

From: [Christopher Curran](#)
To:
Subject: RE: MUR 7934 (Xochitl for New Mexico, et al.) Closing Letter
Date: Sunday, September 11, 2022 10:29:00 AM
Attachments: [MUR 7934 \(Xochitl for New Mexico, et al.\) Factual & Legal Analysis.pdf](#)

Dear Ms. Mendenhall,

I inadvertently omitted the Commission's Factual and Legal Analysis in my previous email. It is attached here.

Regards,

Christopher

From: Christopher Curran
Sent: Wednesday, September 7, 2022 4:02 PM
To:
Subject: MUR 7934 (Xochitl for New Mexico, et al.) Closing Letter

Dear Ms. Mendenhall,

Please see the attached regarding the above referenced matter.

Regards,

Christopher

Christopher S. Curran
Federal Election Commission
Office of General Counsel
Enforcement Division
ccurran@fec.gov

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENT:** Xochitl Torres Small **MUR:** 7934
7 Xochitl for New Mexico and
8 Joshua Orozco in his official capacity
9 as treasurer
10 Karen S. Mendenhall.
11

I. INTRODUCTION

12
13 The Complaint in this matter alleges that 2018 U.S. House candidate Xochitl Torres
14 Small, her principal campaign committee Xochitl for New Mexico and Joshua Orozco in his
15 official capacity as treasurer (the “Committee”), and her campaign counsel Karen S. Mendenhall
16 violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by misusing
17 campaign funds to pay legal fees in connection with a lawsuit brought by campaign supporter
18 William Thomas Morrow challenging the nominating petition of Angel D. Peña—Torres Small’s
19 would-be electoral opponent in the 2018 Democratic primary election. This allegation also
20 raises the issue of whether the Committee properly reported its payments to fund Morrow’s
21 lawsuit.

22 For the reasons set forth below, the Committee’s funding of Morrow’s lawsuit
23 challenging Peña’s nominating petition appears to be a legitimate campaign expense that would
24 not have existed but for Torres Small’s candidacy. Accordingly, the Commission finds no
25 reason to believe that the Committee, Xochitl Torres Small, or Karen S. Mendenhall violated 52
26 U.S.C. § 30114 and 11 C.F.R § 113.2 by converting campaign funds to personal use. The
27 Commission also finds no reason to believe that the Committee violated 52 U.S.C. § 30104(b)
28 and 11 C.F.R. § 104.3(b) by reporting the purpose of its payments to the Mendenhall Firm, P.C.
29 as “legal services.”

1 II. FACTUAL BACKGROUND

2 The 2018 New Mexico Democratic Party primary election for U.S. Representative for
3 New Mexico’s 2nd Congressional District involved two candidates: Xochitl Torres Small and L.
4 Madeline Hildebrandt.¹ Another individual, Angel D. Peña, declared his candidacy but was
5 disqualified by the New Mexico Secretary of State “because a number of his submitted petition
6 pages failed to meet the requirements set forth in [the] state statute.”² Consequently, Peña “did
7 not meet the minimum number of signatures required for qualification.”³ On February 16, 2018,
8 Peña challenged his disqualification by filing a lawsuit against the New Mexico Secretary of
9 State, Maggie Toulouse Oliver.⁴

10 Three days later, William Thomas Morrow (a Torres Small supporter) filed a separate
11 lawsuit against both Peña and Oliver challenging Peña’s nominating petition on other grounds.⁵
12 Morrow was represented by Torres Small’s campaign’s counsel, Karen S. Mendenhall, and the
13 Committee paid the legal fees for the lawsuit.⁶ The Committee paid the Mendenhall Firm, P.C.

¹ New Mexico Secretary of State, Official Results 2018 Primary, <https://electionresults.sos.state.nm.us/resultsSW.aspx?type=FED&map=CTY&eid=112>; Xochitl Torres Small, Statement of Candidacy at 1 (Nov. 26, 2018), <https://docquery.fec.gov/pdf/812/201811269133808812/201811269133808812.pdf>.

² Committee Resp. at 3 (Dec. 17, 2021), Ex. A (Press Release, SOS Toulouse Oliver Qualifies Major Party Candidates for Pre-Primary Convention Designation (Feb. 12, 2018), https://www.sos.state.nm.us/wp-content/uploads/2019/10/20180212_SOS_Qualifies_Major_Party_Candidates.pdf).

³ *Id.*

⁴ *In re Angel Peña*, D-101-CV-201800527 (Feb. 16, 2018), <https://caselookup.nmcourts.gov/caselookup/app>.

⁵ *See* Committee Resp. at 2-3; Soular and Gibbs, *supra* note 4.

⁶ *See* Committee Resp. at 3-5, Exs. C-E. The lawsuit was subsequently dismissed after the parties agreed that Peña lacked the minimum number of valid signatures to qualify as a candidate. *See id.* at 3, Ex. B.

1 \$18,037.02 during the reporting cycle and reported the purpose in each instance as “legal
2 services.”⁷

3 The Complaint alleges that Torres Small “misuse[d] campaign funds” by engaging in
4 “questionable,” “reprehensible,” and “unethical” campaign tactics.⁸ Although the Complaint
5 does not cite a specific provision of the Act, it focuses on the payment of Morrow’s legal fees for
6 the purpose of disqualifying Peña’s nominating petition.⁹ The Complaint claims Torres Small
7 concealed her funding of Morrow’s lawsuit because voters would disapprove of her efforts to
8 disqualify Peña over the omission of a tilde in his name.¹⁰

9 The Committee filed a response denying that it violated the Act.¹¹ First, the Committee
10 argues that the complained-of payments were to “prevent an opponent from appearing on the
11 primary ballot,” and were therefore related to Torres Small’s candidacy, and would not have
12 existed but for her candidacy.¹² To support this assertion, the Response points to Commission
13 advisory opinions where payments for the purpose of gaining and challenging ballot access were
14 deemed campaign related, as well as an enforcement matter where efforts to deny ballot access to

⁷ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00666149&recipient_name=mendenhall&two_year_transaction_period=2018 (last visited June 24, 2022) (reflecting disbursements by Xochitl for New Mexico to the Mendenhall Firm, P.C.).

⁸ Compl. at 1-2.

⁹ *Id.* at 1 (“These efforts involved using campaign finance funds to fund a lawsuit by a private citizen who was surreptitiously recruited to file said suit on behalf of the campaign in order to foster the perception of grassroots voter concern over the validity of Pena’s [*sic*] petition forms.”).

¹⁰ *Id.* at 2.

¹¹ Committee Resp. at 1, 3. The Commission has not received a response from Torres Small or Karen Mendenhall.

¹² *Id.* at 5.

1 an opposing candidate were viewed by the Commission as “qualified campaign expenses” under
2 the Presidential Election Campaign Fund Act.¹³ In an effort to show that the expenses for
3 Morrow’s lawsuit were legitimate campaign expenses and not personal expenses, the Response
4 states that campaign volunteers reviewed Peña’s nominating petition for errors, and that counsel
5 “advised the Campaign concerning how to mount a legal challenge to the sufficiency of Mr.
6 Peña’s nominating petition, and then worked with a supporter of the Campaign to bring such a
7 challenge.”¹⁴

8 Second, the Committee argues that it reported its payments to the Mendenhall Firm for its
9 legal fees in connection with Morrow’s lawsuit and appropriately described the purpose as
10 “Legal Services.”¹⁵ It argues that this description is adequate according to the Commission’s
11 published sample list of purpose descriptions and that based on its own search of the
12 Commission’s disbursement database, it is “exceedingly rare that any additional detail” is
13 provided on the “nature of the legal expenses.”¹⁶

14 **III. LEGAL ANALYSIS**

15 The Complaint in this matter raises the following issues: (1) whether a principal
16 campaign committee’s funding of another person’s lawsuit challenging the sufficiency of a
17 competing candidate’s nominating petition converts campaign funds to personal use; and (2)

¹³ *See id.* at 4 (citing Advisory Opinion 2018-09 at 3 (Clements for Congress); Advisory Opinion 1980-57 at 3 (Bexar County Democratic Party); Advisory Opinion 1982-35 (Hopfman)), at 5 (citing First Gen. Counsel’s Rpt. at 6-7, MUR 5509 (Kerry-Edwards 2004, Inc.) (dispositive Commission opinion)); *see also* Certification ¶ 1, MUR 5509 (Kerry-Edwards 2004, Inc.) (Mar. 4, 2005).

¹⁴ Committee Resp. at 5.

¹⁵ *See id.* at 6, Exs. C-E (attaching pages from Committee’s reports showing payments to the Mendenhall Firm).

¹⁶ *Id.* at 6.

1 whether reporting the purpose of payments to the law firm representing the plaintiff as “legal
2 services” is a sufficient description of purpose under the Act and Commission regulations.

3 **A. The Committee’s Payments to Fund Morrow’s Legal Challenge to Peña’s**
4 **Nominating Petition Did Not Convert Campaign Funds to Personal Use**

5 The Act affords candidates and their campaign committees wide discretion in the
6 disposition of their campaign funds and provides that contributions accepted by a candidate may
7 be used by the candidate “for otherwise authorized expenditures in connection with the campaign
8 for Federal office of the candidate” and “for ordinary and necessary expenses incurred in
9 connection with duties of the individual as a holder of Federal office.”¹⁷ The Act provides,
10 however, that campaign funds may not be converted to the personal use of the candidate or any
11 other person.¹⁸ The Act states that “a contribution or a donation shall be considered to be
12 converted to personal use if the contribution or amount is used to fulfill any commitment,
13 obligation or expense of a person that would exist irrespective of the candidate’s election
14 campaign or individual’s duties as a holder of Federal office.”¹⁹ This means that expenses “that
15 would be incurred even if the candidate was not a candidate” are considered personal rather than
16 campaign related.²⁰ The Act and Commission regulations provide a non-exhaustive list of uses
17 of campaign funds that are *per se* personal use.²¹ For all other disbursements, including

¹⁷ 52 U.S.C. § 30114(a)(1)-(2); *see* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866-67 (Feb. 9, 1995) (“Personal Use E&J”) (explaining that the personal use prohibition is “not so broad as to limit legitimate campaign related or officeholder related activity,” and that “candidates have wide discretion over the use of campaign funds”).

¹⁸ 52 U.S.C. § 30114(b); *see* 11 C.F.R. § 113.2.

¹⁹ 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

²⁰ Personal Use E&J at 7863.

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

1 payments for legal expenses, the Commission determines on a case-by-case basis whether a
2 given campaign fund disbursement is personal use by applying the “irrespective test,” that is,
3 whether the payment fulfills a commitment, obligation, or expense that would exist irrespective
4 of the candidate’s campaign or duties as a federal officeholder.²² The Commission has stated
5 that “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or
6 officeholder activities, the Commission will not consider the use to be personal use.”²³

7 The Commission has explained that “campaign funds may be used to pay for legal
8 expenses incurred in proceedings that directly relate to the candidate’s campaign activities or
9 officeholder duties.”²⁴ However, legal expenses “will not be treated as . . . campaign or
10 officeholder related merely because the underlying legal proceedings have some impact on the
11 campaign or the officeholder’s status.”²⁵ To illustrate the difference between campaign or
12 officeholder-related legal expenses and personal legal expenses, the Commission highlighted
13 “legal expenses associated with a divorce or charges of driving under the influence of alcohol” as
14 examples of personal expenses.²⁶ A number of advisory opinions and enforcement matters
15 further delineate the distinction between campaign or officeholder related legal expenses and
16 personal legal expenses.²⁷

²² 11 C.F.R. § 113.1(g)(1)(ii).

²³ *See* Personal Use E&J at 7867.

²⁴ Advisory Opinion 2018-03 at 3 (Committee to Elect Michael Gilmore) (quoting Advisory Opinion 2013-11 at 3 (Citizens for Joe Miller) (concluding that use of campaign funds for legal expenses incurred in lawsuit by media outlets seeking to obtain information relevant to candidacy would not constitute impermissible personal use).

²⁵ Personal Use E&J at 7868.

²⁶ *Id.*

²⁷ *See, e.g.*, Advisory Opinion 2005-11 (Cunningham) (payment of legal fees stemming from a grand jury investigation into the candidate’s fundraising activity and conduct in office not personal use); Advisory Opinion

1 The Commission has also determined that campaign funds may be used to pay the legal
2 expenses of persons *other* than the candidate when they are for activities directly related to the
3 candidate’s campaign or officeholder duties. For example, in Advisory Opinion 2009-20
4 (Visclosky), the Commission determined that Congressman Peter Visclosky’s principal
5 campaign committee could use campaign funds to pay for his legal expenses, and the legal
6 expenses of his current and former staffers, related to a federal investigation into whether a
7 lobbying firm made improper political contributions to Visclosky and other members of
8 Congress.²⁸ Advisory Opinion 2011-07 (Chuck Fleischmann for Congress) concerned a request
9 by Congressman Chuck Fleischmann’s principal campaign committee to pay a former
10 consultant’s legal expenses to defend himself in a civil lawsuit alleging tortious interference with
11 a contractual relationship and defamation.²⁹ The Commission concluded that “to the extent that
12 the legal proceedings derive from allegations directly relating to campaign activity,” campaign
13 funds could be used to pay the consultant’s legal fees.³⁰

2003-17 (Treffinger) (payment of legal expenses to defend against counts in an indictment alleging filing of false reports with the Commission not personal use); Advisory Opinion 2000-40 (McDermott) (use of campaign funds for legal fees to defend a House member in a civil suit alleging illegal conduct related to his role in the House Ethics Committee not personal use); Advisory Opinion 1996-24 (Cooley) (use of campaign funds to pay legal fees and expenses to investigate, research, and communicate with State and Federal agencies in connection with responding to press allegations of the unlawful receipt of Veterans benefits would be personal use); *see also* Factual and Legal Analysis (“F&LA”) at 7-8, MUR 7390 (Make America Great Again PAC, *et al.*) (campaign committee payments for legal expenses in connection with Department of Justice investigation into Russian interference with the 2016 election not personal use); F&LA at 8-11, MUR 6128 (Craig for U.S. Senate) (Senator’s use of campaign funds to pay legal expenses to overturn conviction for disorderly conduct is personal use). The Commission’s determination in MUR 6128 was subsequently upheld by the D.C. Circuit. *FEC v. Craig for U.S. Senate*, 816 F.3d 829, 839 (D.C. Cir. 2016) (“[The] allegations did not concern the Senator’s campaign activities or official duties, the legal fees he expended trying to withdraw his plea constituted ‘personal use.’”).

²⁸ Advisory Opinion 2009-20 (Visclosky).

²⁹ Advisory Opinion 2011-07 at 1-2 (Fleischmann for Congress).

³⁰ *Id.* at 4. *See also* F&LA at 8, MUR 7390 (Make America Great Again PAC, *et al.*) (no reason to believe that a principal campaign committee converted funds to personal use when it paid the legal expenses for a family

1 Here, the Complaint alleges that the Committee misused campaign funds by paying the
2 Mendenhall Firm for the legal fees associated with a campaign supporter’s legal challenge of
3 Peña’s nominating petition. The Response submitted by the Committee denies the allegations
4 and argues that expenses to prevent a would-be competitor from gaining ballot access would not
5 exist irrespective of Torres’ election campaign. As explained below, because the Committee’s
6 spending of campaign funds for the purpose of removing an electoral opponent from a ballot
7 constitutes a legitimate campaign-related expense that would not exist irrespective of Torres
8 Small’s candidacy, there is no reason to believe that Torres Small, the Committee, or
9 Mendenhall converted campaign funds to personal use.

10 First, spending for the purpose of removing an electoral opponent from the ballot
11 constitutes a legitimate campaign-related expense. Indeed, in an analogous context, the
12 Commission has previously found that expenses aimed at preventing an electoral opponent from
13 being on the ballot are campaign related. In Advisory Opinion 1980-57 (Bexar County
14 Democratic Party), the Commission approved the Bexar County Democratic Party’s proposed
15 solicitation of funds on behalf of a congressional candidate to defray the costs of legal
16 proceedings challenging the nominating petition of the candidate’s electoral opponent.³¹ The
17 Commission stated that “[a] candidate’s attempt to force an election opponent off the ballot so

member — who supported the campaign but did not have an official role — in connection with congressional and DOJ investigations).

³¹ Advisory Opinion 1980-57 (Bexar County Democratic Party).

1 that the electorate does not have an opportunity to vote for that opponent is as much an effort to
2 influence an election as is a campaign advertisement derogating that opponent.”³²

3 Second, the fact that a Torres Small supporter, not the Committee itself, was the plaintiff
4 in the lawsuit challenging Peña’s nominating petition does not alter the campaign-related
5 purpose for which the Committee’s funds were paid. As noted above, candidates and their
6 committees are afforded wide discretion in how to spend their funds. Here, the decision to fund
7 a third-party’s lawsuit to remove Peña from the ballot has the same effect as if the Committee
8 had brought the lawsuit — removing an electoral opponent from the ballot. Thus, whether the
9 lawsuit was brought by a third-party or by the Committee, the payment is directly related to the
10 campaign. In a prior matter, the Commission approved in an analogous context a campaign’s
11 effort to fund third-parties’ attempt to remove an opponent from the ballot. In MUR 5509
12 (Kerry-Edwards 2004, Inc.), the Commission found no reason to believe that alleged payments
13 by Kerry-Edwards 2004, Inc. to fund *others’ efforts* to scrutinize and challenge the ballot
14 petitions of independent candidate Ralph Nader violated the Presidential Election Campaign
15 Fund Act by not being a “qualified campaign expenses.”³³ Here, Peña was Torres Small’s
16 electoral opponent, and the Committee paid for a legal challenge to prevent him from appearing
17 on the ballot, thereby depriving the electorate’s opportunity to vote for him. The election-

³² *Id.* at 3. The Commission has also concluded that expenses associated with efforts to *attain* ballot access are campaign related. *See, e.g.*, Advisory Opinion 1995-45 (Hagelin for President); Advisory Opinion 1984-11 (Independents for Dennis Serrette).

³³ First Gen. Counsel’s Rpt. at 2, 6, MUR 5509 (Kerry-Edwards 2004, Inc., *et al.*) (involving ballot challenges by Democratic activists or state Democratic Party officials) (dispositive Commission opinion) (citing AO 1980-57 (Bexar County Democratic Party), Advisory Opinion 1995-45 (Hagelin for President), and Advisory Opinion 1984-11 (Independents for Dennis Serrette)); Certification ¶ 1, MUR 5509 (Kerry-Edwards 2004, Inc., *et al.*).

1 influencing purpose of the Committee’s payments did not change because the plaintiff was
2 someone other than the candidate or official member of the campaign.

3 In sum, it does not appear that the Committee’s payments to the Mendenhall Firm to
4 prevent Peña from appearing on the ballot would have been incurred absent Torres Small’s
5 candidacy and therefore do not appear to have been “used to fulfill any commitment, obligation,
6 or expense of a person that would exist irrespective” of Torres Small’s election campaign.³⁴
7 Accordingly, the Commission finds no reason to believe that the Committee, Xochitl Torres
8 Small, or Karen S. Mendenhall violated 52 U.S.C. § 30114 and 11 C.F.R § 113.2 by converting
9 campaign funds to personal use.

10 **B. The Committee Did Not Misreport its Payments to Fund Morrow’s Legal**
11 **Challenge to Peña’s Nominating Petition**

12 Political committees must itemize and report the name and address of each person to
13 whom they make expenditures or other disbursements that aggregate more than \$200 per
14 calendar year (for unauthorized committees) or per election cycle (for authorized committees).³⁵
15 Committees must also report the date, amount, and purpose of each expenditure or
16 disbursement.³⁶ “The ‘purpose of disbursement’ entry, when considered along with the identity
17 of the disbursement recipient, must be sufficiently specific to make the purpose of the
18 disbursement clear.”³⁷ While a detailed description is not required, the reported purpose, “when
19 considered along with the identity of the disbursement recipient, must be sufficiently specific to

³⁴ 52 U.S.C. § 30114(b)(2).

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

³⁶ 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a).

³⁷ Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (4)(i)(A)).

1 make the purpose of the disbursement clear” so as to allow “a person not associated with the
2 committee [to] easily discern why the disbursement was made when reading the name of the
3 recipient and the purpose.”³⁸ Examples of sufficient statements of purpose include, but are not
4 limited to, dinner expenses, media, salary, polling, travel, party fees, phone banks, travel
5 expenses, travel expense reimbursement, and catering costs.³⁹ In addition to the non-exhaustive
6 list of examples included in the regulation, the Commission provided guidance in a Statement of
7 Policy that, among other descriptions, “Consulting-Legal” is generally a sufficient description of
8 purpose when read in context with the name of the payee.⁴⁰ Additional guidance set forth on the
9 Commission’s website lists “Legal/ Legal Fees/ Legal Services” as an example of an adequate
10 purpose description.⁴¹

11 Here, the Committee reported \$18,037.02 paid to the Mendenhall Firm for “legal
12 services.”⁴² The Response argues that this purpose description “accurately reflects the
13 disbursement and is consistent with the Commission’s sample descriptions.”⁴³ As explained

³⁸ Purpose Statement of Policy at 887-888 (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (b)(4)(i)(A)); *see* LEGISLATIVE HISTORY OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1979 at 202 (including H.R. Rep. No. 96-422 at 18 (1979)) (“[T]he purpose requirement will be satisfied by a short statement or description, no more than one or two words in most cases, of why the money was spent. The particulars, *i.e.*, the details of the disbursement are not required by the statute.”) (quoting House Report accompanying H.R. 5010 Federal Election Campaign Act Amendments of 1979).

³⁹ 11 C.F.R. § 104.3(b)(3)(i)(B); *id.* § 104.3(b)(4)(i)(A); *see also* Purpose Statement of Policy at 888.

⁴⁰ Purpose Statement of Policy at 888.

⁴¹ *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last updated Aug. 21, 2018).

⁴² *See supra* at 3.

⁴³ Resp. at 6.

1 below, the description “legal services” is sufficiently specific to describe the Committee’s
2 payments to the Mendenhall Firm.

3 First, the Mendenhall Firm’s legal fees were in connection with Karen Mendenhall’s
4 representation of an individual in a lawsuit, a quintessential legal service. Second, the fact that a
5 campaign supporter, and not the Committee, was the plaintiff in the lawsuit challenging Peña’s
6 nominating petition does not change the purpose for which the law firm was paid. The nature of
7 Ms. Mendenhall’s services, legal representation, would be no different if the Committee had
8 been the plaintiff. Third, the Mendenhall Firm appears to have been the ultimate recipient of the
9 Committee’s payment, distinguishing it from other matters where the reported recipient is merely
10 a conduit.⁴⁴ Finally, the Commission specifically includes “Legal Services” as an example of an
11 adequate purpose description.

12 For these reasons, the Commission finds no reason to believe that the Committee violated
13 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b) by reporting the purpose of its payments to the
14 Mendenhall Firm, P.C. as “legal services.”

⁴⁴ See, e.g., *United States v. Benton*, 890 F.3d 697 (8th Cir. 2018) (affirming convictions of three Ron Paul 2012 campaign officials for causing false expenditure reports by concealing payments to an individual using a conduit); Conciliation Agreement at 3-4, MUR 4872 (Jenkins) (the committee knowingly and willfully violated 2 U.S.C. § 434(b)(5)(A) (now 52 U.S.C. § 30104(b)(5)(A)) by concealing payments to a vendor that the candidate “did not want his campaign to be associated with” by routing payments through another company that had “no involvement whatsoever with the services provided”).