

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7940

DATE COMPLAINT FILED: Oct. 29, 2021

DATE OF NOTIFICATIONS: Nov. 4, 2021

DATE OF LAST RESPONSE: Dec. 21, 2021

DATE ACTIVATED: Mar. 31, 2022

EXPIRATION OF SOL: June 29, 2026-

Sept. 3, 2026

ELECTION CYCLE: 2022

COMPLAINANT: Jason Henry

RESPONDENTS: Americans for Parnell Committee and Kayla Glaze
in her official capacity as treasurer
Richard Sean Parnell

RELEVANT STATUTE AND REGULATION:

52 U.S.C. § 30114(b)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Richard Sean Parnell, a candidate for U.S. Senate for

30 Pennsylvania in the 2022 election cycle, and his principal campaign committee, Americans for
31 Parnell Committee and Kayla Glaze in her official capacity as treasurer (the “Committee”),
32 converted campaign funds to personal use when the Committee purchased books authored by
33 Parnell and promoted those books on its social media accounts. The Response argues that the
34 purchase and promotion of the books conformed to guidance issued by the Commission in
35 advisory opinions — that is, the books were purchased for campaign purposes at fair market
36 value; Parnell did not receive any income or royalties from the purchase; and the promotion of
37 the books on the Committee’s social media was *de minimis*.

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1 As explained below, the Committee's purchase of the books was apparently for fair
2 market value, a reasonable number of them were given to contributors and supporters, the
3 purchase was excluded from any current or future royalty calculations, and Parnell did not
4 receive any income from the sale of books to the Committee. Therefore, we recommend that the
5 Commission find no reason to believe that the Committee's purchase of Parnell's books resulted
6 in the conversion of campaign funds to personal use. Further, the Committee's promotion of the
7 books on its social media is *de minimis*, and pursuing the related violation does not appear to be
8 worth further expenditure of the Commission's limited resources. Therefore, we recommend
9 that the Commission exercise its prosecutorial discretion to dismiss the allegation that the
10 Committee's promotion of Parnell's books on its social media accounts resulted in the
11 conversion of campaign funds to personal use.¹

12 **II. FACTUAL BACKGROUND**

13 Richard Sean Parnell was a candidate for U.S. Senate for Pennsylvania in the 2022
14 election cycle.² The Committee is his principal campaign committee.³ Parnell is the author of

¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

² Richard Sean Parnell, Amended Statement of Candidacy at 1 (July 28, 2021), <https://docquery.fec.gov/pdf/480/202107289452144480/202107289452144480.pdf>. On November 22, 2021, after the Complaint was filed but prior to the primary election, Parnell suspended his campaign. Sara Murray & Michael Warren, *Republican Sean Parnell Suspends Candidacy for Pennsylvania Senate Seat*, CNN (Nov. 22, 2021), <https://www.cnn.com/2021/11/22/politics/sean-parnell-suspends-senate-campaign/index.html>; Resp. at 1 (Dec. 20, 2021) ("Mr. Parnell suspended his campaign for Senate on November 22, 2021."); *see generally* Compl. (Oct. 29, 2021) (referring to Parnell as an active candidate).

³ Am. for Parnell Comm., Amended Statement of Organization at 1 (July 27, 2021), <https://docquery.fec.gov/pdf/169/202107279452132169/202107279452132169.pdf>.

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1 five books published by HarperCollins Publishers, including *Outlaw Platoon* and *Left for Dead*.⁴

2 *Left for Dead* was released on September 7, 2021, during Parnell's candidacy.⁵

3 Citing the Committee's disclosure reports, the Complaint identifies \$2,803.54 in
 4 disbursements from the Committee to "Harper Collins Publishing [sic]" for "Donor Mementos"
 5 that the Complaint infers were for books written by Parnell.⁶ The Complaint notes that,
 6 according to Parnell's 2021 Senate Financial Disclosure, Parnell received \$96,811 of income
 7 from "royalties" or "profits on sale of books" over the last decade.⁷ The Complaint alleges that
 8 "there is no indication" that the publisher either donated royalties associated with the
 9 Committee's purchase of Parnell's books to charity or excluded the purchase from the
 10 calculation of Parnell's royalties.⁸ Thus, according to the Complaint, Parnell and the Committee
 11 converted campaign funds to personal use because Parnell received royalties on the Committee's
 12 book purchases.⁹

13 The Complaint further alleges that the Committee impermissibly promoted Parnell's
 14 books with "at least" 25 posts on social media.¹⁰ For example, the Committee's Twitter account

⁴ Compl. at 2 (citing *Search Results: Sean Parnell*, HARPERCOLLINS PUBLISHERS, <https://www.harpercollins.com/search?q=sean+parnell> (last visited Jan. 19, 2023)).

⁵ *Id.*, Ex. C; *Left for Dead*, HARPERCOLLINS PUBLISHERS, <https://www.harpercollins.com/products/left-for-dead-sean-parnell?variant=33031637499938> (last visited Jan. 19, 2023).

⁶ Compl. at 2. After the Complaint was filed, the Committee reported making another \$2,976.65 in disbursements to HarperCollins Publishing. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00724914&recipient_name=harper+collins&two_year_transaction_period=2022 (last visited Jan. 19, 2023) (reflecting disbursements to "Harper Collins Publishing [sic]" for "donor mementos").

⁷ RICHARD S. PARRELL, CANDIDATE REPORT (AMENDMENT 1) (Jan. 6, 2022) Senate candidate financial disclosures are accessible online. *See Financial Disclosures*, U.S. SENATE, <https://edfsearch.senate.gov/search> (search for last name: Parnell; report type: annual).

⁸ Compl. at 5.

⁹ *Id.*

¹⁰ *Id.* at 3.

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1 reposted a September 7, 2021 tweet by Derek Hunter, a radio host, reading in relevant part, “Do
 2 yourself a favor and pick up @SeanParnellUSA’s latest Eric Steele book, out today.”¹¹ The
 3 Complaint further alleges that some of the Committee’s social media posts include “custom-
 4 designed countdown graphics to [Parnell’s] latest book’s release,” and infers that “substantial
 5 campaign staff time and campaign resources” were used to create them.¹² The Complaint alleges
 6 that the number of posts exceeds what the Commission has considered *de minimis* and that the
 7 posts entailed “substantial campaign staff time and campaign resources.”¹³

8 The Response argues that the Committee’s actions were “in full compliance with” the
 9 Commission’s guidance issued in its advisory opinions.¹⁴ Specifically, the Response asserts that
 10 the Committee purchased 240 copies of *Outlaw Platoon*, one of Parnell’s books, “to distribute to
 11 donors and supporters and for related campaign activities.”¹⁵ The Response further asserts that
 12 the books were purchased at fair market value and that the “sales were excluded from the
 13 calculation of royalties that otherwise accrue” to Parnell under the publication agreement, and
 14 that Parnell “did not receive any payments or other form of income whatsoever” from the
 15 Committee’s purchase.¹⁶ The Response also states that the Committee’s promotion of the books

¹¹ *Id.* at 3; *id.*, Ex. B; Derek Hunter (@derekahunter), TWITTER (Sept. 7, 2021, 11:25 AM), <https://twitter.com/derekahunter/status/1435263029092962304> (showing seven retweets including by the Committee’s Twitter account). The tweet links to the Amazon listing for Parnell’s book, *Left for Dead*, which notes that the book is the fourth in a series about character “Eric Steele.”

¹² Compl. at 6.

¹³ *Id.* at 5-6.

¹⁴ Resp. at 1 (citing Advisory Opinion 2014-06 (Ryan) (“AO 2014-06”); Advisory Opinion 2011-02 (Brown) (“AO 2011-02”); Advisory Opinion 2006-07 (Hayworth) (“AO 2006-07”)).

¹⁵ *Id.* at 2. The Committee reported disbursements of \$2,803.54 for 240 books in July and September, 2021, resulting in a purchase price of \$11.69 per book. The most recent list price for the paperback version is \$13.59. *See Outlaw Platoon*, HARPERCOLLINS PUBLISHERS, <https://www.harpercollins.com/products/outlaw-platoon-sean-parnelljohn-bruning?variant=32207492907042> (last visited Jan. 19, 2023).

¹⁶ Resp. at 2.

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1 on its social media accounts was *de minimis* “in both amount and cost” and that promotional
 2 material constituted 2.7% of its Twitter posts and 3.7% of its Facebook posts, and only four of
 3 hundreds posts on Gettr, another social media platform, “since the commencement of Parnell’s
 4 candidacy.”¹⁷

5 **III. LEGAL ANALYSIS**

6 Under the Act and Commission regulations, an authorized committee may spend its funds
 7 to finance activities “in connection with the [candidate’s] campaign for Federal office,” and the
 8 Commission has determined that a candidate and the candidate’s campaign committee have wide
 9 discretion in making expenditures to influence the candidate’s election.¹⁸ Campaign funds,
 10 however, “shall not be converted by any person to personal use,” which is defined as using funds
 11 “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the
 12 candidate’s election campaign or individual’s duties as holder of Federal office.”¹⁹ In other
 13 words, expenses “that would be incurred even if the candidate was not a candidate” are
 14 considered personal rather than campaign-related.²⁰

15 Examples of *per se* personal use include utility payments, non-campaign related
 16 automobile expenses, vacations or other non-campaign-related trips, household food items, and

¹⁷ *Id.* at 4; *see also id.* at 2 (“Specifically, as overviewed in the Complaint, this included nine of 324 total Twitter posts, twelve of 324 total Facebook posts, and four Gettr posts. 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.” (citation omitted)).

¹⁸ 52 U.S.C. § 30114(a)(1); 11 C.F.R. § 113.2 (providing that campaign funds may be used to “defray[] expenses in connection with a campaign for federal office”); Commission Regulations on Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (Feb. 9, 1995) [hereinafter 1995 Personal Use E&J]; *see also* AO 2011-02; AO 2006-07.

¹⁹ 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see also* 11 C.F.R. § 113.2.

²⁰ 1995 Personal Use E&J at 7863.

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1 tuition payments not associated with training campaign staff.²¹ For all other disbursements, the
 2 regulation provides that the Commission shall determine on a case-by-case basis whether a given
 3 disbursement is personal use by applying the “irrespective test” formulated in the statute.²²
 4 Neither the purchase nor promotion of a candidate’s book are codified *per se* uses. Accordingly,
 5 the Commission determines “on a case-by-case basis”²³ whether such activities constitute
 6 personal use, and “[i]f the candidate can reasonably show that the expenses at issue resulted from
 7 campaign or officeholder activities, the Commission will not consider the use to be personal
 8 use.”²⁴

9 **A. The Commission Should Find No Reason to Believe that the Committee’s**
 10 **Disbursements for Purchasing Copies of *Outlaw Platoon* Constituted**
 11 **Personal Use**

12 The purchase of a candidate’s book is not one of the *per se* personal uses listed in the Act
 13 and Commission regulations.²⁵ However, the Commission has issued several advisory opinions
 14 addressing questions surrounding campaign committees purchasing copies of candidates’ books.
 15 In those opinions, the Commission has examined the details of the proposed purchases and
 16 whether the candidates derived a personal financial benefit from the transaction.²⁶ The
 17 Commission concluded in these advisory opinions that, where the purchase of a candidate’s book
 18 was for distribution to the committees’ supporters in quantities limited to that purpose, campaign

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

²² 11 C.F.R. § 113.1(g)(1)(ii).

²³ *Id.* § 113.1(g)(1)(i), (ii).

²⁴ 1995 Personal Use E&J at 7863-64.

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

²⁶ Advisory Opinion 1993-20 (Nighthorse Campbell) (“AO 1993-20”); Advisory Opinion 1995-46 (D’Amato) (“AO 1995-46”); Advisory Opinion 2001-08 (Specter) (“AO 2001-08”); Advisory Opinion 2004-18 (Lieberman) (“AO 2004-18”); AO 2011-02; AO 2014-06.

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1 funds were being used “to defray an expense that would not exist irrespective of the campaign”
 2 and therefore, the book purchase was “in connection with” a federal election.²⁷

3 The Commission’s advisory opinions concerning committee book purchases also
 4 considered whether the candidate received a benefit in the form of royalties as a factor in the
 5 personal use analysis, and under the fact patterns presented, determined that no personal use
 6 would result from such purchases in instances in which the publisher donated the candidate’s
 7 royalties for their campaign’s book purchases directly to a charitable organization that was not
 8 associated with the candidate²⁸ or in instances which otherwise excluded the committees’
 9 purchases from the calculation of royalties accruing to the candidate.²⁹

10 Three of the most recent opinions discuss non-receipt of royalties as a key factor in the
 11 Commission’s personal use analysis. In Advisory Opinion 2001-08 (Specter), the Commission
 12 explained that there would be no personal use as result of the committee’s purchase of the
 13 candidate’s book because the purchase would neither result in the candidate receiving income or
 14 tax deductions nor “increase [the candidate’s] opportunity to receive future royalties,” and stated
 15 that “[the candidate’s] non-receipt of such royalties or other benefits indicates that the sale to the
 16 Committee is not, in reality, a device to use the Committee to benefit [the candidate]
 17 financially.”³⁰ In Advisory Opinion 2011-02 (Brown), the Commission explained its rationale in
 18 approving the request by quoting the statute and regulations prohibiting personal use and stating

²⁷ See, e.g., AO 2001-08 at 3; AO 2004-18 at 4; AO 2011-02 at 5; AO 2014-06 at 4.

²⁸ AO 2001-08 (regarding purchases where the royalties were to be donated to charity by publisher); AO 2011-02 (same); AO 2014-06 (same).

²⁹ AO 1993-20 at 1 (noting that the request stated that the candidate will “receive no royalties or profits from sale of [the candidate’s book]”); AO 1995-46 (noting that the rights to all royalties were assigned by the candidate to Chaminade High School in Mineola, New York); AO 2004-18 (noting that the candidate waived all potential royalties from committee purchases by agreement with the publisher).

³⁰ AO 2001-08 at 3.

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1 that the candidate “may not personally accept royalties for sales of the book to the Committee,
 2 even if he then makes charitable contributions equal to that amount . . . [and] must also not
 3 receive any personal benefit, tangible or intangible, for the royalties the Publisher donates to
 4 charity for the sales of the book to the Committee.”³¹ And in Advisory Opinion 2014-06 (Ryan),
 5 citing both the Specter and Brown advisory opinions, the Commission similarly stated that no
 6 personal use would result where “all royalties attributable to the committee’s purchase would be
 7 paid by the publisher to charity; and the committee’s purchase would be excluded by the
 8 publisher from the royalty calculation.”³² Thus, neither the Act nor Commission regulations
 9 expressly prohibit the use of campaign funds to purchase copies of a candidate’s book, and the
 10 Commission’s advisory opinions considering a variety of book purchase arrangements indicate
 11 that campaign committee book purchases that appear to otherwise pass the irrespective test must
 12 also avoid creating a financial benefit for the candidate to be consistent with the Act and
 13 Commission regulations concerning personal use.³³

³¹ AO 2011-02 at 6.

³² AO 2014-06 at 5. AO 1993-20 and AO 1995-46 also involved exclusion of committee purchases from royalty calculations, although the Commission did not cite non-receipt of royalties as prominently as a factor in its analysis in those opinions. AO 1993-20 at 1 (noting that the request indicated that the candidate would “receive no royalties or profits from the sale of [his] biography [to the campaign]”); AO 1995-46 at 2 (stating that “[t]he fact that Senator D’Amato will not receive proceeds from the proposed transactions also indicates that personal use of campaign funds will not result”).

³³ See AO 1993-20; AO 1995-46; AO 2001-08; AO 2004-18; AO 2011-02; AO 2014-06. This Office previously analyzed the Commission’s advisory opinions to examine whether campaign purchases of a candidate’s book constituted personal use, although the case at issue involved a co-publishing contract that did not include royalties, but under which the candidate was personally obligated to purchase a specific number of books. See First Gen. Counsel’s Rpt. at 9-10, 12-13, MUR 6638 (Long) (discussing AO 2004-18 and AO 2001-08, applying the Commission’s analytical framework from those opinions to the facts of the matter, and determining that the purchases may have been personal use where the candidate’s co-publishing contract required him to purchase a definite quantity of books); *see also* Factual & Legal Analysis, MUR 6638 (dismissing as an exercise of prosecutorial discretion without concluding that Long received a personal benefit from the committee’s purchase of his book).

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1 Here, it appears that the Committee purchased the books from HarperCollins Publishers
 2 at fair market value and gave the books to contributors and supporters, therefore using the books
 3 for campaign-related activities. First, the Committee represents that it purchased the books at
 4 fair market value and the information available regarding the number purchased, cost of the
 5 purchases, and retail value of the books tends to support this assertion.³⁴ Second, the number
 6 purchased (240) appears to have been a reasonable amount used for the campaign-related
 7 purpose of “donor mementos.”³⁵ The Complaint does not allege that the number of copies that
 8 the Committee purchased was unreasonably high, nor does any other available information
 9 suggest that the Committee purchased an unreasonably high number of copies, particularly in
 10 light of a committee’s wide discretion in making expenditures to influence its candidate’s
 11 election.³⁶ Further, the number of books purchased here is consistent with prior, Commission-
 12 approved purchases.³⁷

13 It appears that Parnell did not receive any royalties or other income from the Committee’s
 14 purchase of his book. The Response asserts that “any royalties attributable to the Committee’s
 15 purchases were excluded from the [publisher’s] royalty calculation” and that “[a]ll sales . . . to
 16 the Committee were royalty-free.”³⁸ The Response also denies that Parnell received “any
 17 payments” or “income — royalties or otherwise — from such transactions.”³⁹ The Complaint

³⁴ Resp. at 3; *supra* note 15 (calculating that the Committee spent approximately \$11.69 per book).

³⁵ ^{Supra} note 6 and accompanying text; *see also* Resp. at 4 (“The books were purchased at fair market value from Harper Collins for distribution to campaign supporters and for use in a campaign contest.”).

³⁶ ^{Supra} note 18 and accompanying text.

³⁷ AO 2011-02 at 6 (approving purchase of “several thousand” copies of the candidate’s book); AO 2004-18 at 2 (approving purchase of “a few hundred” copies of the candidate’s book); AO 1995-46 at 1 (approving purchase of “up to several thousand” copies of the candidate’s book); AO 1993-20 (approving purchase of “100 copies” of the candidate’s book).

³⁸ Resp. at 3.

³⁹ *Id.* at 1, 3.

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1 bases its allegations on the fact that Parnell generally disclosed receiving royalties in his Senate
 2 Financial Disclosure, but the Complaint lacks any details that would tend to contradict the
 3 Response's specific denials regarding the Committee's book purchases.⁴⁰ Respondents have also
 4 asserted that the purchased copies will have no impact on his future potential royalties, and we
 5 are aware of no information to the contrary. Accordingly, there is no basis to conclude that any
 6 campaign funds were converted to Parnell's personal use.

7 In sum, it appears that the Committee purchased Parnell's books at fair market value;
 8 used the books for a campaign-related purpose; the number of books purchased was reasonable
 9 for this purpose; Parnell did not receive any payments, income, or royalties from the committee's
 10 purchase of the books; and the purchase of the books was excluded from any current or future
 11 royalty calculations. We therefore recommend that the Commission find no reason to believe
 12 that Respondents converted campaign funds to personal use through the Committee's purchase
 13 of Parnell's books in violation of 52 U.S.C. § 30114(b).

14 **B. The Commission Should Dismiss the Allegations that the Committee's Social
 15 Media Activity to Promote *Outlaw Platoon* Constituted Personal Use**

16 It is unclear whether the promotion of Parnell's books on the Committee's social media
 17 was *de minimis*. The Commission has previously concluded that expenses associated with
 18 marketing a commercially published book for which a candidate would receive royalties are
 19 expenses that would exist irrespective of the candidate's election or duties as a federal
 20 officeholder.⁴¹ Further, the Commission has concluded that an authorized committee "may post

⁴⁰ Compl. at 5.

⁴¹ See AO 2014-06 at 7. In AO 2011-02, the Commission wrote that it had "previously determined that the expenses associated with marketing a book that a commercial publisher publishes and for which it pays royalties to the candidate are expenses that would exist irrespective of the candidate's election campaign or duties as a holder of Federal office. Therefore, the use of an authorized committee's asset, such as the Committee's website, to promote

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1 a *de minimis* amount of material promoting” a candidate’s book on the committee’s “website and
 2 social media sites at *de minimis* cost” without converting campaign funds to personal use.⁴² The
 3 Commission has determined that “a single sentence, or, at most two sentences of promotional
 4 material” on a “substantial” committee website would constitute a small amount of material at *de*
 5 *minimis* cost, but that 25% of a website and Facebook and LinkedIn pages and 10% of a Twitter
 6 feed would not be *de minimis*. By contrast, the Commission has advised that the use of a larger
 7 amount of authorized committee assets to promote a candidate’s book ordinarily would
 8 constitute a prohibited personal use of campaign funds.⁴³

9 The facts of this matter indicate that the Committee’s promotion of Parnell’s book is
 10 between what the Commission has advised is acceptable, *de minimis* promotion and what would
 11 certainly not be considered *de minimis*. The Complaint alleges that the Committee posted “nine
 12 times on Twitter, 12 times on Facebook, and four times on Gettr” from the date that the
 13 Committee filed its statement of organization through the end of Parnell’s candidacy.⁴⁴ The
 14 Response asserts that material promoting Parnell’s books on the Committee’s social media
 15 accounts constituted 2.7% of its Twitter posts “since the commencement of Mr. Parnell’s

the candidate’s book would ordinarily constitute a prohibited personal use.” AO 2011-02 at 6 (internal citations omitted). *See also* AO 2006-07 at 3; Advisory Opinion 2006-18 at 3 (Granger) (“AO 2006-18”).

⁴² AO 2011-02 at 6.

⁴³ *See* AO 2011-02 at 6 (determining that material promoting the candidate’s book comprising up to 25% of the Committee website’s homepage, 25% of the Committee’s Facebook page, 10% of the Committee’s Twitter page, and 25% of the candidate’s LinkedIn page would be more than *de minimis* and therefore prohibited); AO 2014-06 at 7 (determining that adding “one or two sentences” of promotional language to the committee’s website, accompanied by hyperlinks to the publisher’s website or online booksellers, and posting similarly limited information to the Committee’s social media accounts was *de minimis* and would not constitute personal use even though the candidate could receive future royalties); AO 2006-07 at 3 (determining that a *de minimis* amount of promotional language added to the Committee’s website would not constitute personal use even though the candidate would receive royalties from any future book sales); *but see* AO 2006-18 at 3-4 (determining that more than *de minimis* use of the campaign website to promote the candidate’s book was not personal use where the candidate had arranged for all resulting royalties to be donated to charity).

⁴⁴ Compl. at 3.

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1 candidacy," 3.7% of its Facebook posts "in the same time frame," and "a scant four posts out of
2 hundreds on Gettr."⁴⁵

3 Review of the Committee's social media accounts confirms that the promotion of
4 Parnell's books constituted a small percentage of the overall content. Although the Complaint
5 characterizes some of the social media posts as containing "custom graphics" of "countdown
6 clocks," it appears that the posts in question are a stock photograph of the book with added text
7 reading, *e.g.*, "2 DAYS," referring to the days until the book's release.⁴⁶ While it is unclear
8 whether the text was added to the photograph by Parnell, the Committee, or a third party, adding
9 such text to a photograph would likely not require a significant use of campaign resources given
10 current photo-editing technology. Other posts cited by the Complaint were re-posts of content
11 generated by third parties, which similarly would not have used substantial Committee
12 resources.⁴⁷ Further, there is no information that Respondents paid to promote these posts.

13 The posts here, while certainly less than 25% of the Committee's posts on any social
14 media platform, are more than the one or two sentences of a website previously considered to be
15 *de minimis* by the Commission. Nevertheless, given the minimal amount of activity at issue here
16 and the Commission's priorities, we recommend that the Commission dismiss as a matter of
17 prosecutorial discretion the allegation that Respondents converted campaign funds to personal
18 use through the Committee's promotion of Parnell's books on social media in violation of
19 52 U.S.C. § 30114(b).⁴⁸

⁴⁵ Resp. at 4.

⁴⁶ Compl., Ex. C.

⁴⁷ See Compl., Ex. B.

⁴⁸ *Heckler v. Chaney*, 470 U.S. 821 (1985).

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1 IV. RECOMMENDATIONS

1. Find no reason to believe that Sean Parnell and Americans for Parnell Committee and Kayla Glaze in her official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use by purchasing copies of Parnell's books;
2. Dismiss as an exercise of prosecutorial discretion the allegation that Sean Parnell and Americans for Parnell Committee and Kayla Glaze in her official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds by promoting Parnell's books through social media posts;
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters; and
5. Close the file.

Lisa J. Stevenson
Acting General Counsel

January 24, 2023

Date

Charles Kitcher

Charles Kitcher
Associate General Counsel for
Enforcement

Ana J. Pena-Wallace

Ana J. Peña-Wallace
Assistant General Counsel

Kathleen A. di Giovanni

Justine A. di Giovanni
Attorney

Previously Assigned: Ray Wolcott

Attachment

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Americans for Parnell Committee and
Kayla Glaze in her official capacity
as treasurer
Richard Sean Parnell

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I. INTRODUCTION

8 This matter arises from a Complaint alleging that Richard Sean Parnell, a candidate for
9 U.S. Senate for Pennsylvania in the 2022 election cycle, and his principal campaign committee,
10 Americans for Parnell Committee and Kayla Glaze in her official capacity as treasurer (the
11 “Committee”), converted campaign funds to personal use when the Committee purchased books
12 authored by Parnell and promoted those books on its social media accounts. The Response
13 argues that the purchase and promotion of the books conformed to guidance issued by the
14 Commission in advisory opinions — that is, the books were purchased for campaign purposes at
15 fair market value; Parnell did not receive any income or royalties from the purchase; and the
16 promotion of the books on the Committee’s social media was *de minimis*.

17 As explained below, the Committee's purchase of the books was apparently for fair
18 market value, a reasonable number of them were given to contributors and supporters, the
19 purchase was excluded from any current or future royalty calculations, and Parnell did not
20 receive any income from the sale of books to the Committee. Therefore, the Commission finds
21 no reason to believe that the Committee's purchase of Parnell's books resulted in the conversion
22 of campaign funds to personal use. Further, the Committee's promotion of the books on its
23 social media is *de minimis*, and pursuing the related violation does not appear to be worth further
24 expenditure of the Commission's limited resources. Therefore, the Commission exercises its

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1 prosecutorial discretion to dismiss the allegation that the Committee's promotion of Parnell's
 2 books on its social media accounts resulted in the conversion of campaign funds to personal use.¹

3 **II. FACTUAL BACKGROUND**

4 Richard Sean Parnell was a candidate for U.S. Senate for Pennsylvania in the 2022
 5 election cycle.² The Committee is his principal campaign committee.³ Parnell is the author of
 6 five books published by HarperCollins Publishers, including *Outlaw Platoon* and *Left for Dead*.⁴
 7 *Left for Dead* was released on September 7, 2021, during Parnell's candidacy.⁵

8 Citing the Committee's disclosure reports, the Complaint identifies \$2,803.54 in
 9 disbursements from the Committee to "Harper Collins Publishing [sic]" for "Donor Mementos"
 10 that the Complaint infers were for books written by Parnell.⁶ The Complaint notes that,
 11 according to Parnell's 2021 Senate Financial Disclosure, Parnell received \$96,811 of income

¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

² Richard Sean Parnell, Amended Statement of Candidacy at 1 (July 28, 2021), <https://docquery.fec.gov/pdf/480/202107289452144480/202107289452144480.pdf>. On November 22, 2021, after the Complaint was filed but prior to the primary election, Parnell suspended his campaign. Sara Murray & Michael Warren, *Republican Sean Parnell Suspends Candidacy for Pennsylvania Senate Seat*, CNN (Nov. 22, 2021), <https://www.cnn.com/2021/11/22/politics/sean-parnell-suspends-senate-campaign/index.html>; Resp. at 1 (Dec. 20, 2021) ("Mr. Parnell suspended his campaign for Senate on November 22, 2021."); *see generally* Compl. (Oct. 29, 2021) (referring to Parnell as an active candidate).

³ Am. for Parnell Comm., Amended Statement of Organization at 1 (July 27, 2021), <https://docquery.fec.gov/pdf/169/202107279452132169/202107279452132169.pdf>.

⁴ Compl. at 2 (citing *Search Results: Sean Parnell*, HARPERCOLLINS PUBLISHERS, <https://www.harpercollins.com/search?q=sean+parnell> (last visited Jan. 19, 2023)).

⁵ *Id.*, Ex. C; *Left for Dead*, HARPERCOLLINS PUBLISHERS, <https://www.harpercollins.com/products/left-for-dead-sean-parnell?variant=33031637499938> (last visited Jan. 19, 2023).

⁶ Compl. at 2. After the Complaint was filed, the Committee reported making another \$2,976.65 in disbursements to HarperCollins Publishing. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00724914&recipient_name=harper+collins&two_year_transaction_period=2022 (last visited Jan. 19, 2023) (reflecting disbursements to "Harper Collins Publishing [sic]" for "donor mementos").

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1 from “royalties” or “profits on sale of books” over the last decade.⁷ The Complaint alleges that
 2 “there is no indication” that the publisher either donated royalties associated with the
 3 Committee’s purchase of Parnell’s books to charity or excluded the purchase from the
 4 calculation of Parnell’s royalties.⁸ Thus, according to the Complaint, Parnell and the Committee
 5 converted campaign funds to personal use because Parnell received royalties on the Committee’s
 6 book purchases.⁹

7 The Complaint further alleges that the Committee impermissibly promoted Parnell’s
 8 books with “at least” 25 posts on social media.¹⁰ For example, the Committee’s Twitter account
 9 reposted a September 7, 2021 tweet by Derek Hunter, a radio host, reading in relevant part, “Do
 10 yourself a favor and pick up @SeanParnellUSA’s latest Eric Steele book, out today.”¹¹ The
 11 Complaint further alleges that some of the Committee’s social media posts include “custom-
 12 designed countdown graphics to [Parnell’s] latest book’s release,” and infers that “substantial
 13 campaign staff time and campaign resources” were used to create them.¹² The Complaint alleges
 14 that the number of posts exceeds what the Commission has considered *de minimis* and that the
 15 posts entailed “substantial campaign staff time and campaign resources.”¹³

⁷ RICHARD S. PARNELL, CANDIDATE REPORT (AMENDMENT 1) (Jan. 6, 2022). Senate candidate financial disclosures are accessible online. *See Financial Disclosures*, U.S. SENATE, <https://edsearch.senate.gov/search> (search for last name: Parnell; report type: annual).

⁸ Compl. at 5.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3; *id.*, Ex. B; Derek Hunter (@derekahunter), TWITTER (Sept. 7, 2021, 11:25 AM), <https://twitter.com/derekahunter/status/1435263029092962304> (showing seven retweets including by the Committee’s Twitter account). The tweet links to the Amazon listing for Parnell’s book, *Left for Dead*, which notes that the book is the fourth in a series about character “Eric Steele.”

¹² Compl. at 6.

¹³ *Id.* at 5-6.

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1 The Response argues that the Committee’s actions were “in full compliance with” the
 2 Commission’s guidance issued in its advisory opinions.¹⁴ Specifically, the Response asserts that
 3 the Committee purchased 240 copies of *Outlaw Platoon*, one of Parnell’s books, “to distribute to
 4 donors and supporters and for related campaign activities.”¹⁵ The Response further asserts that
 5 the books were purchased at fair market value and that the “sales were excluded from the
 6 calculation of royalties that otherwise accrue” to Parnell under the publication agreement, and
 7 that Parnell “did not receive any payments or other form of income whatsoever” from the
 8 Committee’s purchase.¹⁶ The Response also states that the Committee’s promotion of the books
 9 on its social media accounts was *de minimis* “in both amount and cost” and that promotional
 10 material constituted 2.7% of its Twitter posts and 3.7% of its Facebook posts, and only four of
 11 hundreds posts on Gettr, another social media platform, “since the commencement of Parnell’s
 12 candidacy.”¹⁷

13 **III. LEGAL ANALYSIS**

14 Under the Act and Commission regulations, an authorized committee may spend its funds
 15 to finance activities “in connection with the [candidate’s] campaign for Federal office,” and the
 16 Commission has determined that a candidate and the candidate’s campaign committee have wide

¹⁴ Resp. at 1 (citing Advisory Opinion 2014-06 (Ryan) (“AO 2014-06”); Advisory Opinion 2011-02 (Brown) (“AO 2011-02”); Advisory Opinion 2006-07 (Hayworth) (“AO 2006-07”)).

¹⁵ *Id.* at 2. The Committee reported disbursements of \$2,803.54 for 240 books in July and September, 2021, resulting in a purchase price of \$11.69 per book. The most recent list price for the paperback version is \$13.59. *See Outlaw Platoon*, HARPERCOLLINS PUBLISHERS, <https://www.harpercollins.com/products/outlaw-platoon-sean-parnelljohn-bruning?variant=32207492907042> (last visited Jan. 19, 2023).

¹⁶ Resp. at 2.

¹⁷ *Id.* at 4; *see also id.* at 2 (“Specifically, as overviewed in the Complaint, this included nine of 324 total Twitter posts, twelve of 324 total Facebook posts, and four Gettr posts. 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.” (citation omitted)).

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1 discretion in making expenditures to influence the candidate's election.¹⁸ Campaign funds,
 2 however, "shall not be converted by any person to personal use," which is defined as using funds
 3 "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the
 4 candidate's election campaign or individual's duties as holder of Federal office."¹⁹ In other
 5 words, expenses "that would be incurred even if the candidate was not a candidate" are
 6 considered personal rather than campaign-related.²⁰

7 Examples of *per se* personal use include utility payments, non-campaign related
 8 automobile expenses, vacations or other non-campaign-related trips, household food items, and
 9 tuition payments not associated with training campaign staff.²¹ For all other disbursements, the
 10 regulation provides that the Commission shall determine on a case-by-case basis whether a given
 11 disbursement is personal use by applying the "irrespective test" formulated in the statute.²²

12 Neither the purchase nor promotion of a candidate's book are codified *per se* uses. Accordingly,
 13 the Commission determines "on a case-by-case basis"²³ whether such activities constitute
 14 personal use, and "[i]f the candidate can reasonably show that the expenses at issue resulted from
 15 campaign or officeholder activities, the Commission will not consider the use to be personal
 16 use."²⁴

¹⁸ 52 U.S.C. § 30114(a)(1); 11 C.F.R. § 113.2 (providing that campaign funds may be used to "defray[] expenses in connection with a campaign for federal office"); Commission Regulations on Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (Feb. 9, 1995) [hereinafter 1995 Personal Use E&J]; *see also* AO 2011-02; AO 2006-07.

¹⁹ 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see also* 11 C.F.R. § 113.2.

²⁰ 1995 Personal Use E&J at 7863.

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

²² 11 C.F.R. § 113.1(g)(1)(ii).

²³ *Id.* § 113.1(g)(1)(i), (ii).

²⁴ 1995 Personal Use E&J at 7863-64.

1 **A. The Commission Finds No Reason to Believe that the Committee's**
 2 **Disbursements for Purchasing Copies of *Outlaw Platoon* Constituted**
 3 **Personal Use**

4 The purchase of a candidate's book is not one of the *per se* personal uses listed in the Act

5 and Commission regulations.²⁵ However, the Commission has issued several advisory opinions

6 addressing questions surrounding campaign committees purchasing copies of candidates' books.

7 In those opinions, the Commission has examined the details of the proposed purchases and

8 whether the candidates derived a personal financial benefit from the transaction.²⁶ The

9 Commission concluded in these advisory opinions that, where the purchase of a candidate's book

10 was for distribution to the committees' supporters in quantities limited to that purpose, campaign

11 funds were being used "to defray an expense that would not exist irrespective of the campaign"

12 and therefore, the book purchase was "in connection with" a federal election.²⁷

13 The Commission's advisory opinions concerning committee book purchases also

14 considered whether the candidate received a benefit in the form of royalties as a factor in the

15 personal use analysis, and under the fact patterns presented, determined that no personal use

16 would result from such purchases in instances in which the publisher donated the candidate's

17 royalties for their campaign's book purchases directly to a charitable organization that was not

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

²⁶ Advisory Opinion 1993-20 (Nighthorse Campbell) ("AO 1993-20"); Advisory Opinion 1995-46 (D'Amato) ("AO 1995-46"); Advisory Opinion 2001-08 (Specter) ("AO 2001-08"); Advisory Opinion 2004-18 (Lieberman) ("AO 2004-18"); AO 2011-02; AO 2014-06.

²⁷ See, e.g., AO 2001-08 at 3; AO 2004-18 at 4; AO 2011-02 at 5; AO 2014-06 at 4.

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1 associated with the candidate²⁸ or in instances which otherwise excluded the committees'
 2 purchases from the calculation of royalties accruing to the candidate.²⁹

3 Three of the most recent opinions discuss non-receipt of royalties as a key factor in the
 4 Commission's personal use analysis. In Advisory Opinion 2001-08 (Specter), the Commission
 5 explained that there would be no personal use as result of the committee's purchase of the
 6 candidate's book because the purchase would neither result in the candidate receiving income or
 7 tax deductions nor "increase [the candidate's] opportunity to receive future royalties," and stated
 8 that "[the candidate's] non-receipt of such royalties or other benefits indicates that the sale to the
 9 Committee is not, in reality, a device to use the Committee to benefit [the candidate]
 10 financially."³⁰ In Advisory Opinion 2011-02 (Brown), the Commission explained its rationale in
 11 approving the request by quoting the statute and regulations prohibiting personal use and stating
 12 that the candidate "may not personally accept royalties for sales of the book to the Committee,
 13 even if he then makes charitable contributions equal to that amount . . . [and] must also not
 14 receive any personal benefit, tangible or intangible, for the royalties the Publisher donates to
 15 charity for the sales of the book to the Committee."³¹ And in Advisory Opinion 2014-06 (Ryan),
 16 citing both the Specter and Brown advisory opinions, the Commission similarly stated that no
 17 personal use would result where "all royalties attributable to the committee's purchase would be
 18 paid by the publisher to charity; and the committee's purchase would be excluded by the

²⁸ AO 2001-08 (regarding purchases where the royalties were to be donated to charity by publisher); AO 2011-02 (same); AO 2014-06 (same).

²⁹ AO 1993-20 at 1 (noting that the request stated that the candidate will "receive no royalties or profits from sale of [the candidate's book]"); AO 1995-46 (noting that the rights to all royalties were assigned by the candidate to Chaminade High School in Mineola, New York); AO 2004-18 (noting that the candidate waived all potential royalties from committee purchases by agreement with the publisher).

³⁰ AO 2001-08 at 3.

³¹ AO 2011-02 at 6.

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1 publisher from the royalty calculation.”³² Thus, neither the Act nor Commission regulations
 2 expressly prohibit the use of campaign funds to purchase copies of a candidate’s book, and the
 3 Commission’s advisory opinions considering a variety of book purchase arrangements indicate
 4 that campaign committee book purchases that appear to otherwise pass the irrespective test must
 5 also avoid creating a financial benefit for the candidate to be consistent with the Act and
 6 Commission regulations concerning personal use.³³

7 Here, it appears that the Committee purchased the books from HarperCollins Publishers
 8 at fair market value and gave the books to contributors and supporters, therefore using the books
 9 for campaign-related activities. First, the Committee represents that it purchased the books at
 10 fair market value and the information available regarding the number purchased, cost of the
 11 purchases, and retail value of the books tends to support this assertion.³⁴ Second, the number
 12 purchased (240) appears to have been a reasonable amount used for the campaign-related
 13 purpose of “donor mementos.”³⁵ The Complaint does not allege that the number of copies that
 14 the Committee purchased was unreasonably high, nor does any other available information
 15 suggest that the Committee purchased an unreasonably high number of copies, particularly in
 16 light of a committee’s wide discretion in making expenditures to influence its candidate’s

³² AO 2014-06 at 5. AO 1993-20 and AO 1995-46 also involved exclusion of committee purchases from royalty calculations, although the Commission did not cite non-receipt of royalties as prominently as a factor in its analysis in those opinions. AO 1993-20 at 1 (noting that the request indicated that the candidate would “receive no royalties or profits from the sale of [his] biography [to the campaign]”); AO 1995-46 at 2 (stating that “[t]he fact that Senator D’Amato will not receive proceeds from the proposed transactions also indicates that personal use of campaign funds will not result”).

³³ See AO 1993-20; AO 1995-46; AO 2001-08; AO 2004-18; AO 2011-02; AO 2014-06. .

³⁴ Resp. at 3; *supra* note 15 (calculating that the Committee spent approximately \$11.69 per book).

³⁵ *Supra* note 6 and accompanying text; *see also* Resp. at 4 (“The books were purchased at fair market value from Harper Collins for distribution to campaign supporters and for use in a campaign contest.”).

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1 election.³⁶ Further, the number of books purchased here is consistent with prior, Commission-
2 approved purchases.³⁷

3 It appears that Parnell did not receive any royalties or other income from the Committee's
4 purchase of his book. The Response asserts that "any royalties attributable to the Committee's
5 purchases were excluded from the [publisher's] royalty calculation" and that "[a]ll sales . . . to
6 the Committee were royalty-free."³⁸ The Response also denies that Parnell received "any
7 payments" or "income — royalties or otherwise — from such transactions."³⁹ The Complaint
8 bases its allegations on the fact that Parnell generally disclosed receiving royalties in his Senate
9 Financial Disclosure, but the Complaint lacks any details that would tend to contradict the
10 Response's specific denials regarding the Committee's book purchases.⁴⁰ Respondents have also
11 asserted that the purchased copies will have no impact on his future potential royalties, and the
12 Commission is aware of no information to the contrary. Accordingly, there is no basis to
13 conclude that any campaign funds were converted to Parnell's personal use.

14 In sum, it appears that the Committee purchased Parnell's books at fair market value;
15 used the books for a campaign-related purpose; the number of books purchased was reasonable
16 for this purpose; Parnell did not receive any payments, income, or royalties from the committee's
17 purchase of the books; and the purchase of the books was excluded from any current or future
18 royalty calculations. The Commission therefore finds no reason to believe that Respondents

³⁶ *Supra* note 18 and accompanying text.

³⁷ AO 2011-02 at 6 (approving purchase of "several thousand" copies of the candidate's book); AO 2004-18 at 2 (approving purchase of "a few hundred" copies of the candidate's book); AO 1995-46 at 1 (approving purchase of "up to several thousand" copies of the candidate's book); AO 1993-20 (approving purchase of "100 copies" of the candidate's book).

³⁸ Resp. at 3.

³⁹ *Id.* at 1, 3.

⁴⁰ Compl. at 5.

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1 converted campaign funds to personal use through the Committee’s purchase of Parnell’s books
 2 in violation of 52 U.S.C. § 30114(b).

3 **B. The Commission Dismisses the Allegations that the Committee’s Social**
 4 **Media Activity to Promote *Outlaw Platoon* Constituted Personal Use**

5 It is unclear whether the promotion of Parnell’s books on the Committee’s social media
 6 was *de minimis*. The Commission has previously concluded that expenses associated with
 7 marketing a commercially published book for which a candidate would receive royalties are
 8 expenses that would exist irrespective of the candidate’s election or duties as a federal
 9 officeholder.⁴¹ Further, the Commission has concluded that an authorized committee “may post
 10 a *de minimis* amount of material promoting” a candidate’s book on the committee’s “website and
 11 social media sites at *de minimis* cost” without converting campaign funds to personal use.⁴² The
 12 Commission has determined that “a single sentence, or, at most two sentences of promotional
 13 material” on a “substantial” committee website would constitute a small amount of material at *de*
 14 *minimis* cost, but that 25% of a website and Facebook and LinkedIn pages and 10% of a Twitter
 15 feed would not be *de minimis*. By contrast, the Commission has advised that the use of a larger

⁴¹ See AO 2014-06 at 7. In AO 2011-02, the Commission wrote that it had “previously determined that the expenses associated with marketing a book that a commercial publisher publishes and for which it pays royalties to the candidate are expenses that would exist irrespective of the candidate’s election campaign or duties as a holder of Federal office. Therefore, the use of an authorized committee’s asset, such as the Committee’s website, to promote the candidate’s book would ordinarily constitute a prohibited personal use.” AO 2011-02 at 6 (internal citations omitted). See also AO 2006-07 at 3; Advisory Opinion 2006-18 at 3 (Granger) (“AO 2006-18”).

⁴² AO 2011-02 at 6.

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1 amount of authorized committee assets to promote a candidate's book ordinarily would
 2 constitute a prohibited personal use of campaign funds.⁴³

3 The facts of this matter indicate that the Committee's promotion of Parnell's book is
 4 between what the Commission has advised is acceptable, *de minimis* promotion and what would
 5 certainly not be considered *de minimis*. The Complaint alleges that the Committee posted "nine
 6 times on Twitter, 12 times on Facebook, and four times on Gettr" from the date that the
 7 Committee filed its statement of organization through the end of Parnell's candidacy.⁴⁴ The
 8 Response asserts that material promoting Parnell's books on the Committee's social media
 9 accounts constituted 2.7% of its Twitter posts "since the commencement of Mr. Parnell's
 10 candidacy," 3.7% of its Facebook posts "in the same time frame," and "a scant four posts out of
 11 hundreds on Gettr."⁴⁵

12 Review of the Committee's social media accounts confirms that the promotion of
 13 Parnell's books constituted a small percentage of the overall content. Although the Complaint
 14 characterizes some of the social media posts as containing "custom graphics" of "countdown
 15 clocks," it appears that the posts in question are a stock photograph of the book with added text

⁴³ See AO 2011-02 at 6 (determining that material promoting the candidate's book comprising up to 25% of the Committee website's homepage, 25% of the Committee's Facebook page, 10% of the Committee's Twitter page, and 25% of the candidate's LinkedIn page would be more than *de minimis* and therefore prohibited); AO 2014-06 at 7 (determining that adding "one or two sentences" of promotional language to the committee's website, accompanied by hyperlinks to the publisher's website or online booksellers, and posting similarly limited information to the Committee's social media accounts was *de minimis* and would not constitute personal use even though the candidate could receive future royalties); AO 2006-07 at 3 (determining that a *de minimis* amount of promotional language added to the Committee's website would not constitute personal use even though the candidate would receive royalties from any future book sales); *but see* AO 2006-18 at 3-4 (determining that more than *de minimis* use of the campaign website to promote the candidate's book was not personal use where the candidate had arranged for all resulting royalties to be donated to charity).

⁴⁴ Compl. at 3.

⁴⁵ Resp. at 4.

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1 reading, *e.g.*, “2 DAYS,” referring to the days until the book’s release.⁴⁶ While it is unclear
2 whether the text was added to the photograph by Parnell, the Committee, or a third party, adding
3 such text to a photograph would likely not require a significant use of campaign resources given
4 current photo-editing technology. Other posts cited by the Complaint were re-posts of content
5 generated by third parties, which similarly would not have used substantial Committee
6 resources.⁴⁷ Further, there is no information that Respondents paid to promote these posts.

7 The posts here, while certainly less than 25% of the Committee’s posts on any social
8 media platform, are more than the one or two sentences of a website previously considered to be
9 *de minimis* by the Commission. Nevertheless, given the minimal amount of activity at issue here
10 and the Commission’s priorities, the Commission dismisses as a matter of prosecutorial
11 discretion the allegation that Respondents converted campaign funds to personal use through the
12 Committee’s promotion of Parnell’s books on social media in violation of 52 U.S.C.
13 § 30114(b).⁴⁸

⁴⁶ Compl., Ex. C.

⁴⁷ See Compl., Ex. B.

⁴⁸ *Heckler v. Chaney*, 470 U.S. 821 (1985).