FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 7940
Americans for Parnell Committee, *et al.*	)	
	)	

SUPPLEMENTAL STATEMENT OF REASONS OF VICE CHAIRMAN SEAN J. COOKSEY

I approved the Office of the General Counsel's ("OGC") recommendations in this matter to, among other things, dismiss as a matter of prosecutorial discretion allegations that former U.S. Senate candidate Sean Parnell and his principal campaign committee—Americans for Parnell Committee (the "Committee")—converted campaign funds to personal use through the Committee's promotion of Parnell's books on its social media accounts.[1] I write separately to make two additional points about the issue of campaign committees promoting candidate books online.

First, this matter demonstrates that the Commission's current standard for assessing permissible campaign book promotion is vague and unworkable. Neither the Act nor the Commission's personal-use regulations explicitly addresses whether a candidate's authorized committee may use campaign assets—including a website or social media account—to promote a book written by the candidate. But the Commission has previously advised that an authorized committee "may post a *de minimis* amount of material promoting" a candidate's book on its "website and social media sites at *de minimis* cost without violating the restriction on personal use of campaign funds."[2] Under this line of advisory opinions, the Commission has observed that "the addition of a single sentence, or, at most, two sentences of promotional material" about a candidate's book to an authorized committee's website is a *de minimis* amount, but that sharing promotional material "comprising up to 25 percent of the Committee website's homepage" or social media posts "does not appear to represent a *de minimis* amount of material."[3]

In this matter, OGC reviewed the Committee's website and social media accounts and determined that its total content promoting Parnell's books, "while certainly less than 25% of the

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1 *See* Certification (Apr. 13, 2023), MUR 7940 (Americans for Parnell Committee, *et al.*).

2 Advisory Op. 2011-02 (Brown) at 6. *See also* Advisory Op. 2014-06 (Ryan) at 7 (approving authorized committee's request to use its website and social media pages to promote candidate's book at *de minimis* cost); Advisory Op. 2006-07 (Hayworth) at 2 (concluding that "*de minimis* cost of adding promotional material to the Committee's website does not constitute a prohibited personal use of campaign funds.").

3 Advisory Op. 2011-02 (Brown) at 7; *see also* Advisory Op. 2006-07 (Hayworth) at 3.

Committee's posts on any social media platform, [is] more than the one or two sentences of a website previously considered to be *de minimis* by the Commission."[4] Left with no clear rule to apply for cases involving promotional material between those two guideposts, OGC threw up its hands and recommended dismissal as a matter of prosecutorial discretion.[5]

The absence of a clear line governing authorized committees' promotion of candidate books engenders regulatory dysfunction and undermines due process. Outside of two vague boundaries—*de minimis* content of one or two sentences on a campaign website versus 25 percent of content on an authorized committee's website and various social media profiles—the Commission has failed to give the regulated community fair notice of how it judges promotional activity that falls in between.[6] This uncertainty invites arbitrary and uneven enforcement by the Commission, and ultimately chills constitutionally protected activity by candidates and their campaigns. The Commission should replace this vague standard with a clearer rule so that committees have a better understanding of what is permitted, and so that the Commission can treat respondents in similar circumstances fairly and equally.

Second, it is important to emphasize that the Commission's analysis of the personal-use allegations here turned on the Respondents' assertion that the social media accounts used to promote Parnell's books belonged to the Committee.[7] The Commission therefore appropriately considered the degree to which Parnell may have personally benefited from use of the Committee's assets. I believe the Commission's analysis would be different, however, if instead the Respondents had shown that the social media accounts belonged to Sean Parnell individually, rather than to the Committee.

The personal-use restrictions in the Act and Commission regulations do not extend to candidates' use of their personal assets, including social media accounts, for their own benefit. The Commission's jurisdiction over questions of personal use is limited to the "use of funds *in a campaign account*" and related campaign resources, and individuals, upon becoming candidates, do not forfeit their First Amendment rights to freely express and publicize their writings, views, opinions, and other works.[8] Accordingly, if those had been the facts here, I would have found no reason to believe any personal use occurred as a matter of law.

Sean J. Cooksey
Vice Chairman

May 12, 2023
Date

4 First General Counsel's Report at 12 (Jan. 24, 2023), MUR 7940 (Americans for Parnell Committee, *et al.*).

5 *Id*.

6 Even the outer limit of 25 percent is itself ambiguous as applied to social media. Does the Commission aggregate all of a committee's social media posts, or look at activity on each platform individually? Is an account's original content treated the same as shared content from other accounts? These uncertainties make it impossible for a committee to know how much promotion on social media is allowed without compliance risk.

7 *See* Factual & Legal Analysis at 3 n.11 (Apr. 17, 2023), MUR 7940 (Americans for Parnell Committee, *et al.*).

8 11 C.F.R. § 113.1(g) (emphasis added).