



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**RETURN RECEIPT REQUESTED**

American Democracy Legal Fund  
Brad Woodhouse, Esq.  
455 Massachusetts Avenue, N.W.  
Washington, D.C. 20001

JUL 17 2019

RE: MUR 7336  
John Michael Mulvaney  
Mulvaney for Congress (terminated)

Dear Mr. Woodhouse:

This is in reference to the complaint you filed with the Federal Election Commission ("Commission") on March 1, 2018, concerning alleged violations of the Federal Election Campaign Act of 1971, as amended ("Act") by John Michael Mulvaney and Mulvaney for Congress and Pat Jenkins in her official capacity as treasurer. After considering the available record in this matter, including the Complaint, Responses, and publicly available information, the Commission determined to dismiss this matter and closed the file on July 11, 2019. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision is enclosed.

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). 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).

Mr. Brad Woodhouse, Esq.  
MUR 7336  
Page 2

If you have any questions, please contact Elena Paoli at (202) 694-1548.

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**

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5 **RESPONDENTS:** John Michael Mulvaney **MUR 7336**  
6 Mulvaney for Congress and Pat Jenkins  
7 in her official capacity as treasurer  
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10 **I. INTRODUCTION**

11 The Complaint in this matter alleges that former Representative John Michael Mulvaney  
12 converted campaign funds from his authorized campaign committee to personal use after his  
13 February 2017 appointment as the Director of the U.S. Office of Management and Budget  
14 (“OMB”). The Committee denies the personal use allegations, arguing that all expenditures  
15 were for permissible uses.<sup>1</sup>

16 **II. FACTUAL & LEGAL ANALYSIS**

17 Mulvaney was an incumbent candidate in the 2016 election for the U.S. House of  
18 Representatives in South Carolina’s Fifth Congressional District, and Mulvaney for Congress  
19 and Pat Jenkins in her official capacity as treasurer (“Committee”) was his authorized campaign  
20 committee. Mulvaney won re-election on November 8, 2016. Five weeks later, President Trump  
21 nominated him to be OMB Director. Mulvaney was confirmed on February 16, 2017, and he  
22 resigned from Congress the same day.<sup>2</sup> The Committee remained active until October 27, 2017,  
23 when the Reports Analysis Division approved its termination.<sup>3</sup>

<sup>1</sup> Mulvaney did not respond to the Complaint.

<sup>2</sup> Mulvaney is also the White House acting Chief of Staff.

<sup>3</sup> On October 27, 2017, prior to the filing of this Complaint, the Commission’s Reports Analysis Division (“RAD”) approved the Committee’s termination. See Termination Report (Oct. 27, 2017), <http://docquery.fec.gov/pdf/789/201710270300093789/201710270300093789.pdf>.

From the date Mulvaney resigned until the Committee's termination on October 27, 2017, an eight-month time period, the Committee disbursed \$96,207.86.<sup>4</sup> Of that amount, the Complaint alleges that the following disbursements totaling \$42,484<sup>5</sup> "have nothing to do with his past campaigns or Congressional service," as evidenced by both the nature of the expenses and the lack of debt reported by the Committee.<sup>6</sup>

DATE	PAYMENT	VENDOR/PAYEE	REPORTED PURPOSE
2/27/17	\$457.87	Gula Graham	Travel
3/22/17	\$769.78	Starboard Communications	Direct Mail
5/17/17	\$440.00	Mulvaney	Travel
6/1/17	\$541.02	Capitol Hill Club	Meeting expenses
6/1/17	\$17,500.00	Huckaby Davis Lisker	Compliance consulting
6/21/17	\$750.00	Al Simpson	Strategic consulting
7/14/17	\$17,500.00	Huckaby Davis Lisker	Compliance consulting
7/17/17	\$541.02	Capitol Hill Club	Catering
7/27/17	\$2,000.00	Pat Jenkins	Administrative consulting
7/28/17	\$1,984.86	Eric Bedingfield	Strategic consulting
<b>TOTAL</b>	<b>\$42,484.55</b>		

<sup>4</sup> See Mulvaney for Congress Financial Summary (2017-18 election cycle), <https://www.fcc.gov/data/committees/C00471292/?tab=spending>.

<sup>5</sup> The remaining disbursements included a \$32,544 transfer to Mulvaney's state senate committee to pay off debt; \$7,680.86 in contributions to other political committees; and payments for taxes, Committee personnel, and other campaign-related or winding-down expenditures, none of which appear to be personal-use type expenses. See South Carolina Public Disclosure Reports, <http://apps.sc.gov/PublicReporting/IndividualCandidate/ViewRepayments.aspx>; Mulvaney for Congress April 2017 (April 14, 2017) and July 2017 (July 13, 2017) Quarterly Reports and Termination Report (Oct. 13, 2017).

<sup>6</sup> Compl. at 1-2. The Complaint characterizes the Committee as a "zombie" committee and cites to press articles highlighting political committees that continued spending after officeholders resigned or passed away. See, e.g., <http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/>; see also Rulemaking Petition: Former Candidates' Personal Use, 83 Fed. Reg. 12,283, 12,283 (March 21, 2018) (seeking comment on Petition for Rulemaking regarding personal use of former candidates and officeholders). The Commission recently revised Standard 26 of RAD's Review and Referral Procedures to address the personal use of campaign funds by "dormant committees" of former candidates and officeholders. See Revisions to Standard 26: Personal Use of Campaign Funds, 2017-2018 RAD Review and Referral Procedures (May 4, 2018). In this matter, the Committee would not meet the definition of a dormant committee in the revised standard because its spending took place within months of Mulvaney's resignation. See *id.* (defining "dormant committee" to be one for which candidate did not campaign or hold office during the previous election cycle).

1 In its response, the Committee asserts that all expenditures made after Mulvaney resigned  
2 were for costs incurred either while he was still in office or for the Committee's winding-down  
3 activities after his resignation, though it does not specify which particular disbursements were for  
4 which purpose.<sup>7</sup> The Committee generally denies that any payment was for personal use,  
5 asserting that all payments were for *bona fide* campaign operating expenses, "expenses that only  
6 existed as a result of former Congressman Mulvaney serving in Congress," or other permissible  
7 uses.<sup>8</sup> The Committee explains that it "contacted campaign vendors prior to terminating to  
8 collect any outstanding bills" and that it "then paid [the bills] in full to settle all accounts."<sup>9</sup>  
9 Further, the Committee explains that personnel were also compensated for the wind-down phase  
10 of the campaign.<sup>10</sup> It acknowledges that it "did not disclose debt because it was unaware of the  
11 debt until vendors were contacted to obtain outstanding balance [sic], and it had not previously  
12 received invoices for these amounts."<sup>11</sup>

13 **A. Personal Use**

14 The Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission  
15 regulations afford federal candidates and their campaign committees wide discretion in the  
16 disposition of their campaign funds and provide that contributions accepted by a candidate may  
17 be used in several categories of permissible non-campaign uses of campaign funds, including the

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<sup>7</sup> Resp. at 1 (June 7, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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

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

1 “ordinary and necessary expenses incurred in connection with duties of the individual as a holder  
2 of Federal office” and “any other lawful purpose” that does not convert the funds to personal  
3 use.<sup>12</sup> Commission regulations provide that the costs of winding down the office of a former  
4 federal officeholder for a period of six months after he or she leaves office are included among  
5 “ordinary and necessary expenses.”<sup>13</sup> The Commission has explained that such winding-down  
6 costs include the necessary administrative costs of terminating a campaign or congressional  
7 office, such as office space and storage rental, staff salaries, and office supplies.<sup>14</sup> This six-  
8 month winding-down period “acts as a safe harbor” that is intended “to ensure that former  
9 officeholders have ample time to close down their offices,” but “does not preclude a former  
10 officeholder who can demonstrate that he or she has incurred ordinary and necessary winding  
11 down expenses more than six months after leaving office from using campaign funds to pay  
12 those expenses.”<sup>15</sup>

13 Commission regulations specify that any use of funds that would be personal use “will  
14 not be considered . . . an ordinary and necessary expense incurred in connection with the duties  
15 of a holder of Federal office.”<sup>16</sup> Conversion to personal use occurs when funds are used “to  
16 fulfill any commitment, obligation, or expense of a person that would exist irrespective of the

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<sup>12</sup> See 52 U.S.C. § 30114(a); 11 C.F.R. § 113.2(b), (e).

<sup>13</sup> 11 C.F.R. § 113.2(a)(2).

<sup>14</sup> See Advisory Op. 2013-05 (Gallegly) at 3.

<sup>15</sup> See Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7873 (Feb. 9, 1995) (“Personal Use E&J”).

<sup>16</sup> 11 C.F.R. § 113.1(g)(5).

1 candidate's election campaign or individual's duties as a holder of Federal office."<sup>17</sup> The Act  
2 and Commission regulations enumerate the types of disbursements that are *per se* personal use.<sup>18</sup>  
3 For all other disbursements, including meals and travel, the regulations provide that the  
4 Commission shall determine on a case-by-case basis whether a given disbursement is personal  
5 use by applying the "irrespective test."<sup>19</sup> The Commission has stated, however, that "[i]f the  
6 candidate can reasonably show that the expenses at issue resulted from campaign or officeholder  
7 activities, the Commission will not consider the use to be personal use."<sup>20</sup>

8 The Complaint's personal use allegations rely solely on the nature and timing of ten  
9 disbursements disclosed in the Committee's reports. The Committee responds that the payments  
10 at issue were either payments for expenses incurred while Mulvaney was in office, or for  
11 winding-down costs that arose after Mulvaney's resignation, including compensation to  
12 campaign personnel.<sup>21</sup> Although the Committee did not specify which of the disbursements at  
13 issue were for unpaid campaign expenses and which were for winding-down costs, the payees  
14 and purposes of the alleged personal use payments appear generally consistent with the  
15 Committee's explanations. The nature of the disbursements, on their face, are the type of  
16 disbursements that are typically made for campaign-related purposes, and/or permissible

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<sup>17</sup> 52 U.S.C. § 30114(b)(1).

<sup>18</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). *Per se* conversion to personal use includes utility payments, non-campaign-related automobile expenses, and dues and fees for health clubs, recreational facilities or other nonpolitical organizations unless they are part of the costs of a specific fundraising event taking place on those premises. *Id.* None of the disbursements at issue in this matter fall into the *per se* personal use category.

<sup>19</sup> See 11 C.F.R. § 113.1(g)(1)(ii).

<sup>20</sup> See Personal Use E&J, 60 Fed. Reg. at 7863-64.

<sup>21</sup> Resp. at 1.

1 winding-down expenses that would have occurred after Mulvaney's resignation, *i.e.*,  
2 administrative and compliance consulting, direct mail, travel, and meeting/catering expenses.<sup>22</sup>

3 Further, a number of the disbursements were made to campaign personnel and vendors  
4 who had received disbursements from the Committee at various other points throughout the 2016  
5 election cycle — Al Simpson (consultant), Eric Bedingfield (campaign manager), Gula Graham  
6 (fundraising firm), Pat Jenkins (treasurer), and Starboard Communications (media vendor) —  
7 had all received previous payments from the Committee prior to Mulvaney's resignation. The  
8 previous payments to these payees support the Committee's response that the complained-of  
9 payments were for campaign-related services provided to the Committee while Mulvaney was in  
10 office, or for related winding-down services. And all of the payments at issue occurred within  
11 the six-month winding down period specified in the safe harbor window of the Commission  
12 regulations.<sup>23</sup>

13 In the absence of information showing possible personal use, the Commission exercises  
14 its prosecutorial discretion to dismiss the allegation that Mulvaney and the Committee violated  
15 52 U.S.C. § 30114(b).<sup>24</sup>

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<sup>22</sup> For at least a couple of the disbursements highlighted by the Complaint, the distinction between them being a winding-down cost versus a campaign-related expense could be material to determining whether there is personal use. In particular, if the disbursements for travel to Mulvaney (\$440) and fundraiser Gula Graham (\$457.87) for travel were winding down costs rather than reimbursements for earlier campaign-related travel, they may be questionable as legitimate winding-down costs. These relatively modest expenses standing alone, however, do not warrant the use of additional Commission resources to investigate the specific purpose of the travel. *See, e.g.*, MUR 7127 (Sean Braddy) (Commission dismissed apparent personal use violation involving costs for vehicle maintenance because of low dollar amount at issue).

<sup>23</sup> *See* 11 C.F.R. § 113.2(a)(2).

<sup>24</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).



**B. Failure to Disclose Debt**

The Act and Commission regulations require political committees to disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.<sup>25</sup> A debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure over \$500 must be reported as of the date the obligation is incurred.<sup>26</sup> A debt or obligation under \$500 must be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first.<sup>27</sup> If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate.<sup>28</sup> Once the exact amount is determined, a political committee has two options: (1) amend the report(s) containing the estimate; or (2) indicate the correct amount on the report for the reporting period in which the amount is determined.<sup>29</sup>

Here, the Committee concedes that it failed to disclose debts, actual or estimated, in connection with the 2016 election because it states it was unaware of certain debts until it contacted its vendors after Mulvaney's resignation to settle any outstanding balances.<sup>30</sup> As noted above, the Committee does not specify which of its disbursements after Mulvaney's resignation were made to pay debts incurred during the 2016 election. However, as discussed above, a review of the Committee's disclosure reports shows that several of the post-resignation payments

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<sup>25</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

<sup>26</sup> 11 C.F.R. § 104.11(b).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Resp. at 1.

1 identified in the Complaint were made to payees that had been vendors of the Committee during  
2 the 2016 election cycle. Therefore, it appears reasonable to infer that at least this amount of the  
3 post-resignation payments were for debts incurred in the 2016 campaign but not disclosed in  
4 accordance with the reporting requirements of the Act.

5 Nevertheless, given that the Committee terminated as of October 27, 2017, the  
6 Commission concludes that expending additional resources to pursue this apparent violation is  
7 not warranted. Under these circumstances, the Commission exercises its prosecutorial discretion  
8 to dismiss the allegation that the Committee failed to report debt.<sup>31</sup>

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<sup>31</sup> See *Heckler*, 470 U.S. 821.