FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Michael R. Bloomberg	)	MURs 7722 and 7723
Mike Bloomberg 2020, Inc. and Hayden Horowitz as treasurer	)	
DNC Services Corporation/Democratic National Committee and Virginia McGregor as treasurer	)	
Unknown State Party Committees	)	

STATEMENT OF REASONS OF CHAIR DARA LINDENBAUM, VICE CHAIRMAN SEAN J. COOKSEY, AND COMMISSIONERS SHANA M. BROUSSARD, ALLEN J. DICKERSON, AND JAMES E. "TREY" TRAINOR III

Michael R. Bloomberg spent more than $1 billion of his personal funds on his candidacy for the Democratic nomination for U.S. President in the 2020 election cycle.[1] Two weeks after Bloomberg withdrew from the race, on March 13, 2020, Bloomberg's authorized campaign committee, Mike Bloomberg 2020, Inc. (the "Committee"), transferred $18 million to the DNC Services Corporation/Democratic National Committee ("DNC") and more than $1 million in office facilities and equipment to Democratic state party committees.[2] The Complaints allege that these transfers violated numerous provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").[3] The Office of General Counsel ("OGC") agreed, in part, recommending that the Commission find reason to believe that Bloomberg and the Committee made, and the DNC accepted, excessive contributions.[4] However, the Commission ultimately

[1] First Gen. Counsel's Rpt. ("FGCR") at 7 (May 4, 2023).

[2] *Id.* at 8.

[3] Specifically, the Complaints allege that Bloomberg made, and the DNC and unknown Democratic state party committees accepted, excessive contributions, and that Bloomberg made a contribution in the name of another by using the Committee as a conduit. Alternatively, the Complaints allege that the Committee made, and the DNC and Democratic state party committees accepted, excessive contributions; Bloomberg's contributions to his own campaign were excessive contributions; and the transfer to the DNC was an excessive earmarked contribution. *See generally* Compl., MUR 7722 (Mar. 24, 2020); Compl., MUR 7723 (Mar. 25, 2020).

[4] *See* FGCR at 41, 49. OGC also recommended that the Commission find reason to believe that Bloomberg and the Committee made excessive contributions to unknown Democratic state party committees and to authorize an investigation to uncover their identities, although OGC had apparently already discovered their identities. *See* FGCR at 9 (chart of in-kind contributions to Democratic state party committees).

voted to find no reason to believe Bloomberg and the Committee made, and the DNC accepted, excessive contributions.[5] This Statement explains the reasons for our votes.

The applicable statute, regulations, and Commission precedent unambiguously permit these transfers. Commission regulations provide that: "Candidates for Federal office may make unlimited expenditures from personal funds."[6] Advisory opinions have consistently interpreted this provision to permit a candidate to make unlimited contributions to his or her principal campaign committee.[7] The Act provides that: "A contribution accepted by a candidate. . . may be used by the candidate. . . for transfers, without limitation, to a national, State, or local committee of a political party."[8] The regulation implementing this statutory provision similarly provides: "In addition to defraying expenses in connection with a campaign for federal office, funds in a campaign account… [m]ay be transferred without limitation to any national, State, or local committee of any political party."[9] These transfers are not subject to contribution limits.[10]

Putting these principles together, the law permits the Committee to transfer any funds in its campaign account, including unlimited funds contributed by Bloomberg, to the DNC and Democratic state party committees without limitation.[11] The Commission has interpreted these provisions on several occasions to permit transfers in excess of contribution limits to the national

[5] *See* Certification ("Cert") at 2 ¶ 3a-b. (May 31, 2023). That vote was preceded by a 3-to-3 Commission split to dismiss as a matter of prosecutorial discretion the allegation that the transfer of funds to the DNC constituted excessive contributions. *See id.* ¶ 2a-b. Four Commissioners supported finding no reason to believe concerning these allegations. Chair Lindenbaum initially supported dismissing for prosecutorial discretion, but ultimately voted to find no reason to believe. Commissioner Broussard voted to dismiss these allegations pursuant to the Commission's prosecutorial discretion.

[6] 11 C.F.R. § 110.10 (implementing the holding from *Buckley v. Valeo*, 424 U.S. 1 (1976)).

[7] *See, e.g.*, Advisory Op. 2010-15 (Pike) ("The Commission has interpreted this provision to mean that a candidate may also make unlimited contributions to his or her authorized committee."); Advisory Op. 1984-60 (Mulloy) ("Commission regulations explicitly permit a candidate for Federal office to make unlimited expenditures from his or her personal funds, including contributions to the candidate's principal campaign committee.").

[8] 52 U.S.C. § 30114(a)(4).

[9] 11 C.F.R. § 113.2(c).

[10] Advisory Op. 2004-22 (Bereuter) ("A candidate's principal campaign committee may transfer, without limitation, any contributions received to a State committee of a political party. These provisions do not limit the purposes that any transferred funds may be put to, nor do they restrict the amount that may be transferred in any specific period of time.") (citations omitted); Advisory Op. 2010-28 (Indiana Democratic Congressional Victory Committee) (same).

[11] Although the office equipment and facilities donated to the Democratic state party committees were not literally "funds in a campaign account," the Commission has long interpreted this provision to include non-cash assets of the committee. *See, e.g.*, Advisory Op. 2007-18 (Rangel) (permitting the donation of a commissioned portrait pursuant to the transfer provisions); Advisory Op. 1995-18 (Leach) (same); *cf.* Advisory Op. 1994-20 (Charlie Rose) (permitting the transfer of an RV to a local party committee under the language of the statute prior to its amendment in 2002, which permitted the transfer of "excess campaign funds").

and state parties.[12] Thus, the applicable law and Commission precedent explicitly permit the transfers at issue here.

This should have been the end of the analysis. Instead, OGC argues that contributions from Bloomberg were not "accepted by a candidate" within the meaning of 52 U.S.C. § 30114 because, as a self-funded candidate, Bloomberg cannot accept contributions from himself.[13] This argument defies Commission precedent and would upend the application of other provisions of the Act. Although the statute refers to contributions "accepted by a candidate," advisory opinions make clear that candidates may self-fund their campaigns by making contributions to their authorized committees, the same way contributions are processed from other sources.[14] This result makes intuitive sense because the Act treats the candidate and authorized committee as separate entities with distinct obligations.[15] For example, a treasurer of a committee – not the candidate – must examine all contributions for evidence of illegality and deposit contributions in a campaign depository.[16] The Committee accepted Bloomberg's contributions by depositing and disbursing the funds in furtherance of Bloomberg's campaign. To hold otherwise ignores the statutory distinctions between candidates and their committees and suggests that the Committee rejected the contributions, a nonsensical proposition given that the Committee disbursed $1 billion to support Bloomberg's campaign.

Perhaps OGC's most persuasive argument – that Congress did not intend to permit unlimited transfers to party committees from a self-funded candidate – is not an argument we may consider as a matter of law.[17] When a statute is clear and unambiguous it must be applied as written. "The first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'"[18] "The inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent."[19] Here, OGC does not, and indeed cannot, argue that the statute is ambiguous.

However, even assuming *arguendo* that the phrase "accepted by a candidate" could be deemed ambiguous, the regulation resolves the ambiguity by permitting the transfer of all "funds in a campaign account," which reflects the common sense understanding that "funds in a

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[12] *See, e.g.*, Advisory Op. 2003-30 (Fitzgerald) (permitting a committee to transfer $526,000 to national, State or local party committees despite having liabilities that exceeded its cash-on-hand); Advisory Op. 2004-22 (Bereuter) (permitting the transfer of up to $20,000 to a State Republican party).

[13] *See* FGCR at 25-30.

[14] *See supra* note 7.

[15] 52 U.S.C. § 30102 (setting forth requirements of political committees, including designating a treasurer and prohibiting the commingling of funds).

[16] *See generally* 11 C.F.R. § 103.3.

[17] *See* FGCR at 28-29.

[18] *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

[19] *Id.* (internal quotation marks omitted).

campaign account" were "accepted by a candidate."[20] Even if the statute were deemed ambiguous, then courts must defer to the Commission's permissible interpretation of the statute as set forth in the regulation under principles of *Chevron* deference.[21] OGC does not dispute that the transferred funds were in the Committee's campaign account. Instead, OGC urges the Commission to ignore the plain language of the regulation and interpret it consistent with its implausible theory of the phrase "accepted by a candidate" in the statute. We decline to do so.

Finally, adopting OGC's theory of "accepted by a candidate" would upend the application of other important provisions of the Act. For example, in addition to the transfer provision at issue here, Section 30114 sets forth the prohibition against the personal use of campaign funds "accepted by a candidate."[22] If the Committee did not "accept" Bloomberg's contributions as argued by OGC, then Bloomberg could treat the Committee as his personal piggy bank because the personal use prohibition would not apply. Under OGC's interpretation, Bloomberg could pay for his country club membership and home mortgage, among other enumerated *per se* personal uses set forth in the statute, directly from his campaign account.[23] The Commission has never exempted a self-funded candidate's contributions from the personal use prohibition.[24] To the contrary, several advisory opinions have examined the application of the personal use prohibition to funds in a campaign account contributed by a candidate, albeit in the context of a self-funded candidate seeking refunds.[25] Even if we agreed with OGC, which we do not, an enforcement matter is not an appropriate vehicle to overrule advisory opinions.

It is worth noting how unusual the circumstances are here. Bloomberg ran a robust, almost entirely self-funded campaign and, at its conclusion, had sufficient cash-on-hand to transfer $18 million to the DNC. We may well have come to a different conclusion if Bloomberg contributed funds to his campaign for the express purpose of funding transfers to the DNC, or if the campaign otherwise appeared to be a conduit for transfers to the DNC. While many may disagree with the result here as a matter of public policy, only Congress has the power to change the text of the Act. Until then, we are bound to apply the unambiguous language of the Act and Commission regulations.

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[20] 11 C.F.R. § 113.2(c).

[21] *See Chevron, U.S.A, Inc. v. Natural Resources Def. Council*, 467 U.S. 837, 843-44 (1984) ("[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. . . . We have long recognized . . . the principle of deference of administrative interpretations.").

[22] 52 U.S.C. § 30114(b) ("A contribution or donation described in subsection (a) shall not be converted by any person to personal use.").

[23] 52 U.S.C. § 30114(b)(2) (setting forth a list of *per se* personal uses of campaign funds).

[24] Nor has it distinguished the obligations of a self-funded campaign from a partially self-funded one vis-à-vis the personal use prohibition, as OGC has invited us to do. *See* FGCR at 35.

[25] *See, e.g.*, Advisory Op. 2010-15 (Pike for Congress) ("The Commission has previously observed that in 'some circumstances, refunding contributions could raise personal use issues if refunds are made on the basis of criteria that are not campaign related.'") (quoting Advisory Opinion 1996-52 (Andrews)); Advisory Op. 2006-37 (Kissin) (same).

For the foregoing reasons, we voted to find no reason to believe that respondents violated the Act or Commission regulations.

7/5/23
Date

Dara Lindenbaum
Chair

7/5/23
Date

Sean J. Cooksey
Vice Chairman

7/5/23
Date

Shana M. Broussard
Commissioner

7/5/23
Date

Allen J. Dickerson
Commissioner

7/5/23
Date

James E. "Trey" Trainor III
Commissioner