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December 20, 2021

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Trace Keeys, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: Matter Under Review 7940

Dear Mr. Lockett,

This response is submitted by undersigned counsel on behalf of Sean Parnell, the Americans for Parnell Committee (the “Committee”) and Kayla Glaze, in her capacity as Treasurer (collectively, the “Respondents”), in connection with Matter Under Review 7940.

The Complaint makes wholly unsubstantiated allegations regarding the use of campaign resources for the purchase and promotion of books authored by Mr. Parnell, claiming that such use amounts to a prohibited personal use of campaign funds. As the facts presented herein will demonstrate, however, the campaign’s book purchases and related social media activity were in full compliance with the standards set forth by the Federal Election Commission (the “Commission”) and, as such, an appropriate use of campaign resources. Accordingly, for the reasons set forth below, the Commission should find no reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), or any Commission regulation (“Regulations”). The Complaint warrants no further consideration and should be promptly dismissed.

I. Factual Background

Sean Parnell is a former candidate for U.S. Senate in Pennsylvania. Mr. Parnell filed his Statement of Candidacy (Form 2) for the 2022 Senate race on May 12, 2021, designating the Americans for Parnell Committee as his authorized campaign committee. The Committee then filed its amended Statement of Organization (Form 1) on May 12, 2021, with its most recent amendment filed on July 27, 2021. Mr. Parnell suspended his campaign for Senate on November 22, 2021.

On September 7, 2021, Mr. Parnell released a book he began authoring prior to the commencement of his campaign for U.S. Senate. The book, entitled “Left for Dead,” was the fourth and latest book in a series published by Harper Collins Publishers (“Harper Collins”), the first of which was released in 2018. Mr. Parnell also authored “Outlaw Platoon,” which was released on April 15, 2012 (collectively, the “Books”), prior to his Senate candidacy. The Books

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were published under a series of publication agreements between Mr. Parnell and Harper Collins, each of which provided for royalty payments to Mr. Parnell based on book sales generated. As properly disclosed in Mr. Parnell's U.S. Senate Financial Disclosure and detailed in the Complaint, these agreements had generated \$96,811 in income to Mr. Parnell during the applicable reporting period. Complaint at 2.

The Committee purchased a total of 240 copies of "Outlaw Platoon" directly from Harper Collins in July and September of 2021 to distribute to donors and supporters and for related campaign activities. The copies were purchased by the Committee at fair market value, and the sales were excluded from the calculation of royalties that otherwise accrue to Mr. Parnell under the applicable publication agreement. Mr. Parnell did not receive any payments or other form of income whatsoever relative to the Committee's purchase of the book.

In addition to purchasing copies of "Outlaw Platoon" for campaign use, the Committee has also posted a limited amount of book-related content to each of its social media channels. Specifically, as overviewed in the Complaint, this included nine of 324 total Twitter posts, twelve of 324 total Facebook posts, and four Gettr posts. Complaint at 3. It is important to note, however, that several of these posts were not original content developed and posted by the Committee; rather, they were the result of "re-Tweets" or other reposts of third-party users' unique content. Complaint Exhibit B; see, e.g., Complaint at 3. That clarification aside, over a span of more than five months, the Committee's aggregate book-related content amounted to 25 social media posts across three platforms.

II. Legal Analysis

The Act expressly enumerates several permissible uses of campaign funds by an authorized committee: 1) otherwise authorized expenditures in connection with the candidate's campaign for Federal office; 2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office; 3) contributions to organizations described in 26 U.S.C. 170(c); 4) transfers, without limitation, to national, state or local political party committees; and 5) donations to state and local candidates subject to the provisions of state law. See 2 U.S.C. 439a(a); see also 11 CFR 113.2(a)-(c). In addition to the foregoing categories, campaign funds may be used for any other lawful purpose not otherwise prohibited by 2 U.S.C. 439a(b), provided that such use does not constitute the "personal use" of campaign funds. 2 U.S.C. 439a(b)(1); 11 CFR 113.2.

The "personal use" of campaign funds is defined as any use of campaign funds to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign. 11 CFR 113.1(g); see also 2 U.S.C. 439a(b)(2). The Act and Regulations provide a non-exhaustive list of expense categories that are considered *per se* personal use, including household items or supplies, clothing, tuition payments, entertainment, and mortgage, rent and utility payments. See 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i). For items not included on that list, including purchase and promotion of a candidate's book, the Commission conducts a case-by-case analysis to determine whether any personal use has occurred. 11 CFR 113.1(g)(1)(ii).

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With respect to the use of campaign funds to purchase a candidate's book, the Commission has concluded such a purchase from the publisher at fair market value would defray an expense that would not exist irrespective of the candidate's campaign for federal office, and therefore constitute a permissible use of campaign funds, if a number of factors are met. Advisory Opinion 2014-06 (Ryan, et. al.). First, the books must be purchased for distribution to contributors and supporters and, accordingly, only used for campaign-related purposes. Second, the quantity purchased may not exceed the number needed for such campaign use. Finally, all royalties attributable to such sales must be donated by the publisher to charity, and the committee's purchase of the book must be excluded from the publisher's royalty calculation. Advisory Opinion 2014-06 (Ryan, et. al.) Where those factors are met, the use of campaign funds to purchase a candidate's book is not considered personal use under the Act or Regulations.

With respect to promoting a candidate's book online, the Commission has concluded that a committee may post a *de minimis* amount of promotional material on its website and social media channels at a *de minimis* cost without impermissibly converting campaign funds to personal use. While there is no clear standard regarding the amount of material falling within the *de minimis* threshold, the Commission has previously found that one or two sentences with hyperlinks to online booksellers was permissible, while 25 percent of a committee's Facebook and 10 percent of a committee's Twitter page was not permissible. Advisory Opinion 2014-06 (Ryan, et. al.). These thresholds notwithstanding, the committees did not incur any costs publishing this material on their social media accounts.

Here, Complainants inexplicably allege that the Committee's purchase of Mr. Parnell's book and promotional social media content constituted an impermissible personal use of campaign funds without presenting even a shred of evidence to support its claims. Indeed, this is because none exists. The facts, however, wholly undermine Complainant's argument, exposing the Complaint as nothing more than a transparent attempt at a political hit piece.

The Committee's purchase of the books was done in full compliance with Commission guidance on the matter and, accordingly, a permissible use of campaign funds. The books were purchased at fair market value from Harper Collins for distribution to campaign supporters and for use in a campaign contest. As such, the books were used exclusively in connection with Mr. Parnell's campaign. Further, the 240 copies purchased were consistent with the amount required and used by the campaign for such purposes. Finally, any royalties attributable to the Committee's purchases were excluded from Harper Collins's royalty calculation. All sales by Harper Collins to the Committee were royalty-free, and Mr. Parnell received no income – royalties or otherwise – from such transactions. Despite Complainant's contention that, because “there is no indication that” Harper Collins donated royalties and excluded these sales from its royalty calculation, a personal use of campaign funds must have occurred, the reality is just the opposite. The Committee's use of campaign funds to purchase the Books was in full compliance with current guidance issued by the Commission and, accordingly, a proper use of campaign funds. Although Complainant would have you believe otherwise, a lack of affirmative, readily available evidence of compliance does not equate to non-compliance.

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The Complaint proceeds to erroneously allege that the Committee's book-related social media activity constitutes the conversion of campaign funds to Mr. Parnell's personal use. The social media activity at issue, however, was *de minimis* in both amount and cost to the Committee. With respect to Twitter, book-related content comprised a mere 2.7% of posts since the commencement of Mr. Parnell's candidacy. Similarly, book-related Facebook posts made up 3.7% of all posts in that same time frame, and a scant four posts out of hundreds on Gettr. Although more than the "one or two sentences" contemplated by the Commission in Advisory Opinion 2006-07, these miniscule percentages fall far below the 25% of Facebook and 10% of Twitter proportions considered in Advisory Opinion 2011-02. Further, there is no promotional content included at all on the Committee's website. Considering the amount of promotional content relative to the entirety of the Committee's online activity, the Book-related social media posts were, in fact, *de minimis* in amount and, as social media use is free, *de minimis* in cost as well. Any accompanying graphics produced by campaign staff utilized minimal Committee time and resources and, as such, were also of *de minimis* cost. While the Complainant in this instance argues that anything more than two sentences of promotional material violates the *de minimis* standard instituted by the Commission, this improperly establishes the "floor" level of activity as the effective "ceiling" beyond which no permissible activity may occur. This approach is neither correct nor appropriate, however, and the Commission should dismiss the argument accordingly.

III. Conclusion

Complainants have unsuccessfully attempted to throw allegations at the wall in hopes that something will stick. The Committee's use of campaign resources to purchase and promote Mr. Parnell's books were done in accordance with Commission guidance and, accordingly, a permitted and appropriate use of campaign funds. The allegations in the Complaint are riddled with speculation and are unsupported by any concrete or verifiable facts, failing to meet even the lowest factual and evidentiary standards required for the Commission to find reason to believe that any violation of federal law occurred. Because the Complaint is wholly devoid of merit and fails to withstand any degree of scrutiny, we urge the Commission to promptly dismiss the matter without further action. Further, Mr. Parnell is no longer a candidate for U.S. Senate. Taken together, the Commission's resources are better devoted elsewhere.

Sincerely,



Jessica Furst Johnson
Christine Fort
Counsel to the Americans for Parnell Committee