



FEDERAL ELECTION COMMISSION
Washington, DC

1 **TO:** The Commission

2 **FROM:** Lisa Stevenson
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12 **DATE:** July 19, 2023

13 **SUBJECT:** MUR 7468 (Progressive Priorities PAC, *et al.*)
14 Updated Recommendations Following Sentencing of Matthew Tunstall

15 On October 20, 2022, the Office of General Counsel (“OGC”) circulated a Second
16 General Counsel’s Report in MUR 7468 (Progressive Priorities PAC, *et al.*).¹ In that report,
17 OGC recommended that the Commission: (1) find reason to believe that Matthew Tunstall in his
18 individual capacity knowingly and willfully violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R.
19 § 102.2(a)(1) by misrepresenting the actual treasurer of Progressive Priorities PAC and Matthew
20 Tunstall in his official capacity as treasurer (“PPP”); (2) take no further action regarding the
21 allegation that PPP and Tunstall in his official capacity violated 52 U.S.C. § 30124 by
22 fraudulently misrepresenting that PPP was acting for, or on behalf of, a federal candidate; and
23 (3) take no further action regarding the allegation that PPP and Tunstall in his official capacity
24 violated 52 U.S.C. § 30104(b) by failing to itemize receipts and disbursements.² OGC further
25 recommended that the Commission authorize pre-probable cause conciliation with PPP and

¹ Second Gen. Counsel’s Rpt. (“Second GCR”).

² *Id.*

1 Tunstall in both his official and individual capacities for the violation of 52 U.S.C. § 30103(b),
2 (c) and 11 C.F.R. § 102.2(a)(1).³

3 As discussed in the Second General Counsel’s Report,⁴ on November 2, 2021, the
4 Department of Justice (“DOJ”) indicted Tunstall and his associates, Robert Reyes and Kyle
5 Davies, on charges of conspiracy to commit wire fraud and making a false statement to the
6 Commission, multiple counts of wire fraud, and multiple counts of money laundering in
7 connection with their roles in operating PPP and another political committee, Liberty Action
8 Group.⁵ Davies entered a guilty plea, which the court accepted on May 4, 2022;⁶ Reyes
9 subsequently also entered a guilty plea, which the court accepted on August 8, 2022.⁷ At the
10 time of the Second General Counsel’s Report, Tunstall had pleaded not guilty and his criminal
11 trial was pending.⁸

12 The Commission considered the matter at the Executive Session of November 29 and
13 December 1, 2022. At that time, the Commission determined to defer voting on OGC’s
14 recommendations pending the outcomes of the Tunstall’s criminal trial and the sentencings of
15 Reyes and Davies.

16 Subsequently, on December 20, 2022, Tunstall pleaded guilty to conspiracy to commit
17 wire fraud and to cause false statements to be made to the Commission in violation of 18 U.S.C.
18 § 371, as well as money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i) and (2).⁹ On
19 April 24, 2023, Tunstall was sentenced to ten years in prison to be followed by three years of
20 probation and ordered to forfeit \$789,818 and pay a special assessment of \$200.¹⁰ Reyes was
21 sentenced to seven years in prison and agreed to forfeit \$809,920.40 in connection with his plea
22 agreement, and Davies was sentenced to five years of probation.¹¹

23 Since the Commission’s consideration of this matter in November and December 2022,
24 one additional PPP disclosure report that was within the statute of limitations at the time of the
25 Second General Counsel’s Report has expired. The remaining reports PPP was required to file

3 *Id.*

4 *Id.* at 17-19.

5 Indictment, *U.S. v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Nov. 2, 2021).

6 Order, *United States v. Davies*, No. 21-CR-223-3 (W.D. Tex. May 4, 2022).

7 Minute Entry, *United States v. Reyes*, No. 21-CR-223-2 (W.D. Tex. Aug. 8, 2022).

8 Second GCR at 19.

9 Government’s Sentencing Memorandum, *U.S. v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 14, 2023).

10 Judgment in a Criminal Case, *U.S. v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023).

11 See Press Release, Dep’t of Justice, Three Individuals Sentenced for Soliciting Millions of Dollars in Contributions to Scam PACs (Apr. 25, 2023), <https://www.justice.gov/opa/pr/three-individuals-sentenced-soliciting-millions-dollars-contributions-scam-pacs>; Press Release, Dep’t of Justice, California Man Pleads Guilty to \$3.5 Million Scam-PAC Fraud (Aug. 9, 2022), <https://www.justice.gov/opa/pr/california-man-pleads-guilty-35-million-scam-pac-fraud>.

1 reporting Tunstall as its treasurer are set forth on the following table, along with relevant statute-
 2 of-limitations information:

Report	Date Due	SOL Date ¹²
2017 Year-End	January 31, 2018	July 30, 2023
2018 April Quarterly	April 15, 2018	October 12, 2023
2018 July Quarterly	July 15, 2018	January 11, 2024
2018 October Quarterly	October 15, 2018	April 12, 2024
2018 Post-General	December 6, 2018	June 3, 2024
2018 Year-End	January 31, 2019	July 29, 2024
2019 Mid-Year	July 31, 2019	January 27, 2025

3 PPP failed to file each of these reports except its 2019 Mid-Year Report, which PPP filed nearly
 4 three months late on October 24, 2019, and which represented the first time PPP accurately
 5 reported Tunstall as its treasurer.¹³

6 In consideration of these developments, including the particular facts, circumstances, and
 7 limitations in this matter, and the ordering of the Commission's priorities on its docket, OGC no
 8 longer recommends that the Commission enter into pre-probable cause conciliation with
 9 Tunstall. PPP's last-reported cash on hand was \$0,¹⁴ and the Texas district court's forfeiture
 10 order limits Tunstall's ability to pay a civil penalty on his own or PPP's behalf.¹⁵ Obliging
 11 Tunstall to pay a civil penalty to the Commission has the potential to interfere with such
 12 restitution. Moreover, as noted in the Second General Counsel's Report, the statute of
 13 limitations has expired with respect to all violations of the Act other than the failure to report
 14 Tunstall as treasurer.¹⁶ Collectively, these developments indicate that the Commission's
 15 interests with respect to this matter have been adequately vindicated by the criminal proceedings,
 16 proceedings which were both broader than MUR 7468
 17

¹² This date reflects 180 days of tolling received from respondents during the investigation.

¹³ PPP, 2019 July Quarterly Report (Oct. 24, 2019), <https://docquery.fec.gov/pdf/179/201910249165295179/201910249165295179.pdf>. Though labeled as a July Quarterly Report, it appears that this report was intended to be PPP's 2019 Mid-Year Report, as PPP was a semi-annual filer in non-election years and as such would not have been required to file a July Quarterly Report in 2019.

¹⁴ PPP, 2019 Year-End Report at 2 (Feb. 4, 2020), <https://docquery.fec.gov/pdf/677/202002049186352677/202002049186352677.pdf>.

¹⁵ Judgment in a Criminal Case, *U.S. v. Tunstall*, No. 1:21-CR-00223-LY (W.D. Tex. Apr. 24, 2023).

¹⁶ Second GCR at 24-26.

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1 Consistent with how the Commission has treated other matters within the agency
 2 involving Tunstall,¹⁸ OGC therefore withdraws its previous recommendations and instead
 3 recommends that the Commission exercise its prosecutorial discretion and take no further
 4 enforcement action¹⁹ other than admonishing Tunstall and PPP,²⁰ directing RAD to
 5 administratively terminate PPP, and making the Department of Justice aware of the
 6 admonishment letter by sending the letter to the Department.²¹ Finally, we recommend that the
 7 Commission close the file as to all respondents.

8 **RECOMMENDATIONS:**

- 9 1. Dismiss as an exercise of prosecutorial discretion the allegation that Matthew
 10 Tunstall knowingly and willfully violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R.
 11 § 102.2(a)(1), (2) by misrepresenting the actual treasurer of Progressive Priorities
 12 PAC and issue an admonishment letter to Tunstall individually and as treasurer of
 13 Progressive Priorities PAC;
- 14 2. Take no further action regarding the allegation that Progressive Priorities PAC
 15 and Matthew Tunstall in his official capacity as treasurer violated 52 U.S.C.
 16 § 30124 by fraudulently misrepresenting that Progressive Priorities PAC was
 17 acting for or on behalf of a federal candidate;

¹⁸ Tunstall also served as treasurer for another political committee, Support American Leaders PAC, which has been the subject of multiple administrative fines matters and an open enforcement matter, AR 23-01. In those matters, RAD and OGC have recommended or are in the process of drafting a report in which they intend to recommend that the Commission take no further action against the Committee for the same reasons discussed above. *See* Memorandum to the Commission, Administrative Fine Program — Final Determination Recommendation for the 2022 July Quarterly Report (May 17, 2023) (recommending that the Commission “take no action against Support American Leaders PAC . . . and desist from pursuing this Committee in future Administrative Fine Recommendations”); Cert. (May 24, 2023), AF 4378 (Support Am. Leaders PAC), *et al.* (approving RAD’s recommendation to take no action against the Committee and exclude it from future Administrative Fine recommendations).

¹⁹ *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

²⁰ This approach is consistent with prior Commission action. *See, e.g.*, Amended Cert. (May 11, 2021), MUR 6997 (Ams. Socially United, *et al.*); Admonishment Letter (May 12, 2021), MUR 6997 (Carey Lee Peterson) (admonishing treasurer for failing to maintain records, failing to file accurate disclosure reports, and fraudulently soliciting contributions where treasurer had been convicted of unrelated securities fraud charges in federal court); Cert. (July 20, 2020), MURs 7011, 7092 (HC4President, *et al.*); Admonishment Letter (July 22, 2022), MURs 7011, 7092 (HC4President, *et al.*) (admonishing respondents for fraudulent misrepresentation violations in matter where treasurer had pleaded guilty to related violations in federal court); Cert. (Dec. 9, 2016), MUR 7072 (Babulal Bera, *et al.*); Admonishment Letter (Jan. 4, 2017), MUR 7072 (Babulal Bera) (admonishing respondent who had made contributions in the names of others where respondent had pleaded guilty to related charges in federal court).

²¹ This is consistent with a prior matter where the Commission admonished a respondent who was incarcerated at the time of the admonishment. *See* 52 U.S.C. § 30107(a)(9) (authorizing the Commission to report apparent violations to appropriate law enforcement authorities); *see also* Amended Certification (May 11, 2021), MUR 6997;

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- 1 3. Take no further action regarding the allegation that Progressive Priorities PAC
- 2 and Matthew Tunstall in his official capacity as treasurer violated 52 U.S.C.
- 3 § 30104(b) by failing to itemize receipts and disbursements;

- 4 4. Instruct the Reports Analysis Division to administratively terminate Progressive
- 5 Priorities PAC;

- 6 5.

- 7 6. Approve the appropriate letters; and

- 8 7. Close the file.