

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7340

DATE RECEIVED: March 5, 2018

DATE OF NOTIFICATION: March 8, 2018

DATE SUPPLEMENT RECEIVED: May 15, 2019

DATE OF SUPP. NOTIFICATION: May 17, 2019

LAST RESPONSE RECEIVED: June 26, 2019

DATE ACTIVATED: July 3, 2018

EARLIEST SOL: January 27, 2022

ELECTION CYCLE: 2020

COMPLAINANTS:

Common Cause

Paul S. Ryan

RESPONDENTS:

Great America Committee and Cabell Hobbs

in his official capacity as treasurer

America First Policies, Inc.

America First Action, Inc. and Jon Proch

in his official capacity as treasurer

President Donald J. Trump

Donald J. Trump for President, Inc. and Bradley T.

Crate in his official capacity as treasurer

Vice President Michael R. Pence

Republican National Committee and Ronald C.

Kaufman in his official capacity as treasurer¹

Parscale Strategy, LLC

Bradley J. Parscale

MO Strategies, Inc.

Marty Obst

MUR: 7609

DATE RECEIVED: May 9, 2019

DATE OF NOTIFICATION: May 15, 2019

LAST RESPONSE RECEIVED: June 21, 2019

DATE ACTIVATED: August 23, 2019

EARLIEST SOL: May 7, 2024

ELECTION CYCLE: 2020

¹ At the time the Complaint in MUR 7340 was received, Anthony W. Parker was the treasurer of the Republican National Committee, but the current treasurer is Ronald C. Kaufman. *See* Republican National Committee Amended Statement of Organization at 3 (Oct. 30, 2019).

COMPLAINANTS:

Campaign Legal Center
 End Citizens United PAC
 Tiffany Muller

RESPONDENTS:

President Donald J. Trump
 Donald J. Trump for President, Inc. and Bradley T.
 Crate in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)
 52 U.S.C. § 30116
 52 U.S.C. § 30118
 52 U.S.C. § 30125(a), (e)
 11 C.F.R. § 109.20(b)
 11 C.F.R. § 300.2(b), (c), and (m)
 11 C.F.R. § 300.61
 11 C.F.R. § 300.64(b)(2)(i)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint filed in MUR 7340 alleges that President Trump and his authorized campaign committee Donald J. Trump for President, Inc. (“Trump Committee”) established, financed, maintained, or controlled (“EFMC’d”) America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), and that both organizations allegedly solicited, received, and spent soft money in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).² The Complaint in MUR 7340 further alleges that Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign, solicited soft money for AF Policies and AF Action as an agent of President Trump, the Trump Committee, and the Republican National Committee (“RNC”) in violation of the Act, and that Marty Obst, a former Trump 2016 campaign advisor,

² See MUR 7340 Compl. ¶¶ 84-100 (Mar. 5, 2018).

solicited soft money for AF Policies and AF Action as an agent of Vice President Pence and his leadership PAC, Great America Committee (“GAC”), which thus allegedly received and spent soft money in violation of the Act.³ Finally, the Complaint in MUR 7340 alleges that AF Policies made expenditures for polling in coordination with the Trump campaign, which therefore accepted and failed to report an excessive and prohibited corporate in-kind contribution.⁴

AF Policies, AF Action, and the Trump Committee deny these allegations, arguing that: (1) Trump and the Trump Committee had no role in the creation of, and have no role in the operation of, AF Policies or AF Action;⁵ (2) no agent of a federal candidate or officeholder solicited, received, or spent soft money for AF Action or AF Policies on behalf of a federal candidate or officeholder;⁶ and (3) AF Policies did not coordinate with the Trump campaign regarding polling.⁷ GAC argues that the allegations against it do not establish a violation.⁸

The Complainants in MUR 7340 later filed a supplement to their complaint (“MUR 7340 Supplemental Complaint”) to provide additional information in the form of a public statement by the Trump Committee that warns against “scam groups” raising funds by “deceptively us[ing] the President’s name, likeness, trademarks, or branding” and states that “there is one approved

³ See *id.* ¶¶ 101-136.

⁴ See *id.* ¶¶ 137-145.

⁵ MUR 7340 AF Policies Resp. at 3-5 (Apr. 30, 2018); MUR 7340 AF Action Resp. at 4 (Apr. 30, 2018); MUR 7340 Trump Committee Resp. at 3 (Apr. 30, 2018).

⁶ MUR 7340 AF Policies Resp. at 5-7; MUR 7340 AF Action Resp. at 5-7; MUR 7340 Trump Committee Resp. at 4-5.

⁷ MUR 7340 AF Policies Resp. at 8-9; MUR 7340 Trump Committee Resp. at 6.

⁸ MUR 7340 GAC Resp. at 2 (Apr. 23, 2018). Though named by the MUR 7340 Complaint and notified as respondents, President Trump, Vice President Pence, Obst, MO Strategies, Parscale, and Parscale Strategy did not submit responses.

MURs 7340 & 7609 (Great America Committee, *et al.*)

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outside non-campaign group, America First Action.”⁹ The Complainants allege that this statement further supports their prior allegations as well as constitutes an independent violation by soliciting funds outside the federal limits and prohibitions. A separate complaint, filed in MUR 7609, makes the similar allegation that this statement violates the Act by soliciting and directing contributions outside the limits and prohibitions of the Act in violation of 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61.¹⁰

The Trump Committee replies to both the MUR 7340 Supplemental Complaint and the Complaint in MUR 7609, stating that its statement did not constitute soliciting or directing a contribution and therefore did not violate the Act.¹¹

As discussed below, we recommend that the Commission dismiss the allegations in the original MUR 7340 Complaint that Respondents violated the soft money provisions of 52 U.S.C. § 30125, dismiss the allegation that AF Policies violated 52 U.S.C. §§ 30116 and 30118, and dismiss the allegation that the Trump Committee violated 52 U.S.C. §§ 30116, 30118, and 30104(b) by making, accepting, and failing to report, respectively, excessive and prohibited in-kind contributions. Finally, we recommend that the Commission find reason to believe that the Trump Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 by soliciting contributions for AF Action without restricting its solicitation to hard money, as alleged in the

⁹ MUR 7340 Supp. Compl. at 2 (May 15, 2019).

¹⁰ MUR 7609 Compl. (May 9, 2019).

¹¹ MUR 7340 Trump Committee Supp. Resp. (June 21, 2019); MUR 7609 Trump Committee Resp. (June 21, 2019). The RNC also filed a Supplemental Response in MUR 7340 stating that the Supplemental Complaint's "allegations are directed at other respondents" and that it "does not provide any new information pertaining to the original complaint's allegations against the RNC." MUR 7340 RNC Supp. Resp. (June 6, 2019). AF Action and AF Policies also responded to the Supplemental Complaint, stating that AF Action had no knowledge of the Trump Committee's statement prior to its release and that the Trump Committee statement does not violate the law. MUR 7340 AF Action/AF Policy Supp. Resp. (June 26, 2019).

MUR 7340 Supplemental Complaint and the Complaint in MUR 7609, and enter into probable cause conciliation with the Trump Committee.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee.¹² Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”¹³ According to news reports cited by the MUR 7340 Complaint, the organization was founded by several alumni of the Trump 2016 campaign, including Parscale.¹⁴ AF Policies does not state who its “founders” were but asserts that it was “largely inactive”¹⁵ and had no board of directors until April 2017, when it named its board and appointed Walsh as president.¹⁶ Walsh avers that he has never held a position with the Trump

¹² MUR 7340 AF Policies Resp. at 1; Aff. of Brian O. Walsh (president of AF Policies) ¶¶ 1, 3.

¹³ MUR 7340 Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

¹⁴ MUR 7340 Compl. ¶ 17; *see also id.* ¶ 19. In addition to Parscale, the other reported founders of AF Policies were Trump’s 2016 deputy campaign managers Rick Gates and David Bossie, campaign advisors Nicholas Ayers and Marty Obst, and senior campaign advisor Katrina Pierson. *Id.*

¹⁵ AF Policies did not report any activity to the Commission until June 6, 2017, when it made independent expenditures opposing the candidacy of Jonathan Ossoff for Congress. AF Policies 24-Hour Report (June 7, 2017).

¹⁶ MUR 7340 AF Policies Resp. at 1-2; Aff. of Walsh ¶ 3; *see also* MUR 7340 AF Action Resp. at 2. AF Policies states that its original Board of Directors consisted of Nicholas Ayers, Douglas Ammerman and Thomas Hicks, Jr. Subsequently, Roy Bailey replaced Ayers, who had taken a position in the Trump administration in July 2017, and Harold Hamm replaced Ammerman, who had resigned in November 2017. MUR 7340 AF Policies Resp. at 2, n.1.

campaign or administration.¹⁷ AF Policies has made independent expenditures in federal elections¹⁸ and, according to the MUR 7340 Complaint, has also solicited soft money.¹⁹

AF Action is registered with the Commission as an IEOPC.²⁰ The committee was founded in April 2017 at the direction of AF Policies president Walsh, who also became president of AF Action.²¹ Its original directors were Walsh, Nicholas Ayers (who also served as a director of AF Policies), and Jon Proch (who also serves as AF Action's treasurer).²² AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.²³

The RNC is a national party committee of the Republican Party. The Trump Committee is Trump's principal campaign committee for president. In February 2018, Parscale, who was also the Digital and Data Director for the 2016 Trump campaign, was named campaign manager

¹⁷ MUR 7340 AF Policies Resp. at 1; Aff. of Walsh ¶ 2.

¹⁸ *See e.g.*, AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

¹⁹ *See* MUR 7340 Compl. ¶¶ 95, 109. The MUR 7340 Complaint asserts that Parscale solicited soft money for AF Policies, "based on published reports," but it cites no particular published report for this proposition. *Id.* For its part, AF Policies denies that Parscale solicited donors, but does not address whether as an organization it has solicited or accepted soft money. MUR 7340 AF Policies Resp. at 8.

²⁰ MUR 7340 AF Action Resp. at 1; *see* AF Action, Inc., Statement of Organization (Apr. 12, 2017).

²¹ MUR 7340 AF Action Resp. at 1; Aff. of Walsh ¶ 3.

²² Ayers resigned in July 2017 to join the Trump administration as Pence's chief of staff. Proch also resigned as a director and now serves only as treasurer of AF Action. MUR 7340 AF Action Resp. at 2, n.1. Ayers and Proch were replaced on AF Action's Board by Roy Bailey and Thomas Hicks, Jr., who also serve as AF Policies directors. MUR 7340 AF Action Resp. at 2. In addition to overlapping officers and directors, AF Action and AF Policies share the same counsel, the same address, and the bylaws of each appear very similar based on the provisions that Respondents have provided. MUR 7340 AF Policies Resp., Aff. of Walsh ¶ 4-5, 8-11; MUR 7340 AF Action Resp., Aff. of Walsh ¶ 4-5, 8-11.

²³ MUR 7340 Compl. ¶¶ 35-36, 96-97; *see also, e.g.*, AF Action 2017 Year-End Report (Jan. 23, 2018).

for the 2020 Trump campaign.²⁴ In its response, the Trump Committee denies that it has any role in the governance or activities of AF Policies or AF Action.²⁵

Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.²⁶ At various times, Parscale Strategy has been retained as a consultant by AF Policies, AF Action, the Trump Committee, and the RNC.²⁷ AF Action and AF Policies state that their contracts with Parscale Strategy were terminated when Parscale was named 2020 campaign manager.²⁸ The RNC has continued to contract with Parscale Strategy.

Marty Obst is the owner of MO Strategies, Inc.,²⁹ and was a campaign advisor to Trump in 2016.³⁰ Complainants also assert that he was a founder of AF Policies.³¹ MO Strategies was hired by AF Policies and AF Action for fundraising consulting.³² GAC, a leadership PAC

²⁴ MUR 7340 Compl. ¶ 12; MUR 7340 RNC Resp. at 2 (Apr. 30, 2018). Reports filed with the Commission indicate that Parscale was on payroll for the 2016 Trump campaign and that another firm in which he is a partner, Giles-Parscale, was the number one recipient of disbursements from the 2016 Trump campaign, receiving nearly \$88 million in disbursements. *See* Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. On July 15, 2020, Trump announced that he was replacing Parscale as campaign manager, but that Parscale would remain with the campaign as a senior advisor working on digital and data strategies. Donald J. Trump, Comment to FACEBOOK (July 19, 2020), <https://www.facebook.com/DonaldTrump/posts/10165094743505725>.

²⁵ MUR 7340 Trump Committee Resp. at 3.

²⁶ MUR 7340 Compl. ¶ 37.

²⁷ *See* MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 7; MUR 7340 Trump Committee Resp. at 4; MUR 7340 RNC Resp. at 9.

²⁸ MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 5.

²⁹ MUR 7340 Compl. ¶ 42.

³⁰ *Id.* ¶ 13 (citing Julie Bykowicz, *Trump Advisers Start 'America First Policies' Nonprofit*, AP NEWS (Jan. 30, 2017), <https://apnews.com/77133d470c634a458b3198063af4a14b>). While Trump Committee reports filed with the Commission do not indicate any disbursements to either Obst or MO Strategies, multiple media reports have noted Obst's role as a campaign advisor, and this role appears to be confirmed by Obst's LinkedIn profile. *See* Marty Obst, LINKEDIN, <https://www.linkedin.com/in/marty-obst-92611322> (last visited Nov. 23, 2020).

³¹ MUR 7340 Compl. ¶ 13.

³² MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 5. While the responses of AF Policies and AF Action do not indicate when they first retained MO Strategies, Commission reports indicate that AF Action

established by Pence, also made disbursements to MO Strategies for “financial/political strategy consulting.”³³ GAC’s response in this matter admits that it disbursed “in excess of \$220,000 (inclusive of reimbursements) to MO Strategies, Inc.,” but does not describe the scope of Obst’s work, except to deny that Obst was GAC’s “founder” as alleged in the MUR 7340 Complaint.³⁴

Since the 2016 election, the MUR 7340 Complaint alleges, the RNC has expended significantly less on polling than it has during previous Republican administrations.³⁵ The RNC acknowledges the reduction, but states that this is a result of its extensive investments in other kinds of data that have replaced much of its need for traditional polling.³⁶ The MUR 7340 Complaint alleges that the Trump Committee has likewise not made disbursements for polling for his reelection campaign.³⁷ On the other hand, AF Policies has reportedly spent extensively on polling regarding Trump and his policies and it has made much of this data available through what the MUR 7340 Complaint characterizes as an “obscure” link on AF Policies’ homepage.³⁸

first reported a disbursement to MO Strategies on Aug. 9, 2017. *See* AF Action 2017 Year-End Report at 94 (Jan. 23, 2018).

³³ MUR 7340 GAC Resp. at 1; *see, e.g.*, GAC 2017 Year-End Report at 94-96 (Jan. 23, 2018).

³⁴ MUR 7340 GAC Resp. at 1; *see* MUR 7340 Compl. ¶ 34.

³⁵ MUR 7340 Compl. ¶ 49; Christina Wilkie, *Dark Money Group America First Policies Is Running a Pro-Trump Polling Operation*, CNBC (Mar. 1, 2018) (“Wilkie, *Dark Money*”), <https://www.cnbc.com/2018/03/01/america-first-policies-dark-money-polling-for-trump.html>.

³⁶ Wilkie, *Dark Money* (quoting an RNC official stating, “Since 2013, we’ve spent \$250 million to gather information through voter scoring, and we have a huge amount of information that informs these scores. . . . So, we don’t really pay for traditional polling anymore. We rely on this data, instead.”).

³⁷ MUR 7340 Compl. ¶ 50 (citing Wilkie, *Dark Money*). Trump Committee disclosure reports indicate one expenditure for “polling expenses” through mid-2018 to Gage Group – G2 Analytics for \$74,583. Trump Committee 2017 April Quarterly Report at 54969 (July 20, 2017).

³⁸ *See* MUR 7340 Compl. ¶¶ 45-50 (citing Wilkie, *Dark Money* (reporting that AF Policies admitted to sharing their polling and putting it up on their homepage, but then removed much of the polling data from the website after being asked about it by CNBC)). The polling information could be found by following a small link at the bottom of AF Policies’ homepage link entitled “data.” *See* <https://www.americafirstpolicies.org/data/>. AF Action also posts polling information in a similar fashion. *See* <https://www.alapac.org/data/>.

1 The MUR 7340 Complaint alleges that AF Policies has used several polling firms with
 2 relationships to the Trump Committee, including a polling firm that was owned by Trump's 2016
 3 campaign manager Kellyanne Conway.³⁹

4 On May 7, 2019, the Trump Committee issued a statement criticizing "scam groups"
 5 raising funds by "deceptively us[ing] the President's name, likeness, trademarks, or branding."⁴⁰

6 The statement continued, asserting that:

7 There are only four official fundraising organizations
 8 authorized by President Trump or the RNC: Donald J. Trump for
 9 President, the Republican National Committee, and two joint
 10 fundraising committees with the RNC, The Make America Great
 11 Again Committee (TMAGAC) and Trump Victory. In addition,
 12 there is one approved outside non-campaign group, America First
 13 Action, which is run by allies of the President and is a trusted
 14 supporter of President Trump's policies and agendas.⁴¹

15
 16 The MUR 7340 Supplemental Complaint and the MUR 7609 Complaint allege that, via
 17 this statement, the Trump Committee solicited funds for or directed funds to AF Action without
 18 limiting this solicitation or direction to hard money.⁴² The Trump Committee responds that its
 19 statement was not a solicitation or direction to contribute to AF Action but rather it "merely

³⁹ MUR 7340 Compl. ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

⁴⁰ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁴¹ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁴² MUR 7340 Supp. Compl. at 3; MUR 7609 Compl. at 5-8.

provid[ed] the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds.”⁴³

III. LEGAL ANALYSIS

A. The Commission Should Dismiss the Allegation that Trump or the Trump Committee Violated 52 U.S.C. § 30125 by Establishing, Financing, Maintaining, or Controlling AF Policies or AF Action

The Complaint in MUR 7340 alleges that President Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action, which solicited, received, and spent soft money. In support of its allegation, the MUR 7340 Complaint, relying on media reports, makes six assertions: (1) that Kellyanne Conway, former 2016 Trump campaign manager, publicly stated that an organization will be formed and needs to be run by someone “close to the President”;⁴⁴ (2) that AF Policies was founded by a group of former 2016 Trump campaign aides, including Parscale and Obst;⁴⁵ (3) that Trump’s son-in-law, Jared Kushner, gave Parscale his “blessing” to head AF Policies;⁴⁶ (4) that consultants, including Parscale and Corey Lewandowski, Trump’s former 2016 campaign manager, worked for both the Trump Committee and AF Policies or AF Action;⁴⁷ (5) that AF Policies and AF Action staff regularly communicated with Trump and his

⁴³ MUR 7340 Trump Committee Supp. Resp. at 1 (quoting Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13,926, 13,933 (Mar. 20, 2006) (“Solicitation E&J”)). MUR 7609 Trump Committee Resp. (same). The Trump Committee and AF Action/AF Policies Responses also note that the Complainant, Paul S. Ryan, publicly stated that “[p]ointing to a super Pac and saying, ‘That’s the one I approve of’ doesn’t break the law.” MUR 7340 Trump Committee Supp. Resp. at 1 (citing Zach Montellaro, POLITICO (May 8, 2019), <https://www.politico.com/newsletters/morning-score/2019/05/08/wheres-the-line-between-a-campaign-and-super-pac-614412>); MUR 7340 AF Action/AF Policies Resp. at 2 (same).

⁴⁴ MUR 7340 Compl. ¶ 88.

⁴⁵ *Id.* ¶ 90; *see supra* n.14.

⁴⁶ *Id.* ¶ 89.

⁴⁷ *Id.* ¶¶ 23, 90, 93.

campaign based on a media report of a number of individuals including Parscale and Lewandowski meeting with White House staff regarding the 2018 mid-term elections;⁴⁸ and (6) the Trump Committee's statement that AF Action is its "one approved outside non-campaign group."⁴⁹

AF Policies' response does not address who its founders were, but provides information about the membership of its Board of Directors from two months after its founding. Only one of the reported "founders" of AF Policies actually held a position on the Board of Directors: Nicholas Ayers, a campaign advisor to Pence who stepped down from his board position at AF Policies when he became Pence's chief of staff on July 28, 2017.⁵⁰ AF Policies and AF Action also provide sworn declarations of the first and only president of AF Policies and AF Action, Brian O. Walsh, who states that he has never held any role with the Trump campaign or administration.⁵¹

AF Policies and AF Action both note that their corporate bylaws give no authority to Trump or his campaign to direct or participate in the governance of the entities.⁵² According to the affidavit of Walsh, the authority to "hire, appoint, demote, or otherwise control the officers or

⁴⁸ *Id.* ¶ 94.

⁴⁹ MUR 7340 Supp. Compl. at 3.

⁵⁰ MUR 7340 AF Policies Resp. at 2, n.1; *see also* Vice President Pence (@VP), TWITTER (July 28, 2017 11:37 AM), <https://twitter.com/VP/status/891004622420287489> ("Congrats to @Nick_Ayers for being sworn-in as my Chief of Staff. Excited to welcome you & great having your family at @WhiteHouse today.").

⁵¹ MUR 7340 AF Policies Resp. at 1; Aff. of Walsh ¶ 2; MUR 7340 AF Action Resp. at 1; Aff. of Walsh ¶ 2.

⁵² MUR 7340 AF Policies Resp. at 1-2; MUR 7340 AF Action Resp. at 1-2.

1 other decision-making employees” of AF Policies and AF Action resides with Walsh and the
 2 Board of Directors.⁵³

3 The Act prohibits federal candidates and officeholders, their agents, and entities directly
 4 or indirectly established, financed, maintained, or controlled by or acting on behalf of one or
 5 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
 6 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
 7 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”⁵⁴
 8 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
 9 was designed to “plug the soft-money loophole.”⁵⁵

10 To determine whether a candidate or his or her agent “directly or indirectly establishes,
 11 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten
 12 factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has
 13 the authority to “direct or participate in the governance of the entity through provisions of
 14 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
 15 procedures”;⁵⁶ (2) whether the candidate or his agent has “the authority or ability to hire,
 16 appoint, demote, or otherwise control the officers, or other decision-making employees or
 17 members of the entity”;⁵⁷ (3) whether former or present “overlapping officers or employees”

⁵³ MUR 7340 AF Action Resp. at 4; Aff. of Walsh ¶¶ 5, 10; MUR 7340 AF Policies Resp. at 5; Aff. of Walsh ¶¶ 5, 10. No Respondent explained who had decision-making authority prior to the installation of AF Policies’ Board of Directors several months after its founding or who installed that board.

⁵⁴ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

⁵⁵ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁵⁶ 11 C.F.R. § 300.2(c)(2)(ii).

⁵⁷ *Id.* § 300.2(c)(2)(iii).

indicate “a formal or ongoing relationship” between the candidate or his agent and the entity;⁵⁸ (4) whether directly or through its agent, the candidate had an “active or significant role in the formation of the entity”;⁵⁹ as well as any other relevant factors, in the context of the overall relationship between the federal candidate or officeholder, or his agent, and the entity.⁶⁰

An “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.”⁶¹ The Commission has explained that the purpose of adopting the “actual authority standard” was to “preserve an individual’s ability to raise funds for multiple organizations.”⁶²

The establishment of AF Policies was allegedly effected by a group of “founders” who previously held high-ranking positions with the 2016 Trump campaign.⁶³ Considering their titles, including two deputy campaign managers (Rick Gates and David Bossie), it appears likely that at least some of these founders were agents of Trump and the Trump Committee during the 2016 campaign.⁶⁴ But the available information is insufficient to support a reasonable inference

⁵⁸ *Id.* § 300.2(c)(2)(v), (vi).

⁵⁹ *Id.* § 300.2(c)(2)(ix).

⁶⁰ *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

⁶¹ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,975-76 (Jan. 31, 2006) (“Agent E&J”); Advisory Op. 2007-05 (Iverson) at 3.

⁶² Agent E&J, 71 Fed. Reg. at 4,979, n.9.

⁶³ *See supra* n.14.

⁶⁴ Notably, no facts have been asserted establishing what, if any, role these individuals had in the 2020 Trump campaign (other than Parscale, who became campaign manager in February 2018), or whether any agency authority that was established in the 2016 campaign still existed after that election, or particularly on January 27, 2017, when AF Policies was formed.

1 that any of these individuals was acting at the direction of Trump or the Trump Committee when
2 they reportedly formed AF Policies in January 2017. Parscale was the only one of the reported
3 founders on the payroll of the Trump Committee around the time that AF Policies was formed.
4 His last paycheck was dated four days after the founding of AF Policies but appears to be for a
5 partial pay period as it is about half of the amount he was paid bi-weekly for the prior bi-weekly
6 periods.⁶⁵ Thus, it appears his personal employment by the Committee ended just prior to the
7 formation of AF Policies. Even if Parscale was employed by the Trump Committee at the time
8 of the founding of AF Policies, his role was Digital and Data Director and there is not sufficient
9 evidence to conclude that he had become an agent by virtue of, for instance, soliciting
10 contributions on behalf of the Trump Committee.⁶⁶

11 As for AF Action, it was formed by Walsh, who is not alleged to be an agent of Trump or
12 the Trump Committee. One of AF Action's original board members, Ayers, worked on the 2016
13 Trump campaign and was potentially therefore an agent of Trump and the Trump Committee in
14 2016, but the available information does not support the claim that he continued to be an agent of
15 Trump or the Trump Committee in April 2017 when AF Action was established.

16 As noted above, the Trump Committee and AF Policies and AF Action have several
17 overlapping current and former employees and vendors. Parscale, whose company was retained

⁶⁵ See Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. Thereafter, Parscale's firm continued to receive disbursements from the Trump Committee. *Id.*

⁶⁶ The MUR 7340 Complaint's suggestion that Trump established AF Policies by hiring Parscale to lead it via Jared Kushner's "blessing" is conclusory and unsupported. See MUR 7340 Compl. ¶ 15. Even assuming that Kushner was an agent of Trump, the media report alone does not support a reasonable inference that Kushner had the "authority or ability to hire" Parscale for a job at an entity that did not exist at that point. See Agent E&J, 71 Fed. Reg. at 4,978, n.6 ("Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.").

by all three entities, was employed in high-ranking positions by both the 2016 and 2020 Trump campaigns and was a reported founder of AF Policies. Lewandowski has also held positions with both the Trump Committee in 2016, as campaign manager, and with AF Policies and AF Action, as a consultant. A number of other individuals including Ayers also had roles with the Trump Committee in 2016 and were allegedly founders of AF Policies. But as the Commission has stated previously, “more than the mere fact of such informal, ongoing relationships between the personnel of the potentially sponsoring and potentially sponsored entity is necessary to support a conclusion of ‘establishment, financing, maintenance or control.’”⁶⁷ Instead, to establish a violation based on overlapping employees and officers, the overlap must “indicate[] formal or ongoing relationship.”⁶⁸ The attestation that Ayers left his position at AF Policies when he joined the administration indicates the end of a formal relationship with an overlapping employee.⁶⁹ AF Policies’ and AF Action’s decision to terminate the contract of Parscale’s firm when he was named Trump’s 2020 campaign manager further undermines the existence of a formal relationship by not retaining, even as a vendor, an employee of the Trump Committee.⁷⁰

Moreover, “while former employers and colleagues may exercise influence, influence is not necessarily control.”⁷¹ Here, formal control under the bylaws of AF Policies and AF Action, including the authority to “hire, appoint, demote, or otherwise control the officers or other decision-making employees,” rests with the Board of Directors and the president of the

⁶⁷ Factual & Legal Analysis (“F&LA”) at 8, MUR 6280 (Howard L. Berman).

⁶⁸ 11 C.F.R. § 300.2(c)(2)(v).

⁶⁹ MUR 7340 AF Policies Resp. at 2, n.1; Aff. of Walsh ¶ 6; MUR 7340 AF Action Resp. at 2, n.1.

⁷⁰ MUR 7340 AF Policies Resp. at 6, n.4; Aff. of Walsh ¶ 16; MUR 7340 AF Action Resp. at 5, n.5; Aff. of Walsh ¶ 16.

⁷¹ F&LA at 8, MUR 6280.

organization,⁷² and there is no information indicating that hiring did not occur in accordance with this stated process.

Finally, Complainants note in the MUR 7340 Supplemental Complaint that the allegation that Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action is supported by the additional evidence that the Trump Committee made a public statement regarding fundraising, stating that AF Action is the only “approved outside non-campaign group.”⁷³ Although this statement appears to constitute a solicitation of non-federal funds under section 30125(e), *see infra* pages 23-29, this statement and the attending circumstances do not appear to establish that the AF Action was EFMC’d by Trump or the Trump Committee.⁷⁴

In short, the available information is insufficient to give rise to a reasonable inference that AF Policies or AF Action was established, financed, maintained, or controlled by Trump or the Trump Committee. Accordingly, we recommend that the Commission dismiss these allegations that AF Policies, AF Action, Trump, and the Trump Committee have violated 52 U.S.C. § 30125.

⁷² MUR 7340 AF Policies Resp. at 5; Aff. of Walsh ¶ 5; *see supra* n.66; F&LA at 4, MUR 7070 (Congressional Leadership Fund, *et al.*) (“However, the quoted statement that ‘Fink was personally approached by House Speaker Paul Ryan to take the job’ does not, by itself, support a reasonable inference that Ryan had the ‘authority or ability to hire’ Fink under section 300.2(c)(2)(iii).”); *cf.* Advisory Op. 2003-12 (Flake) (concluding that a candidate “established” an entity for purposes of 11 C.F.R. § 300.2(c)(2) on the basis that the candidate was among the individuals who formed the committee and signed its organizational documents, he served as its chairman, and his part-time campaign consultant aided the committee with its state filings and bank accounts).

⁷³ MUR 7340 Supp. Compl. at 1-4.

⁷⁴ Among the EFMC factors set forth in the Commission’s regulations is that a candidate or officeholder “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity.” 11 C.F.R. § 300.2(c)(2)(viii). In the present matter, AF Action disclosed the receipt of contributions totaling \$2.7 million in the month before the Trump Committee statement and \$1.3 million in the month after the statement. *See* AF Action 2019 Mid-Year Report (July 31, 2019).

B. The Commission Should Dismiss the Allegation that Trump, the Trump Committee, or the RNC Though Their Agent, Brad Parscale, Violated 52 U.S.C. § 30125 by Raising Soft Money for AF Policies or AF Action

The MUR 7340 Complaint alleges, “[b]ased on published reports,” that Parscale solicited soft money for AF Policies and AF Action as an agent of Trump or the Trump Committee.⁷⁵

While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for other political parties or outside groups.”⁷⁶ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of federal candidates.”⁷⁷

Assuming, *arguendo*, that Parscale was an agent of the Trump Committee at some time after the formation of AF Policies and before being named Trump’s campaign manager in 2018, the record does not support a reasonable inference that Parscale solicited funds for either AF Policies or AF Action. Both AF Policies and AF Action dispute that he has ever been authorized to solicit funds for them. AF Policies explains that Parscale, through his company, provided digital and online consulting services, not fundraising services.⁷⁸ Likewise, AF Action

⁷⁵ MUR 7340 Compl. ¶ 111; *see also id.* ¶¶ 33, 37 (detailing reported disbursements to Parscale’s company for “digital fundraising consulting,” among other purposes).

⁷⁶ Agent E&J, 71 Fed. Reg. at 4,979.

⁷⁷ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (“AO 2015-09”) (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

⁷⁸ MUR 7340 AF Policies Resp. at 6; Aff. of Walsh ¶ 16.

1 states that Parscale, through his company, provided digital and online consulting services,
 2 including services related to AF Action's digital fundraising activities, but that he did not
 3 directly solicit donors.⁷⁹ In neither case does the available information indicate otherwise.
 4 Accordingly, because the available information fails to give rise to a reasonable inference that a
 5 violation has occurred, we recommend that the Commission dismiss these allegations that
 6 Trump, the Trump Committee, Bradley Parscale, and Parscale Strategy, LLC have violated
 7 52 U.S.C. § 30125.

8 Similarly, the MUR 7340 Complaint alleges that Parscale solicited soft money for AF
 9 Policies and AF Action on behalf of the RNC, based on the RNC paying Parscale Strategy "more
 10 than \$2 million for management consulting."⁸⁰ The Act prohibits a national committee of a
 11 political party and any agent acting on behalf of such a committee from soliciting soft money.⁸¹

12 The RNC responds that Pascale was not a fundraising agent of the RNC because his
 13 firm's consulting work did not include soliciting contributions (though he did advise the RNC
 14 regarding its online fundraising),⁸² and that its contract with Parscale explicitly prohibits him
 15 from raising non-federal funds on behalf of the RNC.⁸³ Moreover, as noted above, AF Policies
 16 and AF Action deny that Parscale solicited funds on their behalf. Accordingly, because the
 17 available information fails to give rise to a reasonable inference that a violation has occurred, we

⁷⁹ MUR 7340 AF Action Resp. at 5, 7; Aff. of Walsh ¶ 16.

⁸⁰ MUR 7340 Compl. ¶ 129.

⁸¹ 52 U.S.C. § 30125(a).

⁸² MUR 7340 RNC Resp. at 9.

⁸³ MUR 7340 RNC Resp. at 2-3 (quoting Parscale Strategy's contract: "Independent Contractor is not an agent of the RNC and expressly agrees not to represent itself as an agent of the RNC in the course of, or in connection with, the raising of any Non-Federal Funds.").

recommend that the Commission dismiss the allegation that the RNC, Bradley Parscale, and Parscale Strategy, LLC violated 52 U.S.C. § 30125(a).

C. The Commission Should Dismiss the Allegation that Pence and his Leadership PAC, GAC, Through Their Agent, Marty Obst, Violated 52 U.S.C. § 30125 by Raising Soft Money for AF Policies or AF Action

We recommend a similar disposition regarding the MUR 7340 Complaint's allegations concerning non-federal fundraising by Marty Obst as an agent of Pence and GAC. Obst, through contracts with his company MO Strategies, conducted fundraising for AF Policies and AF Action.⁸⁴ And it is possible that Obst, through his company, solicited funds for GAC, which admits that it retained MO Strategies for "financial/political strategy consulting" but does not state whether that work entailed soliciting contributions.⁸⁵

Despite the Complaint's assertions of Obst's agency to raise funds for AF Policies and AF Action on behalf of Pence or GAC, the record includes no specific information indicating that any of the fundraising that MO Strategies did for AF Policies or AF Action was done at "the request or suggestion" of Pence, or any other federal candidate or officeholder, or any committee or entity other than AF Policies and AF Action. AF Policies and AF Action state that their contracts with MO Strategies specifically state that "[a]t all times while acting within the scope of this Agreement, Consultant agrees that it will have no authority to, and will not hold itself out or otherwise represent itself as soliciting funds as an agent of, or otherwise on behalf of any other entity, including any federal candidate campaign committee or national, state, or local political

⁸⁴ MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 5.

⁸⁵ MUR 7340 GAC Resp. at 1; *see, e.g.*, GAC July 2017 Mid-Year Report at 65 (July 31, 2017) (indicating a \$62,500 disbursement to MO Strategies for "financial/political strategy consulting").

party committee.”⁸⁶ No information in the record indicates that Obst or MO Strategies acted otherwise. Accordingly, because the available information fails to give rise to a reasonable inference that a violation has occurred, we recommend that the Commission dismiss the allegation that Pence, GAC, Marty Obst, and MO Strategies, Inc. violated 52 U.S.C. § 30125.

D. The Commission Should Dismiss the Allegation that AF Policies or the Trump Committee Violated the Act by Making or Receiving, Respectively, Unreported Contributions in the Form of Coordinated Expenditures

The MUR 7340 Complaint asserts that AF Policies conducted polls on voter perceptions of Trump and his policies in coordination with the Trump Committee, resulting in an unreported and excessive in-kind contribution to the Committee.⁸⁷ The Complaint bases its allegation on the following facts: (1) the Trump Committee reported no disbursements for polling during the relevant period, and the RNC's reported polling expenses decreased relative to prior years during the relevant period;⁸⁸ (2) AF Policies used a polling firm owned by presidential advisor Kellyanne Conway;⁸⁹ (3) AF Policies consultants Parscale and Lewandowski reportedly attended a meeting at the White House to discuss the 2018 mid-term elections;⁹⁰ and (4) AF Policies

⁸⁶ MUR 7340 AF Policies Resp. at 7-8; Aff. of Walsh ¶ 18; MUR 7340 AF Action Resp. at 7; Aff. of Walsh ¶ 18.

⁸⁷ MUR 7340 Compl. ¶¶ 137-145.

⁸⁸ *Id.* ¶¶ 49-50, 144.

⁸⁹ *Id.* ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

⁹⁰ *Id.* ¶ 139.

1 posted the polling results at a relatively obscure link on its website and took the results down
2 after reporters inquired about the polls.⁹¹

3 AF Policies and the Trump Committee deny any coordination. AF Policies does not deny
4 that Parscale or Lewandowski attended the reported meeting at the White House, but states that
5 their attendance was not at the direction of AF Policies and that no officer or director of
6 AF Policies was at the meeting.⁹² Moreover, they note that there is no available information
7 indicating that the polling conducted by AF Policies was discussed.⁹³

8 Under the Commission's regulations, any expenditures that are made in cooperation,
9 consultation or in concert with, or at the request or suggestion of a candidate or a candidate's
10 authorized committee, but that are not coordinated communications, party coordinated
11 communications, or coordinated party expenditures, are in-kind contributions to the candidate
12 and must be reported as an expenditure by that candidate.⁹⁴

13 The available information is not sufficient to support the conclusion that AF Policies and
14 the Trump campaign coordinated in connection with the polling as alleged in the MUR 7340
15 Complaint. Specifically, the available information is insufficient to demonstrate that AF Policies
16 and the Trump campaign acted in cooperation, consultation, or in concert in conducting the
17 polling. For example, though the MUR 7340 Complaint mentions the involvement of the

⁹¹ *Id.* ¶¶ 47-48.

⁹² MUR 7340 AF Policies Resp. at 9, n.5.

⁹³ *Id.* at 9.

⁹⁴ 11 C.F.R. § 109.20(b); 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); *Campaign Guide for Nonconnected Committees* at 25, <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee").

1 company of Trump's advisor, Conway, in the polling, it presents no allegation that Conway had
2 any personal knowledge of or involvement in AF Policies' polling activity. Nor is there enough
3 information to conclude that AF Policies made an in-kind contribution to the Trump campaign
4 by sharing the results of the polling. Although the MUR 7340 Complaint notes that the polling
5 results were published online, it presents insufficient information to conclude that the Trump
6 Committee accessed those results or that AF Policies communicated any information about the
7 online information to the Trump Committee.⁹⁵ In sum, when taken together, the available facts
8 do not support a reasonable inference that there was coordination on the polling. Accordingly,
9 we recommend that the Commission dismiss the allegations that AF Policies violated 52 U.S.C.
10 §§ 30116 and 30118 by making prohibited and excessive in-kind contributions and that the
11 Trump Committee violated 52 U.S.C. §§ 30116, 30118, and 30104(b) by accepting and failing to
12 report prohibited or excessive in-kind contributions.

⁹⁵ In MUR 6908 (NRCC) the NRCC tweeted coded polling data on Twitter accounts which did not appear to be affiliated with the NRCC. First Gen. Counsel's Rpt., MUR 6908 (NRCC). The Office of General Counsel recommended finding reason to believe that this data was not "publicly available" and that therefore the polling results were in-kind contributions and provided for the purpose of furthering expenditures and also that Respondents coordinated their activities and thereby made and accepted prohibited, excessive, and unreported in-kind contributions when that information was then used by other committees to make expenditures. *Id.* In the present matter, we recommend dismissing the coordination allegations as there is insufficient information to conclude that the Trump Committee accessed or used the polling data on AF Policies' website. Therefore, it is unnecessary to address whether the use of a relatively obscure link rendered the information not "publicly available."

E. The Commission Should Find Reason to Believe that the Trump Committee Violated 52 U.S.C. § 30125 by Soliciting Soft Money Via the Committee's Statement Issued May 7, 2019

Finally, the MUR 7340 Supplemental Complaint and the MUR 7609 Complaint allege that a statement issued by the Trump Committee solicited soft money for or directed soft money contributions to AF Action in violation of section 30125(e) and 11 C.F.R. § 300.61.⁹⁶

The Act prohibits federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of federal candidates and officeholders, from soliciting funds in connection with a federal election “unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”⁹⁷ The Act limits contributions to non-authorized, non-party committees to \$5,000 in any calendar year.⁹⁸ Although an IEOPC may accept contributions from corporations and individuals without regard to that \$5,000 limitation,⁹⁹ federal officeholders and candidates may only solicit up to \$5,000 from permissible sources on behalf of such a committee.¹⁰⁰

Through regulation, the Commission has defined “to solicit” broadly to mean “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution,

⁹⁶ MUR 7340 Supp. Compl.; MUR 7609 Compl.; *see* 52 U.S.C. § 30125(e); 11 C.F.R. 300.61.

⁹⁷ *See* 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. §§ 300.60, 300.61.

⁹⁸ 52 U.S.C. § 30116(a)(1)(C).

⁹⁹ *See SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals' contributions to political committees that only make independent expenditures); Advisory Op. 2010-11 (Common Sense Ten) (“AO 2010-11”) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

¹⁰⁰ *See* Advisory Op. 2011-12 (Majority PAC) at 3 (“AO 2011-12”) (determining that solicitation restrictions under 52 U.S.C. § 30125(e)(1)(A) remain applicable to contributions solicited by federal candidates, officeholders, and other covered persons); Conciliation Agreement ¶¶ 7, 8, MUR 7048 (Cruz for President) (“CA”) (same); F&LA at 11, MURs 6563 and 6733 (Rep. Aaron Schock).

1 donation, transfer of funds, or otherwise provide anything of value.”¹⁰¹ The regulation further
 2 provides that a “solicitation” is “an oral or written communication that, construed as reasonably
 3 understood in the context in which it is made, contains a clear message asking, requesting, or
 4 recommending that another person make a contribution” and “may be made directly or
 5 indirectly” but “does not include mere statements of political support.”¹⁰²

6 In 2006, the Commission revised the definition of “to solicit” following a decision by the
 7 United States Court of Appeals for the District of Columbia Circuit in *Shays v. FEC* holding that
 8 the Commission’s former regulation, promulgated in 2002, was too narrow and failed to include
 9 “implicit requests for money.”¹⁰³ In promulgating the revised definition, the Commission
 10 explained that the revision is broad in order to “ensure[] that candidates and parties may not,
 11 implicitly and indirectly, raise unregulated funds for either themselves, or subject to statutory
 12 exceptions, ‘friendly outsiders.’”¹⁰⁴ The Commission further stated: “By covering implicit and
 13 indirect requests and recommendations, the new definition forecloses parties and candidates from
 14 using circumlocutions ‘that make their intentions clear without overtly “asking” for money’” and
 15 “also squarely addresses the central concern of the Court of Appeals in *Shays* that ‘indirect’ as
 16 well as ‘direct’” requests for funds or anything of value must be covered.”¹⁰⁵

¹⁰¹ 11 C.F.R. § 300.2(m); *see also* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

¹⁰² 11 C.F.R. § 300.2(m); *see also* Solicitation E&J, 71 Fed. Reg. at 13,928 (Mar. 20, 2006).

¹⁰³ Solicitation E&J, 71 Fed. Reg. at 13,927 (quoting *Shays v. FEC*, 414 F.3d 76, 104-06 (D.C. Cir. 2005)).

¹⁰⁴ *Id.* at 13,928 (quoting *Shays*, 414 F.3d at 106).

¹⁰⁵ *Id.*

1 The standard for determining whether a communication is a solicitation is objective and
 2 does not turn on the subjective interpretations of the person making the communication or its
 3 recipients.¹⁰⁶ This objective standard “hinges on whether the recipient should have reasonably
 4 understood that a solicitation was made.”¹⁰⁷ The Commission has explained the that “[t]he
 5 context of a communication is often important because words that would not, by their literal
 6 meaning, convey a solicitation, may in some contexts be reasonably understood as one.”¹⁰⁸
 7 Conversely, “words that would by their plain meaning normally be understood as a solicitation,
 8 may not be a solicitation when considered in context, such as when the words are used as part of
 9 a joke or parody.”¹⁰⁹

10 The Trump Committee’s one-page “Statement on Dishonest Fundraising Groups”
 11 “condemns any organization that deceptively uses the President’s name, likeness, trademarks or
 12 branding and confuses voters.”¹¹⁰ The Statement continues, stating that “[t]here is no excuse for
 13 any group, including ones run by people who claim to be part of our ‘coalition,’ to suggest they

¹⁰⁶ 11 C.F.R. § 300.2(m); *see also* Solicitation E&J, 71 Fed. Reg. at 13,928.

¹⁰⁷ Solicitation E&J, 71 Fed. Reg. at 13,929.

¹⁰⁸ Solicitation E&J at 13929. For instance, it is not a solicitation for a candidate to simply state: “Joe, X is a very worthy organization. It has always been very helpful to me.” *Id.* On the other hand, context could render the same statement by the candidate a solicitation. For example, if Joe is introduced to the candidate by a fundraiser for the organization saying: “I’ve been trying to persuade Joe to commit to giving X another \$50,000. Wouldn’t that be great, Senator?”, then, because of the context, the same words would be reasonably understood as a solicitation. *Id.*

¹⁰⁹ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publ’ns*, 953 F.2d 724, 727 (1st Cir. 1992) (providing as an example the point that no reasonable listener would understand a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” to be accusing the producer of the actual crime of robbery)); *see* F&LA, MUR 6939 (Mike Huckabee, *et al.*); F&LA, MUR 7135 (Donald Trump for President Inc., *et al.*).

¹¹⁰ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

1 directly support President Trump's re-election or any other candidates, when in fact their actions
 2 show they are interested in filling their own pockets"¹¹¹

3 The Trump Committee then identifies the "only four official fundraising organizations
 4 authorized by President Trump and the RNC," the Trump Committee itself, the RNC and two
 5 joint fundraising committees, as well as "one approved outside non-campaign group, America
 6 First Action, which is run by allies of the President and is a trusted supporter of President
 7 Trump's policies and agendas."¹¹²

8 The warning against "organization[s] that deceptively use[] the President's name" to
 9 fundraise creates a context in which the later parts of the Trump Committee statement must be
 10 read. In this context, which the statement itself expressly frames to be about "fundraising
 11 organizations," AF Action is identified as the "one approved outside non-campaign group" and
 12 as a direct contrast to contributing to other outside groups that "suggest they directly support
 13 President Trump's re-election" where the contributor runs the risk of "filling [the groups'] own
 14 pockets" instead.¹¹³

15 The Trump Committee asserts that it "merely provid[ed] the identity of an appropriate
 16 recipient, without any attempt to motivate another person to contribute or donate funds" and that
 17 such a statement does not constitute a "solicitation" or "direction" under the Act.¹¹⁴ The Trump
 18 Committee statement, however, does not merely provide the name of an entity to which a

¹¹¹ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

¹¹² MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

¹¹³ During the 2016 election cycle, 45 outside committees made independent expenditures in support of Donald Trump, according to Commission records. The Trump Committee in its statement identifies a single outside committee "approved" for the 2020 election.

¹¹⁴ MUR 7340 Trump Committee Supp. Resp. at 1 (quoting Solicitation E&J at 13,933).

contributor could give. First, the Trump Committee's statement explains that there are a number of unnamed groups to which individuals should not contribute because they are only "interested in filling their own pockets." Then it lists the four "authorized" groups and one outside "approved" group. The juxtaposition of these two statements is significant. Applying the Commission's objective test, and considering the context in which it is made, the statement as a whole contains a clear message recommending that the reader contribute to the authorized and approved *fundraising organizations* and not contribute to other groups.¹¹⁵

Moreover, the paragraph listing the authorized and approved groups begins "[t]here are only four official *fundraising* organizations."¹¹⁶ Even though AF Action is also described as a "trusted supporter of President Trump's policies and agendas," the subject of the statement — entitled "Trump Campaign Statement on Dishonest Fundraising Groups" — is not mere electoral, legislative, or political support, but the financing of unidentified "[d]ishonest" groups and five identified authorized or approved groups.¹¹⁷ Accordingly, this statement, as a

¹¹⁵ The language in the Trump Committee Statement is in line with several of the "solicitation" examples in the Commission's regulations. *See, e.g.*, 11 C.F.R. § 300.2(m)(2)(iii) ("Group X has always helped me financially in my elections. Keep them in mind this fall"); (iii) ("Send all contributions to the following address * * *"); (ix) ("You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party.").

¹¹⁶ MUR 7340 Supp. Compl. at 2 (emphasis added); MUR 7609 Compl. at 3 (same).

¹¹⁷ *See* Solicitation E&J at 13,928 ("The sheer number of interaction and similarity in the messages for these purposes may sometimes give rise to situations where a candidate's request for electoral or legislative support is misconstrued as a request for financial support. . . . Absent a requirement that a communication contains a clear message asking, requesting, or recommending that another person provide funds or something of value, such a statement might be inappropriately captured by the definition of 'to solicit.'"); *id.* at 13,929 ("[R]egulations must encompass a communication that 'makes [a candidate's or political party's] intention clear without overtly 'asking' for money . . . if imaginative advertisers are able to make their meaning clear without employing express terms like 'vote for' and 'vote against,' savvy politicians will surely be able to convey fundraising desires without explicitly asking for money.'") (quoting *Shays*, 414 F.3d at 106).

reasonable person would understand it in its context, constitutes a recommendation to contribute to AF Action and thus is a solicitation.¹¹⁸

If a federal candidate or an agent, such as a principal campaign committee, solicits money to an IEOPC, that solicitation must comply with the Act's amount and source limitations.¹¹⁹ The Trump Committee statement contained no such limitation. Indeed, as the sole "approved" Trump-supporting IEOPC identified, the message conveys that AF Action is the only approved destination for unlimited individual and corporate contributions supporting Trump.¹²⁰ Discussing similar solicitations made by candidates at fundraising events for groups that may accept non-federal funds, the Commission has concluded that "any solicitation that is not limited either by its express terms or otherwise (such as through a clear and conspicuous oral statement or written notice) risks being understood as soliciting donations in amounts and from sources prohibited under the Act. . . ."¹²¹ Indeed, Commission regulations provide guidance as to language that can be included in a solicitation at a fundraising event so that it is appropriately

¹¹⁸ See F&LA at 2, 6, MUR 7048 (Cruz for President) (finding reason to believe that Cruz for President impermissibly solicited soft money when an agent of the committee told fundraiser attendees that "the method to our madness is this: you max out [to Respondent] and then get engaged in the Super PAC," identifying a particular IEOPC with a table at the fundraiser); CA ¶ IV.5, MUR 7048 (Cruz for President) (same). On the other hand, in AO 1984-02 the Commission approved of Friends of Phil Gramm (the authorized committee of Phil Gramm) sending a letter to individuals who contributed to "Americans for Phil Gramm in '84" (not an authorized committee) to provide information to contributors who may have been misled, without considering it a solicitation to the authorized committee. Advisory Op. 1984-02 (Gramm). In contrast to that situation, here the Trump Committee statement does not provide factual clarity between two entities that could easily be mistaken for one another, it does not identify any particular group that may have been confused with the authorized committee, and it does not merely provide the name of Trump's authorized committee but also the party committee, and two joint fundraising committees. It then goes on to single out AF Action, an entity that by its status as an IEOPC is required to be independent of Trump and the aforementioned committees.

¹¹⁹ 52 U.S.C. § 30125(e)(1)(B); see AO 2011-12 at 4.

¹²⁰ Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

¹²¹ Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events. 75 Fed Reg. 24,375, 24,380 (May 5, 2010).

1 limited to federal funds.¹²² The Trump Committee's solicitation included no disclaimer or
 2 restriction of any kind limiting the solicitation to federal funds, and its distinction between the
 3 four "authorized" hard money recipients and AF Action as the "one outside non-campaign
 4 group" conveys that AF Action is an IEOPC that may receive soft money by virtue of that status
 5 as an "outside . . . group."¹²³ Accordingly, we recommend that the Commission find that there is
 6 reason to believe that the Trump Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R.
 7 § 300.61 by soliciting soft money contributions to AF Action.¹²⁴

¹²² See 11 C.F.R. § 300.64(b)(2)(i) ("A Federal candidate or officeholder may limit such a solicitation by displaying at the fundraising event a clear and conspicuous written notice, or making a clear and conspicuous oral statement, that the solicitation is not for Levin funds (when applicable), does not seek funds in excess of \$ [Federally permissible amount], and does not seek funds from corporations, labor organizations, national banks, federal government contractors, or foreign nationals.").

¹²³ Notably, the donation page on AF Action's website, includes a prefilled option to donate \$20,000, an amount in excess of the hard money contribution limits. See <https://secure.alapac.org/donate>.

¹²⁴ The Complaint in MUR 7609 and the MUR 7340 Supplemental Complaint allege that the statement in question "solicits" and/or "directs" contributions in violation of 52 U.S.C. § 30125(e). MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 9. Because we conclude that there is reason to believe that the statement solicits contributions in violation of section 30125(e), it is unnecessary to engage in an additional analysis as to whether it also constitutes a direction of contributions in violation of the same section of the Act. See 11 C.F.R. § 300.2(n) (definition of "to direct").

V. RECOMMENDATIONS

1. Dismiss the allegation that Donald J. Trump and Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30125 by establishing, financing, maintaining, or controlling America First Policies, Inc. and America First Action, Inc., which raised and spent soft money;
2. Dismiss the allegation that America First Policies, Inc. and America First Action, Inc. and Jon Proch in his official capacity as treasurer violated 52 U.S.C. § 30125 by accepting soft money contributions as organizations established, financed, maintained, or controlled by a federal candidate or office holder;
3. Dismiss the allegation that Donald J. Trump; Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer; or the Republican National Committee and Ronald C. Kaufman in his official capacity as treasurer, though their agent, Brad Parscale, violated 52 U.S.C. § 30125 by raising soft money for America First Policies, Inc. and America First Action, Inc.;
4. Dismiss the allegation that Michael R. Pence, and Great America Committee and Cabell Hobbs in his official capacity as treasurer, through their agent, Marty Obst, violated 52 U.S.C. § 30125 by raising soft money for America First Policies, Inc. and America First Action, Inc.;
5. Dismiss the allegation that America First Policies, Inc. violated 52 U.S.C. §§ 30116 and 30118 by making excessive and prohibited contributions in the form of coordinated expenditures;
6. Dismiss the allegation that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116, and 30118 by receiving and failing to report excessive and prohibited contributions in the form of coordinated expenditures ;
7. Find reason to believe that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 by soliciting soft money;
8. Approve the attached Factual and Legal Analyses;
9. Enter into conciliation with Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer prior to a finding of probable cause to believe;
10. Approve the attached conciliation agreement;

11. Approve the appropriate letters; and
12. Close the file as to Great America Committee and Cabell Hobbs in his official capacity as treasurer; America First Policies, Inc.; America First Action, Inc. and Jon Proch in his official capacity as treasurer; President Donald J. Trump; Vice President Michael R. Pence; Republican National Committee and Ronald C. Kaufman in his official capacity as treasurer; Parscale Strategy, LLC; Bradley J. Parscale; MO Strategies, Inc.; and Marty Obst.

Lisa J. Stevenson
 Acting General Counsel

11/24/2020
 Date

Charles Kitcher
 Charles Kitcher
 Acting Associate General Counsel
 for Enforcement

By NOM
Mark Allen
 Mark Allen
 Assistant General Counsel

Nicholas O. Mueller
 Nicholas O. Mueller
 Attorney

Attachments:

1. Factual and Legal Analysis for Great America Committee and Cabell Hobbs in his official capacity as treasurer
2. Factual and Legal Analysis for America First Policies, Inc. and America First Action, Inc. and Jon Proch in his official capacity as treasurer
3. Factual and Legal Analysis for President Donald J. Trump
4. Factual and Legal Analysis for Vice President Michael R. Pence
5. Factual and Legal Analysis for Republican National Committee and Ronald C. Kaufman in his official capacity as treasurer
6. Factual and Legal Analysis for Parscale Strategy, LLC and Bradley J. Parscale
7. Factual and Legal Analysis for MO Strategies, Inc. and Marty Obst
8. Factual and Legal Analysis for Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Great America Committee
and Cabell Hobbs in his official
capacity as treasurer

MUR: 7340

I. INTRODUCTION

This matter involves allegations that Marty Obst, a former Trump 2016 campaign advisor, solicited soft money for America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”) as an agent of Vice President Pence and his leadership PAC, Great America Committee (“GAC”), which thus allegedly received and spent soft money in violation of the Act.¹ GAC argues that the allegations against it do not establish a violation.² As discussed below, the Commission dismisses the allegations that GAC violated the soft money provisions of 52 U.S.C. § 30125.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”³ According to news reports cited by the

¹ See Compl. ¶¶ 113-124 (Mar. 5, 2018).

² GAC Resp. at 2 (Apr. 23, 2018).

³ Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

Complaint, the organization was founded by several alumni of the Trump 2016 campaign.⁴ AF Policies has made independent expenditures in federal elections⁵ and, according to the Complaint, has also solicited soft money.⁶

AF Action is registered with the Commission as an IEOPC.⁷ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.⁸

Marty Obst is the owner of MO Strategies, Inc.,⁹ and was a campaign advisor to Trump in 2016.¹⁰ Complainants also assert that he was a founder of AF Policies.¹¹ The Commission possesses information that MO Strategies was hired by AF Policies and AF Action for fundraising consulting.¹² GAC, a leadership PAC established by Pence, also made disbursements to MO Strategies for “financial/political strategy consulting.”¹³ GAC’s response

⁴ Compl. ¶ 17; *see also id.* ¶ 19.

⁵ *See e.g.*, AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

⁶ *See* Compl. ¶¶ 95, 109.

⁷ *See* AF Action, Inc., Statement of Organization (Apr. 12, 2017).

⁸ Compl. ¶¶ 35-36, 96-97; *see also, e.g.*, AF Action 2017 Year-End Report (Jan. 23, 2018).

⁹ Compl. ¶ 42.

¹⁰ *Id.* ¶ 13 (citing Julie Bykowicz, *Trump Advisers Start ‘America First Policies’ Nonprofit*, AP NEWS (Jan. 30, 2017), <https://apnews.com/77133d470c634a458b3198063af4a14b>). While Trump Committee reports filed with the Commission do not indicate any disbursements to either Obst or MO Strategies, multiple media reports have noted Obst’s role as a campaign advisor, and this role appears to be confirmed by Obst’s LinkedIn profile. *See* Marty Obst, LINKEDIN, <https://www.linkedin.com/in/marty-obst-92611322> (last visited Nov. 23, 2020).

¹¹ Compl. ¶ 13.

¹² Commission reports indicate that AF Action first reported a disbursement to MO Strategies on Aug. 9, 2017. *See* AF Action 2017 Year-End Report at 94 (Jan. 23, 2018).

¹³ GAC Resp. at 1; *see, e.g.*, GAC 2017 Year-End Report at 94-96 (Jan. 23, 2018).

in this matter admits that it disbursed “in excess of \$220,000 (inclusive of reimbursements) to MO Strategies, Inc.,” but does not describe the scope of Obst’s work, except to deny that Obst was GAC’s “founder” as alleged in the Complaint.¹⁴

III. LEGAL ANALYSIS

The Commission dismisses the Complaint’s allegations concerning non-federal fundraising by GAC. While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for other political parties or outside groups.”¹⁵ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of federal candidates.”¹⁶

An “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.”¹⁷ The Commission has explained that the purpose of adopting the “actual

¹⁴ GAC Resp. at 1; *see* Compl. ¶ 34.

¹⁵ Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006) (“Agent E&J”).

¹⁶ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (“AO 2015-09”) (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

¹⁷ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Agent E&J, 71 Fed. Reg. at 4,975-76; Advisory Op. 2007-05 (Iverson) at 3.

1 authority standard” was to “preserve an individual’s ability to raise funds for multiple
2 organizations.”¹⁸

3 The Commission possesses information indicating that Marty Obst, through contracts
4 with his company MO Strategies, conducted fundraising for AF Policies and AF Action. And it
5 is possible that Obst, through his company, solicited funds for GAC, which admits that it retained
6 MO Strategies for “financial/political strategy consulting” but does not state whether that work
7 entailed soliciting contributions.¹⁹

8 Despite the Complaint’s assertions of Obst’s agency to raise funds for AF Policies and
9 AF Action on behalf of Pence or GAC, the record includes no specific information indicating
10 that any of the fundraising that MO Strategies did for AF Policies or AF Action was done at “the
11 request or suggestion” of Pence, or any other federal candidate or officeholder, or any committee
12 or entity other than AF Policies and AF Action. The Commission possesses information
13 indicating that AF Policies and AF Action contracts with MO Strategies specifically state that
14 “[a]t all times while acting within the scope of this Agreement, Consultant agrees that it will
15 have no authority to, and will not hold itself out or otherwise represent itself as soliciting funds
16 as an agent of, or otherwise on behalf of any other entity, including any federal candidate
17 campaign committee or national, state, or local political party committee.” No information in the
18 record indicates that Obst or MO Strategies acted otherwise. Therefore, because the available
19 information fails to give rise to a reasonable inference that a violation has occurred, the

¹⁸ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

¹⁹ GAC Resp. at 1; *see, e.g.*, GAC July 2017 Mid-Year Report at 65 (July 31, 2017) (indicating a \$62,500 disbursement to MO Strategies for “financial/political strategy consulting”).

MUR 7340 (Great America Committee)

Factual & Legal Analysis

Page 5 of 5

- 1 Commission dismisses the allegation that GAC, through its agent, Marty Obst, violated
- 2 52 U.S.C. § 30125 by raising soft money for AF Policies or AF Action.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: America First Policies, Inc. **MUR: 7340**
 America First Action, Inc. and
 Jon Proch in his official
 capacity as treasurer

I. INTRODUCTION

The Complaint filed in MUR 7340 alleges that President Trump and his authorized campaign committee Donald J. Trump for President, Inc. (“Trump Committee”) established, financed, maintained, or controlled (“EFMC’d”) America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), and that both organizations allegedly solicited, received, and spent soft money in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ Additionally, the Complaint alleges that AF Policies made expenditures for polling in coordination with the Trump campaign and thereby made excessive and prohibited corporate in-kind contributions.²

AF Policies, and AF Action deny these allegations, arguing that: (1) Trump and the Trump Committee had no role in the creation of, and have no role in the operation of, AF Policies or AF Action;³ (2) no agent of a federal candidate or officeholder solicited, received, or

¹ See MUR 7340 Compl. ¶¶ 84-100 (Mar. 5, 2018).

² See *id.* ¶¶ 137-145.

³ MUR 7340 AF Policies Resp. at 3-5 (Apr. 30, 2018); MUR 7340 AF Action Resp. at 4 (Apr. 30, 2018).

spent soft money for AF Action or AF Policies on behalf of a federal candidate or officeholder;⁴
 and (3) AF Policies did not coordinate with the Trump campaign regarding polling.⁵

The Complainants later filed a supplement to their complaint (“MUR 7340 Supplemental Complaint”) to provide additional information in the form of a public statement by the Trump Committee that warns against “scam groups” raising funds by “deceptively us[ing] the President’s name, likeness, trademarks, or branding” and states that “there is one approved outside non-campaign group, America First Action.”⁶ The Complainants allege that this statement further supports their prior allegations that Trump EFMC’d AF Policies and AF Action.

As discussed below, the Commission dismisses the allegations that AF Policies and AF Action violated the soft money provisions of 52 U.S.C. § 30125, and the allegation that AF Policies violated 52 U.S.C. §§ 30116 and 30118 by making excessive and prohibited corporate in-kind contributions.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee.⁷ Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the

⁴ MUR 7340 AF Policies Resp. at 5-7; MUR 7340 AF Action Resp. at 5-7.

⁵ MUR 7340 AF Policies Resp. at 8-9.

⁶ MUR 7340 Supp. Compl. at 2 (May 15, 2019).

⁷ MUR 7340 AF Policies Resp. at 1; Aff. of Brian O. Walsh (president of AF Policies) ¶¶ 1, 3.

President of the United States and his agenda.”⁸ According to news reports cited by the Complaint, the organization was founded by several alumni of the Trump 2016 campaign, including Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign.⁹ AF Policies does not state who its “founders” were but asserts that it was “largely inactive”¹⁰ and had no board of directors until April 2017, when it named its board and appointed Walsh as president.¹¹ Walsh avers that he has never held a position with the Trump campaign or administration.¹² AF Policies has made independent expenditures in federal elections¹³ and, according to the Complaint, has also solicited soft money.¹⁴

AF Action is registered with the Commission as an IEOPC.¹⁵ The committee was founded in April 2017 at the direction of AF Policies president Walsh, who also became

⁸ MUR 7340 Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

⁹ MUR 7340 Compl. ¶ 17; *see also id.* ¶ 19. In addition to Parscale, the other reported founders of AF Policies were Trump’s 2016 deputy campaign managers Rick Gates and David Bossie, campaign advisors Nicholas Ayers and Marty Obst, and senior campaign advisor Katrina Pierson. *Id.*

¹⁰ AF Policies did not report any activity to the Commission until June 6, 2017, when it made independent expenditures opposing the candidacy of Jonathan Ossoff for Congress. AF Policies 24-Hour Report (June 7, 2017).

¹¹ MUR 7340 AF Policies Resp. at 1-2; Aff. of Walsh ¶ 3; *see also* MUR 7340 AF Action Resp. at 2. AF Policies states that its original Board of Directors consisted of Nicholas Ayers, Douglas Ammerman and Thomas Hicks, Jr. Subsequently, Roy Bailey replaced Ayers, who had taken a position in the Trump administration in July 2017, and Harold Hamm replaced Ammerman, who had resigned in November 2017. MUR 7340 AF Policies Resp. at 2, n.1.

¹² MUR 7340 AF Policies Resp. at 1; Aff. of Walsh ¶ 2.

¹³ *See e.g.*, AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

¹⁴ *See* MUR 7340 Compl. ¶¶ 95, 109. The MUR 7340 Complaint asserts that Parscale solicited soft money for AF Policies, “based on published reports,” but it cites no particular published report for this proposition. *Id.* For its part, AF Policies denies that Parscale solicited donors, but does not address whether as an organization it has solicited or accepted soft money. MUR 7340 AF Policies Resp. at 8.

¹⁵ MUR 7340 AF Action Resp. at 1; *see* AF Action, Inc., Statement of Organization (Apr. 12, 2017).

1 president of AF Action.¹⁶ Its original directors were Walsh, Nicholas Ayers (who also served as
 2 a director of AF Policies), and Jon Proch (who also serves as AF Action's treasurer).¹⁷
 3 AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise
 4 would be in excess of contribution limits and from sources that otherwise would be prohibited;
 5 AF Action reported more than \$1.2 million in independent expenditures to influence federal
 6 elections in 2017.¹⁸

7 Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.¹⁹
 8 Information possessed by the Commission indicates that at various times, Parscale Strategy has
 9 been retained as a consultant by AF Policies, AF Action, and the Trump Committee.²⁰ AF
 10 Action and AF Policies state that their contracts with Parscale Strategy were terminated when
 11 Parscale was named 2020 campaign manager.²¹

12 Marty Obst is the owner of MO Strategies, Inc.,²² and was a campaign advisor to Trump
 13 in 2016.²³ Complainants also assert that he was a founder of AF Policies.²⁴ MO Strategies was

¹⁶ MUR 7340 AF Action Resp. at 1; Aff. of Walsh ¶ 3.

¹⁷ Ayers resigned in July 2017 to join the Trump administration as Pence's chief of staff. Proch also resigned as a director and now serves only as treasurer of AF Action. MUR 7340 AF Action Resp. at 2, n.1. Ayers and Proch were replaced on AF Action's Board by Roy Bailey and Thomas Hicks, Jr., who also serve as AF Policies directors. MUR 7340 AF Action Resp. at 2. In addition to overlapping officers and directors, AF Action and AF Policies share the same counsel, the same address, and the bylaws of each appear very similar based on the provisions that Respondents have provided. MUR 7340 AF Policies Resp., Aff. of Walsh ¶ 4-5, 8-11; MUR 7340 AF Action Resp., Aff. of Walsh ¶ 4-5, 8-11.

¹⁸ MUR 7340 Compl. ¶¶ 35-36, 96-97; *see also, e.g.*, AF Action 2017 Year-End Report (Jan. 23, 2018).

¹⁹ MUR 7340 Compl. ¶ 37.

²⁰ *See* MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 7.

²¹ MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 5.

²² MUR 7340 Compl. ¶ 42.

²³ *Id.* ¶ 13 (citing Julie Bykowicz, *Trump Advisers Start 'America First Policies' Nonprofit*, AP NEWS (Jan. 30, 2017), <https://apnews.com/77133d470c634a458b3198063af4a14b>). While Trump Committee reports filed

1 hired by AF Policies and AF Action for fundraising consulting.²⁵ Since the 2016 election, the
 2 Complaint alleges, the Republican National Committee (“RNC”) has expended significantly less
 3 on polling than it has during previous Republican administrations.²⁶ The RNC acknowledges the
 4 reduction, but states that this is a result of its extensive investments in other kinds of data that
 5 have replaced much of its need for traditional polling.²⁷ The Complaint alleges that the Trump
 6 Committee has likewise not made disbursements for polling for his reelection campaign.²⁸ On
 7 the other hand, AF Policies has reportedly spent extensively on polling regarding Trump and his
 8 policies and it has made much of this data available through what the Complaint characterizes as
 9 an “obscure” link on AF Policies’ homepage.²⁹ The Complaint alleges that AF Policies has used

with the Commission do not indicate any disbursements to either Obst or MO Strategies, multiple media reports have noted Obst’s role as a campaign advisor, and this role appears to be confirmed by Obst’s LinkedIn profile. *See* Marty Obst, LINKEDIN, <https://www.linkedin.com/in/marty-obst-92611322> (last visited Nov. 23, 2020).

²⁴ MUR 7340 Compl. ¶ 13.

²⁵ MUR 7340 AF Policies Resp. at 6; MUR 7340 AF Action Resp. at 5. While the responses of AF Policies and AF Action do not indicate when they first retained MO Strategies, Commission reports indicate that AF Action first reported a disbursement to MO Strategies on Aug. 9, 2017. *See* AF Action 2017 Year-End Report at 94 (Jan. 23, 2018).

²⁶ MUR 7340 Compl. ¶ 49; Christina Wilkie, *Dark Money Group America First Policies Is Running a Pro-Trump Polling Operation*, CNBC (Mar. 1, 2018) (“Wilkie, *Dark Money*”), <https://www.cnbc.com/2018/03/01/america-first-policies-dark-money-polling-for-trump.html>.

²⁷ Wilkie, *Dark Money* (quoting an RNC official stating, “Since 2013, we’ve spent \$250 million to gather information through voter scoring, and we have a huge amount of information that informs these scores. . . . So, we don’t really pay for traditional polling anymore. We rely on this data, instead.”).

²⁸ MUR 7340 Compl. ¶ 50 (citing Wilkie, *Dark Money*). Trump Committee disclosure reports indicate one expenditure for “polling expenses” through mid-2018 to Gage Group – G2 Analytics for \$74,583. Trump Committee 2017 April Quarterly Report at 54969 (July 20, 2017).

²⁹ *See* MUR 7340 Compl. ¶¶ 45-50 (citing Wilkie, *Dark Money* (reporting that AF Policies admitted to sharing their polling and putting it up on their homepage, but then removed much of the polling data from the website after being asked about it by CNBC)). The polling information could be found by following a small link at the bottom of AF Policies’ homepage link entitled “data.” *See* <https://www.americafirstpolicies.org/data/>. AF Action also posts polling information in a similar fashion. *See* <https://www.alapac.org/data/>.

several polling firms with relationships to the Trump Committee, including a polling firm that was owned by Trump’s 2016 campaign manager Kellyanne Conway.³⁰

III. LEGAL ANALYSIS

A. The Commission Dismisses the Allegation that, having been Established, Financed, Maintained, or Controlled by Trump or the Trump Committee, AF Policies or AF Action Violated 52 U.S.C. § 30125 by Soliciting, Receiving, or Spending Soft Money

The Complaint alleges that President Trump and the Trump Committee established, financed, maintained, or controlled AF Policies and AF Action, which solicited, received, and spent soft money. In support of its allegation, the Complaint, relying on media reports, makes six assertions: (1) that Kellyanne Conway, former 2016 Trump campaign manager, publicly stated that an organization will be formed and needs to be run by someone “close to the President”;³¹ (2) that AF Policies was founded by a group of former 2016 Trump campaign aides, including Parscale and Obst;³² (3) that Trump’s son-in-law, Jared Kushner, gave Parscale his “blessing” to head AF Policies;³³ (4) that consultants, including Parscale and Corey Lewandowski, Trump’s former 2016 campaign manager, worked for both the Trump Committee and AF Policies or AF Action;³⁴ (5) that AF Policies and AF Action staff regularly communicated with Trump and his campaign based on a media report of a number of individuals including Parscale and Lewandowski meeting with White House staff regarding the 2018 mid-term elections;³⁵ and

³⁰ MUR 7340 Compl. ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

³¹ MUR 7340 Compl. ¶ 88.

³² *Id.* ¶ 90; *see supra* n.9.

³³ *Id.* ¶ 89.

³⁴ *Id.* ¶¶ 23, 90, 93.

(6) the Trump Committee’s statement that AF Action is its “one approved outside non-campaign group.”³⁶

AF Policies’ response does not address who its founders were, but provides information about the membership of its Board of Directors from two months after its founding. Only one of the reported “founders” of AF Policies actually held a position on the Board of Directors: Nicholas Ayers, a campaign advisor to Vice President Pence who stepped down from his board position at AF Policies when he became Pence’s chief of staff on July 28, 2017.³⁷ AF Policies and AF Action also provide sworn declarations of the first and only president of AF Policies and AF Action, Brian O. Walsh, who states that he has never held any role with the Trump campaign or administration.³⁸

AF Policies and AF Action both note that their corporate bylaws give no authority to Trump or his campaign to direct or participate in the governance of the entities.³⁹ According to the affidavit of Walsh, the authority to “hire, appoint, demote, or otherwise control the officers or other decision-making employees” of AF Policies and AF Action resides with Walsh and the Board of Directors.⁴⁰

³⁵ *Id.* ¶ 94.

³⁶ MUR 7340 Supp. Compl. at 3.

³⁷ MUR 7340 AF Policies Resp. at 2, n.1; *see also* Vice President Pence (@VP), TWITTER (July 28, 2017 11:37 AM), <https://twitter.com/VP/status/891004622420287489> (“Congrats to @Nick_Ayers for being sworn-in as my Chief of Staff. Excited to welcome you & great having your family at @WhiteHouse today.”).

³⁸ MUR 7340 AF Policies Resp. at 1; Aff. of Walsh ¶ 2; MUR 7340 AF Action Resp. at 1; Aff. of Walsh ¶ 2.

³⁹ MUR 7340 AF Policies Resp. at 1-2; MUR 7340 AF Action Resp. at 1-2.

⁴⁰ MUR 7340 AF Action Resp. at 4; Aff. of Walsh ¶¶ 5, 10; MUR 7340 AF Policies Resp. at 5; Aff. of Walsh ¶¶ 5, 10. No Respondent explained who had decision-making authority prior to the installation of AF Policies’ Board of Directors several months after its founding or who installed that board.

1 The Act prohibits federal candidates and officeholders, their agents, and entities directly
 2 or indirectly established, financed, maintained, or controlled by or acting on behalf of one or
 3 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
 4 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
 5 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”⁴¹
 6 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
 7 was designed to “plug the soft-money loophole.”⁴²

8 To determine whether a candidate or his or her agent “directly or indirectly establishes,
 9 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten
 10 factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has
 11 the authority to “direct or participate in the governance of the entity through provisions of
 12 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
 13 procedures”;⁴³ (2) whether the candidate or his agent has “the authority or ability to hire, appoint,
 14 demote, or otherwise control the officers, or other decision-making employees or members of the
 15 entity”;⁴⁴ (3) whether former or present “overlapping officers or employees” indicate “a formal
 16 or ongoing relationship” between the candidate or his agent and the entity;⁴⁵ (4) whether directly
 17 or through its agent, the candidate had an “active or significant role in the formation of the

⁴¹ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

⁴² *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁴³ 11 C.F.R. § 300.2(c)(2)(ii).

⁴⁴ *Id.* § 300.2(c)(2)(iii).

⁴⁵ *Id.* § 300.2(c)(2)(v), (vi).

entity”;⁴⁶ as well as any other relevant factors, in the context of the overall relationship between the federal candidate or officeholder, or his agent, and the entity.⁴⁷

An “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.”⁴⁸ The Commission has explained that the purpose of adopting the “actual authority standard” was to “preserve an individual’s ability to raise funds for multiple organizations.”⁴⁹

The establishment of AF Policies was allegedly effected by a group of “founders” who previously held high-ranking positions with the 2016 Trump campaign.⁵⁰ Considering their titles, including two deputy campaign managers (Rick Gates and David Bossie), it appears likely that at least some of these founders were agents of Trump and the Trump Committee during the 2016 campaign.⁵¹ But the available information is insufficient to support a reasonable inference that any of these individuals was acting at the direction of Trump or the Trump Committee when they reportedly formed AF Policies in January 2017. Parscale was the only one of the reported founders on the payroll of the Trump Committee around the time that AF Policies was formed.

⁴⁶ *Id.* § 300.2(c)(2)(ix).

⁴⁷ *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

⁴⁸ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,975-76 (Jan. 31, 2006) (“Agent E&J”); Advisory Op. 2007-05 (Iverson) at 3.

⁴⁹ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

⁵⁰ *See supra* n.9.

⁵¹ Notably, no facts have been asserted establishing what, if any, role these individuals had in the 2020 Trump campaign (other than Parscale, who became campaign manager in February 2018), or whether any agency authority that was established in the 2016 campaign still existed after that election, or particularly on January 27, 2017, when AF Policies was formed.

1 His last paycheck was dated four days after the founding of AF Policies but appears to be for a
 2 partial pay period as it is about half of the amount he was paid bi-weekly for the prior bi-weekly
 3 periods.⁵² Thus, it appears his personal employment by the Committee ended just prior to the
 4 formation of AF Policies. Even if Parscale was employed by the Trump Committee at the time
 5 of the founding of AF Policies, his role was Digital and Data Director and there is not sufficient
 6 evidence to conclude that he had become an agent by virtue of, for instance, soliciting
 7 contributions on behalf of the Trump Committee.⁵³

8 As for AF Action, it was formed by Walsh, who is not alleged to be an agent of Trump or
 9 the Trump Committee. One of AF Action's original board members, Ayers, worked on the 2016
 10 Trump campaign and was potentially therefore an agent of Trump and the Trump Committee in
 11 2016, but the available information does not support the claim that he continued to be an agent of
 12 Trump or the Trump Committee in April 2017 when AF Action was established.

13 As noted above, the Trump Committee and AF Policies and AF Action have several
 14 overlapping current and former employees and vendors. Parscale, whose company was retained
 15 by all three entities, was employed in high-ranking positions by both the 2016 and 2020 Trump
 16 campaigns and was a reported founder of AF Policies. Lewandowski has also held positions
 17 with both the Trump Committee in 2016, as campaign manager, and with AF Policies and AF
 18 Action, as a consultant. A number of other individuals including Ayers also had roles with the

⁵² See Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. Thereafter, Parscale's firm continued to receive disbursements from the Trump Committee. *Id.*

⁵³ The MUR 7340 Complaint's suggestion that Trump established AF Policies by hiring Parscale to lead it, via Jared Kushner's "blessing" is conclusory and unsupported. See MUR 7340 Compl. ¶ 15. Even assuming that Kushner was an agent of Trump, the media report alone does not support a reasonable inference that Kushner had the "authority or ability to hire" Parscale for a job at an entity that did not exist at that point. See Agent E&J, 71 Fed. Reg. at 4,978, n.6 ("Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.").

Trump Committee in 2016 and were allegedly founders of AF Policies. But as the Commission has stated previously, “more than the mere fact of such informal, ongoing relationships between the personnel of the potentially sponsoring and potentially sponsored entity is necessary to support a conclusion of ‘establishment, financing, maintenance or control.’”⁵⁴ Instead, to establish a violation based on overlapping employees and officers, the overlap must “indicate[] formal or ongoing relationship.”⁵⁵ The attestation that Ayers left his position at AF Policies when he joined the administration indicates the end of a formal relationship with an overlapping employee.⁵⁶ AF Policies’ and AF Action’s decision to terminate the contract of Parscale’s firm when he was named Trump’s 2020 campaign manager further undermines the existence of a formal relationship by not retaining, even as a vendor, an employee of the Trump Committee.⁵⁷

Moreover, “while former employers and colleagues may exercise influence, influence is not necessarily control.”⁵⁸ Here, formal control under the bylaws of AF Policies and AF Action, including the authority to “hire, appoint, demote, or otherwise control the officers or other decision-making employees,” rests with the Board of Directors and the president of the organization,⁵⁹ and there is no information indicating that hiring did not occur in accordance with this stated process.

⁵⁴ Factual & Legal Analysis (“F&LA”) at 8, MUR 6280 (Howard L. Berman).

⁵⁵ 11 C.F.R. § 300.2(c)(2)(v).

⁵⁶ MUR 7340 AF Policies Resp. at 2, n.1; Aff. of Walsh ¶ 6; MUR 7340 AF Action Resp. at 2, n.1.

⁵⁷ MUR 7340 AF Policies Resp. at 6, n.4; Aff. of Walsh ¶ 16; MUR 7340 AF Action Resp. at 5, n.5; Aff. of Walsh ¶ 16.

⁵⁸ F&LA at 8, MUR 6280.

⁵⁹ MUR 7340 AF Policies Resp. at 5; Aff. of Walsh ¶ 5; *see supra* n.53; F&LA at 4, MUR 7070 (Congressional Leadership Fund, *et al.*) (“However, the quoted statement that ‘Fink was personally approached by House Speaker Paul Ryan to take the job’ does not, by itself, support a reasonable inference that Ryan had the ‘authority or ability to hire’ Fink under section 300.2(c)(2)(iii).”); *cf.* Advisory Op. 2003-12 (Flake) (concluding that

Finally, Complainants note in the MUR 7340 Supplemental Complaint that the allegation is supported by the additional evidence that the Trump Committee made a public statement regarding fundraising, stating that AF Action is the only “approved outside non-campaign group.”⁶⁰ This statement and the attending circumstances do not appear to establish that the AF Action was EFMC’d by Trump or the Trump Committee.⁶¹

In short, the available information is insufficient to give rise to a reasonable inference that AF Policies or AF Action was established, financed, maintained, or controlled by Trump or the Trump Committee. Accordingly, the Commission dismisses these allegations that AF Policies, and AF Action have violated 52 U.S.C. § 30125.

B. The Commission Dismisses the Allegation that AF Policies Violated the Act by Making Unreported Contributions in the Form of Coordinated Expenditures

The Complaint asserts that AF Policies conducted polls on voter perceptions of Trump and his policies in coordination with the Trump Committee, resulting in an unreported and excessive in-kind contribution to the Committee.⁶² The Complaint bases its allegation on the following facts: (1) the Trump Committee reported no disbursements for polling during the relevant period, and the RNC’s reported polling expenses decreased relative to prior years during the relevant period;⁶³ (2) AF Policies used a polling firm owned by presidential advisor

a candidate “established” an entity for purposes of 11 C.F.R. § 300.2(c)(2) on the basis that the candidate was among the individuals who formed the committee and signed its organizational documents, he served as its chairman, and his part-time campaign consultant aided the committee with its state filings and bank accounts).

⁶⁰ MUR 7340 Supp. Compl. at 1-4.

⁶¹ Among the EFMC factors set forth in the Commission’s regulations is that a candidate or officeholder “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity.” 11 C.F.R. § 300.2(c)(2)(viii). In the present matter, AF Action disclosed the receipt of contributions totaling \$2.7 million in the month before the Trump Committee statement and \$1.3 million in the month after the statement. *See* AF Action 2019 Mid-Year Report (July 31, 2019).

Kellyanne Conway;⁶⁴ (3) AF Policies consultants Parscale and Lewandowski reportedly attended a meeting at the White House to discuss the 2018 mid-term elections;⁶⁵ and (4) AF Policies posted the polling results at a relatively obscure link on its website and took the results down after reporters inquired about the polls.⁶⁶

AF Policies denies any coordination. AF Policies does not deny that Parscale or Lewandowski attended the reported meeting at the White House, but states that their attendance was not at the direction of AF Policies and that no officer or director of AF Policies was at the meeting.⁶⁷ Moreover, they note that there is no available information indicating that the polling conducted by AF Policies was discussed.⁶⁸

Under the Commission's regulations, any expenditures that are made in cooperation, consultation or in concert with, or at the request or suggestion of a candidate or a candidate's authorized committee, but that are not coordinated communications, party coordinated communications, or coordinated party expenditures, are in-kind contributions to the candidate and must be reported as an expenditure by that candidate.⁶⁹

⁶² MUR 7340 Compl. ¶¶ 137-145.

⁶³ *Id.* ¶¶ 49-50, 144.

⁶⁴ *Id.* ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

⁶⁵ *Id.* ¶ 139.

⁶⁶ *Id.* ¶¶ 47-48.

⁶⁷ MUR 7340 AF Policies Resp. at 9, n.5.

⁶⁸ *Id.* at 9.

⁶⁹ 11 C.F.R. § 109.20(b); 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); *Campaign Guide for Nonconnected Committees* at 25, <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> ("a

1 The available information is not sufficient to support the conclusion that AF Policies and
2 the Trump campaign coordinated in connection with the polling as alleged in the Complaint.
3 Specifically, the available information is insufficient to demonstrate that AF Policies and the
4 Trump campaign acted in cooperation, consultation, or in concert in conducting the polling. For
5 example, though the Complaint mentions the involvement of the company of Trump’s advisor,
6 Conway, in the polling, it presents no allegation that Conway had any personal knowledge of or
7 involvement in AF Policies’ polling activity. Nor is there enough information to conclude that
8 AF Policies made an in-kind contribution to the Trump campaign by sharing the results of the
9 polling. Although the Complaint notes that the polling results were published online, it presents
10 insufficient information to conclude that the Trump Committee accessed those results or that AF
11 Policies communicated any information about the online information to the Trump Committee.
12 In sum, when taken together, the available facts do not support a reasonable inference that there
13 was coordination on the polling. Accordingly, the Commission dismisses the allegations that AF
14 Policies violated 52 U.S.C. §§ 30116 and 30118 by making prohibited and excessive in-kind
15 contributions to the Trump Committee.

committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee”).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** President Donald J. Trump**MUR: 7340****I. INTRODUCTION**

The Complaint filed in MUR 7340 alleges that President Trump and his authorized campaign committee Donald J. Trump for President, Inc. (“Trump Committee”) established, financed, maintained, or controlled (“EFMC’d”) America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), and that both organizations allegedly solicited, received, and spent soft money in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint in MUR 7340 further alleges that Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign, solicited soft money for AF Policies and AF Action as an agent of President Trump, and the Trump Committee in violation of the Act, which thus allegedly received and spent soft money in violation of the Act.²

The Complainants in MUR 7340 later filed a supplement to their complaint (“MUR 7340 Supplemental Complaint”) to provide additional information in the form of a public statement by the Trump Committee that warns against “scam groups” raising funds by “deceptively us[ing] the President’s name, likeness, trademarks, or branding” and states that “there is one approved outside non-campaign group, America First Action.”³ The Complainants allege that this

¹ See Compl. ¶¶ 84-100 (Mar. 5, 2018).

² See *id.* ¶¶ 101-112.

³ Supp. Compl. at 2 (May 15, 2019).

statement further supports their prior allegations. As discussed below, the Commission dismisses the allegations that Trump violated the soft money provisions of 52 U.S.C. § 30125.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”⁴ According to news reports cited by the Complaint, the organization was founded by several alumni of the Trump 2016 campaign, including Parscale.⁵ The Commission possesses information indicating that AF Policies was “largely inactive”⁶ and had no board of directors until April 2017, when it named its board and appointed Walsh as president.⁷ Information indicates that Walsh has never held a position with the Trump campaign or administration. AF Policies has made independent expenditures in federal elections⁸ and, according to the Complaint, has also solicited soft money.⁹

⁴ Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

⁵ Compl. ¶ 17; *see also id.* ¶ 19. In addition to Parscale, the other reported founders of AF Policies were Trump’s 2016 deputy campaign managers Rick Gates and David Bossie, campaign advisors Nicholas Ayers and Marty Obst, and senior campaign advisor Katrina Pierson. *Id.*

⁶ AF Policies did not report any activity to the Commission until June 6, 2017, when it made independent expenditures opposing the candidacy of Jonathan Ossoff for Congress. AF Policies 24-Hour Report (June 7, 2017).

⁷ The Commission also possesses information that the original Board of Directors of AF Policies consisted of Nicholas Ayers, Douglas Ammerman and Thomas Hicks, Jr. Subsequently, Roy Bailey replaced Ayers, who had taken a position in the Trump administration in July 2017, and Harold Hamm replaced Ammerman, who had resigned in November 2017.

⁸ *See e.g.*, AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

⁹ *See* Compl. ¶¶ 95, 109. The MUR 7340 Complaint asserts that Parscale solicited soft money for AF Policies, “based on published reports,” but it cites no particular published report for this proposition. *Id.*

AF Action is registered with the Commission as an IEOPC.¹⁰ The committee was founded in April 2017 at the direction of AF Policies president Walsh, who also became president of AF Action. Its original directors were Walsh, Nicholas Ayers (who also served as a director of AF Policies), and Jon Proch (who also serves as AF Action's treasurer).¹¹ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.¹²

The Trump Committee is Trump's principal campaign committee for president. In February 2018, Parscale, who was also the Digital and Data Director for the 2016 Trump campaign, was named campaign manager for the 2020 Trump campaign.¹³

Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.¹⁴ At various times, Parscale Strategy has been retained as a consultant by AF Policies, AF Action, and the Trump Committee. The Commission also possesses information that Parscale Strategy's

¹⁰ See AF Action, Inc., Statement of Organization (Apr. 12, 2017).

¹¹ The Commission possesses information indicating that Ayers resigned in July, 2017 to join the Trump administration as Pence's chief of staff. Proch also resigned as a director and now serves only as treasurer of AF Action. Ayers and Proch were replaced on AF Action's Board by Roy Bailey and Thomas Hicks, Jr., who also serve as AF Policies directors.

¹² Compl. ¶¶ 35-36, 96-97; *see also, e.g.*, AF Action 2017 Year-End Report (Jan. 23, 2018).

¹³ Compl. ¶ 12. Reports filed with the Commission indicate that Parscale was on payroll for the 2016 Trump campaign and that another firm in which he is a partner, Giles-Parscale, was the number one recipient of disbursements from the 2016 Trump campaign, receiving nearly \$88 million in disbursements. *See* Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. On July 15, 2020, Trump announced that he was replacing Parscale as campaign manager, but that Parscale would remain with the campaign as a senior advisor working on digital and data strategies. Donald J. Trump, Comment to FACEBOOK (July 19, 2020), <https://www.facebook.com/DonaldTrump/posts/10165094743505725>.

¹⁴ Compl. ¶ 37.

contracts with AF Action and AF Policies were terminated when Parscale was named 2020 campaign manager.

On May 7, 2019, The Trump Committee issued a statement criticizing “scam groups” raising funds by “deceptively us[ing] the President’s name, likeness, trademarks, or branding.”¹⁵

The statement continued, asserting that:

There are only four official fundraising organizations authorized by President Trump or the RNC: Donald J. Trump for President, the Republican National Committee, and two joint fundraising committees with the RNC, The Make America Great Again Committee (TMAGAC) and Trump Victory. In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump’s policies and agendas.¹⁶

III. LEGAL ANALYSIS

A. The Commission Dismisses the Allegation that Trump Violated 52 U.S.C. § 30125 by Establishing, Financing, Maintaining, or Controlling AF Policies or AF Action

The Complaint in MUR 7340 alleges that President Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action, which solicited, received, and spent soft money. In support of its allegation, the Complaint, relying on media reports, makes six assertions: (1) that Kellyanne Conway, former 2016 Trump campaign manager, publicly stated that an organization will be formed and needs to be run by someone “close to the President”;¹⁷ (2) that AF Policies was founded by a group of former 2016 Trump campaign aides, including Parscale and Obst;¹⁸

¹⁵ Supp. Compl. at 2.

¹⁶ *Id.*.

¹⁷ Compl. ¶ 88.

¹⁸ *Id.* ¶ 90; *see supra* n.7.

(3) that Trump’s son-in-law, Jared Kushner, gave Parscale his “blessing” to head AF Policies;¹⁹
 (4) that consultants, including Parscale and Corey Lewandowski, Trump’s former 2016
 campaign manager, worked for both the Trump Committee and AF Policies or AF Action;²⁰ (5)
 that AF Policies and AF Action staff regularly communicated with Trump and his campaign
 based on a media report of a number of individuals including Parscale and Lewandowski
 meeting with White House staff regarding the 2018 mid-term elections;²¹ and (6) the Trump
 Committee’s statement that AF Action is its “one approved outside non-campaign group.”²²

The Commission possesses information about the membership of AF Policies’ Board of
 Directors from two months after its founding. Only one of the reported “founders” of AF
 Policies actually held a position on the Board of Directors: Nicholas Ayers, a campaign advisor
 to Pence who stepped down from his board position at AF Policies when he became Pence’s
 chief of staff on July 28, 2017.²³ The Commission also possesses information that the first and
 only president of AF Policies and AF Action, Brian O. Walsh, has never held any role with the
 Trump campaign or administration.

Information further indicates that the corporate bylaws of both AF Policies and AF
 Action give no authority to Trump or his campaign to direct or participate in the governance of
 the entities and that the authority to “hire, appoint, demote, or otherwise control the officers or

¹⁹ *Id.* ¶ 89.

²⁰ *Id.* ¶¶ 23, 90, 93.

²¹ *Id.* ¶ 94.

²² Supp. Compl. at 3.

²³ See Vice President Pence (@VP), TWITTER (July 28, 2017 11:37 AM),
<https://twitter.com/VP/status/891004622420287489> (“Congrats to @Nick_Ayers for being sworn-in as my Chief of
 Staff. Excited to welcome you & great having your family at @WhiteHouse today.”).

1 other decision-making employees” of AF Policies and AF Action resides with Walsh and the
2 Board of Directors.

3 The Act prohibits federal candidates and officeholders, their agents, and entities directly
4 or indirectly established, financed, maintained, or controlled by or acting on behalf of one or
5 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
6 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
7 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”²⁴
8 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
9 was designed to “plug the soft-money loophole.”²⁵

10 To determine whether a candidate or his or her agent “directly or indirectly establishes,
11 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten
12 factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has
13 the authority to “direct or participate in the governance of the entity through provisions of
14 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
15 procedures”;²⁶ (2) whether the candidate or his agent has “the authority or ability to hire,
16 appoint, demote, or otherwise control the officers, or other decision-making employees or
17 members of the entity”;²⁷ (3) whether former or present “overlapping officers or employees”
18 indicate “a formal or ongoing relationship” between the candidate or his agent and the entity;²⁸

²⁴ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

²⁵ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

²⁶ 11 C.F.R. § 300.2(c)(2)(ii).

²⁷ *Id.* § 300.2(c)(2)(iii).

²⁸ *Id.* § 300.2(c)(2)(v), (vi).

(4) whether directly or through its agent, the candidate had an “active or significant role in the formation of the entity”;²⁹ as well as any other relevant factors, in the context of the overall relationship between the federal candidate or officeholder, or his agent, and the entity.³⁰

An “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.”³¹ The Commission has explained that the purpose of adopting the “actual authority standard” was to “preserve an individual’s ability to raise funds for multiple organizations.”³²

The establishment of AF Policies was allegedly effected by a group of “founders” who previously held high-ranking positions with the 2016 Trump campaign.³³ Considering their titles, including two deputy campaign managers (Rick Gates and David Bossie), it appears likely that at least some of these founders were agents of Trump and the Trump Committee during the 2016 campaign.³⁴ But the available information is insufficient to support a reasonable inference that any of these individuals was acting at the direction of Trump or the Trump Committee when they reportedly formed AF Policies in January 2017. Parscale was the only one of the reported

²⁹ *Id.* § 300.2(c)(2)(ix).

³⁰ *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

³¹ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,975-76 (Jan. 31, 2006) (“Agent E&J”); Advisory Op. 2007-05 (Iverson) at 3.

³² Agent E&J, 71 Fed. Reg. at 4,979, n.9.

³³ *See supra* n.7.

³⁴ Notably, no facts have been asserted establishing what, if any, role these individuals had in the 2020 Trump campaign (other than Parscale, who became campaign manager in February 2018), or whether any agency authority that was established in the 2016 campaign still existed after that election, or particularly on January 27, 2017, when AF Policies was formed.

founders on the payroll of the Trump Committee around the time that AF Policies was formed. His last paycheck was dated four days after the founding of AF Policies but appears to be for a partial pay period as it is about half of the amount he was paid bi-weekly for the prior bi-weekly periods.³⁵ Thus, it appears his personal employment by the Committee ended just prior to the formation of AF Policies. Even if Parscale was employed by the Trump Committee at the time of the founding of AF Policies, his role was Digital and Data Director and there is not sufficient evidence to conclude that he had become an agent by virtue of, for instance, soliciting contributions on behalf of the Trump Committee.³⁶

As for AF Action, it was formed by Walsh, who is not alleged to be an agent of Trump or the Trump Committee. One of AF Action's original board members, Ayers, worked on the 2016 Trump campaign and was potentially therefore an agent of Trump and the Trump Committee in 2016, but the available information does not support the claim that he continued to be an agent of Trump or the Trump Committee in April 2017 when AF Action was established.

As noted above, the Trump Committee and AF Policies and AF Action have several overlapping current and former employees and vendors. Parscale, whose company was retained by all three entities, was employed in high-ranking positions by both the 2016 and 2020 Trump campaigns and was a reported founder of AF Policies. Lewandowski has also held positions with both the Trump Committee in 2016, as campaign manager, and with AF Policies and AF

³⁵ See Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. Thereafter, Parscale's firm continued to receive disbursements from the Trump Committee. *Id.*

³⁶ The Complaint's suggestion that Trump established AF Policies by hiring Parscale to lead it via Jared Kushner's "blessing" is conclusory and unsupported. See Compl. ¶ 15. Even assuming that Kushner was an agent of Trump, the media report alone does not support a reasonable inference that Kushner had the "authority or ability to hire" Parscale for a job at an entity that did not exist at that point. See Agent E&J, 71 Fed. Reg. at 4,978, n.6 ("Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.").

MUR 7340 (President Donald J. Trump)

Factual & Legal Analysis

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1 Action, as a consultant. A number of other individuals including Ayers also had roles with the
2 Trump Committee in 2016 and were allegedly founders of AF Policies. But as the Commission
3 has stated previously, “more than the mere fact of such informal, ongoing relationships between
4 the personnel of the potentially sponsoring and potentially sponsored entity is necessary to
5 support a conclusion of ‘establishment, financing, maintenance or control.’”³⁷ Instead, to
6 establish a violation based on overlapping employees and officers, the overlap must “indicate[]
7 formal or ongoing relationship.”³⁸ The information indicating that Ayers left his position at AF
8 Policies when he joined the administration indicates the end of a formal relationship with an
9 overlapping employee. AF Policies’ and AF Action’s decision to terminate the contract of
10 Parscale’s firm when he was named Trump’s 2020 campaign manager further undermines the
11 existence of a formal relationship by not retaining, even as a vendor, an employee of the Trump
12 Committee.

13 Moreover, “while former employers and colleagues may exercise influence, influence is
14 not necessarily control.”³⁹ Here, formal control under the bylaws of AF Policies and AF Action,
15 including the authority to “hire, appoint, demote, or otherwise control the officers or other
16 decision-making employees,” rests with the Board of Directors and the president of the
17 organization,⁴⁰ and there is no information indicating that hiring did not occur in accordance
18 with this stated process.

³⁷ Factual & Legal Analysis (“F&LA”) at 8, MUR 6280 (Howard L. Berman).

³⁸ 11 C.F.R. § 300.2(c)(2)(v).

³⁹ F&LA at 8, MUR 6280.

⁴⁰ *See supra* n.36; F&LA at 4, MUR 7070 (Congressional Leadership Fund, *et al.*) (“However, the quoted statement that ‘Fink was personally approached by House Speaker Paul Ryan to take the job’ does not, by itself, support a reasonable inference that Ryan had the ‘authority or ability to hire’ Fink under section 300.2(c)(2)(iii).”); *cf.* Advisory Op. 2003-12 (Flake) (concluding that a candidate “established” an entity for purposes of 11 C.F.R. § 300.2(c)(2) on the basis that the candidate was among the individuals who formed the committee and signed its

Finally, Complainants note in the Supplemental Complaint that the allegation that Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action is supported by the additional evidence that the Trump Committee made a public statement regarding fundraising, stating that AF Action is the only “approved outside non-campaign group.”⁴¹ This statement and the attending circumstances do not appear to establish that the AF Action was EFMC’d by Trump or the Trump Committee.⁴²

In short, the available information is insufficient to give rise to a reasonable inference that AF Policies or AF Action was established, financed, maintained, or controlled by Trump or the Trump Committee. Accordingly, the Commission dismisses these allegations that Trump violated 52 U.S.C. § 30125.

B. The Commission Dismisses the Allegation that Trump, Through His Agent, Brad Parscale, Violated 52 U.S.C. § 30125 by Raising Soft Money for AF Policies or AF Action

The Complaint alleges, “[b]ased on published reports,” that Parscale solicited soft money for AF Policies and AF Action as an agent of Trump or the Trump Committee.⁴³ While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for

organizational documents, he served as its chairman, and his part-time campaign consultant aided the committee with its state filings and bank accounts).

⁴¹ Supp. Compl. at 1-4.

⁴² Among the EFMC factors set forth in the Commission’s regulations is that a candidate or officeholder “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity.” 11 C.F.R. § 300.2(c)(2)(viii). In the present matter, AF Action disclosed the receipt of contributions totaling \$2.7 million in the month before the Trump Committee statement and \$1.3 million in the month after the statement. *See* AF Action 2019 Mid-Year Report (July 31, 2019).

⁴³ Compl. ¶ 111; *see also id.* ¶¶ 33, 37 (detailing reported disbursements to Parscale’s company for “digital fundraising consulting,” among other purposes).

1 other political parties or outside groups.”⁴⁴ The Commission has also observed that individuals
2 who are dual agents of both a candidate and a non-candidate committee must solicit non-federal
3 funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of
4 federal candidates.”⁴⁵

5 Assuming, *arguendo*, that Parscale was an agent of the Trump Committee at some time
6 after the formation of AF Policies and before being named Trump’s campaign manager in 2018,
7 the record does not support a reasonable inference that Parscale solicited funds for either
8 AF Policies or AF Action. The Commission possesses information that Parscale, through his
9 company, provided digital and online consulting services, not fundraising services, to AF Action
10 and AF Policies and did not directly solicit donors. Accordingly, because the available
11 information fails to give rise to a reasonable inference that a violation has occurred, the
12 Commission dismisses the allegation that Trump has violated 52 U.S.C. § 30125.

⁴⁴ Agent E&J, 71 Fed. Reg. at 4,979.

⁴⁵ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (“AO 2015-09”) (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Vice President Michael R. Pence

MUR: 7340

I. INTRODUCTION

This matter involves allegations that Marty Obst, a former Trump 2016 campaign advisor, solicited soft money for America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”) as an agent of Vice President Pence and his leadership PAC, Great America Committee (“GAC”), which thus allegedly received and spent soft money in violation of the Act.¹ As discussed below, the Commission dismisses the allegations that Pence violated the soft money provisions of 52 U.S.C. § 30125.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”² According to news reports cited by the Complaint, the organization was founded by several alumni of the Trump 2016 campaign.³ AF

¹ See Compl. ¶¶ 113-124 (Mar. 5, 2018).

² Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

³ Compl. ¶ 17; see also *id.* ¶ 19.

Policies has made independent expenditures in federal elections⁴ and, according to the Complaint, has also solicited soft money.⁵

AF Action is registered with the Commission as an IEOPC.⁶ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.⁷

Marty Obst is the owner of MO Strategies, Inc.,⁸ and was a campaign advisor to Trump in 2016.⁹ Complainants also assert that he was a founder of AF Policies.¹⁰ The Commission possesses information that MO Strategies was hired by AF Policies and AF Action for fundraising consulting.¹¹ GAC, a leadership PAC established by Pence, also made disbursements to MO Strategies for “financial/political strategy consulting.”¹² The Commission

⁴ See e.g., AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

⁵ See Compl. ¶¶ 95, 109.

⁶ See AF Action, Inc., Statement of Organization (Apr. 12, 2017).

⁷ Compl. ¶¶ 35-36, 96-97; see also, e.g., AF Action 2017 Year-End Report (Jan. 23, 2018).

⁸ Compl. ¶ 42.

⁹ *Id.* ¶ 13 (citing Julie Bykowicz, *Trump Advisers Start ‘America First Policies’ Nonprofit*, AP NEWS (Jan. 30, 2017), <https://apnews.com/77133d470c634a458b3198063af4a14b>). While Trump Committee reports filed with the Commission do not indicate any disbursements to either Obst or MO Strategies, multiple media reports have noted Obst’s role as a campaign advisor, and this role appears to be confirmed by Obst’s LinkedIn profile. See Marty Obst, LINKEDIN, <https://www.linkedin.com/in/marty-obst-92611322> (last visited Nov. 23, 2020).

¹⁰ Compl. ¶ 13.

¹¹ Commission reports indicate that AF Action first reported a disbursement to MO Strategies on Aug. 9, 2017. See AF Action 2017 Year-End Report at 94 (Jan. 23, 2018).

¹² GAC, Statement of Organization (Dec. 18, 2019); see, e.g., GAC 2017 Year-End Report at 94-96 (Jan. 23, 2018).

possesses information that GAC disbursed in excess of \$220,000 (inclusive of reimbursements) to MO Strategies, Inc.

III. LEGAL ANALYSIS

The Commission dismisses the Complaint’s allegations concerning non-federal fundraising by Marty Obst as an agent of Pence. While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for other political parties or outside groups.”¹³ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of federal candidates.”¹⁴

An “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with any election.”¹⁵ The Commission has explained that the purpose of adopting the “actual

¹³ Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006) (“Agent E&J”).

¹⁴ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

¹⁵ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Agent E&J, 71 Fed. Reg. at 4,975-76; Advisory Op. 2007-05 (Iverson) at 3.

1 authority standard” was to “preserve an individual’s ability to raise funds for multiple
2 organizations.”¹⁶

3 The Commission possesses information indicating that Marty Obst, through contracts
4 with his company MO Strategies, conducted fundraising for AF Policies and AF Action. And it
5 is possible that Obst, through his company, solicited funds for GAC. Information available to the
6 Commission indicates GAC retained MO Strategies for financial/political strategy consulting but
7 does not make clear whether that work entailed soliciting contributions.¹⁷

8 Despite the Complaint’s assertions of Obst’s agency to raise funds for AF Policies and
9 AF Action on behalf of Pence or GAC, the record includes no specific information indicating
10 that any of the fundraising that MO Strategies did for AF Policies or AF Action was done at “the
11 request or suggestion” of Pence, or any other federal candidate or officeholder, or any committee
12 or entity other than AF Policies and AF Action. The Commission possesses information
13 indicating that AF Policies and AF Action contracts with MO Strategies specifically state that
14 “[a]t all times while acting within the scope of this Agreement, Consultant agrees that it will
15 have no authority to, and will not hold itself out or otherwise represent itself as soliciting funds
16 as an agent of, or otherwise on behalf of any other entity, including any federal candidate
17 campaign committee or national, state, or local political party committee.” No information in the
18 record indicates that Obst or MO Strategies acted otherwise. Therefore, because the available
19 information fails to give rise to a reasonable inference that a violation has occurred, the

¹⁶ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

¹⁷ See, e.g., GAC July 2017 Mid-Year Report at 65 (July 31, 2017) (indicating a \$62,500 disbursement to MO Strategies for “financial/political strategy consulting”).

MUR 7340 (Vice President Michael R. Pence)

Factual & Legal Analysis

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- 1 Commission dismisses the allegation that Pence, through his agent, Marty Obst, violated
- 2 52 U.S.C. § 30125 by raising soft money for AF Policies or AF Action.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Republican National Committee
and Ronald C. Kaufman in his
official capacity as treasurer¹

MUR: 7340

I. INTRODUCTION

The Complaint alleges that Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign, solicited soft money for America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), as an agent of the Republican National Committee (“RNC”) in violation of the Act.² As discussed below, the Commission dismisses the allegation that the RNC violated the soft money provisions of 52 U.S.C. § 30125.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”³ According to news reports cited by the Complaint, the organization was founded by several alumni of the Trump 2016 campaign.⁴ AF

¹ At the time the Complaint in MUR 7340 was received, Anthony W. Parker was the treasurer of the Republican National Committee, but the current treasurer is Ronald C. Kaufman. *See* Republican National Committee Amended Statement of Organization at 3 (Oct. 30, 2019).

² *See* Compl. ¶¶ 125-136 (Mar. 5, 2018).

³ Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

⁴ Compl. ¶ 17; *see also id.* ¶ 19.

Policies has made independent expenditures in federal elections⁵ and, according to the Complaint, has also solicited soft money.⁶

AF Action is registered with the Commission as an IEOPC.⁷ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.⁸

The RNC is a national party committee of the Republican Party. Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.⁹ Information available to the Commission indicates that at various times, Parscale Strategy has been retained as a consultant by AF Policies, AF Action, the Trump Committee, and the RNC.¹⁰ The Commission possesses information that AF Action and AF Policies terminated their contracts with Parscale Strategy when Parscale was named 2020 campaign manager. The RNC has continued to contract with Parscale Strategy.

III. LEGAL ANALYSIS

While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also

⁵ See e.g., AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

⁶ See Compl. ¶¶ 95, 109. The Complaint asserts that Parscale solicited soft money for AF Policies, “based on published reports,” but it cites no particular published report for this proposition. *Id.*

⁷ See AF Action, Inc., Statement of Organization (Apr. 12, 2017).

⁸ Compl. ¶¶ 35-36, 96-97; see also, e.g., AF Action 2017 Year-End Report (Jan. 23, 2018).

⁹ Compl. ¶ 37.

¹⁰ See RNC Resp. at 9 (Apr. 30, 2018).

1 raising non-federal funds for other political parties or outside groups.”¹¹ The Commission has
 2 also observed that individuals who are dual agents of both a candidate and a non-candidate
 3 committee must solicit non-federal funds for the non-candidate committee “on their own” and
 4 “‘not at the request or suggestion’ of federal candidates.”¹²

5 An “agent” of a federal candidate or officeholder is “any person who has actual authority,
 6 either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with
 7 any election.”¹³ The Commission has explained that the purpose of adopting the “actual
 8 authority standard” was to “preserve an individual’s ability to raise funds for multiple
 9 organizations.”¹⁴

10 The Complaint alleges that Parscale solicited soft money for AF Policies and AF Action
 11 on behalf of the RNC, based on the RNC paying Parscale Strategy “more than \$2 million for
 12 management consulting.”¹⁵ The Act prohibits a national committee of a political party and any
 13 agent acting on behalf of such a committee from soliciting soft money.¹⁶

¹¹ Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006) (“Agent E&J”).

¹² Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (“AO 2015-09”) (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

¹³ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Agent E&J, 71 Fed. Reg. at 4,975-76; Advisory Op. 2007-05 (Iverson) at 3.

¹⁴ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

¹⁵ Compl. ¶ 129.

¹⁶ 52 U.S.C. § 30125(a).

1 The RNC responds that Pascale was not a fundraising agent of the RNC because his
2 firm's consulting work did not include soliciting contributions (though he did advise the RNC
3 regarding its online fundraising),¹⁷ and that its contract with Parscale explicitly prohibits him
4 from raising non-federal funds on behalf of the RNC.¹⁸ Therefore, because the available
5 information fails to give rise to a reasonable inference that a violation has occurred, the
6 Commission dismisses the allegation that the RNC through its agent, Bradley Parscale, and
7 Parscale Strategy, LLC violated 52 U.S.C. § 30125(a).

¹⁷ RNC Resp. at 9.

¹⁸ RNC Resp. at 2-3 (quoting Parscale Strategy's contract: "Independent Contractor is not an agent of the RNC and expressly agrees not to represent itself as an agent of the RNC in the course of, or in connection with, the raising of any Non-Federal Funds.").

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Bradley J. Parscale
Parscale Strategy, LLC

I. INTRODUCTION

The Complaint filed in MUR 7340 alleges that Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign, solicited soft money for America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), as an agent of President Trump, his authorized campaign committee Donald J. Trump for President, Inc. (“Trump Committee”), and the Republican National Committee (“RNC”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ As discussed below, the Commission dismisses the allegations that Parscale and Parscale Strategy violated the soft money provisions of 52 U.S.C. § 30125.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”² According to news reports cited by the Complaint, the organization was founded by several alumni of the Trump 2016 campaign,

¹ See Compl. ¶¶ 101-112 (Mar. 5, 2018).

² Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

including Parscale.³ AF Policies has made independent expenditures in federal elections⁴ and, according to the Complaint, has also solicited soft money.⁵

AF Action is registered with the Commission as an IEOPC.⁶ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.⁷

The RNC is a national party committee of the Republican Party. The Trump Committee is Trump's principal campaign committee for president. In February 2018, Parscale, who was also the Digital and Data Director for the 2016 Trump campaign, was named campaign manager for the 2020 Trump campaign.⁸

Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.⁹ The Commission possesses information that at various times, Parscale Strategy has been retained as a consultant by AF Policies, AF Action, the Trump Committee, and the RNC. The Commission

³ Compl. ¶ 17; *see also id.* ¶ 19. In addition to Parscale, the other reported founders of AF Policies were Trump's 2016 deputy campaign managers Rick Gates and David Bossie, campaign advisors Nicholas Ayers and Marty Obst, and senior campaign advisor Katrina Pierson. *Id.*

⁴ *See e.g.*, AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

⁵ *See* Compl. ¶¶ 95, 109. The Complaint asserts that Parscale solicited soft money for AF Policies, "based on published reports," but it cites no particular published report for this proposition. *Id.*

⁶ *See* AF Action, Inc., Statement of Organization (Apr. 12, 2017).

⁷ Compl. ¶¶ 35-36, 96-97; *see also, e.g.*, AF Action 2017 Year-End Report (Jan. 23, 2018).

⁸ Compl. ¶ 12. Reports filed with the Commission indicate that Parscale was on payroll for the 2016 Trump campaign and that another firm in which he is a partner, Giles-Parscale, was the number one recipient of disbursements from the 2016 Trump campaign, receiving nearly \$88 million in disbursements. *See* Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. On July 15, 2020, Trump announced that he was replacing Parscale as campaign manager, but that Parscale would remain with the campaign as a senior advisor working on digital and data strategies. Donald J. Trump, Comment to FACEBOOK (July 19, 2020), <https://www.facebook.com/DonaldTrump/posts/10165094743505725>.

also possesses information that Parscale Strategy’s contracts with AF Action and AF Policies were terminated when Parscale was named 2020 campaign manager. The RNC has continued to contract with Parscale Strategy.

III. LEGAL ANALYSIS

The Complaint alleges, “[b]ased on published reports,” that Parscale solicited soft money for AF Policies and AF Action as an agent of Trump or the Trump Committee.¹⁰ While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for other political parties or outside groups.”¹¹ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of federal candidates.”¹²

An “agent” of a federal candidate or officeholder is “any person who has actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with

⁹ Compl. ¶ 37.

¹⁰ Compl. ¶ 111; *see also id.* ¶¶ 33, 37 (detailing reported disbursements to Parscale’s company for “digital fundraising consulting,” among other purposes).

¹¹ Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006) (“Agent E&J”).

¹² Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

1 any election.”¹³ The Commission has explained that the purpose of adopting the “actual
2 authority standard” was to “preserve an individual’s ability to raise funds for multiple
3 organizations.”¹⁴

4 Assuming, *arguendo*, that Parscale was an agent of the Trump Committee at some time
5 after the formation of AF Policies and before being named Trump’s campaign manager in 2018,
6 the record does not support a reasonable inference that Parscale solicited funds for either
7 AF Policies or AF Action. The Commission possesses information that Parscale, through his
8 company, provided digital and online consulting services, not fundraising services, to AF Action
9 and AF Policies and did not directly solicit donors. Accordingly, because the available
10 information fails to give rise to a reasonable inference that a violation has occurred, the
11 Commission dismisses the allegations that Bradley Parscale, and Parscale Strategy, LLC have
12 violated 52 U.S.C. § 30125.

13 Similarly, the Complaint alleges that Parscale solicited soft money for AF Policies and
14 AF Action on behalf of the RNC, based on the RNC paying Parscale Strategy “more than \$2
15 million for management consulting.”¹⁵ The Act prohibits a national committee of a political
16 party and any agent acting on behalf of such a committee from soliciting soft money.¹⁶

17 The Commission possesses information indicating that Parscale was not a fundraising
18 agent of the RNC because his firm’s consulting work did not include soliciting contributions
19 (though he did advise the RNC regarding its online fundraising), and that the RNC’s contract

¹³ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Agent E&J, 71 Fed. Reg. at 4,975-76; Advisory Op. 2007-05 (Iverson) at 3.

¹⁴ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

¹⁵ Compl. ¶ 129.

¹⁶ 52 U.S.C. § 30125(a).

MUR 7340 (Bradley J. Parscale & Parscale Strategy, LLC)

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- 1 with Parscale explicitly prohibits him from raising non-federal funds on behalf of the RNC.
- 2 Accordingly, because the available information fails to give rise to a reasonable inference that a
- 3 violation has occurred, the Commission dismisses the allegation that Bradley Parscale and
- 4 Parscale Strategy, LLC violated 52 U.S.C. § 30125(a).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Marty Obst
MO Strategies, Inc.

MUR: 7340

I. INTRODUCTION

This matter involves allegations that Marty Obst a former Trump 2016 campaign advisor, and his company MO Strategies, Inc. solicited soft money for America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), as an agent of Vice President Pence and his leadership PAC, Great America Committee (“GAC”), which thus allegedly received and spent soft money in violation of the Act.¹ As discussed below, the Commission dismisses the allegations that Marty Obst and MO Strategies violated the soft money provisions of 52 U.S.C. § 30125.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”² According to news reports cited by the

¹ See Compl. ¶¶ 113-124 (Mar. 5, 2018).

² Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

MUR 7340 (Marty Obst & MO Strategies, Inc.)

Factual & Legal Analysis

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Complaint, the organization was founded by several alumni of the Trump 2016 campaign.³

AF Policies has made independent expenditures in federal elections⁴ and, according to the

Complaint, has also solicited soft money.⁵

AF Action is registered with the Commission as an IEOPC.⁶ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.⁷

Marty Obst is the owner of MO Strategies,⁸ and was a campaign advisor to Trump in 2016.⁹ Complainants also assert that he was a founder of AF Policies.¹⁰ The Commission possesses information that MO Strategies was hired by AF Policies and AF Action for fundraising consulting.¹¹ GAC, a leadership PAC established by Pence, also made disbursements to MO Strategies for financial/political strategy consulting.¹² The Commission

³ Compl. ¶ 17; *see also id.* ¶ 19.

⁴ *See e.g.*, AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

⁵ *See* Compl. ¶¶ 95, 109.

⁶ *See* AF Action, Inc., Statement of Organization (Apr. 12, 2017).

⁷ Compl. ¶¶ 35-36, 96-97; *see also, e.g.*, AF Action 2017 Year-End Report (Jan. 23, 2018).

⁸ Compl. ¶ 42.

⁹ *Id.* ¶ 13 (citing Julie Bykowicz, *Trump Advisers Start 'America First Policies' Nonprofit*, AP NEWS (Jan. 30, 2017), <https://apnews.com/77133d470c634a458b3198063af4a14b>). While Trump Committee reports filed with the Commission do not indicate any disbursements to either Obst or MO Strategies, multiple media reports have noted Obst's role as a campaign advisor, and this role appears to be confirmed by Obst's LinkedIn profile. *See* Marty Obst, LINKEDIN, <https://www.linkedin.com/in/marty-obst-92611322> (last visited Nov. 23, 2020).

¹⁰ Compl. ¶ 13.

¹¹ Commission reports indicate that AF Action first reported a disbursement to MO Strategies on Aug. 9, 2017. *See* AF Action 2017 Year-End Report at 94 (Jan. 23, 2018).

¹² *See, e.g.*, GAC 2017 Year-End Report at 94-96 (Jan. 23, 2018).

possesses information that GAC disbursed in excess of \$220,000 (inclusive of reimbursements) to MO Strategies, Inc.

III. LEGAL ANALYSIS

The Commission dismisses the Complaint's allegations concerning non-federal fundraising by Marty Obst and MO Strategies as agents of Pence and GAC. While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, "[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for other political parties or outside groups."¹³ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee "on their own" and "'not at the request or suggestion' of federal candidates."¹⁴

An "agent" of a federal candidate or officeholder is "any person who has actual authority, either express or implied," "to solicit, receive, direct, transfer, or spend funds in connection with any election."¹⁵ The Commission has explained that the purpose of adopting the "actual

¹³ Definitions of 'Agent' for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006) ("Agent E&J").

¹⁴ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds "on their own" and "'not at the request or suggestion' of federal candidates"; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not "use their campaign titles or campaign resources (such as letterhead and email)"; (4) would inform potential contributors that they are "making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents"; and (5) "would not solicit contributions for the candidates and for [the non-candidate committees] at the same time").

¹⁵ 11 C.F.R. § 300.2(b)(3). An agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent's authority to act on the principal's behalf. *See* Agent E&J, 71 Fed. Reg. at 4,975-76; Advisory Op. 2007-05 (Iverson) at 3.

1 authority standard” was to “preserve an individual’s ability to raise funds for multiple
2 organizations.”¹⁶

3 The Commission possesses information indicating that Marty Obst, through contracts
4 with his company MO Strategies, conducted fundraising for AF Policies and AF Action. And it
5 is possible that Obst, through his company, solicited funds for GAC. Information available to the
6 Commission indicates that GAC retained MO Strategies for “financial/political strategy
7 consulting” but does not indicate whether that work entailed soliciting contributions.¹⁷

8 Despite the Complaint’s assertions of Obst’s agency to raise funds for AF Policies and
9 AF Action on behalf of Pence or GAC, the record includes no specific information indicating
10 that any of the fundraising that MO Strategies did for AF Policies or AF Action was done at “the
11 request or suggestion” of Pence, or any other federal candidate or officeholder, or any committee
12 or entity other than AF Policies and AF Action. The Commission possesses information
13 indicating that AF Policies and AF Action contracts with MO Strategies specifically state that
14 “[a]t all times while acting within the scope of this Agreement, Consultant agrees that it will
15 have no authority to, and will not hold itself out or otherwise represent itself as soliciting funds
16 as an agent of, or otherwise on behalf of any other entity, including any federal candidate
17 campaign committee or national, state, or local political party committee.” No information in the
18 record indicates that Obst or MO Strategies acted otherwise. Therefore, because the available
19 information fails to give rise to a reasonable inference that a violation has occurred, the

¹⁶ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

¹⁷ See, e.g., GAC July 2017 Mid-Year Report at 65 (July 31, 2017) (indicating a \$62,500 disbursement to MO Strategies for “financial/political strategy consulting”).

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- 1 Commission dismisses the allegation that Marty Obst, and MO Strategies, Inc. violated
- 2 52 U.S.C. § 30125 by raising soft money on behalf of Pence or GAC.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Donald J. Trump for President, Inc. **MURs: 7340 & 7609**
and Bradley T. Crate in his official
capacity as treasurer

I. INTRODUCTION

The Complaint filed in MUR 7340 alleges that President Trump and his authorized campaign committee Donald J. Trump for President, Inc. (“Trump Committee”) established, financed, maintained, or controlled (“EFMC’d”) America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), and that both organizations allegedly solicited, received, and spent soft money in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint in MUR 7340 further alleges that Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign, solicited soft money for AF Policies and AF Action as an agent of President Trump, and the Trump Committee in violation of the Act, which thus allegedly received and spent soft money in violation of the Act.² Finally, the Complaint in MUR 7340 alleges that AF Policies made expenditures for polling in coordination with the Trump campaign, which therefore accepted and failed to report an excessive and prohibited corporate in-kind contribution.³

¹ See MUR 7340 Compl. ¶¶ 84-100 (Mar. 5, 2018).

² See *id.* ¶¶ 101-112.

³ See *id.* ¶¶ 137-145.

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1 The Trump Committee denies these allegations, arguing that: (1) Trump and the Trump
2 Committee had no role in the creation of, and have no role in the operation of, AF Policies or AF
3 Action;⁴ (2) no agent of a federal candidate or officeholder solicited, received, or spent soft
4 money for AF Action or AF Policies on behalf of a federal candidate or officeholder;⁵ and (3) AF
5 Policies did not coordinate with the Trump campaign regarding polling.⁶

6 The Complainants in MUR 7340 later filed a supplement to their complaint (“MUR 7340
7 Supplemental Complaint”) to provide additional information in the form of a public statement by
8 the Trump Committee that warns against “scam groups” raising funds by “deceptively us[ing] the
9 President’s name, likeness, trademarks, or branding” and states that “there is one approved
10 outside non-campaign group, America First Action.”⁷ The Complainants allege that this
11 statement further supports their prior allegations as well as constitutes an independent violation
12 by soliciting funds outside the federal limits and prohibitions. A separate complaint, filed in
13 MUR 7609, makes the similar allegation that this statement violates the Act by soliciting and
14 directing contributions outside the limits and prohibitions of the Act in violation of 52 U.S.C.
15 § 30125(e) and 11 C.F.R. § 300.61.⁸

⁴ MUR 7340 Trump Committee Resp. at 3 (Apr. 30, 2018).

⁵ MUR 7340 Trump Committee Resp. at 4-5.

⁶ MUR 7340 Trump Committee Resp. at 6.

⁷ MUR 7340 Supp. Compl. at 2 (May 15, 2019).

⁸ MUR 7609 Compl. (May 9, 2019).

The Trump Committee replies to both the MUR 7340 Supplemental Complaint and the Complaint in MUR 7609, stating that its statement did not constitute soliciting or directing a contribution and therefore did not violate the Act.⁹

As discussed below, the Commission dismisses the allegations in the original MUR 7340 Complaint that the Trump Committee violated the soft money provisions of 52 U.S.C. § 30125 and dismisses the allegation that the Trump Committee violated 52 U.S.C. §§ 30116, 30118, and 30104(b) by accepting, and failing to report excessive and prohibited in-kind contributions. Finally, the Commission finds reason to believe that the Trump Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 by soliciting contributions for AF Action without restricting its solicitation to hard money, as alleged in the MUR 7340 Supplemental Complaint and the Complaint in MUR 7609.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017; it is not registered with the Commission as a political committee. Brian O. Walsh, president of AF Policies, reportedly stated that “America First Policies exists for one reason: to support the President of the United States and his agenda.”¹⁰ According to news reports cited by the MUR 7340 Complaint, the organization was founded by several alumni of the Trump 2016 campaign, including Parscale.¹¹ The Commission possesses information indicating that AF

⁹ MUR 7340 Trump Committee Supp. Resp. (June 21, 2019); MUR 7609 Trump Committee Resp. (June 21, 2019).

¹⁰ MUR 7340 Compl. ¶ 31 (citing Maggie Haberman, *Dispute Over Political Strategy Erupts Inside the White House*, NEW YORK TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/politics/trump-stepien-lewandowski.html>).

¹¹ MUR 7340 Compl. ¶ 17; *see also id.* ¶ 19. In addition to Parscale, the other reported founders of AF Policies were Trump’s 2016 deputy campaign managers Rick Gates and David Bossie, campaign advisors Nicholas Ayers and Marty Obst, and senior campaign advisor Katrina Pierson. *Id.*

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1 Policies was “largely inactive”¹² and had no board of directors until April 2017, when it named
2 its board and appointed Walsh as president.¹³ Information also indicates that Walsh has never
3 held a position with the Trump campaign or administration. AF Policies has made independent
4 expenditures in federal elections¹⁴ and, according to the MUR 7340 Complaint, has also solicited
5 soft money.¹⁵

6 AF Action is registered with the Commission as an IEOPC.¹⁶ The committee was
7 founded in April 2017 at the direction of AF Policies president Walsh, who also became
8 president of AF Action. Its original directors were Walsh, Nicholas Ayers (who also served as a
9 director of AF Policies), and Jon Proch (who also serves as AF Action’s treasurer).¹⁷ AF Action,
10 as an IEOPC, has received contributions from individuals in amounts that otherwise would be in
11 excess of contribution limits and from sources that otherwise would be prohibited; AF Action
12 reported more than \$1.2 million in independent expenditures to influence federal elections in
13 2017.¹⁸

¹² AF Policies did not report any activity to the Commission until June 6, 2017, when it made independent expenditures opposing the candidacy of Jonathan Ossoff for Congress. AF Policies 24-Hour Report (June 7, 2017).

¹³ The Commission also possesses information that its original Board of Directors of AF Policies consisted of Nicholas Ayers, Douglas Ammerman and Thomas Hicks, Jr. Subsequently, Roy Bailey replaced Ayers, who had taken a position in the Trump administration in July 2017, and Harold Hamm replaced Ammerman, who had resigned in November 2017.

¹⁴ See e.g., AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

¹⁵ See MUR 7340 Compl. ¶¶ 95, 109. The MUR 7340 Complaint asserts that Parscale solicited soft money for AF Policies, “based on published reports,” but it cites no particular published report for this proposition. *Id.*

¹⁶ See AF Action, Inc., Statement of Organization (Apr. 12, 2017).

¹⁷ The Commission possesses information indicating that Ayers resigned in July 2017 to join the Trump administration as Pence’s chief of staff. Proch also resigned as a director and now serves only as treasurer of AF Action. Ayers and Proch were replaced on AF Action’s Board by Roy Bailey and Thomas Hicks, Jr., who also serve as AF Policies directors.

¹⁸ MUR 7340 Compl. ¶¶ 35-36, 96-97; see also, e.g., AF Action 2017 Year-End Report (Jan. 23, 2018).

1 The Trump Committee is Trump's principal campaign committee for president. In
 2 February 2018, Parscale, who was also the Digital and Data Director for the 2016 Trump
 3 campaign, was named campaign manager for the 2020 Trump campaign.¹⁹ In its response, the
 4 Trump Committee denies that it has any role in the governance or activities of AF Policies or AF
 5 Action.²⁰

6 Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.²¹ At
 7 various times, Parscale Strategy has been retained as a consultant by AF Policies, AF Action, and
 8 the Trump Committee.²² The Commission also possesses information that Parscale Strategy's
 9 contracts with AF Action and AF Policies were terminated when Parscale was named 2020
 10 campaign manager.

11 Since the 2016 election, the MUR 7340 Complaint alleges, the RNC has expended
 12 significantly less on polling than it has during previous Republican administrations.²³ The RNC
 13 acknowledges the reduction, but states that this is a result of its extensive investments in other
 14 kinds of data that have replaced much of its need for traditional polling.²⁴ The MUR 7340
 15 Complaint alleges that the Trump Committee has likewise not made disbursements for polling
 16 for his reelection campaign.²⁵ On the other hand, AF Policies has reportedly spent extensively

¹⁹ MUR 7340 Compl. ¶ 12. Reports filed with the Commission indicate that Parscale was on payroll for the 2016 Trump campaign and that another firm in which he is a partner, Giles-Parscale, was the number one recipient of disbursements from the 2016 Trump campaign, receiving nearly \$88 million in disbursements. *See* Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. On July 15, 2020, Trump announced that he was replacing Parscale as campaign manager, but that Parscale would remain with the campaign as a senior advisor working on digital and data strategies. Donald J. Trump, Comment to FACEBOOK (July 19, 2020), <https://www.facebook.com/DonaldTrump/posts/10165094743505725>.

²⁰ MUR 7340 Trump Committee Resp. at 3.

²¹ MUR 7340 Compl. ¶ 37.

²² *See* MUR 7340 Trump Committee Resp. at 4.

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on polling regarding Trump and his policies and it has made much of this data available through what the MUR 7340 Complaint characterizes as an “obscure” link on AF Policies’ homepage.²⁶ The MUR 7340 Complaint alleges that AF Policies has used several polling firms with relationships to the Trump Committee, including a polling firm that was owned by Trump’s 2016 campaign manager Kellyanne Conway.²⁷

On May 7, 2019, the Trump Committee issued a statement criticizing “scam groups” raising funds by “deceptively us[ing] the President’s name, likeness, trademarks, or branding.”²⁸ The statement continued, asserting that:

There are only four official fundraising organizations authorized by President Trump or the RNC: Donald J. Trump for President, the Republican National Committee, and two joint fundraising committees with the RNC, The Make America Great Again Committee (TMAGAC) and Trump Victory. In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump’s policies and agendas.²⁹

²³ MUR 7340 Compl. ¶ 49; Christina Wilkie, *Dark Money Group America First Policies Is Running a Pro-Trump Polling Operation*, CNBC (Mar. 1, 2018) (“Wilkie, *Dark Money*”), <https://www.cnn.com/2018/03/01/america-first-policies-dark-money-polling-for-trump.html>.

²⁴ Wilkie, *Dark Money* (quoting an RNC official stating, “Since 2013, we’ve spent \$250 million to gather information through voter scoring, and we have a huge amount of information that informs these scores. . . . So, we don’t really pay for traditional polling anymore. We rely on this data, instead.”).

²⁵ MUR 7340 Compl. ¶ 50 (citing Wilkie, *Dark Money*). Trump Committee disclosure reports indicate one expenditure for “polling expenses” through mid-2018 to Gage Group – G2 Analytics for \$74,583. Trump Committee 2017 April Quarterly Report at 54969 (July 20, 2017).

²⁶ See MUR 7340 Compl. ¶¶ 45-50 (citing Wilkie, *Dark Money* (reporting that AF Policies admitted to sharing their polling and putting it up on their homepage, but then removed much of the polling data from the website after being asked about it by CNBC)). The polling information could be found by following a small link at the bottom of AF Policies’ homepage link entitled “data.” See <https://www.americafirstpolicies.org/data/>. AF Action also posts polling information in a similar fashion. See <https://www.a1apac.org/data/>.

²⁷ MUR 7340 Compl. ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

²⁸ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

²⁹ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

The MUR 7340 Supplemental Complaint and the MUR 7609 Complaint allege that, via this statement, the Trump Committee solicited funds for or directed funds to AF Action without limiting this solicitation or direction to hard money.³⁰ The Trump Committee responds that its statement was not a solicitation or direction to contribute to AF Action but rather it “merely provid[ed] the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds.”³¹

III. LEGAL ANALYSIS

A. The Commission Dismisses the Allegation that the Trump Committee Violated 52 U.S.C. § 30125 by Establishing, Financing, Maintaining, or Controlling AF Policies or AF Action

The Complaint in MUR 7340 alleges that President Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action, which solicited, received, and spent soft money. In support of its allegation, the MUR 7340 Complaint, relying on media reports, makes six assertions: (1) that Kellyanne Conway, former 2016 Trump campaign manager, publicly stated that an organization will be formed and needs to be run by someone “close to the President”;³² (2) that AF Policies was founded by a group of former 2016 Trump campaign aides, including

³⁰ MUR 7340 Supp. Compl. at 3; MUR 7609 Compl. at 5-8.

³¹ MUR 7340 Trump Committee Supp. Resp. at 1 (quoting Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13,926, 13,933 (Mar. 20, 2006) (“Solicitation E&J”)). MUR 7609 Trump Committee Resp. (same). The Trump Committee and AF Action/AF Policies Responses also note that the Complainant, Paul S. Ryan, publicly stated that “[p]ointing to a super Pac and saying, ‘That’s the one I approve of’ doesn’t break the law.” MUR 7340 Trump Committee Supp. Resp. at 1 (citing Zach Montellaro, POLITICO (May 8, 2019), <https://www.politico.com/newsletters/morning-score/2019/05/08/wheres-the-line-between-a-campaign-and-super-pac-614412>).

³² MUR 7340 Compl. ¶ 88.

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Parscale and Obst;³³ (3) that Trump’s son-in-law, Jared Kushner, gave Parscale his “blessing” to head AF Policies;³⁴ (4) that consultants, including Parscale and Corey Lewandowski, Trump’s former 2016 campaign manager, worked for both the Trump Committee and AF Policies or AF Action;³⁵ (5) that AF Policies and AF Action staff regularly communicated with Trump and his campaign based on a media report of a number of individuals including Parscale and Lewandowski meeting with White House staff regarding the 2018 mid-term elections;³⁶ and (6) the Trump Committee’s statement that AF Action is its “one approved outside non-campaign group.”³⁷

The Commission possesses information about the membership of AF Policies’ Board of Directors from two months after its founding. Only one of the reported “founders” of AF Policies actually held a position on the Board of Directors: Nicholas Ayers, a campaign advisor to Pence who stepped down from his board position at AF Policies when he became Pence’s chief of staff on July 28, 2017.³⁸ The Commission also possesses information that the first and only president of AF Policies and AF Action, Brian O. Walsh, has never held any role with the Trump campaign or administration.

Information further indicates that the corporate bylaws of both AF Policies and AF Action give no authority to Trump or his campaign to direct or participate in the governance of

³³ *Id.* ¶ 90; *see supra* n.13.

³⁴ *Id.* ¶ 89.

³⁵ *Id.* ¶¶ 23, 90, 93.

³⁶ *Id.* ¶ 94.

³⁷ MUR 7340 Supp. Compl. at 3.

³⁸ *See* Vice President Pence (@VP), TWITTER (July 28, 2017 11:37 AM), <https://twitter.com/VP/status/891004622420287489> (“Congrats to @Nick_Ayers for being sworn-in as my Chief of Staff. Excited to welcome you & great having your family at @WhiteHouse today.”).

1 the entities and that the authority to “hire, appoint, demote, or otherwise control the officers or
 2 other decision-making employees” of AF Policies and AF Action resides with Walsh and the
 3 Board of Directors.

4 The Act prohibits federal candidates and officeholders, their agents, and entities directly
 5 or indirectly established, financed, maintained, or controlled by or acting on behalf of one or
 6 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
 7 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
 8 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”³⁹

9 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
 10 was designed to “plug the soft-money loophole.”⁴⁰

11 To determine whether a candidate or his or her agent “directly or indirectly establishes,
 12 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten
 13 factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has
 14 the authority to “direct or participate in the governance of the entity through provisions of
 15 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
 16 procedures”;⁴¹ (2) whether the candidate or his agent has “the authority or ability to hire, appoint,
 17 demote, or otherwise control the officers, or other decision-making employees or members of the
 18 entity”;⁴² (3) whether former or present “overlapping officers or employees” indicate “a formal

³⁹ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

⁴⁰ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁴¹ 11 C.F.R. § 300.2(c)(2)(ii).

⁴² *Id.* § 300.2(c)(2)(iii).

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1 or ongoing relationship” between the candidate or his agent and the entity;⁴³ (4) whether directly
 2 or through its agent, the candidate had an “active or significant role in the formation of the
 3 entity”;⁴⁴ as well as any other relevant factors, in the context of the overall relationship between
 4 the federal candidate or officeholder, or his agent, and the entity.⁴⁵

5 An “agent” of a federal candidate or officeholder is “any person who has actual authority,
 6 either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with
 7 any election.”⁴⁶ The Commission has explained that the purpose of adopting the “actual
 8 authority standard” was to “preserve an individual’s ability to raise funds for multiple
 9 organizations.”⁴⁷

10 The establishment of AF Policies was allegedly effected by a group of “founders” who
 11 previously held high-ranking positions with the 2016 Trump campaign.⁴⁸ Considering their
 12 titles, including two deputy campaign managers (Rick Gates and David Bossie), it appears likely
 13 that at least some of these founders were agents of Trump and the Trump Committee during the
 14 2016 campaign.⁴⁹ But the available information is insufficient to support a reasonable inference

⁴³ *Id.* § 300.2(c)(2)(v), (vi).

⁴⁴ *Id.* § 300.2(c)(2)(ix).

⁴⁵ *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

⁴⁶ 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,975-76 (Jan. 31, 2006) (“Agent E&J”); Advisory Op. 2007-05 (Iverson) at 3.

⁴⁷ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

⁴⁸ *See supra* n.13.

⁴⁹ Notably, no facts have been asserted establishing what, if any, role these individuals had in the 2020 Trump campaign (other than Parscale, who became campaign manager in February 2018), or whether any agency authority that was established in the 2016 campaign still existed after that election, or particularly on January 27, 2017, when AF Policies was formed.

1 that any of these individuals was acting at the direction of Trump or the Trump Committee when
2 they reportedly formed AF Policies in January 2017. Parscale was the only one of the reported
3 founders on the payroll of the Trump Committee around the time that AF Policies was formed.
4 His last paycheck was dated four days after the founding of AF Policies but appears to be for a
5 partial pay period as it is about half of the amount he was paid bi-weekly for the prior bi-weekly
6 periods.⁵⁰ Thus, it appears his personal employment by the Committee ended just prior to the
7 formation of AF Policies. Even if Parscale was employed by the Trump Committee at the time
8 of the founding of AF Policies, his role was Digital and Data Director and there is not sufficient
9 evidence to conclude that he had become an agent by virtue of, for instance, soliciting
10 contributions on behalf of the Trump Committee.⁵¹

11 As for AF Action, it was formed by Walsh, who is not alleged to be an agent of Trump or
12 the Trump Committee. One of AF Action's original board members, Ayers, worked on the 2016
13 Trump campaign and was potentially therefore an agent of Trump and the Trump Committee in
14 2016, but the available information does not support the claim that he continued to be an agent of
15 Trump or the Trump Committee in April 2017 when AF Action was established.

16 As noted above, the Trump Committee and AF Policies and AF Action have several
17 overlapping current and former employees and vendors. Parscale, whose company was retained
18 by all three entities, was employed in high-ranking positions by both the 2016 and 2020 Trump

⁵⁰ See Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. Thereafter, Parscale's firm continued to receive disbursements from the Trump Committee. *Id.*

⁵¹ The MUR 7340 Complaint's suggestion that Trump established AF Policies by hiring Parscale to lead it, via Jared Kushner's "blessing" is conclusory and unsupported. See MUR 7340 Compl. ¶ 15. Even assuming that Kushner was an agent of Trump, the media report alone does not support a reasonable inference that Kushner had the "authority or ability to hire" Parscale for a job at an entity that did not exist at that point. See Agent E&J, 71 Fed. Reg. at 4,978, n.6 ("Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.").

1 campaigns and was a reported founder of AF Policies. Lewandowski has also held positions
2 with both the Trump Committee in 2016, as campaign manager, and with AF Policies and AF
3 Action, as a consultant. A number of other individuals including Ayers also had roles with the
4 Trump Committee in 2016 and were allegedly founders of AF Policies. But as the Commission
5 has stated previously, “more than the mere fact of such informal, ongoing relationships between
6 the personnel of the potentially sponsoring and potentially sponsored entity is necessary to
7 support a conclusion of ‘establishment, financing, maintenance or control.’”⁵² Instead, to
8 establish a violation based on overlapping employees and officers, the overlap must “indicate[]
9 formal or ongoing relationship.”⁵³ The information indicating that Ayers left his position at AF
10 Policies when he joined the administration indicates the end of a formal relationship with an
11 overlapping employee. AF Policies’ and AF Action’s decision to terminate the contract of
12 Parscale’s firm when he was named Trump’s 2020 campaign manager further undermines the
13 existence of a formal relationship by not retaining, even as a vendor, an employee of the Trump
14 Committee.

15 Moreover, “while former employers and colleagues may exercise influence, influence is
16 not necessarily control.”⁵⁴ Here, formal control under the bylaws of AF Policies and AF Action,
17 including the authority to “hire, appoint, demote, or otherwise control the officers or other
18 decision-making employees,” rests with the Board of Directors and the president of the

⁵² Factual & Legal Analysis (“F&LA”) at 8, MUR 6280 (Howard L. Berman).

⁵³ 11 C.F.R. § 300.2(c)(2)(v).

⁵⁴ F&LA at 8, MUR 6280.

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organization,⁵⁵ and there is no information indicating that hiring did not occur in accordance with this stated process.

Finally, Complainants note in the MUR 7340 Supplemental Complaint that the allegation that Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action is supported by the additional evidence that the Trump Committee made a public statement regarding fundraising, stating that AF Action is the only “approved outside non-campaign group.”⁵⁶ Although this statement appears to constitute a solicitation of non-federal funds under section 30125(e), *see infra* pages 17-23, this statement and the attending circumstances do not appear to establish that the AF Action was EFMC’d by Trump or the Trump Committee.⁵⁷

In short, the available information is insufficient to give rise to a reasonable inference that AF Policies or AF Action was established, financed, maintained, or controlled by Trump or the Trump Committee. Accordingly, the Commission dismisses these allegations that the Trump Committee violated 52 U.S.C. § 30125.

⁵⁵ See *supra* n.51; F&LA at 4, MUR 7070 (Congressional Leadership Fund, *et al.*) (“However, the quoted statement that ‘Fink was personally approached by House Speaker Paul Ryan to take the job’ does not, by itself, support a reasonable inference that Ryan had the ‘authority or ability to hire’ Fink under section 300.2(c)(2)(iii).”); *cf.* Advisory Op. 2003-12 (Flake) (concluding that a candidate “established” an entity for purposes of 11 C.F.R. § 300.2(c)(2) on the basis that the candidate was among the individuals who formed the committee and signed its organizational documents, he served as its chairman, and his part-time campaign consultant aided the committee with its state filings and bank accounts).

⁵⁶ MUR 7340 Supp. Compl. at 1-4.

⁵⁷ Among the EFMC factors set forth in the Commission’s regulations is that a candidate or officeholder “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity.” 11 C.F.R. § 300.2(c)(2)(viii). In the present matter, AF Action disclosed the receipt of contributions totaling \$2.7 million in the month before the Trump Committee statement and \$1.3 million in the month after the statement. See AF Action 2019 Mid-Year Report (July 31, 2019).

B. The Commission Dismisses the Allegation that the Trump Committee, Though its Agent, Brad Parscale, Violated 52 U.S.C. § 30125 by Raising Soft Money for AF Policies or AF Action

The MUR 7340 Complaint alleges, “[b]ased on published reports,” that Parscale solicited soft money for AF Policies and AF Action as an agent of Trump or the Trump Committee.⁵⁸

While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-federal funds for other political parties or outside groups.”⁵⁹ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of federal candidates.”⁶⁰

Assuming, *arguendo*, that Parscale was an agent of the Trump Committee at some time after the formation of AF Policies and before being named Trump’s campaign manager in 2018, the record does not support a reasonable inference that Parscale solicited funds for either AF Policies or AF Action. The Commission possesses information that Parscale, through his company, provided digital and online consulting services, not fundraising services, to AF Action and AF Policies and did not directly solicit donors. Accordingly, because the available

⁵⁸ MUR 7340 Compl. ¶ 111; *see also id.* ¶¶ 33, 37 (detailing reported disbursements to Parscale’s company for “digital fundraising consulting,” among other purposes).

⁵⁹ Agent E&J, 71 Fed. Reg. at 4,979.

⁶⁰ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (“AO 2015-09”) (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

information fails to give rise to a reasonable inference that a violation has occurred, the Commission dismisses these allegations that the Trump Committee violated 52 U.S.C. § 30125.

C. The Commission Dismisses the Allegation that the Trump Committee Violated the Act by Receiving Unreported Contributions in the Form of Coordinated Expenditures

The MUR 7340 Complaint asserts that AF Policies conducted polls on voter perceptions of Trump and his policies in coordination with the Trump Committee, resulting in an unreported and excessive in-kind contribution to the Committee.⁶¹ The Complaint bases its allegation on the following facts: (1) the Trump Committee reported no disbursements for polling during the relevant period, and the RNC's reported polling expenses decreased relative to prior years during the relevant period;⁶² (2) AF Policies used a polling firm owned by presidential advisor Kellyanne Conway;⁶³ (3) AF Policies consultants Parscale and Lewandowski reportedly attended a meeting at the White House to discuss the 2018 mid-term elections;⁶⁴ and (4) AF Policies posted the polling results at a relatively obscure link on its website and took the results down after reporters inquired about the polls.⁶⁵

The Trump Committee denies any coordination. Parscale and Lewandowski may have attended the reported meeting at the White House, but information available to the Commission indicates that their attendance may not have been at the direction of AF Policies and that no

⁶¹ MUR 7340 Compl. ¶¶ 137-145.

⁶² *Id.* ¶¶ 49-50, 144.

⁶³ *Id.* ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

⁶⁴ *Id.* ¶ 139.

⁶⁵ *Id.* ¶¶ 47-48.

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1 officer or director of AF Policies was at the meeting. Moreover, there is no available information
2 indicating that the polling conducted by AF Policies was discussed.

3 Under the Commission's regulations, any expenditures that are made in cooperation,
4 consultation or in concert with, or at the request or suggestion of a candidate or a candidate's
5 authorized committee, but that are not coordinated communications, party coordinated
6 communications, or coordinated party expenditures, are in-kind contributions to the candidate
7 and must be reported as an expenditure by that candidate.⁶⁶

8 The available information is not sufficient to support the conclusion that AF Policies and
9 the Trump campaign coordinated in connection with the polling as alleged in the MUR 7340
10 Complaint. Specifically, the available information is insufficient to demonstrate that AF Policies
11 and the Trump campaign acted in cooperation, consultation, or in concert in conducting the
12 polling. For example, though the MUR 7340 Complaint mentions the involvement of the
13 company of Trump's advisor, Conway, in the polling, it presents no allegation that Conway had
14 any personal knowledge of or involvement in AF Policies' polling activity. Nor is there enough
15 information to conclude that AF Policies made an in-kind contribution to the Trump campaign by
16 sharing the results of the polling. Although the MUR 7340 Complaint notes that the polling
17 results were published online, it presents insufficient information to conclude that the Trump
18 Committee accessed those results or that AF Policies communicated any information about the
19 online information to the Trump Committee. In sum, when taken together, the available facts do

⁶⁶ 11 C.F.R. § 109.20(b); 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); *Campaign Guide for Nonconnected Committees* at 25, <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee").

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not support a reasonable inference that there was coordination on the polling. Accordingly, the Commission dismisses the allegation that the Trump Committee violated 52 U.S.C. §§ 30116, 30118, and 30104(b) by accepting and failing to report prohibited or excessive in-kind contributions.

D. The Commission Finds Reason to Believe that the Trump Committee Violated 52 U.S.C. § 30125 by Soliciting Soft Money Via the Committee’s Statement Issued May 7, 2019

Finally, the MUR 7340 Supplemental Complaint and the MUR 7609 Complaint allege that a statement issued by the Trump Committee solicited soft money for or directed soft money contributions to AF Action in violation of section 30125(e) and 11 C.F.R. § 300.61.⁶⁷

The Act prohibits federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of federal candidates and officeholders, from soliciting funds in connection with a federal election “unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”⁶⁸

The Act limits contributions to non-authorized, non-party committees to \$5,000 in any calendar year.⁶⁹ Although an IEOPC may accept contributions from corporations and individuals without

⁶⁷ MUR 7340 Supp. Compl.; MUR 7609 Compl.; *see* 52 U.S.C. § 30125(e); 11 C.F.R. 300.61.

⁶⁸ *See* 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. §§ 300.60, 300.61.

⁶⁹ 52 U.S.C. § 30116(a)(1)(C).

1 regard to that \$5,000 limitation,⁷⁰ federal officeholders and candidates may only solicit up to
 2 \$5,000 from permissible sources on behalf of such a committee.⁷¹

3 Through regulation, the Commission has defined “to solicit” broadly to mean “to ask,
 4 request, or recommend, explicitly or implicitly, that another person make a contribution,
 5 donation, transfer of funds, or otherwise provide anything of value.”⁷² The regulation further
 6 provides that a “solicitation” is “an oral or written communication that, construed as reasonably
 7 understood in the context in which it is made, contains a clear message asking, requesting, or
 8 recommending that another person make a contribution” and “may be made directly or
 9 indirectly” but “does not include mere statements of political support.”⁷³

10 In 2006, the Commission revised the definition of “to solicit” following a decision by the
 11 United States Court of Appeals for the District of Columbia Circuit in *Shays v. FEC* holding that
 12 the Commission’s former regulation, promulgated in 2002, was too narrow and failed to include
 13 “implicit requests for money.”⁷⁴ In promulgating the revised definition, the Commission
 14 explained that the revision is broad in order to “ensure[] that candidates and parties may not,
 15 implicitly and indirectly, raise unregulated funds for either themselves, or subject to statutory

⁷⁰ See *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals’ contributions to political committees that only make independent expenditures); Advisory Op. 2010-11 (Common Sense Ten) (“AO 2010-11”) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

⁷¹ See Advisory Op. 2011-12 (Majority PAC) at 3 (“AO 2011-12”) (determining that solicitation restrictions under 52 U.S.C. § 30125(e)(1)(A) remain applicable to contributions solicited by federal candidates, officeholders, and other covered persons); Conciliation Agreement ¶¶ 7, 8, MUR 7048 (Cruz for President) (“CA”) (same); F&LA at 11, MURs 6563 and 6733 (Rep. Aaron Schock).

⁷² 11 C.F.R. § 300.2(m); see also Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

⁷³ 11 C.F.R. § 300.2(m); see also Solicitation E&J, 71 Fed. Reg. at 13,928 (Mar. 20, 2006).

⁷⁴ Solicitation E&J, 71 Fed. Reg. at 13,927 (quoting *Shays v. FEC*, 414 F.3d 76, 104-06 (D.C. Cir. 2005)).

1 exceptions, ‘friendly outsiders.’”⁷⁵ The Commission further stated: “By covering implicit and
 2 indirect requests and recommendations, the new definition forecloses parties and candidates from
 3 using circumlocutions ‘that make their intentions clear without overtly “asking” for money’” and
 4 “also squarely addresses the central concern of the Court of Appeals in *Shays* that ‘indirect’ as
 5 well as ‘direct’” requests for funds or anything of value must be covered.”⁷⁶

6 The standard for determining whether a communication is a solicitation is objective and
 7 does not turn on the subjective interpretations of the person making the communication or its
 8 recipients.⁷⁷ This objective standard “hinges on whether the recipient should have reasonably
 9 understood that a solicitation was made.”⁷⁸ The Commission has explained the that “[t]he
 10 context of a communication is often important because words that would not, by their literal
 11 meaning, convey a solicitation, may in some contexts be reasonably understood as one.”⁷⁹
 12 Conversely, “words that would by their plain meaning normally be understood as a solicitation,
 13 may not be a solicitation when considered in context, such as when the words are used as part of
 14 a joke or parody.”⁸⁰

⁷⁵ *Id.* at 13,928 (quoting *Shays*, 414 F.3d at 106).

⁷⁶ *Id.*

⁷⁷ 11 C.F.R. § 300.2(m); *see also* Solicitation E&J, 71 Fed. Reg. at 13,928.

⁷⁸ Solicitation E&J, 71 Fed. Reg. at 13,929.

⁷⁹ Solicitation E&J at 13,929. For instance, it is not a solicitation for a candidate to simply state: “Joe, X is a very worthy organization. It has always been very helpful to me.” *Id.* On the other hand, context could render the same statement by the candidate a solicitation. For example, if Joe is introduced to the candidate by a fundraiser for the organization saying: “I’ve been trying to persuade Joe to commit to giving X another \$50,000. Wouldn’t that be great, Senator?”, then, because of the context, the same words would be reasonably understood as a solicitation. *Id.*

⁸⁰ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publ’ns*, 953 F.2d 724, 727 (1st Cir. 1992) (providing as an example the point that no reasonable listener would understand a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” to be accusing the producer of the actual crime of robbery)); *see* F&LA, MUR 6939 (Mike Huckabee, et al.); F&LA, MUR 7135 (Donald Trump for President Inc., et al.).

1 The Trump Committee’s one-page “Statement on Dishonest Fundraising Groups”
2 “condemns any organization that deceptively uses the President’s name, likeness, trademarks or
3 branding and confuses voters.”⁸¹ The Statement continues, stating that “[t]here is no excuse for
4 any group, including ones run by people who claim to be part of our ‘coalition,’ to suggest they
5 directly support President Trump’s re-election or any other candidates, when in fact their actions
6 show they are interested in filling their own pockets”⁸²

7 The Trump Committee then identifies the “only four official fundraising organizations
8 authorized by President Trump and the RNC,” the Trump Committee itself, the RNC and two
9 joint fundraising committees, as well as “one approved outside non-campaign group, America
10 First Action, which is run by allies of the President and is a trusted supporter of President
11 Trump’s policies and agendas.”⁸³

12 The warning against “organization[s] that deceptively use[] the President’s name” to
13 fundraise creates a context in which the later parts of the Trump Committee statement must be
14 read. In this context, which the statement itself expressly frames to be about “fundraising
15 organizations,” AF Action is identified as the “one approved outside non-campaign group” and
16 as a direct contrast to contributing to other outside groups that “suggest they directly support
17 President Trump’s re-election” where the contributor runs the risk of “filling [the groups’] own
18 pockets” instead.⁸⁴

⁸¹ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁸² MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁸³ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁸⁴ During the 2016 election cycle, 45 outside committees made independent expenditures in support of Donald Trump, according to Commission records. The Trump Committee in its statement identifies a single outside committee “approved” for the 2020 election.

1 The Trump Committee asserts that it “merely provid[ed] the identity of an appropriate
 2 recipient, without any attempt to motivate another person to contribute or donate funds” and that
 3 such a statement does not constitute a “solicitation” or “direction” under the Act.⁸⁵ The Trump
 4 Committee statement, however, does not merely provide the name of an entity to which a
 5 contributor could give. First, the Trump Committee’s statement explains that there are a number
 6 of unnamed groups to which individuals should not contribute because they are only “interested
 7 in filling their own pockets.” Then it lists the four “authorized” groups and one outside
 8 “approved” group. The juxtaposition of these two statements is significant. Applying the
 9 Commission’s objective test, and considering the context in which it is made, the statement as a
 10 whole contains a clear message recommending that the reader contribute to the authorized and
 11 approved *fundraising organizations* and not contribute to other groups.⁸⁶

12 Moreover, the paragraph listing the authorized and approved groups begins “[t]here are
 13 only four official *fundraising* organizations.”⁸⁷ Even though AF Action is also described as a
 14 “trusted supporter of President Trump’s policies and agendas,” the subject of the statement —
 15 entitled “Trump Campaign Statement on Dishonest Fundraising Groups” — is not mere
 16 electoral, legislative, or political support, but the financing of unidentified “[d]ishonest” groups
 17 and five identified authorized or approved groups.⁸⁸ Accordingly, this statement, as a reasonable

⁸⁵ MUR 7340 Trump Committee Supp. Resp. at 1 (quoting Solicitation E&J at 13,933).

⁸⁶ The language in the Trump Committee Statement is in line with several of the “solicitation” examples in the Commission’s regulations. *See, e.g.*, 11 C.F.R. § 300.2(m)(2)(iii) (“Group X has always helped me financially in my elections. Keep them in mind this fall”); (iii) (“Send all contributions to the following address * * * *”); (ix) (“You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party.”).

⁸⁷ MUR 7340 Supp. Compl. at 2 (emphasis added); MUR 7609 Compl. at 3 (same).

⁸⁸ *See* Solicitation E&J at 13,928 (“The sheer number of interaction and similarity in the messages for these purposes may sometimes give rise to situations where a candidate’s request for electoral or legislative support is

1 person would understand it in its context, constitutes a recommendation to contribute to AF
 2 Action and thus is a solicitation.⁸⁹

3 If a federal candidate or an agent, such as a principal campaign committee, solicits money
 4 to an IEOPC, that solicitation must comply with the Act's amount and source limitations.⁹⁰ The
 5 Trump Committee statement contained no such limitation. Indeed, as the sole "approved"
 6 Trump-supporting IEOPC identified, the message conveys that AF Action is the only approved
 7 destination for unlimited individual and corporate contributions supporting Trump.⁹¹ Discussing
 8 similar solicitations made by candidates at fundraising events for groups that may accept non-
 9 federal funds, the Commission has concluded that "any solicitation that is not limited either by its
 10 express terms or otherwise (such as through a clear and conspicuous oral statement or written
 11 notice) risks being understood as soliciting donations in amounts and from sources prohibited

misconstrued as a request for financial support. . . . Absent a requirement that a communication contains a clear message asking, requesting, or recommending that another person provide funds or something of value, such a statement might be inappropriately captured by the definition of 'to solicit.'"); *id.* at 13,929 ("[R]egulations must encompass a communication that 'makes [a candidate's or political party's] intention clear without overtly 'asking' for money . . . if imaginative advertisers are able to make their meaning clear without employing express terms like 'vote for' and 'vote against,' savvy politicians will surely be able to convey fundraising desires without explicitly asking for money.'") (quoting *Shays*, 414 F.3d at 106).

⁸⁹ See F&LA at 2, 6, MUR 7048 (Cruz for President) (finding reason to believe that Cruz for President impermissibly solicited soft money when an agent of the committee told fundraiser attendees that "the method to our madness is this: you max out [to Respondent] and then get engaged in the Super PAC," identifying a particular IEOPC with a table at the fundraiser); CA ¶ IV.5, MUR 7048 (Cruz for President) (same). On the other hand, in AO 1984-02 the Commission approved of Friends of Phil Gramm (the authorized committee of Phil Gramm) sending a letter to individuals who contributed to "Americans for Phil Gramm in '84" (not an authorized committee) to provide information to contributors who may have been misled, without considering it a solicitation to the authorized committee. Advisory Op. 1984-02 (Gramm). In contrast to that situation, here the Trump Committee statement does not provide factual clarity between two entities that could easily be mistaken for one another, it does not identify any particular group that may have been confused with the authorized committee, and it does not merely provide the name of Trump's authorized committee but also the party committee, and two joint fundraising committees. It then goes on to single out AF Action, an entity that by its status as an IEOPC is required to be independent of Trump and the aforementioned committees.

⁹⁰ 52 U.S.C. § 30125(e)(1)(B); see AO 2011-12 at 4.

⁹¹ Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

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1 under the Act. . . .”⁹² Indeed, Commission regulations provide guidance as to language that can
 2 be included in a solicitation at a fundraising event so that it is appropriately limited to federal
 3 funds.⁹³ The Trump Committee’s solicitation included no disclaimer or restriction of any kind
 4 limiting the solicitation to federal funds, and its distinction between the four “authorized” hard
 5 money recipients and AF Action as the “one outside non-campaign group” conveys that AF
 6 Action is an IEOPC that may receive soft money by virtue of that status as an “outside . . .
 7 group.”⁹⁴ Accordingly, the Commission finds that there is reason to believe that the Trump
 8 Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 by soliciting soft money
 9 contributions to AF Action.

⁹² Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events. 75 Fed Reg. 24,375, 24,380 (May 5, 2010).

⁹³ See 11 C.F.R. § 300.64(b)(2)(i) (“A Federal candidate or officeholder may limit such a solicitation by displaying at the fundraising event a clear and conspicuous written notice, or making a clear and conspicuous oral statement, that the solicitation is not for Levin funds (when applicable), does not seek funds in excess of \$ [Federally permissible amount], and does not seek funds from corporations, labor organizations, national banks, federal government contractors, or foreign nationals.”).

⁹⁴ Notably, the donation page on AF Action’s website, includes a prefilled option to donate \$20,000, an amount in excess of the hard money contribution limits. See <https://secure.alapac.org/donate>.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Donald J. Trump for President, Inc. **MURs: 7340 & 7609**
and Bradley T. Crate in his official
capacity as treasurer

I. INTRODUCTION

The Complaint filed in MUR 7340 alleges that President Trump and his authorized campaign committee Donald J. Trump for President, Inc. (“Trump Committee”) established, financed, maintained, or controlled (“EFMC’d”) America First Policies (“AF Policies”), a 501(c)(4) organization, and America First Action (“AF Action”), an independent expenditure-only political committee (“IEOPC”), and that both organizations allegedly solicited, received, and spent soft money in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint in MUR 7340 further alleges that Bradley Parscale, the Digital and Data Director for the 2016 Trump campaign, solicited soft money for AF Policies and AF Action as an agent of President Trump, and the Trump Committee in violation of the Act, which thus allegedly received and spent soft money in violation of the Act.² Finally, the Complaint in MUR 7340 alleges that AF Policies made expenditures for polling in coordination with the Trump campaign, which therefore accepted and failed to report an excessive and prohibited corporate in-kind contribution.³

¹ See MUR 7340 Compl. ¶¶ 84-100 (Mar. 5, 2018).

² See *id.* ¶¶ 101-112.

³ See *id.* ¶¶ 137-145.

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1 The Trump Committee denies these allegations, arguing that: (1) Trump and the Trump
2 Committee had no role in the creation of, and have no role in the operation of, AF Policies or AF
3 Action;⁴ (2) no agent of a federal candidate or officeholder solicited, received, or spent soft
4 money for AF Action or AF Policies on behalf of a federal candidate or officeholder;⁵ and (3)
5 AF Policies did not coordinate with the Trump campaign regarding polling.⁶

6 The Complainants in MUR 7340 later filed a supplement to their complaint (“MUR 7340
7 Supplemental Complaint”) to provide additional information in the form of a public statement by
8 the Trump Committee that warns against “scam groups” raising funds by “deceptively us[ing]
9 the President’s name, likeness, trademarks, or branding” and states that “there is one approved
10 outside non-campaign group, America First Action.”⁷ The Complainants allege that this
11 statement further supports their prior allegations as well as constitutes an independent violation
12 by soliciting funds outside the federal limits and prohibitions. A separate complaint, filed in
13 MUR 7609, makes the similar allegation that this statement violates the Act by soliciting and
14 directing contributions outside the limits and prohibitions of the Act in violation of 52 U.S.C.
15 § 30125(e) and 11 C.F.R. § 300.61.⁸

⁴ MUR 7340 Trump Committee Resp. at 3 (Apr. 30, 2018).

⁵ MUR 7340 Trump Committee Resp. at 4-5.

⁶ MUR 7340 Trump Committee Resp. at 6.

⁷ MUR 7340 Supp. Compl. at 2 (May 15, 2019).

⁸ MUR 7609 Compl. (May 9, 2019).

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The Trump Committee replies to both the MUR 7340 Supplemental Complaint and the Complaint in MUR 7609, stating that its statement did not constitute soliciting or directing a contribution and therefore did not violate the Act.⁹

As discussed below, the Commission dismisses the allegations in the original MUR 7340 Complaint that the Trump Committee violated the soft money provisions of 52 U.S.C. § 30125 and dismisses the allegation that the Trump Committee violated 52 U.S.C. §§ 30116, 30118, and 30104(b) by accepting, and failing to report excessive and prohibited in-kind contributions. Finally, the Commission dismisses the allegations that the Trump Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 by soliciting contributions for AF Action without restricting its solicitation to hard money, as alleged in the MUR 7340 Supplemental Complaint and the Complaint in MUR 7609.

II. FACTS

AF Policies is a 501(c)(4) nonprofit organization, incorporated on January 27, 2017.. According to news reports cited by the MUR 7340 Complaint, the organization was founded by several alumni of the Trump 2016 campaign, including Parscale.¹⁰ The Commission possesses information indicating that AF Policies was “largely inactive”¹¹ and had no board of directors until April 2017, when it named its board and appointed Brian O. Walsh as president.¹²

⁹ MUR 7340 Trump Committee Supp. Resp. (June 21, 2019); MUR 7609 Trump Committee Resp. (June 21, 2019).

¹⁰ MUR 7340 Compl. ¶ 17; *see also id.* ¶ 19. In addition to Parscale, the other reported founders of AF Policies were Trump’s 2016 deputy campaign managers Rick Gates and David Bossie, campaign advisors Nicholas Ayers and Marty Obst, and senior campaign advisor Katrina Pierson. *Id.*

¹¹ AF Policies did not report any activity to the Commission until June 6, 2017, when it made independent expenditures opposing the candidacy of Jonathan Ossoff for Congress. AF Policies 24-Hour Report (June 7, 2017).

¹² The Commission also possesses information that its original Board of Directors of AF Policies consisted of Nicholas Ayers, Douglas Ammerman and Thomas Hicks, Jr. Subsequently, Roy Bailey replaced Ayers, who had

Information also indicates that Walsh has never held a position with the Trump campaign or administration. AF Policies has made independent expenditures in federal elections¹³ and, according to the MUR 7340 Complaint, has also solicited soft money.¹⁴

AF Action is registered with the Commission as an IEOPC.¹⁵ The committee was founded in April 2017 at the direction of AF Policies president Walsh, who also became president of AF Action. Its original directors were Walsh, Nicholas Ayers (who also served as a director of AF Policies), and Jon Proch (who also serves as AF Action's treasurer).¹⁶ AF Action, as an IEOPC, has received contributions from individuals in amounts that otherwise would be in excess of contribution limits and from sources that otherwise would be prohibited; AF Action reported more than \$1.2 million in independent expenditures to influence federal elections in 2017.¹⁷

The Trump Committee is Trump's principal campaign committee for president. In February 2018, Parscale, who was also the Digital and Data Director for the 2016 Trump campaign, was named campaign manager for the 2020 Trump campaign.¹⁸ In its response, the

taken a position in the Trump administration in July 2017, and Harold Hamm replaced Ammerman, who had resigned in November 2017.

¹³ See e.g., AF Policies 24-Hour Report (Sept. 21, 2017) (reporting \$452,254.89 in independent expenditures).

¹⁴ See MUR 7340 Compl. ¶¶ 95, 109. The MUR 7340 Complaint asserts that Parscale solicited soft money for AF Policies, "based on published reports," but it cites no particular published report for this proposition. *Id.*

¹⁵ See AF Action, Inc., Statement of Organization (Apr. 12, 2017).

¹⁶ The Commission possesses information indicating that Ayers resigned in July 2017 to join the Trump administration as Pence's chief of staff. Proch also resigned as a director and now serves only as treasurer of AF Action. Ayers and Proch were replaced on AF Action's Board by Roy Bailey and Thomas Hicks, Jr., who also serve as AF Policies directors.

¹⁷ MUR 7340 Compl. ¶¶ 35-36, 96-97; see also, e.g., AF Action 2017 Year-End Report (Jan. 23, 2018).

¹⁸ MUR 7340 Compl. ¶ 12. Reports filed with the Commission indicate that Parscale was on payroll for the 2016 Trump campaign and that another firm in which he is a partner, Giles-Parscale, was the number one recipient

Trump Committee denies that it has any role in the governance or activities of AF Policies or AF Action.¹⁹

Parscale Strategy, LLC is a political consulting firm owned by Bradley Parscale.²⁰ At various times, Parscale Strategy has been retained as a consultant by AF Policies, AF Action, and the Trump Committee.²¹ The Commission also possesses information that Parscale Strategy's contracts with AF Action and AF Policies were terminated when Parscale was named 2020 campaign manager.

Since the 2016 election, AF Policies has reportedly spent extensively on polling regarding Trump and his policies and it has made much of this data available through what the MUR 7340 Complaint characterizes as an "obscure" link on AF Policies' homepage.²² The MUR 7340 Complaint alleges that AF Policies has used several polling firms with relationships to the Trump Committee, including a polling firm that was owned by Trump's 2016 campaign manager Kellyanne Conway.²³

of disbursements from the 2016 Trump campaign, receiving nearly \$88 million in disbursements. *See* Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. On July 15, 2020, Trump announced that he was replacing Parscale as campaign manager, but that Parscale would remain with the campaign as a senior advisor working on digital and data strategies. Donald J. Trump, Comment to FACEBOOK (July 19, 2020), <https://www.facebook.com/DonaldTrump/posts/10165094743505725>.

¹⁹ MUR 7340 Trump Committee Resp. at 3.

²⁰ MUR 7340 Compl. ¶ 37.

²¹ *See* MUR 7340 Trump Committee Resp. at 4.

²² *See* MUR 7340 Compl. ¶¶ 45-50 (citing Wilkie, *Dark Money* (reporting that AF Policies admitted to sharing their polling and putting it up on their homepage, but then removed much of the polling data from the website after being asked about it by CNBC)). The polling information could be found by following a small link at the bottom of AF Policies' homepage link entitled "data." *See* <https://www.americafirstpolicies.org/data/>. AF Action also posts polling information in a similar fashion. *See* <https://www.alapac.org/data/>.

²³ MUR 7340 Compl. ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

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- 1 On May 7, 2019, the Trump Committee issued a statement criticizing “scam groups”
- 2 raising funds by “deceptively us[ing] the President’s name, likeness, trademarks, or branding.”²⁴
- 3 The statement continued, asserting that:

²⁴ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

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There are only four official fundraising organizations authorized by President Trump or the RNC: Donald J. Trump for President, the Republican National Committee, and two joint fundraising committees with the RNC, The Make America Great Again Committee (TMAGAC) and Trump Victory. In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump's policies and agendas.²⁵

The MUR 7340 Supplemental Complaint and the MUR 7609 Complaint allege that, via this statement, the Trump Committee solicited funds for or directed funds to AF Action without limiting this solicitation or direction to hard money.²⁶ The Trump Committee responds that its statement was not a solicitation or direction to contribute to AF Action but rather it "merely provid[ed] the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds."²⁷

III. LEGAL ANALYSIS

A. The Commission Dismisses the Allegation that the Trump Committee Violated 52 U.S.C. § 30125 by Establishing, Financing, Maintaining, or Controlling AF Policies or AF Action

The Complaint in MUR 7340 alleges that President Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action, which solicited, received, and spent soft money. In support of its allegation, the MUR 7340 Complaint, relying on media reports, makes six

²⁵ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

²⁶ MUR 7340 Supp. Compl. at 3; MUR 7609 Compl. at 5-8.

²⁷ MUR 7340 Trump Committee Supp. Resp. at 1 (quoting Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,926, 13,933 (Mar. 20, 2006) ("Solicitation E&J")). MUR 7609 Trump Committee Resp. (same). The Trump Committee and AF Action/AF Policies Responses also note that the Complainant, Paul S. Ryan, publicly stated that "[p]ointing to a super Pac and saying, 'That's the one I approve of' doesn't break the law." MUR 7340 Trump Committee Supp. Resp. at 1 (citing Zach Montellaro, POLITICO (May 8, 2019), <https://www.politico.com/newsletters/morning-score/2019/05/08/wheres-the-line-between-a-campaign-and-super-pac-614412>).

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1 assertions: (1) that Kellyanne Conway, former 2016 Trump campaign manager, publicly stated
2 that an organization will be formed and needs to be run by someone “close to the President”;²⁸
3 (2) that AF Policies was founded by a group of former 2016 Trump campaign aides, including
4 Parscale and Obst;²⁹ (3) that Trump’s son-in-law, Jared Kushner, gave Parscale his “blessing” to
5 head AF Policies;³⁰ (4) that consultants, including Parscale and Corey Lewandowski, Trump’s
6 former 2016 campaign manager, worked for both the Trump Committee and AF Policies or AF
7 Action;³¹ (5) that AF Policies and AF Action staff regularly communicated with Trump and his
8 campaign based on a media report of a number of individuals including Parscale and
9 Lewandowski meeting with White House staff regarding the 2018 mid-term elections;³² and (6)
10 the Trump Committee’s statement that AF Action is its “one approved outside non-campaign
11 group.”³³

12 The Commission possesses information about the membership of AF Policies’ Board of
13 Directors from two months after its founding. Only one of the reported “founders” of AF
14 Policies actually held a position on the Board of Directors: Nicholas Ayers, a campaign advisor
15 to Pence who stepped down from his board position at AF Policies when he became Pence’s
16 chief of staff on July 28, 2017.³⁴ The Commission also possesses information that the first and

²⁸ MUR 7340 Compl. ¶ 88.

²⁹ *Id.* ¶ 90; *see supra* n.13.

³⁰ *Id.* ¶ 89.

³¹ *Id.* ¶¶ 23, 90, 93.

³² *Id.* ¶ 94.

³³ MUR 7340 Supp. Compl. at 3.

³⁴ *See* Vice President Pence (@VP), TWITTER (July 28, 2017 11:37 AM), <https://twitter.com/VP/status/891004622420287489> (“Congrats to @Nick_Ayers for being sworn-in as my Chief of Staff. Excited to welcome you & great having your family at @WhiteHouse today.”).

only president of AF Policies and AF Action, Brian O. Walsh, has never held any role with the Trump campaign or administration.

Information further indicates that the corporate bylaws of both AF Policies and AF Action give no authority to Trump or his campaign to direct or participate in the governance of the entities and that the authority to “hire, appoint, demote, or otherwise control the officers or other decision-making employees” of AF Policies and AF Action resides with Walsh and the Board of Directors.

The Act prohibits federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”³⁵ This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002, was designed to “plug the soft-money loophole.”³⁶

To determine whether a candidate or his or her agent “directly or indirectly establishes, finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R. § 300.2(c)(2), including: (1) whether the candidate or his agent has the authority to “direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures”;³⁷ (2) whether the candidate or his agent has “the authority or ability to hire,

³⁵ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

³⁶ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

³⁷ 11 C.F.R. § 300.2(c)(2)(ii).

1 appoint, demote, or otherwise control the officers, or other decision-making employees or
 2 members of the entity”;³⁸ (3) whether former or present “overlapping officers or employees”
 3 indicate “a formal or ongoing relationship” between the candidate or his agent and the entity;³⁹
 4 (4) whether directly or through its agent, the candidate had an “active or significant role in the
 5 formation of the entity”;⁴⁰ as well as any other relevant factors, in the context of the overall
 6 relationship between the federal candidate or officeholder, or his agent, and the entity.⁴¹

7 An “agent” of a federal candidate or officeholder is “any person who has actual authority,
 8 either express or implied,” “to solicit, receive, direct, transfer, or spend funds in connection with
 9 any election.”⁴² The Commission has explained that the purpose of adopting the “actual
 10 authority standard” was to “preserve an individual’s ability to raise funds for multiple
 11 organizations.”⁴³

12 The establishment of AF Policies was allegedly effected by a group of “founders” who
 13 previously held high-ranking positions with the 2016 Trump campaign.⁴⁴ However, the
 14 available information is insufficient to support a reasonable inference that any of these
 15 individuals was acting at the direction of Trump or the Trump Committee when they reportedly
 16 formed AF Policies in January 2017. Parscale was the only one of the reported founders on the

³⁸ *Id.* § 300.2(c)(2)(iii).

³⁹ *Id.* § 300.2(c)(2)(v), (vi).

⁴⁰ *Id.* § 300.2(c)(2)(ix).

⁴¹ *Id.* § 300.2(c)(2); *see* Advisory Op. 2006-04 (Tancredo) at 3.

⁴² 11 C.F.R. § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of ‘Agent’ for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,975-76 (Jan. 31, 2006) (“Agent E&J”); Advisory Op. 2007-05 (Iverson) at 3.

⁴³ Agent E&J, 71 Fed. Reg. at 4,979, n.9.

⁴⁴ *See supra* n.13.

1 payroll of the Trump Committee around the time that AF Policies was formed. His last
2 paycheck was dated four days after the founding of AF Policies but appears to be for a partial
3 pay period as it is about half of the amount he was paid bi-weekly for the prior bi-weekly
4 periods.⁴⁵ Thus, it appears his personal employment by the Committee ended just prior to the
5 formation of AF Policies. Even if Parscale was employed by the Trump Committee at the time
6 of the founding of AF Policies, his role was Digital and Data Director and there is not sufficient
7 evidence to conclude that he had become an agent by virtue of, for instance, soliciting
8 contributions on behalf of the Trump Committee.⁴⁶

9 As for AF Action, it was formed by Walsh, who is not alleged to be an agent of Trump or
10 the Trump Committee. One of AF Action's original board members, Ayers, worked on the 2016
11 Trump campaign, but the available information does not support the claim that he was an agent
12 of Trump or the Trump Committee in April 2017 when AF Action was established.

13 As noted above, the Trump Committee and AF Policies and AF Action have several
14 overlapping current and former employees and vendors. Parscale, whose company was retained
15 by all three entities, was employed in high-ranking positions by both the 2016 and 2020 Trump
16 campaigns and was a reported founder of AF Policies. Lewandowski has also held positions
17 with both the Trump Committee in 2016, as campaign manager, and with AF Policies and AF
18 Action, as a consultant. A number of other individuals including Ayers also had roles with the

⁴⁵ See Donald J. Trump for President, Inc., Spending Summary, by recipient, <https://www.fec.gov/data/committee/C00580100/?tab=spending&cycle=2016>. Thereafter, Parscale's firm continued to receive disbursements from the Trump Committee. *Id.*

⁴⁶ The MUR 7340 Complaint's suggestion that Trump established AF Policies by hiring Parscale to lead it, via Jared Kushner's "blessing" is conclusory and unsupported. See MUR 7340 Compl. ¶ 15. See Agent E&J, 71 Fed. Reg. at 4,978, n.6 ("Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.").

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Trump Committee in 2016 and were allegedly founders of AF Policies. But as the Commission has stated previously, “more than the mere fact of such informal, ongoing relationships between the personnel of the potentially sponsoring and potentially sponsored entity is necessary to support a conclusion of ‘establishment, financing, maintenance or control.’”⁴⁷ Instead, to establish a violation based on overlapping employees and officers, the overlap must “indicate[] formal or ongoing relationship.”⁴⁸ The information indicating that Ayers left his position at AF Policies when he joined the administration indicates the end of a formal relationship with an overlapping employee. AF Policies’ and AF Action’s decision to terminate the contract of Parscale’s firm when he was named Trump’s 2020 campaign manager further undermines the existence of a formal relationship by not retaining, even as a vendor, an employee of the Trump Committee.

Moreover, “while former employers and colleagues may exercise influence, influence is not necessarily control.”⁴⁹ Here, formal control under the bylaws of AF Policies and AF Action, including the authority to “hire, appoint, demote, or otherwise control the officers or other decision-making employees,” rests with the Board of Directors and the president of the organization,⁵⁰ and there is no information indicating that hiring did not occur in accordance with this stated process.

⁴⁷ Factual & Legal Analysis (“F&LA”) at 8, MUR 6280 (Howard L. Berman).

⁴⁸ 11 C.F.R. § 300.2(c)(2)(v).

⁴⁹ F&LA at 8, MUR 6280.

⁵⁰ See *supra* n.51; F&LA at 4, MUR 7070 (Congressional Leadership Fund, *et al.*) (“However, the quoted statement that ‘Fink was personally approached by House Speaker Paul Ryan to take the job’ does not, by itself, support a reasonable inference that Ryan had the ‘authority or ability to hire’ Fink under section 300.2(c)(2)(iii).”); cf. Advisory Op. 2003-12 (Flake) (concluding that a candidate “established” an entity for purposes of 11 C.F.R. § 300.2(c)(2) on the basis that the candidate was among the individuals who formed the committee and signed its organizational documents, he served as its chairman, and his part-time campaign consultant aided the committee with its state filings and bank accounts).

Finally, Complainants note in the MUR 7340 Supplemental Complaint that the allegation that Trump and the Trump Committee violated the soft money prohibition of the Act by establishing, financing, maintaining, or controlling AF Policies and AF Action is supported by the additional evidence that the Trump Committee made a public statement regarding fundraising, stating that AF Action is the only “approved outside non-campaign group.”⁵¹ This statement and the attending circumstances do not appear to establish that the AF Action was EFMC’d by Trump or the Trump Committee.⁵²

In short, the available information is insufficient to give rise to a reasonable inference that AF Policies or AF Action was established, financed, maintained, or controlled by Trump or the Trump Committee. Accordingly, the Commission dismisses these allegations that the Trump Committee violated 52 U.S.C. § 30125.

B. The Commission Dismisses the Allegation that the Trump Committee, Through Brad Parscale, Violated 52 U.S.C. § 30125 by Raising Soft Money for AF Policies or AF Action

The MUR 7340 Complaint alleges, “[b]ased on published reports,” that Parscale solicited soft money for AF Policies and AF Action as an agent of Trump or the Trump Committee.⁵³ While the Act restricts the ability of federal candidates and officeholders to raise non-federal funds, “[it] does not prohibit individuals who are agents of the foregoing from also raising non-

⁵¹ MUR 7340 Supp. Compl. at 1-4.

⁵² Among the EFMC factors set forth in the Commission’s regulations is that a candidate or officeholder “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity.” 11 C.F.R. § 300.2(c)(2)(viii). In the present matter, AF Action disclosed the receipt of contributions totaling \$2.7 million in the month before the Trump Committee statement and \$1.3 million in the month after the statement. *See* AF Action 2019 Mid-Year Report (July 31, 2019).

⁵³ MUR 7340 Compl. ¶ 111; *see also id.* ¶¶ 33, 37 (detailing reported disbursements to Parscale’s company for “digital fundraising consulting,” among other purposes).

federal funds for other political parties or outside groups.”⁵⁴ The Commission has also observed that individuals who are dual agents of both a candidate and a non-candidate committee must solicit non-federal funds for the non-candidate committee “on their own” and “‘not at the request or suggestion’ of federal candidates.”⁵⁵

The Commission has no indication that Parscale was an agent of the Trump Committee. The record does not support a reasonable inference that Parscale solicited funds for either AF Policies or AF Action. Accordingly, because the available information fails to give rise to a reasonable inference that a violation has occurred, the Commission dismisses these allegations that the Trump Committee violated 52 U.S.C. § 30125.

C. The Commission Dismisses the Allegation that the Trump Committee Violated the Act by Receiving Unreported Contributions in the Form of Coordinated Expenditures

The MUR 7340 Complaint asserts that AF Policies conducted polls on voter perceptions of Trump and his policies in coordination with the Trump Committee, resulting in an unreported and excessive in-kind contribution to the Committee.⁵⁶ The Complaint bases its allegation on the following facts: (1) the Trump Committee reported no disbursements for polling during the relevant period, and the RNC’s reported polling expenses decreased relative to prior years during the relevant period;⁵⁷ (2) AF Policies used a polling firm owned by presidential advisor

⁵⁴ Agent E&J, 71 Fed. Reg. at 4,979.

⁵⁵ Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7-8 (“AO 2015-09”) (approving request to allow agents of a candidate to solicit non-federal funds for other committees where the agents: (1) solicited funds “on their own” and “‘not at the request or suggestion’ of federal candidates”; (2) solicited contributions identifying themselves as raising funds only for the non-candidate committee; (3) would not “use their campaign titles or campaign resources (such as letterhead and email)”; (4) would inform potential contributors that they are “making the solicitation on [their] own and not at the direction of [the federal candidates] or their agents”; and (5) “would not solicit contributions for the candidates and for [the non-candidate committees] at the same time”).

⁵⁶ MUR 7340 Compl. ¶¶ 137-145.

⁵⁷ *Id.* ¶¶ 49-50, 144.

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Kellyanne Conway;⁵⁸ (3) AF Policies consultants Parscale and Lewandowski reportedly attended a meeting at the White House to discuss the 2018 mid-term elections;⁵⁹ and (4) AF Policies posted the polling results at a relatively obscure link on its website and took the results down after reporters inquired about the polls.⁶⁰

The Trump Committee denies any coordination. Parscale and Lewandowski may have attended the reported meeting at the White House, but information available to the Commission indicates that their attendance may not have been at the direction of AF Policies and that no officer or director of AF Policies was at the meeting. Moreover, there is no available information indicating that the polling conducted by AF Policies was discussed.

Under the Commission's regulations, any expenditures that are made in cooperation, consultation or in concert with, or at the request or suggestion of a candidate or a candidate's authorized committee, but that are not coordinated communications, party coordinated communications, or coordinated party expenditures, are in-kind contributions to the candidate and must be reported as an expenditure by that candidate.⁶¹

The available information is not sufficient to support the conclusion that AF Policies and the Trump campaign coordinated in connection with the polling as alleged in the MUR 7340 Complaint. Specifically, the available information is insufficient to demonstrate that AF Policies

⁵⁸ *Id.* ¶ 46. Conway reportedly sold the polling firm approximately two months after AF Policies began using it. *Id.*

⁵⁹ *Id.* ¶ 139.

⁶⁰ *Id.* ¶¶ 47-48.

⁶¹ 11 C.F.R. § 109.20(b); 52 U.S.C. § 30116(a)(7)(B); *see also* 11 C.F.R. § 106.4(b) (describing circumstances in which non-connected committee's purchase of poll results to make expenditures and candidate committee's subsequent acceptance of poll results is in-kind contribution to that candidate committee); *Campaign Guide for Nonconnected Committees* at 25, <https://www.fec.gov/resources/cms-content/documents/nongui.pdf> ("a committee makes an in-kind contribution when it: Pays for consulting, polling or printing services provided to a candidate committee").

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1 and the Trump campaign acted in cooperation, consultation, or in concert in conducting the
 2 polling. For example, though the MUR 7340 Complaint mentions the involvement of the
 3 company of Trump’s advisor, Conway, in the polling, it presents no allegation that Conway had
 4 any personal knowledge of or involvement in AF Policies’ polling activity. Nor is there enough
 5 information to conclude that AF Policies made an in-kind contribution to the Trump campaign
 6 by sharing the results of the polling. Although the MUR 7340 Complaint notes that the polling
 7 results were published online, it presents insufficient information to conclude that the Trump
 8 Committee accessed those results or that AF Policies communicated any information about the
 9 online information to the Trump Committee. In sum, when taken together, the available facts do
 10 not support a reasonable inference that there was coordination on the polling. Accordingly, the
 11 Commission dismisses the allegation that the Trump Committee violated 52 U.S.C. §§ 30116,
 12 30118, and 30104(b) by accepting and failing to report prohibited or excessive in-kind
 13 contributions.

14 **D. The Commission Dismisses the Allegation that the Trump Committee**
 15 **Violated 52 U.S.C. § 30125 by Soliciting Soft Money Via the Committee’s**
 16 **Statement Issued May 7, 2019**
 17

18 Finally, the MUR 7340 Supplemental Complaint and the MUR 7609 Complaint allege
 19 that a statement issued by the Trump Committee solicited soft money for or directed soft money
 20 contributions to AF Action in violation of section 30125(e) and 11 C.F.R. § 300.61.⁶²

21 The Act prohibits federal candidates and officeholders, their agents, and entities directly
 22 or indirectly established, financed, maintained, or controlled by or acting on behalf of federal
 23 candidates and officeholders, from soliciting funds in connection with a federal election “unless

⁶² MUR 7340 Supp. Compl.; MUR 7609 Compl.; *see* 52 U.S.C. § 30125(e); 11 C.F.R. 300.61.

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the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”⁶³

The Act limits contributions to non-authorized, non-party committees to \$5,000 in any calendar year.⁶⁴ Although an IEOPC may accept contributions from corporations and individuals without regard to that \$5,000 limitation,⁶⁵ federal officeholders and candidates may only solicit up to \$5,000 from permissible sources on behalf of such a committee.⁶⁶

Through regulation, the Commission has defined “to solicit” broadly to mean “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”⁶⁷ The regulation further provides that a “solicitation” is “an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution” and “may be made directly or indirectly” but “does not include mere statements of political support.”⁶⁸

In 2006, the Commission revised the definition of “to solicit” following a decision by the United States Court of Appeals for the District of Columbia Circuit in *Shays v. FEC* holding that

⁶³ See 52 U.S.C. § 30125(e)(1)(A); see also 11 C.F.R. §§ 300.60, 300.61.

⁶⁴ 52 U.S.C. § 30116(a)(1)(C).

⁶⁵ See *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals’ contributions to political committees that only make independent expenditures); Advisory Op. 2010-11 (Common Sense Ten) (“AO 2010-11”) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

⁶⁶ See Advisory Op. 2011-12 (Majority PAC) at 3 (“AO 2011-12”) (determining that solicitation restrictions under 52 U.S.C. § 30125(e)(1)(A) remain applicable to contributions solicited by federal candidates, officeholders, and other covered persons); Conciliation Agreement ¶¶ 7, 8, MUR 7048 (Cruz for President) (“CA”) (same); F&LA at 11, MURs 6563 and 6733 (Rep. Aaron Schock).

⁶⁷ 11 C.F.R. § 300.2(m); see also Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

⁶⁸ 11 C.F.R. § 300.2(m); see also Solicitation E&J, 71 Fed. Reg. at 13,928 (Mar. 20, 2006).

1 the Commission’s former regulation, promulgated in 2002, was too narrow and failed to include
 2 “implicit requests for money.”⁶⁹ In promulgating the revised definition, the Commission
 3 explained that the revision is broad in order to “ensure[] that candidates and parties may not,
 4 implicitly and indirectly, raise unregulated funds for either themselves, or subject to statutory
 5 exceptions, ‘friendly outsiders.’”⁷⁰ The Commission further stated: “By covering implicit and
 6 indirect requests and recommendations, the new definition forecloses parties and candidates
 7 from using circumlocutions ‘that make their intentions clear without overtly “asking” for
 8 money’” and “also squarely addresses the central concern of the Court of Appeals in *Shays* that
 9 ‘indirect’ as well as ‘direct’” requests for funds or anything of value must be covered.”⁷¹

10 The standard for determining whether a communication is a solicitation is objective and
 11 does not turn on the subjective interpretations of the person making the communication or its
 12 recipients.⁷² This objective standard “hinges on whether the recipient should have reasonably
 13 understood that a solicitation was made.”⁷³ The Commission has explained the that “[t]he
 14 context of a communication is often important because words that would not, by their literal
 15 meaning, convey a solicitation, may in some contexts be reasonably understood as one.”⁷⁴
 16 Conversely, “words that would by their plain meaning normally be understood as a solicitation,

⁶⁹ Solicitation E&J, 71 Fed. Reg. at 13,927 (quoting *Shays v. FEC*, 414 F.3d 76, 104-06 (D.C. Cir. 2005)).

⁷⁰ *Id.* at 13,928 (quoting *Shays*, 414 F.3d at 106).

⁷¹ *Id.*

⁷² 11 C.F.R. § 300.2(m); *see also* Solicitation E&J, 71 Fed. Reg. at 13,928.

⁷³ Solicitation E&J, 71 Fed. Reg. at 13,929.

⁷⁴ Solicitation E&J at 13,929. For instance, it is not a solicitation for a candidate to simply state: “Joe, X is a very worthy organization. It has always been very helpful to me.” *Id.* On the other hand, context could render the same statement by the candidate a solicitation. For example, if Joe is introduced to the candidate by a fundraiser for the organization saying: “I’ve been trying to persuade Joe to commit to giving X another \$50,000. Wouldn’t that be great, Senator?”, then, because of the context, the same words would be reasonably understood as a solicitation. *Id.*

may not be a solicitation when considered in context, such as when the words are used as part of a joke or parody.”⁷⁵

The Trump Committee’s one-page “Statement on Dishonest Fundraising Groups” “condemns any organization that deceptively uses the President’s name, likeness, trademarks or branding and confuses voters.”⁷⁶ The Statement continues, stating that “[t]here is no excuse for any group, including ones run by people who claim to be part of our ‘coalition,’ to suggest they directly support President Trump’s re-election or any other candidates, when in fact their actions show they are interested in filling their own pockets”⁷⁷

The Trump Committee then identifies the “only four official fundraising organizations authorized by President Trump and the RNC,” the Trump Committee itself, the RNC and two joint fundraising committees, as well as “one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump’s policies and agendas.”⁷⁸

The warning against “organization[s] that deceptively use[] the President’s name” to fundraise declares the precise reason why the statement is made and clarifies the context in which the later parts of the Trump Committee statement must be read. In this context, where the statement expressly frames itself to be about “Dishonest Fundraising Groups,” AF Action is identified as the “one approved outside non-campaign group” and as a means to distinguish it

⁷⁵ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publ’ns*, 953 F.2d 724, 727 (1st Cir. 1992) (providing as an example the point that no reasonable listener would understand a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” to be accusing the producer of the actual crime of robbery)); see F&LA, MUR 6939 (Mike Huckabee, et al.); F&LA, MUR 7135 (Donald Trump for President Inc., et al.).

⁷⁶ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁷⁷ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

1 from “scam groups” that could be involved in potential illegal activity and are only interested in
2 “filling [the groups’] own pockets”.

3 The Trump Committee asserts that it “provid[ed] the identity of an appropriate recipient,
4 without any attempt to motivate another person to contribute or donate funds” and that such a
5 statement does not constitute a “solicitation” or “direction” under the Act.⁷⁹ Indeed, the
6 objective and unambiguous reading of the Trump Committee statement encourages authorities to
7 investigate the alleged scam groups for potential illegal activities as they are only “interested in
8 filling their own pockets with money from innocent Americans’ paychecks, and sadly
9 retirements.” Then it lists the four “authorized” groups and one outside “approved” group so as
10 to distinguish “scam groups” from legitimate groups. Applying the Commission’s objective test,
11 and considering the context in which it is made, the statement does not, at any time, ask, request,
12 or recommend, explicitly or implicitly, that another person make a contribution, donation,
13 transfer of funds, or otherwise provide anything of value. As such, the Trump Committee’s
14 statement is not a solicitation. Accordingly, the Commission dismisses the allegation that the
15 Trump Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61 by soliciting soft
16 money contributions to AF Action.

⁷⁸ MUR 7340 Supp. Compl. at 2; MUR 7609 Compl. at 3.

⁷⁹ MUR 7340 Trump Committee Supp. Resp. at 1 (quoting Solicitation E&J at 13,933).