FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

December 16, 2021

Neil Reiff and David Mitrani
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RE: MUR 7639
Ilhan for Congress, *et al.*

Dear Mr. Reiff and Mr. Mitrani:

On August 29, 2019, the Federal Election Commission notified your clients Ilhan for Congress and Kate Wittenstein in her official capacity as treasurer (the "Committee"), Congresswoman Ilhan Omar, E Street Group, LLC, and Tim Mynett of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Upon further review of the allegations contained in the complaint and information provided by your clients, the Commission, on December 2, 2021, found no reason to believe that the Committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) and 11 C.F.R. § 104.3(b)(4)(i), (vi) by improperly reporting payee information; dismissed the allegation that the Committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) and 11 C.F.R. § 104.3(b)(4)(i), (vi) by reporting improper disbursement purposes; and directed the Committee to work with the Reports Analysis Division to amend its disbursement purpose reporting as needed. The Commission also found no reason to believe that the Committee, Congresswoman Ilhan Omar, E Street Group, LLC, and Tim Mynett violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days pursuant to the Commission's disclosure policy. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). As previously stated in the letter sent to you on December 4, 2019, that policy provides for the disclosure of "[a]ttachments to complaints and attachments to responses to complaints" at the conclusion of a matter, as well as the "disclosure of certain documents created by the Commission in the course of the matter, such as General Counsel's Reports and Briefs, and Factual and Legal Analyses, that might or might not contain information from the response or attachments thereto." Letter from Jeff Jordan, Assistant Gen. Counsel, FEC, to David Mitrani, Esq. (Dec. 4, 2019). That said, all documents

related to the case "are carefully reviewed and appropriately redacted prior to public release," *id.*, and the Office of General Counsel's Administrative Law Team, which conducts the review, has been made aware of your concerns regarding the release of certain information.

If you have any questions, please contact Laura Conley, the attorney assigned to this matter, at (202) 694-1475 or lconley@fec.gov.

Sincerely,

Saurav Ghosh

Saurav Ghosh
Acting Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondents: Ilhan for Congress and Kate Wittenstein in her official capacity as treasurer
Representative Ilhan Omar
E Street Group, LLC
Tim Mynett

MUR 7639

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by the National Legal and Policy Center, alleging that Representative Ilhan Omar's principal campaign committee, Ilhan for Congress and Kate Wittenstein in her official capacity as treasurer (the "Committee"), knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to properly report disbursements the Committee reported making to a political consulting firm, E Street Group, LLC ("E Street Group").[1] It alleges that the Committee did not properly report payee information for certain disbursements and reported an improper purpose for one disbursement.[2] The Complaint also alleges that Omar and the Committee may have converted campaign funds to personal use by paying for travel for an E Street Group partner, Tim Mynett, to facilitate an alleged affair between him and Omar.[3] Mynett and Omar married in March 2020.[4]

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[1] Compl. at 2-3 (Aug. 28, 2019); Am. Compl. at 1-3 (Oct. 18, 2019).

[2] Compl. at 2; Am. Compl. at 1-3.

[3] Compl. at 2; Am. Compl. at 2.

[4] Ilhan Omar (@Ilhanmn), INSTAGRAM, https://www.instagram.com/p/B9nW-g3jhsA/ (Mar. 11, 2020); *see also* Phil Helsel, *'Got Married!' Rep. Ilhan Omar Says in Announcing Wedding to Political Consultant*, NBC NEWS, Mar. 11, 2020, https://www.nbcnews.com/politics/politics-news/got-married-u-s-rep-ilhan-omar-says-announcing-wedding-n1156221.

Omar, the Committee, Mynett, and E Street Group (collectively "Respondents") deny that they violated the Act or Commission regulations.[5] They state, however, that in the course of responding to the Complaint, they identified inconsistencies between disbursement purposes the Committee reported to the Commission and the purposes of the underlying expenses, all of which were payments to E Street Group. Respondents offer to amend the Committee's reports.[6]

For the reasons set forth below, the Commission finds no reason to believe that the Committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) and 11 C.F.R. § 104.3(b)(4)(i), (vi) by improperly reporting payee information. The Commission dismisses the allegation that the Committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) and 11 C.F.R. § 104.3(b)(4)(i), (vi) by reporting improper disbursement purposes but directs the Committee to work with the Reports Analysis Division ("RAD") to amend its purpose reporting, as described below. Finally, the Commission finds no reason to believe that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.

II. FACTUAL BACKGROUND

Omar was elected in 2018 to be the U.S. Representative for Minnesota's Fifth District. During her campaign, the Committee contracted with E Street Group, a consulting firm led by Mynett and another partner, Will Hailer.[7] E Street Group's role initially was to provide strategic

[5] Resp. at 1-2 (Oct. 16, 2019); Supp. Resp. at 1-2 (Dec. 12, 2019).

[6] Supp. Resp. at Prefatory Email (Email from David Mitrani, Counsel for Respondents, to Kathryn Ross, FEC, *et al.*).

[7] Supp. Resp. at 3; *id.*, Attach. A at 1-6 (fundraising agreement between Committee and E Street Group beginning June 11, 2018) ("Initial Fundraising Agreement").

guidance, manage campaign consultants, and secure new national funding sources.[8] In August 2018, E Street Group took on additional responsibilities that apparently continue today.[9] As relevant to the instant matter, these additional responsibilities include managing "all aspects of the candidate's national travel and outreach as it pertains to fundraising."[10]

The Committee reported disbursing $369,551.02 to E Street Group between August 9, 2018, and September 30, 2019, the period implicated by the Complaint.[11] The Committee also reported a single July 11, 2018, payment made directly to Mynett.[12] The Committee's reported disbursements to E Street Group included expense reimbursements as well as fees that were set by contract at between $7,000-$12,000 per month for general fundraising and $5,000 per month for digital fundraising.[13]

A. Itemization of Travel Reimbursements

The Complaint focuses on ten disbursements (totaling $24,718.22) that the Committee reported making to E Street Group between April 1, 2019, and September 30, 2019.[14] As

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[8] Initial Fundraising Agreement at 2.

[9] Supp. Resp., Attach. A at 7-13 (fundraising agreement between Committee and E Street Group beginning Sept. 1, 2018) ("Current Fundraising Agreement").

[10] Current Fundraising Agreement at 2. In April 2019, the relationship was again expanded, this time to include digital fundraising assistance. Supp. Resp., Attach. A at 14-20 ("Digital Fundraising Agreement").

[11] Compl. at 2 (summarizing Committee disbursement data reported to the Commission); Am. Compl. at 2 (Oct. 16, 2019) (same).

[12] Compl. at 2; *Id.*, Ex. B (showing reported $7,000 disbursement for "fundraising consulting"); Am. Compl. at 1.

[13] Compl., Ex. A (listing disbursement data reported to the Commission); Am. Compl., Ex. A (same); Initial Fundraising Agreement at 2 (setting partial month fee at $7,000 and monthly fee at $10,000 beginning June 11, 2018); Current Fundraising Agreement at 2 (setting monthly fee at $12,000 beginning Sept. 2018); Digital Fundraising Agreement at 2 (setting monthly fee at $5,000 between Apr. 1, 2019, and Dec. 31, 2020).

[14] Compl., Ex. C (listing eight disbursements for "travel expenses" from Apr. 1, 2019 – June 11, 2019); Am. Compl., Ex. A at 4, 7 (listing additional disbursement for "travel expenses" and disbursement for "travel and fundraising expenses").

reflected in the below chart, the Committee reported the purpose of these transactions as either "travel expenses" or, in one case, "travel and fundraising expenses."[15] For each disbursement, the Committee reported E Street Group as the payee and did not provide further detail on how the funds were spent. The reports did not include, for example, the names of the subvendors (airlines, hotels, etc.) to which the funds were ultimately paid.[16]

Date of Disbursement	Payee	Disbursement Purpose	Amount
04/01/2019	E Street Group LLC	Travel Expenses	$2,364.45
04/03/2019	E Street Group LLC	Travel Expenses	$6,509.06
04/22/2019	E Street Group LLC	Travel Expenses	$2,618.78
05/06/2019	E Street Group LLC	Travel Expenses	$2,553.76
05/16/2019	E Street Group LLC	Travel Expenses	$1,800.60
05/22/2019	E Street Group LLC	Travel Expenses	$2,876.02
06/05/2019	E Street Group LLC	Travel Expenses	$2,760.60
06/11/2019	E Street Group LLC	Travel Expenses	$63.67
08/01/2019	E Street Group LLC	Travel and Fundraising Expenses	$2,823.01
09/30/2019	E Street Group LLC	Travel Expenses	$348.27

The Complaint argues that this reporting was deficient in two ways. First, it asserts that the Committee was required to report the payee as Tim Mynett, not as E Street Group, for any travel reimbursement it made to him that exceeded $500.[17] Second, it argues that for any such reimbursement, the Committee also had to provide memo entries with additional information identifying vendors who received an aggregate of more than $200 of the reimbursed funds.[18] Respondents do not deny that Mynett traveled for the Committee, but they argue that the payee

[15] Compl., Ex. C; Am. Compl., Ex. A at 4, 7.

[16] Compl., Ex. C; Am. Compl., Ex. A at 4, 7; Compl. at 2 (stating that the Committee failed to provide travel vendor information); Am. Compl. at 2 (same).

[17] Compl. at 2; Am. Compl. at 1-2.

[18] Compl. at 2; Am. Compl. at 1 (asserting that memo entries must include the vendor's name and address, along with the date, amount, and purpose of the payment).

reporting was proper and that the Complaint erroneously relies on regulations that do not apply to commercial vendors like E Street Group.[19]

B. Purposes of Disbursements

The Amended Complaint alleges one additional reporting violation: that the Committee reported an improper purpose of "travel and fundraising expenses" for the $2,823.01 disbursement it made to E Street Group in August 2019.[20] The Amended Complaint argues that a disbursement may be for travel or fundraising expenses, but not for both.[21] The current record contains no further information on how the funds were spent.

Respondents do not address this specific transaction, but they acknowledge that, while preparing materials for a response in this matter, they "discovered that certain items in the underlying transactions did not match the description reported on the overall payment to E Street Group."[22] Respondents provided a detailed breakdown of the transactions covered by each disbursement the Committee reported making to E Street Group between August 21, 2018, and June 11, 2019.[23] The document identifies the reported purpose of each disbursement and provides separate "Memo/Description" and subvendor information for each underlying expense.[24] Respondents did not indicate which of the underlying transactions they identified as not matching the reported descriptions, but there are five transactions for which Respondents'

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19 Supp. Resp. at 4-6.

20 Am. Compl. at 2-3.

21 *Id.* at 3.

22 Supp. Resp. at Prefatory Email.

23 Supp. Resp., Attach. C (Dec. 12, 2019).

24 For example, the document shows that the Committee disbursed $2,618.78 to E Street Group on April 22, 2019, for "travel expenses." This payment reimbursed five "fundraising travel expenses" incurred from payments to American Airlines, Delta Airlines, Hertz Car Rental, AirBnB, and JW Marriot. *Id.* at 7.

"Memo/Description" column entry may be inconsistent with the purpose of the disbursement that the Committee reported.[25] The Committee offered to amend its reports, if requested.[26]

C. Personal Use

The Complaint's final allegation is that Respondents converted campaign funds to personal use.[27] In August 2019, Mr. Mynett's then-wife, Beth Mynett, filed for divorce and custody, alleging that her husband ended their marriage because he was romantically involved with Omar.[28] Ms. Mynett alleged that Mr. Mynett disclosed the relationship to her on or about April 7, 2019.[29] The Complaint states that the Committee began reimbursing Mynett's travel that same month, even though he had worked for the Committee since mid-2018.[30] Ms. Mynett claimed her husband traveled an average of twelve days per month, and that, in hindsight, it appeared to her that his trips were "more related to his affair" than to "actual work commitments."[31]

Based on the timing of the travel reimbursements, the alleged admission of an affair, and Ms. Mynett's assessment of the purposes of Mr. Mynett's trips, the Complaint concludes that his travel "may have been unrelated, or only partially related, to Omar's campaign."[32] The

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[25] *See id.* at 6-9.

[26] Supp. Resp. at Prefatory Email.

[27] Compl. at 2; Am. Compl. at 2.

[28] Compl., Ex. D ¶ 5 (Complaint for Legal Separation, Custody, Child Support, Equitable Distribution of Property, and Other Related Relief).

[29] *Id.*

[30] Compl. at 2.

[31] Compl., Ex. D ¶ 9.

[32] Compl. at 2; *see also* Am. Compl. at 2.

Complaint asserts that if Mynett accompanied Omar so she would "have the benefit of Mynett's romantic companionship," such reimbursement of his travel expenses was personal use.[33] The Complaint does not, however, identify which particular travel may have been improperly reimbursed by the Committee.[34]

Mynett, who married Omar in March 2020,[35] has denied "any allegation which characterizes his work-related travel as being related to the furtherance of a relationship with Rep. Omar."[36] In the divorce and custody proceeding, Mynett asserted that his travel increased in the summer and fall of 2018 due to multiple work commitments, including assisting three candidates for the U.S. House of Representatives.[37] He stated that Ms. Mynett had engaged in a "negative campaign" against him in an attempt to secure a more favorable settlement.[38]

Respondents contend that all E Street Group travel reimbursed by the Committee "was directly related to services provided to the campaign."[39] They state that E Street Group, including Mynett, travels to solicit contributions for Omar's campaign, and that the campaign

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[33] Compl. at 2; Am. Compl. at 2.

[34] Although Respondents have submitted detailed transaction information for some of the travel expenses the Committee reimbursed, at this time the Commission does not have information showing who participated in the travel or whether it was undertaken to attend fundraising or other campaign events.

[35] Phil Helsel, *'Got Married!' Rep. Ilhan Omar Says in Announcing Wedding to Political Consultant*, NBC NEWS, Mar. 11, 2020, https://www.nbcnews.com/politics/politics-news/got-married-u-s-rep-ilhan-omar-says-announcing-wedding-n1156221.

[36] Answer to Complaint for Legal Separation, Custody, Child Support, Equitable Distribution of Property and Other Related Relief ¶ 9, *Mynett v. Mynett*, Case No. 2019 DRB 003033 (D.C. Super. Ct. Aug. 29, 2019).

[37] *Id.*

[38] Counterclaim for Legal Separation, Custody, and Other Relief ¶¶ 19-20, *Mynett v. Mynett*, Case No. 2019 DRB 003033 (D.C. Super. Ct. Aug. 29, 2019).

[39] Supp. Resp. at 1 (emphasis omitted).

reimburses the expenses pursuant to the parties' contracts.[40] To support their position, Respondents point to the fundraising agreements between the Committee and E Street Group, which they have submitted as exhibits.[41] The initial agreement provided that E Street Group would "[s]ecure new national funding sources" for the Committee and anticipated that the Committee would reimburse travel expenses incurred by E Street Group.[42] The follow-on agreement, which apparently remains in effect, states that E Street Group will "[m]anage all aspects of the candidate's national travel and outreach as it pertains to fundraising" and "personally staff each trip."[43] It provides that, when possible, the Committee will pay for E Street Group's "expenses to execute this agreement, including plane tickets, car rentals, hotels or other major expenses involved in national travel."[44]

Respondents also submit the declaration of Will Hailer — an E Street Group partner who, with Mr. Mynett, signed the contracts with the Committee — who states under penalty of perjury that the services E Street Group provided to the Committee "were and are unrelated to any personal purposes of the Congresswoman."[45] He avers that E Street Group has sought reimbursement for "travel expenses incurred while providing services to the campaign" and that such reimbursements "were not made for expenses incurred for non-campaign purposes."[46]

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40 *Id.* at 4.

41 Initial Fundraising Agreement; Current Fundraising Agreement; Digital Fundraising Agreement.

42 Initial Fundraising Agreement at 2-3.

43 Current Fundraising Agreement at 1.

44 *Id.* at 3.

45 Supp. Resp., Attach. B ¶ 4.

46 *Id.* ¶¶ 7-9.

III. LEGAL ANALYSIS

A. The Commission Finds No Reason to Believe that the Committee Failed to Properly Report Payee Information for E Street Group's Travel Expenses

The Complaint claims the Committee violated its reporting obligations by failing to report Mynett as the payee for travel reimbursements exceeding $500.[47] The Complaint also argues that the Committee should have provided memo entries listing the name and address of any vendor to whom Mynett paid more than $200, along with the date, amount, and purpose of such payment.[48] Although there are some circumstances in which this level of detailed reporting is required, it was not necessary here.

The Act and Commission regulations require authorized committees to report the name and address of each person to whom they make expenditures or other disbursements that aggregate more than $200 per election cycle, as well as the date, amount, and purpose of each disbursement.[49] Although neither the Act nor Commission regulations expressly address reporting of ultimate payees such as subvendors, subcontractors, or vendor employees, the Complaint appears to reference an Interpretive Rule in which the Commission describes a committee's obligation to report "ultimate payees" in three specific circumstances: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) payments by candidates who use personal funds to pay committee expenses without reimbursement.[50]

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47 Compl. at 2; Am. Compl. at 1-2.

48 Compl. at 2; Am. Compl. at 1-2.

49 52 U.S.C. § 30104(b)(5)(A), 6(A); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9(a), (b).

50 Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (July 8, 2013) ("Ultimate Payee Interpretive Rule"); *see also* Compl. at 2.

Of the scenarios set out in the Interpretive Rule, only the first — reimbursements to individuals who advance personal funds — is potentially applicable here. This appears to be the portion of the rule relied on by the Complaint.[51] The Commission explained that it was interpreting the reporting requirements at 11 C.F.R. § 116.5, which addresses advances by committee staff and other individuals, to necessitate reporting the ultimate payee in some instances in which the committee reports a reimbursement payment to "an individual who is not acting as a vendor."[52] The Commission specified that if a committee reimburses such an individual for advancing personal funds greater than $500 for travel or subsistence expenses, the committee must provide a memo entry for each subvendor who received more than $200 from the individual or the committee in the relevant election cycle.[53]

That requirement does not apply here, however, for two reasons. First, there is no information suggesting that Mynett was individually reimbursed by the Committee, which is a prerequisite for this part of the Interpretive Rule to apply.[54] The Complaint asserts that the Committee reported reimbursing E Street Group rather than Mynett and appears to infer from this that the Committee incorrectly reported a payee.[55] That reasoning erroneously assumes what it purports to show, however, namely that Mynett was the actual recipient of the funds.

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[51] *See* Compl. at 2; Am. Compl. at 1.

[52] Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626.

[53] *Id.* (explaining that the memo entry must include "the name and address of the vendor, as well as the date, amount, and purpose of the payment").

[54] *Id.* The one payment the Complaint identifies as directly made to Mynett was for the reported purpose of "fundraising consulting" rather than expense reimbursement. Compl., Ex. B (showing reported $7,000 payment in July 2018); *see also* Compl. at 2 (alleging that "reimbursements for Mynett's travel did not commence until April 2019"). The Complaint does not allege, and the available information does not provide a basis for concluding, that this $7,000 payment was for expense reimbursement rather than the reported consulting purpose.

[55] Compl. at 2; Am. Compl. at 1-2.

Second, even if the Committee's reported reimbursement payments to E Street Group are construed as reimbursements to Mynett, the Interpretive Rule still would not apply because its scope is limited to individuals "not acting as a vendor."[56] Here, the Complaint identifies Mynett as a partner at E Street Group,[57] and the available information supports the conclusion that the expenses the Committee reported paying to E Street Group were for services, including travel, offered by E Street Group as a commercial vendor under a contract with the Committee.[58] Specifically, E Street Group contracted to "[m]anage all aspects of the candidate's national travel and outreach as it pertains to fundraising" and to "personally staff each trip," and the Committee agreed to either directly pay E Street Group's travel expenses or to reimburse them.[59] Although no available information suggests that Mynett was advancing his personal funds on E Street Group's or the Committee's behalf, or that E Street Group used any portion of payments it received from the Committee to reimburse Mynett for such an advance of his personal funds, such an advance would appear to be within E Street Group's performance of its contract as the Committee's vendor.[60]

In addition to providing guidance on the reporting of ultimate payees in the Interpretive Rule, the Commission has concluded that "merely reporting the immediate recipient of a

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[56] Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626. In fact, the Commission has made clear that the entirety of the Interpretive Rule does not cover "situations in which a vendor, acting as the committee's agent, purchases goods and services on the committee's behalf from subvendors." *Id.*; *compare* 11 C.F.R. § 116.3 (governing extensions of credit by commercial vendors), *with* 11 C.F.R. § 116.5 (governing advances by individuals "who are not acting as commercial vendors").

[57] Compl. at 2.

[58] *See* 11 C.F.R. § 116.1(c) (defining "commercial vendor" as "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services").

[59] Current Fundraising Agreement at 2-3.

[60] *See also infra*, Sec. III(C) (discussing personal use allegation).

committee's payment will not satisfy the requirements of section 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of funds."[61] Here, however, the Complaint does not allege that the Committee routed payments through E Street Group to hide the true provider of services to the Committee or the true recipient of funds, whether Mynett or any travel subvendors he used, and the available information does not support that conclusion. Instead, E Street Group appears to be a legitimate vendor that contracted with the Committee to provide fundraising and consulting services, including travel, and also engaged in fundraising consulting work for other committees.[62] As such, the Committee correctly reported E Street Group as the payee and was not required to report travel reimbursements to specific E Street Group employees or partners, like Mynett.

Accordingly, the Commission finds no reason to believe that the Committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) and 11 C.F.R. § 104.3(b)(4)(i), (vi) when it reported the payee information.

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[61] F&LA 8-9, 10-11 MUR 6724 (Bachmann for President, *et al.*) (finding reason to believe Bachmann's committee misreported payments to Iowa State Senator Sorenson, per agreement that Sorenson would be paid through an intermediary that simply added Sorenson's monthly payments to the monthly fees it was already collecting from the committee); *see also* 52 U.S.C. § 30104(b)(5) (specifying disbursement reporting requirements); Gen. Counsel's Brief at 33-37, MUR 3847 (Stockman) (available at https://www.fec.gov/files/legal/murs/3847.pdf at 1,416) (recommending probable cause to believe committee violated reporting requirements by obscuring payment to committee officials via reported payments to vendor that had no formal contract with the committee, worked largely for the committee out of the committee's headquarters, using its facilities, and whose principals held positions with the committee and held themselves out to the public as officials of the committee); Conciliation Agreement at 6-7, MUR 3847 (Stockman) (available at https://www.fec.gov/files/legal/murs/3847.pdf at 1,576); Conciliation Agreement at 2-4, MUR 4872 (Jenkins for Senate 1996, *et al.*) (conciliating reporting violation where vendor's only role in the transaction was "to serve as a conduit for payment . . . so as to conceal the transaction").

[62] Current Fundraising Agreement at 2-3; Disbursements to E Street Group, 2017-1018, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=e+street+group&two_year_transaction_period=2018 (showing disbursements to E Street Group by four committees).

B. The Committee May Have Reported Some Improper Purposes, but the Commission Dismisses the Complaint's Reporting Allegation and Directs the Committee to Amend Its Reports as Needed

The Complaint alleges one other reporting violation, which is limited to a single disbursement to E Street Group for "travel and fundraising expenses."[63] The Complaint contends this reported purpose was improper because the disbursement could be for either travel or fundraising, but not both.[64] Respondents do not address that specific reported purpose, and, as discussed below, it does not appear to be improper. But because the information Respondents provided indicates that some of the transactions included in the reported disbursements to E Street Group may not match the purposes the Committee reported, the Commission directs the Committee to amend its reports, as necessary.

As noted above, the Act and Commission regulations require authorized committees to report the purpose of each reported disbursement.[65] Commission regulations define "purpose" as a "brief statement or description of why the disbursement was made."[66] The Commission has determined that the description of purpose should be sufficient to allow "a person not associated with the committee [to] easily discern why the disbursement was made when reading the name of the recipient and the purpose."[67] Examples of sufficient statements of purpose include: dinner expenses, media, salary, travel expenses, and catering costs.[68] The Commission has also

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63 Am. Compl. at 2-3.

64 *Id.*

65 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a), (b).

66 11 C.F.R. § 104.3(b)(4)(i)(A).

67 Statement of Policy: "Purpose of Disbursement" Entries for Filings with the Commission, 72 Fed. Reg. 887, 888 (Jan. 9, 2007) ("Purpose Statement of Policy").

68 *Id.*

provided guidance that descriptions of purpose such as "Fundraising Consulting" and "Fundraising Expense" are sufficient for a disbursement to a consultant or vendor;[69] the sufficiency of the description is read in context with the name of the payee.[70]

The purpose highlighted by the Complaint, "fundraising and travel expenses," is not facially improper. Contrary to the Complaint's assertion, neither the Act nor Commission regulations bar committees from reporting multiple purposes for a single disbursement.[71] Here, the Committee combined two purposes that appear acceptable — fundraising expenses and travel expenses — and there is no information in the record indicating the descriptions are inaccurate.

However, five payments the Committee reported making to E Street Group include transactions that, based on the "Memo/Description" in the supplemental document Respondents provided, may differ from the reported purposes of the payments:

(1) a $500 payment for "Design – American Jewish World" that was included in an April 1, 2019, disbursement under the purpose "travel expenses";

(2) a $5,000 payment for "Digital consulting for the month of April" that was included in an April 3, 2019, disbursement under the purpose "travel expenses";

(3) a $15.40 payment for "Fundraising Travel Expenses" that was included in an April 22, 2019, disbursement under the purpose "internet advertising";

(4) a $12 payment for "Domain Purchase" that was included in a May 16, 2019, disbursement under the purpose "travel expenses"; and

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[69] *See* FEC, Purposes of Disbursement (last updated Aug 21, 2018), https://www fec.gov/help-candidates-and-committees/purposes-disbursement; Purpose Statement of Policy, 72 Fed. Reg. at 888 (indicating that additional guidance will be posted on the Commission's website).

[70] *See* Purpose Statement of Policy, 72 Fed. Reg. at 887 ("'purpose of disbursement' entries, when linked to information provided about the recipient of the payment, may provide sufficient disclosure"); *cf.* FEC Campaign Guide for Congressional Candidates and Committees at 103 (June 2014), https://www fec.gov/resources/cms-content/documents/candgui.pdf.

[71] Am. Compl. at 2-3. *See* F&LA at 2-5, MUR 6639 (Gary Johnson 2012, Inc.) (dismissing allegation of reporting violation when the Committee reported multiple purposes for disbursements).

(5) a $150 payment for "MRLF Anniversary Ad Creation" that was included in a May 22, 2019, disbursement under the purpose "travel expenses."[72]

More information is needed to determine whether these descriptions are, in fact, inaccurate. For example, the $150 reimbursement in the last item could properly be reported as a disbursement for "travel expenses" if the funds were used for travel done in connection with creating the MRLF Anniversary ad. If, however, the funds were used to pay for materials used to create the ad, the reported purpose of "travel expenses" would not be sufficient to allow a person not affiliated with the Committee to easily discern why the disbursement was made.[73]

Despite the limited information available about these disbursements, pursuing this potential violation of $5,677.40 in these circumstances does not justify the use of the Commission resources that would be needed.[74] Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegation that the Committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) and 11 C.F.R. § 104.3(b)(4)(i), (vi), and directs the Committee to work with RAD to amend its reports, if necessary, to reflect proper purposes.[75]

C. The Allegation of Personal Use Is Speculative and the Commission Finds No Reason to Believe Respondents Converted Funds to Personal Use

Finally, the Complaint alleges that Respondents may have converted campaign funds to personal use by reimbursing E Street Group for Mynett's travel.[76] The Complaint does not

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[72] Supp. Resp., Attach. C at 6-9.

[73] *See* Purpose Statement of Policy at 888.

[74] In MUR 6204, the Commission found reason to believe when the respondent disclosed inadequate or incorrect purposes for fifty disbursements totaling $215,261. F&LA at 3, MUR 6204 (Dallas County Republican Party). In contrast, in MUR 6638, the Commission dismissed an allegation that the respondent reported an incorrect purpose for two disbursements totaling $21,667. F&LA at 2-3, 5-6, MUR 6638 (Todd Long for Congress (2010)) (noting that the committee amended its reports following an RFAI and had since terminated).

[75] *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

[76] Compl. at 2; Am. Compl. at 2.

identify any particular travel that it has reason to believe was improper and instead relies on Ms. Mynett's belief that Mr. Mynett's alleged relationship with Omar was the reason for his travel in support of its personal use allegations.[77] Neither the Complainant nor the Respondents have commented on how Omar's recent marriage to Mynett may affect these allegations, as the marriage took place after their filings were received by the Commission.[78] The Respondents argued that the Complaint made "salacious claims" about Omar's personal life but did not directly address the issue of Omar and Mynett's romantic relationship.[79]

The Act and Commission regulations prohibit the conversion of campaign funds by any person to personal use, defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."[80] The Act and Commission regulations list certain uses of campaign funds that constitute *per se* conversion to personal use.[81] For other payments, the "Commission will determine, on a case-by-case basis, whether other uses" of campaign funds constitute personal use by applying the "irrespective test," that is, whether the payment fulfills a commitment, obligation, or expense that would exist irrespective of the candidate's campaign or duties as a federal officeholder.[82] Commission

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77 Compl. at 2.

78 *Omar Marries Political Consultant, Months After Affair Claim*, ASSOCIATED PRESS, Mar. 12, 2020, https://apnews.com/c1a31dbcc7adcf48667f799403873406 (stating that Omar and Mynett's marriage license is dated Mar. 11, 2020).

79 Supp. Resp. at 1-2.

80 11 C.F.R. § 113.1(g); *see* 52 U.S.C. § 30114(b).

81 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

82 11 C.F.R. § 113.1(g)(1)(ii).

regulations specify that travel expenses are evaluated on a case-by-case basis.[83] Such expenses are not personal use "[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities."[84] If a committee uses campaign funds to pay for travel with a mixed purpose, that is, travel that involves both personal and campaign activities, "the incremental expenses that result from the personal activities are personal use" unless the person(s) benefiting from the personal use reimburse(s) the committee within 30 days.[85]

Here, Respondents present a contract obligating E Street Group to "[m]anage all aspects of the candidate's national travel and outreach as it pertains to fundraising" and to "personally staff each trip."[86] They also provide Hailer's declaration, which asserts that E Street Group sought reimbursement for travel "incurred for campaign purposes, while providing services to the campaign."[87] Finally, the Response states that "all travel reimbursed was directly related to services provided to the campaign."[88] In contrast, the Complaint relies on Ms. Mynett's speculation about the reasons for Mr. Mynett's travel, and asserts that E Street Group began receiving travel reimbursements around the time Mr. Mynett allegedly disclosed an affair to his wife.[89] The detailed expense information submitted by Respondents shows, however, that

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83 11 C.F.R. § 113.1(g)(1)(ii)(C).

84 Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

85 11 C.F.R. § 113.1(g)(1)(ii)(C).

86 Current Fundraising Agreement at 2.

87 Supp. Resp., Attach. B ¶¶ 3-9.

88 Supp. Resp. at 1 (emphasis omitted).

89 Compl. at 2.

E Street Group began receiving travel reimbursements from the Committee well before that date.[90]

Given the lack of specific information suggesting that Mynett was reimbursed for personal travel, and E Street Group's contracts, which clearly anticipated that its employees would travel to assist the Committee, the available information does not provide reason to believe that the claimed personal use occurred.[91] Omar and Mynett's marriage, although indicative of an earlier personal relationship, does not change this conclusion. The Act does not bar payment or reimbursement of campaign-related expenses to family members, and Commission regulations provide that family members may be paid a salary by a campaign so long as they provide *bona fide* services and are not compensated above fair market value.[92] The Commission has not found a violation of the personal use prohibition for payments to family members for *bona fide* campaign travel or services absent information that the payments were for amounts in excess of the fair market value of the services provided to the campaign.[93] The

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[90] *Compare* Supp. Resp., Attach. C at 1 (showing reimbursement for $1,655.73 of fundraising travel expenses as early as Aug. 21, 2018) *and* Ilhan for Congress, Am. Oct. 2018 Quarterly Rpt. at 388 (listing "fundraising expenses" as purpose for disbursement matching that amount), *with* Compl. at 2 (alleging Mynett revealed an affair and began receiving travel reimbursements in Apr. 2019).

[91] In MUR 6510 (Kirk for Senate, *et al.*), the Commission found no reason to believe a personal use violation had occurred when a committee hired a vendor who then subcontracted with the company of the candidate's alleged girlfriend, Dorothy McCracken. F&LA at 1-2, 9, MUR 6510 (Kirk for Senate, *et al*.). The complaint alleged McCracken did not provide *bona fide* services at fair market value, but respondents submitted sworn and notarized responses attesting to her credentials and work for the committee. *Id.* at 9. The Commission noted that the complaint's assertions were based "primarily on the [c]omplainant's assessment of McCracken's credentials and her relationships" with the candidate and primary vendor; the Commission found that, "[w]ithout more, these assertions do not provide reason to believe." *Id. See also* F&LA at 6-7, MUR 7494 (John Culberson, *et al.*) (dismissing allegations of personal use when complainant failed to link questioned expenditures to actual personal use).

[92] 11. C.F.R. § 113.1(g)(1)(i)(H); 52 U.S.C. § 30114(b).

[93] *See, e.g.*, F&LA at 3-4, MUR 7100 (Donald J. Trump for President, *et al*.) (finding no reason to believe on allegations that travel reimbursements made to Donald Trump Jr. and Eric Trump during President Trump's 2016 campaign were personal use); F&LA at 5-6, MUR 6864 (Nicholas Ruiz III for Congress, *et al.*) (finding no reason to believe when available information indicated the candidate's spouse received a salary from the committee that did not exceed fair market value); *cf.* Advisory Op. 1996-34 (Thornberry) at 2-3 (allowing a committee to pay for the

available information does not indicate that E Street Group was paid in excess of the fair market value for the services it provided to the Committee. Accordingly, the Commission finds no reason to believe that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.

travel expenses, including lodging and meals, of a candidate's wife and children when they would play a "significant role in the political receptions and fundraising events that are part of the trip").