

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL’S REPORT

MUR: 7967

DATE COMPLAINT FILED: Mar. 9, 2022

DATE OF NOTIFICATIONS: Mar. 10, 2022

LAST RESPONSE RECEIVED: June 2, 2022

DATE ACTIVATED: June 10, 2022

EXPIRATION OF SOL: Jan. 19, 2027 – Feb. 10, 2027

ELECTION CYCLES: 2022

COMPLAINANTS:

Mooney for Congress 2022

Teemu Garrity

RESPONDENTS:

Defending Main Street SuperPAC Inc., and Sarah

Chamberlain in her official capacity as treasurer

RELEVANT STATUTES

AND REGULATIONS:

52 U.S.C. § 30104(b)(6)(B)(iii)

52 U.S.C. § 30104(g)(3)(B)

11 C.F.R. § 104.3(b)(3)(vii)(B)

11 C.F.R. § 104.4(b)(2)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Defending Main Street SuperPAC Inc., and Sarah Chamberlain in her official capacity as treasurer (the “Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations because the Committee’s disclosure reports inaccurately stated that it made independent expenditures opposing “Alex Moody,” rather than the candidate’s actual name, “Alex Mooney.”¹ The Committee acknowledges that its January and February 2022 disclosure reports contained this incorrect name but argues that it was an inadvertent error, which it corrected in March 2022, well

¹ Compl. at 1 (Mar. 9, 2022).

before the relevant May 2022 election. Further, the Committee states that the communications underlying the reports contained the correct name of the candidate with the proper disclaimers. Because the circumstances indicate that the mistake was inadvertent and the overall harm to the public is likely low, we recommend the Commission dismiss this matter pursuant to *Heckler v. Chaney*.²

II. FACTUAL BACKGROUND

Defending Main Street SuperPAC Inc., is an independent expenditure-only political committee ("IEOPC") that registered with the Commission on December 26, 2012.³ Sarah Chamberlain is its treasurer.⁴ During 2019-2020, the Committee had \$3,536,091.11 in receipts⁵ and made \$3,324,233.26 in independent expenditures.⁶

In January and February 2022, the Committee reported making \$202,831.47 in independent expenditures opposing "Alex Moody."⁷ However, those independent expenditures

² 470 U.S. 821 (1985)

³ Defending Main Street SuperPAC Inc., Statement of Organization at 1 (Dec. 26, 2012), <https://docquery.fec.gov/pdf/617/12030992617/12030992617.pdf>.

⁴ Defending Main Street SuperPAC Inc., Amended Statement of Organization at 3 (Jan. 17, 2022), <https://docquery.fec.gov/pdf/779/202201179475007779/202201179475007779.pdf>.

⁵ *FEC Defending Main Street SuperPAC Inc., Financial Summary 2019-2020*, FEC.GOV, <https://www.fec.gov/data/committee/C00540203/?cycle=2020> (last visited Sept. 6, 2022) (reflecting Defending Main Street SuperPAC Inc.'s receipts from 2019 to 2020).

⁶ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00540203&is_notice=false&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Sept. 6, 2022) (reflecting Defending Main Street SuperPAC Inc.'s independent expenditures from 2019 to 2020).

⁷ Compl. at 1; *see also* Defending Main Street SuperPAC Inc., 2022 February Monthly Report at 8 (Feb. 10, 2022), <https://docquery.fec.gov/pdf/600/20220109491617600/20220109491617600.pdf> (Incorrectly referring to the candidate as "Alex Moody"); Defending Main Street SuperPAC Inc., 48-Hour Report (Feb. 4, 2022), <https://docquery.fec.gov/pdf/063/202202049491597063/202202049491597063.pdf> (same); Defending Main Street SuperPAC Inc., 48-Hour Report (Jan. 27, 2022), <https://docquery.fec.gov/pdf/042/202201279475215042/202201279475215042.pdf> (same); Defending Main Street SuperPAC Inc., 48-Hour Report (Jan. 19, 2022), <https://docquery.fec.gov/pdf/056/202201199475024056/202201199475024056.pdf> (same). The Committee again

1 actually opposed “Alex Mooney,” the incumbent Representative from West Virginia’s 2nd
 2 congressional district.⁸

3 According to the Complaint, the Committee’s error was a “deliberate” attempt to
 4 “frustrate online search capabilities” and prevent “public disclosure of its activities.”⁹ In
 5 support, the Complaint states that even after the Alex Mooney campaign informed the
 6 Committee of the misspelling of Mooney’s name in a February 3, 2022 letter, the Committee
 7 continued to file disclosure reports with the incorrect name.¹⁰

8 The Committee acknowledges that it provided an incorrect name in several reports but
 9 indicates that it was inadvertent.¹¹ The Committee argues that it was not attempting to hide its

referred to the candidate as “Alex Moody” in March. Defending Main Street SuperPAC Inc., 2022 March Monthly Report at 7 (Mar. 3, 2022), <https://docquery.fec.gov/pdf/649/202203039493730649/202203039493730649.pdf>; Defending Main Street SuperPAC Inc., 48-Hour Report (Mar. 3, 2022), <https://docquery.fec.gov/pdf/614/202203039493730614/202203039493730614.pdf>.

⁸ Defending Main Street SuperPAC Inc., Amended 2022 February Monthly Report at 8 (Mar. 14, 2022), <https://docquery.fec.gov/pdf/334/202203149493772334/202203149493772334.pdf> (Amending the 2022 February Monthly Report to reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/342/202203149493772342/202203149493772342.pdf> (Amending the February 4, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/329/202203149493772329/202203149493772329.pdf> (Amending the January 27, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/324/202203149493772324/202203149493772324.pdf> (Amending the January 19, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”); *see also* Defending Main Street SuperPAC Inc., Amended 2022 March Monthly Report at 7 (Mar. 14, 2022), <https://docquery.fec.gov/pdf/354/202203149493772354/202203149493772354.pdf> (Amending the 2022 March Monthly Report to reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/347/202203149493772347/202203149493772347.pdf> (Amending the March 3, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”).

⁹ Compl. at 1.

¹⁰ *Id.* at 2; *see also id.*, Attach. 5 at 2 (noting that the Committee’s January 27, 2022 48-Hour Report spelled Alex Mooney’s name as “Alex Moody”).

¹¹ Resp. at 1 (June 2, 2022) (stating it “was a simple ‘writo’ mistake by Ms. Chamberlain when initially conveying information to the accounting firm that handles FEC reporting”); *see also id.*, Attach. at 1-2 (emails from Sarah Chamberlain with the subject line “West Virginia against moody” and approving reports to the Commission indicating opposition to “Alex Moody”).

independent expenditures from the public, noting that its disclosure reports correctly referenced the primary election it was trying to influence.¹² The Committee further contends that it corrected its mistakes on March 14, 2022, four days after receiving the Complaint and 57 days before the May 10, 2022 primary election¹³ and that the communications underlying the reports contained the correct candidate name with the required disclaimers.¹⁴

III. LEGAL ANALYSIS

The Act and Commission regulations require political committees to provide an accounting of all disbursements, including independent expenditures, on their regularly-scheduled disclosure reports.¹⁵ In addition, committees that make independent expenditures aggregating \$10,000 or more, at any time up to and including the 20th day before the date of an election, must file 48-Hour Reports to disclose such independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the independent expenditures are publicly distributed or otherwise publicly disseminated.¹⁶ Additional 48-Hour Reports must be filed by 11:59 p.m. the following day each time a committee makes or contracts

¹² Resp. at 1.

¹³ *Id.*; see *supra* note 8. In its 2022 May Monthly Report, the Committee correctly identified “Alex Mooney” as the candidate it was opposing in its independent expenditures totaling \$250,000. Defending Main Street SuperPAC Inc., 2022 May Monthly Report at 14 (May 10, 2022), <https://docquery.fec.gov/pdf/790/202205109502719790/202205109502719790.pdf>.

¹⁴ Resp. at 2; see also *Campaign Support*, DEFENDING MAIN STREET, <https://www.defendingmainstreet.com/materials> (last visited Sept. 6, 2022) (providing electronic copies of its communications opposing Alex Mooney with a disclaimer that it was “paid for by Defending Main Street SuperPAC”).

¹⁵ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b).

¹⁶ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

1 to make independent expenditures relating to the same election that aggregates an additional
 2 \$10,000 or more.¹⁷

3 Both the regularly-scheduled disclosure reports and 48-Hour Reports must include the
 4 name of each candidate whom the expenditure is intended to support or oppose.¹⁸ Additionally,
 5 the reports must include the date and amount of the independent expenditure, the office sought
 6 by the candidate referenced in the communication, and “a certification, under penalty of perjury,
 7 whether such independent expenditure is made in cooperation, consultation, or concert, with, or
 8 at the request or suggestion of, any candidate or any authorized committee or agent of such
 9 committee.”¹⁹

10 Here, while the Committee misspelled the name of the opposing candidate by identifying
 11 him as “Alex Moody,” rather than “Alex Mooney,” the Committee timely filed the disclosure
 12 reports alleged in the Complaint.²⁰ These reports also included the correct date and amount of
 13 the independent expenditure, the office sought by the candidate referenced in the
 14 communication, and a certification, under penalty of perjury, whether the independent
 15 expenditure was made in cooperation, consultation, or concert, with, or at the request or
 16 suggestion of, any candidate or any authorized committee or agent of such committee.²¹ While
 17 the Complaint cites prior instances in which the Commission found reason to believe that

¹⁷ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

¹⁸ 52 U.S.C. § 30104(b)(6)(B)(iii), (g)(3)(B); *see also* 11 C.F.R. §§ 104.3(b)(3)(vii)(B), 104.4(b)(2).

¹⁹ 52 U.S.C. § 30104(b)(6)(B)(iii), (g)(3)(B); *see also* 11 C.F.R. §§ 104.3(b)(3)(vii)(B), 104.4(b)(2).

²⁰ *See supra* note 7.

²¹ *Id.*

1 respondents failed to properly report their independent expenditures, those matters involved
 2 allegations where respondents filed their reports late or misreported the dollar amount of the
 3 independent expenditure spending,²² which are not at issue here.

4 Further, the amount of confusion caused by the Committee's error was likely low. The
 5 independent expenditure communications themselves contained the correct name of Mooney and
 6 a disclaimer indicating that the Committee paid for them²³ — which is supported by the sample
 7 communications hosted on the Committee's website.²⁴ And the Committee's reports accurately
 8 disclosed the overall amount and sources of spending for the primary election for the House of
 9 Representatives in the 2nd district of West Virginia. Moreover, as Alex Mooney had been
 10 serving as the Representative in West Virginia's 2nd congressional district since January 2015,
 11 voters residing in that district likely recognized that the identification of "Alex Moody" in the
 12 Committee's disclosure reports was a spelling error. Finally, because the Committee amended
 13 its reports on March 14, 2022, it provided the public with the correct information 57 days before
 14 the primary election.²⁵

²² Compl. at 2-3 (citing MUR 7896 (Integrity NJ), MUR 7545 (Tea Party Majority Fund), and MURs 7438, 7476 (Ohio First PAC)); *see* Factual and Legal Analysis ("F&LA") at 1-2, 4-5, MUR 7896 (Integrity NJ) (finding reason to believe that the committee failed to timely file a 48-Hour Report, where the independent expenditures were not disclosed until the committee filed its 12-Day Pre-General Report); F&LA at 5-7, MUR 7545 (Tea Party Majority Fund) (found reason to believe that the committee misreported the amount it spent on independent expenditures on its quarterly reports, and the committee did not correct that information despite receiving Requests for Additional Information from the Reports Analysis Division); F&LA at 1, 5-6, MURs 7438, 7476 (Ohio First PAC) (finding reason to believe that the committee failed to timely file 48-Hour Reports, where those independent expenditures were not disclosed until six weeks after the relevant election).

²³ Resp. at 2.

²⁴ *See Campaign Support*, DEFENDING MAIN STREET, <https://www.defendingmainstreet.com/materials> (last visited Sept. 6, 2022).

²⁵ *Supra* note 8.

Despite the Complaint's allegation that the Alex Mooney campaign informed the Committee of its mistake in a February 3, 2022 letter,²⁶ that letter primarily focuses on the Committee's advertisements themselves — alleging that the Committee defamed Mooney in a number of print advertisements by using a fabricated photo and making false statements about him. The misspelling of Mooney's name in the Committee's reports was not the focus of the letter, which only made one passing reference to the error.²⁷

As such, while the Committee did not accurately identify the candidate in its disclosure reports, the circumstances in this matter suggest that the overall harm to the public is likely low and that the mistake was inadvertent. We therefore recommend the Commission dismiss this matter pursuant to *Heckler v. Chaney*.²⁸

IV. RECOMMENDATIONS

1. Dismiss the allegation that Defending Main Street SuperPAC Inc., and Sarah Chamberlain in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(6)(B)(iii), (g)(3)(B) and 11 C.F.R. §§ 104.3(b)(3)(vii)(B), 104.4(b)(2) by failing to accurately provide the name of the candidate it was opposing in its disclosure reports;
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letters; and

²⁶ Compl. at 2; *see also id.*, Attach. 5 at 2.

²⁷ Compl., Attach. 5 (alleging that the Committee's statements against Alex Mooney were false, and stating "the publication was widespread, as demonstrated by your 48-hour report to the Federal Election Commission dated January 27, 2022, noting that your committee spent \$50,067.54 for a mailing opposing 'Alex Moody' [*sic*]") (emphasis in original).

²⁸ 471 U.S. at 831-32; *cf.* Gen. Counsel's Rpt. 1-2, MUR 7925 (Jim Banks for Congress, *et al.*) (EPS Dismissal) (dismissing the complaint where the committee stated that a misspelling of a contributor's name caused it to be unaware of an excessive contribution and the contribution was refunded within 15 days of its discovery); Certification ¶ 1 (July 13, 2022), MUR 7925.

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4. Close the file.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel
for Enforcement

Sept. 6, 2022

Date

Jin Lee

Jin Lee
Deputy Associate General Counsel
for Enforcement

Mark D. Shonkwiler BY *KDH*

Mark Shonkwiler
Assistant General Counsel

Crystal Liu

Crystal Liu
Attorney

Attachment

Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Defending Main Street SuperPAC Inc., and
4 Sarah Chamberlain in her official capacity
5 as treasurer

MUR 7967

6 **I. INTRODUCTION**

7 The Complaint alleges that Defending Main Street SuperPAC Inc., and Sarah
8 Chamberlain in her official capacity as treasurer (the “Committee”) violated the Federal Election
9 Campaign Act of 1971, as amended (the “Act”), and Commission regulations because the
10 Committee’s disclosure reports inaccurately stated that it made independent expenditures
11 opposing “Alex Moody,” rather than the candidate’s actual name, “Alex Mooney.”¹ The
12 Committee acknowledges that its January and February 2022 disclosure reports contained this
13 incorrect name but argues that it was an inadvertent error, which it corrected in March 2022, well
14 before the relevant May 2022 election. Further, the Committee states that the communications
15 underlying the reports contained the correct name of the candidate with the proper disclaimers.
16 Because the circumstances indicate that the mistake was inadvertent and the overall harm to the
17 public is likely low, Commission dismisses this matter pursuant to *Heckler v. Chaney*.²

18 **II. FACTUAL BACKGROUND**

19 Defending Main Street SuperPAC Inc., is an independent expenditure-only political
20 committee (“IEOPC”) that registered with the Commission on December 26, 2012.³ Sarah

¹ Compl. at 1 (Mar. 9, 2022).

² 470 U.S. 821 (1985)

³ Defending Main Street SuperPAC Inc., Statement of Organization at 1 (Dec. 26, 2012), <https://docquery.fec.gov/pdf/617/12030992617/12030992617.pdf>.

Chamberlain is its treasurer.⁴ During 2019-2020, the Committee had \$3,536,091.11 in receipts⁵ and made \$3,324,233.26 in independent expenditures.⁶

In January and February 2022, the Committee reported making \$202,831.47 in independent expenditures opposing “Alex Moody.”⁷ However, those independent expenditures actually opposed “Alex Mooney,” the incumbent Representative from West Virginia’s 2nd congressional district.⁸

⁴ Defending Main Street SuperPAC Inc., Amended Statement of Organization at 3 (Jan. 17, 2022), <https://docquery.fec.gov/pdf/779/202201179475007779/202201179475007779.pdf>.

⁵ *FEC Defending Main Street SuperPAC Inc., Financial Summary 2019-2020*, FEC.GOV, <https://www.fec.gov/data/committee/C00540203/?cycle=2020> (last visited Sept. 6, 2022) (reflecting Defending Main Street SuperPAC Inc.’s receipts from 2019 to 2020).

⁶ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C00540203&is_notice=false&most_recent=true&min_date=01%2F01%2F2019&max_date=12%2F31%2F2020 (last visited Sept. 6, 2022) (reflecting Defending Main Street SuperPAC Inc.’s independent expenditures from 2019 to 2020).

⁷ Compl. at 1; *see also* Defending Main Street SuperPAC Inc., 2022 February Monthly Report at 8 (Feb. 10, 2022), <https://docquery.fec.gov/pdf/600/202202109491617600/202202109491617600.pdf> (Incorrectly referring to the candidate as “Alex Moody”); Defending Main Street SuperPAC Inc., 48-Hour Report (Feb. 4, 2022), <https://docquery.fec.gov/pdf/063/202202049491597063/202202049491597063.pdf> (same); Defending Main Street SuperPAC Inc., 48-Hour Report (Jan. 27, 2022), <https://docquery.fec.gov/pdf/042/202201279475215042/202201279475215042.pdf> (same); Defending Main Street SuperPAC Inc., 48-Hour Report (Jan. 19, 2022), <https://docquery.fec.gov/pdf/056/202201199475024056/202201199475024056.pdf> (same). The Committee again referred to the candidate as “Alex Moody” in March. Defending Main Street SuperPAC Inc., 2022 March Monthly Report at 7 (Mar. 3, 2022), <https://docquery.fec.gov/pdf/649/202203039493730649/202203039493730649.pdf>; Defending Main Street SuperPAC Inc., 48-Hour Report (Mar. 3, 2022), <https://docquery.fec.gov/pdf/614/202203039493730614/202203039493730614.pdf>.

⁸ Defending Main Street SuperPAC Inc., Amended 2022 February Monthly Report at 8 (Mar. 14, 2022), <https://docquery.fec.gov/pdf/334/202203149493772334/202203149493772334.pdf> (Amending the 2022 February Monthly Report to reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/342/202203149493772342/202203149493772342.pdf> (Amending the February 4, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/329/202203149493772329/202203149493772329.pdf> (Amending the January 27, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/324/202203149493772324/202203149493772324.pdf> (Amending the January 19, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”); *see also* Defending Main Street SuperPAC Inc., Amended 2022 March Monthly Report at 7 (Mar. 14, 2022), <https://docquery.fec.gov/pdf/354/202203149493772354/202203149493772354.pdf> (Amending the 2022 March Monthly Report to reflect the candidate’s name as “Alex Mooney”); Defending Main Street SuperPAC Inc., Amended 48-

According to the Complaint, the Committee’s error was a “deliberate” attempt to “frustrate online search capabilities” and prevent “public disclosure of its activities.”⁹ In support, the Complaint states that even after the Alex Mooney campaign informed the Committee of the misspelling of Mooney’s name in a February 3, 2022 letter, the Committee continued to file disclosure reports with the incorrect name.¹⁰

The Committee acknowledges that it provided an incorrect name in several reports but indicates that it was inadvertent.¹¹ The Committee argues that it was not attempting to hide its independent expenditures from the public, noting that its disclosure reports correctly referenced the primary election it was trying to influence.¹² The Committee further contends that it corrected its mistakes on March 14, 2022, four days after receiving the Complaint and 57 days

Hour Report (Mar. 14, 2022), <https://docquery.fec.gov/pdf/347/202203149493772347/202203149493772347.pdf> (Amending the March 3, 2022 48-Hour Report to correctly reflect the candidate’s name as “Alex Mooney”).

⁹ Compl. at 1.

¹⁰ *Id.* at 2; *see also id.*, Attach. 5 at 2 (noting that the Committee’s January 27, 2022 48-Hour Report spelled Alex Mooney’s name as “Alex Moody”).

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¹² Resp. at 1.

before the May 10, 2022 primary election¹³ and that the communications underlying the reports contained the correct candidate name with the required disclaimers.¹⁴

III. LEGAL ANALYSIS

The Act and Commission regulations require political committees to provide an accounting of all disbursements, including independent expenditures, on their regularly-scheduled disclosure reports.¹⁵ In addition, committees that make independent expenditures aggregating \$10,000 or more, at any time up to and including the 20th day before the date of an election, must file 48-Hour Reports to disclose such independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the independent expenditures are publicly distributed or otherwise publicly disseminated.¹⁶ Additional 48-Hour Reports must be filed by 11:59 p.m. the following day each time a committee makes or contracts to make independent expenditures relating to the same election that aggregates an additional \$10,000 or more.¹⁷

¹³ *Id.*; see *supra* note 8. In its 2022 May Monthly Report, the Committee correctly identified “Alex Mooney” as the candidate it was opposing in its independent expenditures totaling \$250,000. Defending Main Street SuperPAC Inc., 2022 May Monthly Report at 14 (May 10, 2022), <https://docquery.fec.gov/pdf/790/202205109502719790/202205109502719790.pdf>.

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¹⁵ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b).

¹⁶ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

¹⁷ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

Both the regularly-scheduled disclosure reports and 48-Hour Reports must include the name of each candidate whom the expenditure is intended to support or oppose.¹⁸ Additionally, the reports must include the date and amount of the independent expenditure, the office sought by the candidate referenced in the communication, and “a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee.”¹⁹

Here, while the Committee misspelled the name of the opposing candidate by identifying him as “Alex Moody,” rather than “Alex Mooney,” the Committee timely filed the disclosure reports alleged in the Complaint.²⁰ These reports also included the correct date and amount of the independent expenditure, the office sought by the candidate referenced in the communication, and a certification, under penalty of perjury, whether the independent expenditure was made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee.²¹ While the Complaint cites prior instances in which the Commission found reason to believe that respondents failed to properly report their independent expenditures, those matters involved

¹⁸ 52 U.S.C. § 30104(b)(6)(B)(iii), (g)(3)(B); *see also* 11 C.F.R. §§ 104.3(b)(3)(vii)(B), 104.4(b)(2).

¹⁹ 52 U.S.C. § 30104(b)(6)(B)(iii), (g)(3)(B); *see also* 11 C.F.R. §§ 104.3(b)(3)(vii)(B), 104.4(b)(2).

²⁰ *See supra* note 7.

²¹ *Id.*

allegations where respondents filed their reports late or misreported the dollar amount of the independent expenditure spending,²² which are not at issue here.

Further, the amount of confusion caused by the Committee's error was likely low. The independent expenditure communications themselves contained the correct name of Mooney and a disclaimer indicating that the Committee paid for them²³ — which is supported by the sample communications hosted on the Committee's website.²⁴ And the Committee's reports accurately disclosed the overall amount and sources of spending for the primary election for the House of Representatives in the 2nd district of West Virginia. Moreover, as Alex Mooney had been serving as the Representative in West Virginia's 2nd congressional district since January 2015, voters residing in that district likely recognized that the identification of "Alex Moody" in the Committee's disclosure reports was a spelling error. Finally, because the Committee amended its reports on March 14, 2022, it provided the public with the correct information 57 days before the primary election.²⁵

²² Compl. at 2-3 (citing MUR 7896 (Integrity NJ), MUR 7545 (Tea Party Majority Fund), and MURs 7438, 7476 (Ohio First PAC)); *see* Factual and Legal Analysis ("F&LA") at 1-2, 4-5, MUR 7896 (Integrity NJ) (finding reason to believe that the committee failed to timely file a 48-Hour Report, where the independent expenditures were not disclosed until the committee filed its 12-Day Pre-General Report); F&LA at 5-7, MUR 7545 (Tea Party Majority Fund) (found reason to believe that the committee misreported the amount it spent on independent expenditures on its quarterly reports, and the committee did not correct that information despite receiving Requests for Additional Information from the Reports Analysis Division); F&LA at 1, 5-6, MURs 7438, 7476 (Ohio First PAC) (finding reason to believe that the committee failed to timely file 48-Hour Reports, where those independent expenditures were not disclosed until six weeks after the relevant election).

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²⁴ *See Campaign Support*, DEFENDING MAIN STREET, <https://www.defendingmainstreet.com/materials> (last visited Sept. 6, 2022).

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1 Despite the Complaint’s allegation that the Alex Mooney campaign informed the
2 Committee of its mistake in a February 3, 2022 letter,²⁶ that letter primarily focuses on the
3 Committee’s advertisements themselves — alleging that the Committee defamed Mooney in a
4 number of print advertisements by using a fabricated photo and making false statements about
5 him. The misspelling of Mooney’s name in the Committee’s reports was not the focus of the
6 letter, which only made one passing reference to the error.²⁷

7 As such, while the Committee did not accurately identify the candidate in its disclosure
8 reports, the circumstances in this matter suggest that the overall harm to the public is likely low
9 and that the mistake was inadvertent. Therefore, the Commission dismisses this matter pursuant
10 to *Heckler v. Chaney*.²⁸

²⁶ Compl. at 2; *see also id.*, Attach. 5 at 2.

²⁷ Compl., Attach. 5 (alleging that the Committee’s statements against Alex Mooney were false, and stating “the publication was widespread, as demonstrated by your 48-hour report to the Federal Election Commission dated January 27, 2022, noting that your committee spent \$50,067.54 for a mailing opposing ‘Alex Moody’ [*sic*]”) (emphasis in original).

²⁸ 471 U.S. at 831-32; *cf.* Gen. Counsel’s Rpt. 1-2, MUR 7925 (Jim Banks for Congress, *et al.*) (EPS Dismissal) (dismissing the complaint where the committee stated that a misspelling of a contributor’s name caused it to be unaware of an excessive contribution and the contribution was refunded within 15 days of its discovery); Certification ¶ 1 (July 13, 2022), MUR 7925.