

4 stated:

5 Follow Bobby Lawrence. He’s running for US Senate in Pennsylvania
6 and he has a very strong chance at unseating long time Democrat Bob
7 Casey. Bobby is a strong conservative, a supporter of President Trump’s
8 agenda and a life long hardworking small business owner who is ready to
9 take real policy action to improve the lives of everyday American people.
10 He’s a winner!¹²

11 Utley also paid for a post soliciting volunteers for Lawrence’s campaign, stating: “Bobby
12 Lawrence who is running for US Senate in Pennsylvania against Democrat Bob Casey is looking
13 for campaign volunteers. Any Pennsylvania residents willing to volunteer? Comment yes and
14 they will private message you.”¹³

15 In addition to his support for the Lawrence campaign, Utley spent \$113 to promote
16 political rallies such as the “American First 2018 Candidates Rally.”¹⁴ One such advertisement
17 declared: “Hear candidates from all over the country who want to listen to you on how to Make
18 America Great Again. President Trump can not [sic] do this alone. He needs congress to
19 support the agenda that we elected him to enforce.”¹⁵ Utley also spent \$87 to promote other
20 websites, such as ElectRepublicans.net. One of the ads urges users to “[l]ike patriot Derek
21 Utley’s page” while the accompanying link directs to the Trump 2020 Page.¹⁶

¹¹ Supp. Facebook Resp. at 25-26.

¹² *Id.* at 67.

¹³ *Id.* at 27.

¹⁴ See, e.g., *id.* at 30.

¹⁵ *Id.* at 27.

¹⁶ See Facebook Resp. at 31.

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1 A breakdown of Utley's payments is as follows:

Start Date	Amount
7/14/2017	\$45.42
7/14/2017	\$40.37
7/18/2017	\$8.45
7/21/2017	\$50.00
7/22/2017	\$14.84
7/23/2017	\$23.87
7/29/2017	\$110.00
8/1/2017	\$50.00
8/5/2017	\$30.00
8/14/2017	\$30.00
8/25/2017	\$25.00
9/5/2017	\$1.64
10/31/2017	\$3.41
2/10/2018	\$50.00
Total:	\$483.00

2 We have no information from Facebook or any other source indicating that there was any paid
3 activity on the Trump 2020 Page following this early-2018 activity.

4 We notified Utley of the Commission’s initial findings and offered
5 them an opportunity to respond.¹⁷ In his Response, Utley admitted that he made \$483 in
6 payments on behalf of the Trump 2020 Page,¹⁸ which is consistent with Facebook’s records.
7 However, Utley claimed through counsel that he was “NOT the person interviewed” in the *Vice*
8 *News* article, “nor the person described as having ‘spent \$34,100 on political advertising.’”¹⁹

¹⁷ Notification Letter to Derek Utley (Jan. 6, 2020);

18 *See* Resp. of Derek Utley at 2.

¹⁹ See Email from Dan Backer, counsel to Derek Utley, to Amanda Andrade, Federal Election Commission (Apr. 15, 2021 1:30PM).

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1 Instead, Utley asserted that was the owner of the Trump 2020 Page.²⁰ Utley asserted
 2 that in June 2017, invited him to be an administrator of the Trump 2020 Page, and,
 3 acting as an administrator, Utley paid to “boost” posts of other groups and candidates besides
 4 Trump.²¹ Utley argued, through counsel, that the advertisements he purchased should not be
 5 considered express advocacy such that they would need to be reported in the first place, and that
 6 in any event he was “unaware that his activities on Facebook, which included nominal small
 7 dollar spending to boost posts over the course of two years, would require him to report any
 8 information to the Commission.”²²

9 We also spoke with who stated in our interview that he works in web
 10 development and that he created the Trump 2020 Page to express his own political opinions.
 11 denied ever spending any money to purchase advertisements on behalf of the Trump
 12 2020 Page, which is consistent with the information we obtained from Facebook.²⁴
 13 stated that Derek Utley was a moderator and expressed his belief that Utley was the unknown
 14 businessman who spoke to *Vice News*.²⁵ did not believe that Utley had spent even
 15 close to the reported \$34,000 level on the Trump 2020 Page and opined that the *Vice News*
 16 article had likely been Utley’s attempt to drum up business by making it appear to be a bigger
 17 operation than it was.²⁶

²⁰ Resp. of Derek Utley at 2.

²¹ *Id.*

²² *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

1 **IV. DISCUSSION**

2 **A. Independent Expenditure Reporting**

3 An “independent expenditure” is an expenditure expressly advocating the election or
 4 defeat of a clearly identified federal candidate that is not coordinated with a candidate, a
 5 candidate’s authorized committee, or their agents, or a political party committee or its agents.²⁷

6 The Act and Commission regulations require political committees that make independent
 7 expenditures to file reports disclosing their independent expenditures.²⁸ Persons who are not
 8 political committees who make independent expenditures aggregating more than \$250 in a
 9 calendar year must also file reports of independent expenditures.²⁹

10 Our investigation discovered that the owner of the Trump 2020 Page was not the same
 11 person who paid for the advertisements. Because he was the one making the relevant
 12 expenditures, Utley should be substituted in place of the previously Unknown Respondent in this
 13 matter. He made \$433 in independent expenditures in the year 2017, which exceeds the \$250
 14 statutory threshold, and he therefore should have reported them to the Commission.

15 Utley’s Response argues that his posts did not contain express advocacy, but the
 16 Commission previously found that any advertisement paid for by the Trump 2020 Page would
 17 necessarily contain express advocacy because it would be accompanied by the message header
 18 bearing a photograph of former President Trump and the phrase “Trump 2020.”³⁰ The

²⁷ 52 U.S.C. § 10101(17); 11 C.F.R. § 100.16.

²⁸ See 52 U.S.C. § 30104(b)(4)(H)(iii) (requiring political committees other than authorized political committees to disclose all disbursements made in connection with independent expenditures).

²⁹ 52 U.S.C. § 30104(c)(1) (requiring every person, other than a political committee, who makes independent expenditures aggregating over \$250 during a calendar year to file reports of such expenditures); *see also* 11 C.F.R. §§ 104.4, 109.10.

³⁰ Factual & Legal Analysis at 4.

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1 Commission concluded that this header was virtually identical to “Carter ’76,” which is one of
 2 the examples of express advocacy set forth in 11 C.F.R. § 100.22(a).³¹ The investigation
 3 confirmed that all of Utley’s paid advertisements contained the phrase “Trump 2020,” and
 4 therefore constituted independent expenditures. Thus, Utley violated 52 U.S.C. § 30104(c)(1) by
 5 failing to report the \$433 of independent expenditures he purchased in 2017 in support of
 6 President Trump’s reelection.³²

7 **B. Inclusion of Proper Disclaimers**

8 Whenever a person makes a disbursement for a “public communication” that expressly
 9 advocates the election or defeat of a federal candidate, that communication must contain a
 10 disclaimer stating who paid for the communication and whether the communication was
 11 authorized by the candidate.³³ If the communication was not authorized by a candidate or the
 12 authorized committee of a candidate, then the disclaimer must state the name and permanent
 13 street address, telephone number or World Wide Web address of the person who paid for the
 14 communication and state that the communication was not authorized by a candidate or
 15 candidate’s committee.³⁴

³¹ *Id.* (“All Trump 2020 posts are accompanied by the message header . . . bearing a photograph of Trump and phrase ‘Trump 2020,’ which is identical to the ‘Carter ’76’ example provided in 11 C.F.R. § 100.22(a) and has no other reasonable meaning in this context than to urge the election of Trump.”).

³² It appears that some of the \$433 in independent expenditures supporting Trump’s candidacy also contained language supporting another federal candidate, Bobby Lawrence. Some of these ads likewise contain examples of express advocacy. However, because it appears that these ads were republication of content from Lawrence’s official campaign, they were likely contributions to Lawrence rather than independent expenditures on his behalf. However, as explained in Section IV.C., *infra*, it does not appear that Utley made excessive contributions to Lawrence and we do not recommend taking any action regarding Utley’s activity respecting Lawrence’s candidacy. Therefore, treating these ads as independent expenditures in support of Trump’s candidacy would not result in double counting.

³³ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); *see also* 11 C.F.R. § 100.22 (defining “expressly advocating”).

³⁴ 11 C.F.R. § 110.11(b)(3); *see also* 52 U.S.C. § 30120(a)(3).

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1 The Commission previously found reason to believe that the Unknown Respondent
 2 violated 52 U.S.C. § 30120 by failing to include proper disclaimers on advertisements purchased
 3 for the Trump 2020 Page. Here, Utley, as a person who paid for advertising that contained
 4 express advocacy, was required to include disclaimers that complied with 52 U.S.C.
 5 § 30120(a)(2) and (3). However, none of the advertisements included compliant disclaimers.
 6 Our review of these advertisements found that only one of them had a disclaimer — a \$50
 7 advertisement supporting Bobby Lawrence’s candidacy claiming that the ad was “[p]aid for and
 8 authorized by Bobby Lawrence for US Senate,”³⁵ but this disclaimer fails to comply with
 9 52 U.S.C. § 30120 because Utley paid to repost the communication on the Trump 2020 Page,
 10 and thus the disclaimer is not accurate. Thus, Utley violated that provision of the Act by failing
 11 to include the required disclaimers on ads he purchased for the Trump 2020 Page.

12 **C. Republication of Campaign Materials**

13 Under the Act, “the financing by any person of the dissemination, distribution, or
 14 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
 15 campaign materials prepared by the candidate, his campaign committees, or their authorized
 16 agents shall be considered to be an expenditure.”³⁶ The republication of campaign materials is
 17 also “considered a contribution for the purposes of contribution limitations and reporting
 18 responsibilities of the person making the expenditure,”³⁷ because the person financing the

³⁵ See Facebook Resp. at 25-26. It does not appear that this disclaimer was correct since Utley admitted to spending money to boost posts for “candidates other than President Donald J. Trump,” Resp. of Utley at 2, and there are no disbursement records from the Commission filings by Bobby Lawrence for U.S. Senate that appear to correspond to this advertisement.

³⁶ 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

³⁷ 11 C.F.R. § 109.23.

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1 republication “has provided something of value to the candidate [or] authorized committee.”³⁸

2 No person shall make contributions to any candidate or authorized committee with respect to any

3 election which, in the aggregate, exceed the Act’s contribution limit, which was \$2,700 during

4 the 2018 election cycle.³⁹

5 As discussed above, Utley appears to have spent funds to repost communications of

6 Bobby Lawrence’s campaign committee. One advertisement contains a link to the website of the

7 Lawrence campaign and includes the original disclaimer, “Paid for and authorized by Bobby

8 Lawrence for US Senate.”⁴⁰ Another advertisement urges readers to “[f]ollow Bobby Lawrence”

9 and contains a link to the Lawrence campaign’s Facebook page. Further, Utley acknowledged

10 that he purchased ads on behalf of “other candidates.”⁴¹ Accordingly, under the circumstances,

11 it appears that Utley was paying to republish materials from Lawrence’s campaign and therefore

12 made a contribution to Lawrence’s committee.⁴² However, the ads in question total only \$190

13 and Commission records show that Utley otherwise made contributions of \$610 to Lawrence’s

14 authorized committee,⁴³ which is cumulatively below the individual contribution limit of

15 \$2,700.⁴⁴ Therefore, there is no indication in the record that Utley’s purchase of these

³⁸ Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003). The Commission has stated that “Congress has addressed republication of campaign materials through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views republication of his or her campaign material, even in part, as a benefit” and “can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443.

³⁹ 52 U.S.C. § 30116(a)(1)(A); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundle Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

⁴⁰ Facebook Resp. at 25-26.

⁴¹ Resp. of Utley at 2.

⁴² *See supra* notes 37- 38 and accompanying text.

⁴³ Bobby Lawrence for US Senate, October Quarterly Report at 6-7 (Oct. 17, 2017).

⁴⁴ *See supra* note 39.

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1 advertisements violated the Act by constituting an excessive contribution to Lawrence’s
2 committee.

3 **D. Conclusion**

4 Notwithstanding these violations of the Act’s provisions concerning the reporting of
5 independent expenditures and inclusion of proper disclaimers, we do not believe that this matter
6 warrants further enforcement action given the amount in violation. Although the *Vice News*
7 article alludes to other, related Facebook Pages, we did not find any information about such
8 pages, and the level of spending revealed in the current record does not suggest that we would
9 discover significant amounts of money spent on other express advocacy. Contrary to the article
10 underlying the Complaint in this matter, both documents produced by Facebook and Utley’s
11 Response consistently indicate that Utley spent only \$483 on the Trump 2020 Page. In previous
12 matters involving independent-expenditure reporting by unknown respondents, the Commission
13 has not further pursued cases where the cost of the communication was low.⁴⁶ Furthermore,
14 although Utley did not admit to being the person interviewed by *Vice News*, when identified and
15 contacted he admitted to all payments made on behalf of the Trump 2020 page with no
16 knowledge that we had independently acquired that information. The investigation thus appears

⁴⁶ See, e.g., Factual & Legal Analysis at 1, MUR 6642 (Kauffman) (taking no further action after Second General Counsel’s Report found that advertising costs incurred by previously Unknown Respondent were only \$3,000); see also MURs 6486, 6491 (Mark Hicks and JW Management) (taking no further action after investigation showed that inexperienced Respondent spent \$10,500 on two billboards and failed to report independent expenditures).

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- 1 to establish both the source of the expenditures at issue and that they were not at the \$34,000
- 2 level reported by the *Vice News* article and alleged in the Complaint.

3 We therefore recommend that the Commission exercise its prosecutorial discretion to
4 take no further action in this matter as to the allegation that Utley violated 52 U.S.C.
5 § 30104(b)(4)(H)(iii) or (c) by failing to report independent expenditures.⁴⁷ For the same
6 reasons, we recommend that the Commission take no further action as to the allegation that Utley
7 violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include appropriate
8 disclaimers and close the file.

9 **V. RECOMMENDATIONS**

- 10 1. Substitute the name Derek Utley in the place of “Unknown Owner of ‘Trump 2020’
11 Facebook Page”;
- 12 2. Take no further action as to the allegation that Derek Utley violated 52 U.S.C.
13 § 30104(b)(4)(H)(iii) or (c) by failing to report independent expenditures;
- 14 3. Take no further action as to the allegation that Derek Utley violated 52 U.S.C.
15 § 30120(a) by failing to include disclaimers on advertisements;
- 16 4. Approve the appropriate letters; and
- 17 5. Close the file.

⁴⁷ *Heckler v. Chaney*, 470 U.S. 821 (1985).

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Date: March 16, 2022

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