



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 4, 2022

Via Electronic Mail

Scott.Thomas@BlankRome.com

Scott E. Thomas, Esq.
Blank Rome LLP
1825 Eye Street NW
Washington, DC 20006

RE: MUR 7967
Defending Main Street SuperPAC
Inc., and Sarah Chamberlain in her
official capacity as treasurer

Dear Mr. Thomas:

On March 10, 2022, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and the information supplied by your clients, the Commission, on September 22, 2022, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Crystal Liu, the attorney assigned to this matter, at (202) 694-1273.

Sincerely,

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Defending Main Street SuperPAC Inc., and **MUR 7967**
 Sarah Chamberlain in her official capacity
 as treasurer

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 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, Commission dismisses 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

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-

MUR 7967 (Defending Main Street SuperPAC Inc.)

Factual and Legal Analysis

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

6 The Committee acknowledges that it provided an incorrect name in several reports but
7 indicates that it was inadvertent.¹¹ The Committee argues that it was not attempting to hide its
8 independent expenditures from the public, noting that its disclosure reports correctly referenced
9 the primary election it was trying to influence.¹² The Committee further contends that it
10 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”).

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”).

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>.

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).

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

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.*

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

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

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

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.

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

1 number of print advertisements by using a fabricated photo and making false statements about
2 him. The misspelling of Mooney’s name in the Committee’s reports was not the focus of the
3 letter, which only made one passing reference to the error.²⁷

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

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.