

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7882

DATE COMPLAINT FILED: February 25, 2021

DATE OF NOTIFICATION: March 3, 2021

LAST RESPONSE RECEIVED: March 17, 2021

DATE ACTIVATED: August 25, 2021

EARLIEST SOL: January 2024

LATEST SOL: December 2025

ELECTION CYCLE: 2020

COMPLAINANT:

Foundation for Accountability and Civic Trust

RESPONDENTS:

Christy Smith

Christy Smith for Congress and Marc Winger in his
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

11 C.F.R. § 104.3(b)

11 C.F.R. § 104.9

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Christy Smith and Christy Smith for Congress and Marc Winger, in his official capacity as treasurer (the "Committee"), failed to disclose in its reports filed with the Commission the actual and true recipients of payroll and salary disbursements made during the 2019-2020 election cycle.¹ Based on the available information, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(4) by failing to properly disclose the purpose of its disbursements in disclosure reports filed with the Commission.

¹ Compl. at 2-3 (Feb. 25, 2021).

II. FACTUAL BACKGROUND

On October 30, 2019, Christy Smith filed a Statement of Candidacy announcing her candidacy for the U.S. House of Representatives to represent California's 25th Congressional district, and the Committee filed a Statement of Organization as her authorized campaign committee.² The Complaint alleges that the Committee filed several reports between October 2019 and January 2020 but failed to report the names and salaries of its campaign staff until after the 2020 general election, in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b).

The Committee filed the required disclosure reports referenced in Chart A below and reported disbursements to Method Campaign Services ("MCS") for salary, payroll, and campaign consulting.³

Chart A – Disbursements for Salary, Payroll and Campaign Consulting

Disbursement Dates/Amount/ Reason for disbursement	Disclosure Report	Original filing	Amended filings
12/12/19 - \$16,114.56 for Salary 11/26/19 - \$14,708.10 for Salary	Year-End 2019	Jan. 29, 2020	1st amended June 11, 2020; 2nd amended July 15, 2020
1/3/20 - \$19,168.22 for Salary 1/23/20 - \$23,289.73 for Salary 1/27/20 - \$14,576.10 for Salary	Pre-Primary 2020	Feb. 20, 2020	1st amended Mar. 3, 2020; 2nd amended Jun. 11, 2020
2/13/20 - \$14,553.78 for Salary 2/26/20 - \$14,107.38 for Salary 3/10/20 - \$5,000.00 for Campaign Consulting 3/10/20 - \$14,107.38 for Salary 3/30/20 - \$4,166.67 for Campaign Consulting 3/30/20 - \$14,393.54 for Salary	April Quarterly 2020	April 15, 2020	Amended Jun. 11, 2020
4/15/20 - \$4,166.67 for Campaign Consulting 4/15/20 - \$14,393.54 for Salary	Pre-Run-Off 2020	April 30, 2020	Amended Jun. 11, 2020

² *Id.* at 2. FEC, Christy Smith for Congress, Statement of Org. (Oct. 30, 2019), <https://docquery.fec.gov/pdf/525/201910309165306525/201910309165306525.pdf>.

³ Compl. at 2; FEC, Christy Smith for Congress, Committee Filings, <https://www.fec.gov/data/committee/C00725101/?cycle=2020&tab=filings>.

MUR 7882 (Christy Smith for Congress, *et al.*)

First General Counsel's Report

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5/1/20 - \$4,166.67 for Campaign Consulting 5/1/20 - \$14,509.61 for Salary 5/13/20 - \$4,166.67 for Campaign Consulting 5/13/20 - \$4,378.44 for Campaign Consulting 5/13/20 - \$41,495.96 for Salary 5/13/20 - \$20,009.61 for Salary	Post-Run-Off 2020	June 11, 2020	Amended July 15, 2020
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11/24/20 - \$20,348.75 for Payroll 12/15/20 - \$55,697.75 for Payroll 12/18/20 - \$5,592.92 for Payroll	Year-End 2020	Jan. 29, 2021	

1 The Complaint alleges that in its disclosures, the Committee failed to report the actual
2 and true recipient of the payroll and salary disbursements and failed to report any payroll or
3 salary disbursements other than those made to MCS, which the Complaint asserts is a payroll
4 vendor.⁴ As a result, the Complaint contends, the public did not have any information about who
5 was working for Smith's campaign, as required under the Act.

6 The Complaint alleges that even after a November 2, 2020, news report publicly revealed
7 that the Committee had failed to disclose the identities of its campaign staff and their salaries in

⁴ Compl. at 2-3.

1 FEC filings, the Committee continued to omit this required information from three subsequent
2 reports, and did not amend any of its previous filings to include the missing information.⁵ Thus,
3 the Complaint alleges, the Committee continued failing to disclose the required information
4 about its staff even after it was made aware of this failure.

5 The Committee's Response denies the allegations and states that MCS is a campaign
6 consulting firm that provides a variety of campaign services, including community outreach,
7 coalition building, data and strategy services, political campaign services, and text messaging
8 services.⁶ The Response states that Complainant's allegation that MCS is a payroll company, as
9 well as the allegation that the Committee should have further itemized the ultimate recipients of
10 salary disbursements to MCS, is inaccurate and misunderstands MCS's role with the campaign.⁷
11 Rather, it contends that MCS is not a payroll vendor but a campaign consulting firm that
12 provides a wide variety of campaign consulting services to a number of campaigns, including the
13 Committee.⁸ It further asserts that MCS, not the Committee, hired and employed the campaign
14 professionals that worked for the Committee, and that MCS was responsible for the payment of
15 payroll taxes, workers compensation, and any other benefits that may have been provided to its
16 professional staff.⁹ Additionally, the Response argues that MCS supervised the staff in
17 accordance with its contractual arrangement with the Committee; thus, the ultimate payees of the

⁵ *Id.* at 3-4.

⁶ Resp. at 2 (Mar. 17, 2021) (citing MCS website's description about its services <https://www.methodcampaigns.com/community-outreach>).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 payments at issue are employees of MCS and not the Committee.¹⁰ The Response does not
2 provide a copy of the contract or any specifics regarding the agreed-upon contractual
3 arrangements, including names or number of employees, job assignments, services provided, or
4 compensation schedules.

5 With respect to the allegation that the Committee only disclosed the payments to
6 employees after the election, the Response states that the Complainant is misinformed about the
7 circumstances behind the payments disclosed in the Committee's 2020 Year-End Report.¹¹
8 Respondents contend that the payments disclosed in that report reflect employees that the
9 Committee hired after the election to assist with then-ongoing post-election canvassing activities
10 and a potential recount.¹² Since these individuals did not become employees of the Committee
11 until after the election, the Response argues, salary payments to these individuals were properly
12 disclosed on the Committee's Year-End Report.¹³ The Response does not provide any
13 information as to whether the post-election Committee employees had previously worked for the
14 Committee as MCS consultants or were entirely new to the Committee.

15 **III. LEGAL ANALYSIS**

16 The Act and Commission regulations require authorized candidate committees to report
17 the name and address of each person to whom they make expenditures or other disbursements
18 aggregating more than \$200 per election cycle, as well as the date, amount, and purpose of such
19 payments.¹⁴

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(4)(i), (vi).

In this context, Commission regulations define “purpose” as a “brief statement or description of why the disbursement was made.”¹⁵ The Commission has publicly explained that “[t]he ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear.”¹⁶ The Commission has determined that the description of a disbursement’s purpose should be sufficiently detailed to allow “a person not associated with the committee [to] easily discern why the disbursement was made when reading the name of the recipient and the purpose.”¹⁷ Commission regulations illustrate sufficient statements of purpose, including, *e.g.*, dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs.¹⁸

The Commission has provided guidance that disbursements for salary payments to employees are to be disclosed in the same manner as credit card payments and ultimate payees.¹⁹ Although neither the Act nor Commission regulations expressly address the reporting of ultimate payees such as subvendors, subcontractors, or vendor employees, in a 2013 interpretive rule, the Commission clarified the itemization requirement and specifically addressed the proper disclosure of ultimate payees where a committee pays a credit card bill that includes charges

¹⁵ 11 C.F.R. § 104.3(b)(3)(i)(A)-(B), (b)(4)(i)(A).

¹⁶ See Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (b)(4)(i)(A)).

¹⁷ *Id.*, 72 Fed. Reg. at 888.

¹⁸ 11 C.F.R. § 104.3(b)(3)(i)(B), (b)(4)(i)(A).

¹⁹ See *RAD FAQs for Political Action Committees* at 9, https://www.fec.gov/resources/cms-content/documents/RAD_FAQs-PACs_last_visited_september_21_2020.pdf (“RAD FAQs”) (“The lump sum paid to the payroll company must be followed by MEMO entries that include the individuals that were the ultimate recipients of the salary payment. Payroll company disbursements and employee MEMO entries are disclosed in the same manner as credit card payments and ultimate recipients.”) (citing 11 C.F.R. § 104.9).

1 exceeding \$200 from a single vendor.²⁰ It explained that a committee itemizing a disbursement
 2 to a credit card company “must itemize as a memo entry any transaction with a single vendor
 3 charged on the credit card that exceeds the \$200 itemization threshold” in order to itemize the
 4 “ultimate payee, as the provider of the goods or services to the political committee” and to reflect
 5 that the credit card company was not the provider of those goods and services.²¹

6 The Commission’s guide for candidates also includes instructions for interpreting the
 7 regulatory requirement for itemizing operating expenditures under 11 C.F.R. § 104.3(b)(4)(i),
 8 and provides specific guidance for properly itemizing operating expenditures charged on a credit
 9 card using memo entries that disclose the ultimate recipient of the payment.²² Specific guidance
 10 concerning the proper reporting of disbursements *when using payroll companies* likewise
 11 appears on the Commission’s website, which explains that “[t]he payroll disbursement will be
 12 itemized . . . once payments to the payroll company aggregate more than \$200 in an election
 13 cycle,” and that the reporting committee “will also itemize the ultimate recipients of the salary
 14 payments as memo entries . . . once aggregate payments made to the individual are more than
 15 \$200 in an election cycle.”²³ In sum, the Commission’s publicly available guidance provides

²⁰ In the rule, the Commission describes a committee’s obligation to report “ultimate payees” in three specific circumstances: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) payments by candidates who use personal funds to pay committee expenses without reimbursement. *See* Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (Jul. 8, 2013) (“Ultimate Payee Interpretive Rule”).

²¹ Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626. In explaining the rule, “the Commission makes clear that this interpretation is based on long-standing Commission practice and is not making any fundamental changes to its rules or processes.” *Id.*

²² FEC Candidate Guide at 104-105. *See, e.g.*, Factual and Legal Analysis (“F&LA”) at 5-6, MUR 6818 (Allen Weh) (dismissing committee’s failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject); F&LA at 12-13, MUR 6576 (McLeod) (dismissing committee’s failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject and before the election); F&LA at 1-3, MUR 4822 (Friends for Harry Reid) (finding reason to believe the committee violated the Act by failing to itemize payroll expenditures).

²³ *See HOW TO REPORT/Using a payroll company/Reporting on candidate forms*, <https://www.fec.gov/help-candidates-and-committees/filing-reports/using-payroll-company> (“Payroll Reporting Guidance”) (“The committee

1 that reporting disbursements for salary payments to employees is analogous to reporting credit
 2 card payments, and thus that any such payments are to be disclosed in the same manner as credit
 3 card payments and ultimate payees.²⁴

4 In prior enforcement matters, the Commission has determined that merely reporting the
 5 immediate recipient of a committee's payment will not satisfy the requirements of Section
 6 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the
 7 intended recipient of the funds.²⁵ For example, the Commission has found reason to believe in
 8 ultimate payee matters where it had information that a committee undertook efforts to actively
 9 conceal the ultimate payee.²⁶ In MUR 6724 (Bachmann for President), information in the record
 10 indicated that the campaign committee paid a consultant through an intermediary in order to
 11 conceal the true payee because it believed that state ethics rules prohibited the ultimate payee
 12 from receiving the funds.²⁷ The Commission found reason to believe that the committee
 13 misreported the ultimate payee because the disclosed payee was merely a conduit, "thereby
 14 concealing the true, intended recipient of the disbursements."²⁸

15 Respondents assert that MCS is not a payroll management company, and therefore that
 16 itemization of the firm's employees is not required under the Commission's guidance because

reports the disbursement to Virginia Payroll company as an operating expenditure . . . [and] includes the staff members receiving payments as memo entries").

²⁴ See *supra* Ultimate Payee Interpretive Rule; RAD FAQs.

²⁵ F&LA at 9, MUR 6724 (Bachmann for President, *et al.*) (citing Conciliation Agreement at 3, MUR 4872 (Jenkins)).

²⁶ See, e.g., F&LA at 10-11, MUR 6724 (Bachmann for President) (finding reason to believe where a committee used an intermediary to disguise the "true, intended recipient of the disbursements"); Conciliation Agreement at 2-4, MUR 4872 (Jenkins for Senate) (finding reason to believe where a vendor's only role was "to serve as a conduit for payment . . . so as to conceal the transaction").

²⁷ F&LA at 3, MUR 6724 (Bachmann for President).

²⁸ *Id.* at 10.

1 the regulations governing the disclosure of ultimate payees in certain circumstances do not apply
 2 unless: (1) the committee reimburses an individual (such as a campaign staffer) who used
 3 personal funds to pay committee expenses aggregating more than \$200 to a single vendor; (2) the
 4 committee pays a credit card bill that includes charges of more than \$200 to a single vendor; or
 5 (3) the committee is the authorized committee of a candidate who used personal funds to pay
 6 committee expenses aggregating more than \$200 to a single vendor without receiving
 7 reimbursement.²⁹ The Committee admits that it failed to identify the ultimate recipients of its
 8 payroll and salary payments, although it argues that none of these enumerated circumstances
 9 apply here, and thus asserts that it was not required to disclose the names of the professional staff
 10 hired by the vendor, MCS, to whom it made these disbursements. The Respondents' argument is
 11 inapposite, however, because as noted above, the Commission has provided publicly available
 12 guidance indicating that payments for salary payments to employees are to be disclosed in the
 13 same manner as credit card payments and ultimate payees.³⁰

14 On the Committee's disclosure reports, in some months there are multiple disbursements
 15 to MCS that are described as "campaign consulting," "salary," or "payroll" (Mar. 2020 –
 16 Jun. 2020), while in other months there are only disbursements for "salary" or "payroll"
 17 (Nov. 2019 – Feb. 2020 and July 2020 – Dec. 2020); all of the entries for "salary" or "payroll"
 18 fail to itemize which individuals were the ultimate recipients of those payments.³¹ Thus, based
 19 on the Committee's own description of its disbursements, it appears that the Committee's

²⁹ Resp. at 2-3 (citing Ultimate Payee Interpretive Rule); *see* 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9.

³⁰ *See supra* Ultimate Payee Interpretive Rule; RAD FAQs; Payroll Reporting Guidance.

³¹ *See* Chart A, *supra*; *see also* <https://www.fec.gov/data/committee/C00725101/?cycle=2020&tab=filings>.

1 payments to MCS were *not* solely for “campaign consulting” services, as the Committee asserts,
2 but were also — as the reports indicate — for “salary” and “payroll.”

3 The Committee provides no explanation as to why it made such distinctions in describing
4 the purpose of the disbursements in its reporting, or why the amounts for “campaign consulting”
5 were similar, but the amounts for “salary” and “payroll” were both varied and significantly
6 higher: During the 2019-2020 cycle, the Committee’s disbursements for campaign consulting
7 totaled \$39,374, whereas its disbursements for salary and payroll totaled \$268,627 and \$348,579,
8 respectively, with the salary and payroll disbursements totaling \$617,206.³² The Committee
9 asserts that it hired MCS staff to perform all of the functions of a campaign staff, and that the
10 MCS employees did not work for the campaign,³³ but its disclosure reports indicate that it had no
11 other campaign staff, and paid no salaries to anyone other than MCS until November 2020.³⁴

12 The Committee admits that MCS employees served all the functions of its campaign staff
13 and that MCS was the exclusive provider of paid staff for the Committee — although it provides
14 no contract to support its contention. Additionally, the Committee’s reports disclose no
15 disbursements to staff until after the election, and its Response makes no claim that volunteers
16 staffed the campaign.

17 Finally, the Response provides no explanation as to why the Committee reported
18 “payroll” and “salary” disbursements to MCS separately from the “campaign consulting.” These
19 separate payments, without further itemization or explanation, leave the public without a basic
20 understanding of the purpose of those disbursements and to whom they were actually made. If

³² See Chart A, *supra*.

³³ Resp. at 2.

³⁴ 2020 Year-End Report (Jan. 29, 2020).

1 the disbursements were all for “campaign consulting” services, as the Committee now claims,
2 there is no explanation for why there are additional disbursements for “payroll” and “salary” in
3 the reports (sometimes in the same months), and the reporting fails to correctly provide an
4 adequate explanation of the purpose for the disbursements. For example, if a “payroll”
5 disbursement was for staff that provided “canvassing” or “voter outreach” services, the latter
6 descriptions would be more appropriate explanations of the purpose of the disbursement.
7 Alternatively, if the disbursements were for “payroll” and “salary” for campaign employees and
8 MCS was simply acting as a payroll vendor, as alleged in the Complaint, then further itemization
9 as to the ultimate payee of those disbursements is required.

10 In sum, the Committee failed to properly disclose the purpose of \$617,206 in
11 disbursements to MCS for salary and payroll, either by not properly itemizing those
12 disbursements or by not providing an appropriate description of the purposes for those
13 disbursements. Thus, the Committee’s reporting does not comply with the 11 C.F.R.
14 § 104.3(b)(4)(i) and (vi) requirements, which implement the statutory requirement at 52 U.S.C.
15 § 30104(b), for the reporting of disbursements by a candidate’s authorized committee.

16 Accordingly, we recommend that the Commission find reason to believe that the
17 Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(4) based on its failure to
18 properly disclose the purpose of its disbursements. Because the statutory provisions involved do
19 not contemplate personal liability for the candidate, we recommend that the Commission take no
20 action as to Christy Smith.

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10 **V. RECOMMENDATIONS**

- 11 1. Find reason to believe that Christy Smith for Congress and Marc Winger in his
12 official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R.
13 § 104.3(b)(4) by failing to properly disclose the purpose of its disbursements;
- 14 2. Approve the attached Factual and Legal Analysis;
- 15 3. Enter into conciliation with Christy Smith for Congress and Marc Winger in his
16 official capacity as treasurer prior to a finding of probable cause to believe;
- 17 4. Approve the attached Conciliation Agreement; and

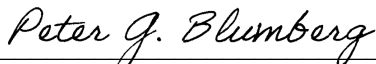
5. Approve the appropriate letters.


Lisa J. Stevenson
Acting General Counsel


Charles Kitcher
Associate General Counsel for Enforcement

December 23, 2021

Date


Peter G. Blumberg
Acting Deputy Associate General Counsel
for Enforcement


Saurav Ghosh
Acting Assistant General Counsel

 by SG
Camilla Jackson Jones
Staff Attorney

Attachments:

1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Christy Smith for Congress MUR 7882
and Marc Winger in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) by the Foundation for Accountability and Civic Trust.¹ The Complaint alleges that Christy Smith and Christy Smith for Congress and Marc Winger, in his official capacity as treasurer (the “Committee”), failed to disclose in its reports filed with the Commission the actual and true recipients of payroll and salary disbursements made during the 2019-2020 election cycle.² Respondents deny the allegations and assert that the recipient of the disbursements at issue, Method Campaign Services (“MCS”), is a campaign consulting firm that hired and employed the campaign professionals that worked for the Committee, such that MCS was responsible for the payment of payroll taxes, workers compensation, and any other benefits that may have been provided to its professional staff, and, accordingly, that the Committee’s disbursements were properly disclosed on the Committee’s disclosure reports.³

Based on the available information, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(4) by failing to properly disclose the purpose of its disbursements in disclosure reports filed with the Commission.

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 2-3 (Feb. 25, 2021).

³ Resp. at 2-3 (Mar. 17, 2021).

II. FACTUAL AND LEGAL ANALYSIS**A. Background**

On October 30, 2019, Christy Smith filed a Statement of Candidacy announcing her candidacy for the U.S. House of Representatives to represent California's 25th Congressional district, and the Committee filed a Statement of Organization as her authorized campaign committee.⁴ The Complaint alleges that the Committee filed several reports between October 2019 and January 2020 but failed to report the names and salaries of its campaign staff until after the 2020 general election, in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b).

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6 consulting firm that provides a variety of campaign services, including community outreach,
7 coalition building, data and strategy services, political campaign services, and text messaging
8 services.⁸ The Response states that Complainant's allegation that MCS is a payroll company, as
9 well as the allegation that the Committee should have further itemized the ultimate recipients of
10 salary disbursements to MCS, is inaccurate and misunderstands MCS's role with the campaign.⁹
11 Rather, it contends that MCS is not a payroll vendor but a campaign consulting firm that
12 provides a wide variety of campaign consulting services to a number of campaigns, including the
13 Committee.¹⁰ It further asserts that MCS, not the Committee, hired and employed the campaign
14 professionals that worked for the Committee, and that MCS was responsible for the payment of
15 payroll taxes, workers compensation, and any other benefits that may have been provided to its
16 professional staff.¹¹ Additionally, the Response argues that MCS supervised the staff in
17 accordance with its contractual arrangement with the Committee; thus, the ultimate payees of the

⁷ *Id.* at 3-4.

⁸ Resp. at 2 (citing MCS website's description about its services <https://www.methodcampaigns.com/community-outreach>).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

1 payments at issue are employees of MCS and not the Committee.¹² The Response does not
2 provide a copy of the contract or any specifics regarding the agreed-upon contractual
3 arrangements, including names or number of employees, job assignments, services provided, or
4 compensation schedules.

5 With respect to the allegation that the Committee only disclosed the payments to
6 employees after the election, the Response states that the Complainant is misinformed about the
7 circumstances behind the payments disclosed in the Committee's 2020 Year-End Report.¹³
8 Respondents contend that the payments disclosed in that report reflect employees that the
9 Committee hired after the election to assist with then-ongoing post-election canvassing activities
10 and a potential recount.¹⁴ Since these individuals did not become employees of the Committee
11 until after the election, the Response argues, salary payments to these individuals were properly
12 disclosed on the Committee's Year-End Report.¹⁵ The Response does not provide any
13 information as to whether the post-election Committee employees had previously worked for the
14 Committee as MCS consultants or were entirely new to the Committee.

15 **B. Legal Analysis**

16 The Act and Commission regulations require authorized candidate committees to report
17 the name and address of each person to whom they make expenditures or other disbursements

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.*

1 aggregating more than \$200 per election cycle, as well as the date, amount, and purpose of such
2 payments.¹⁶

3 In this context, Commission regulations define “purpose” as a “brief statement or
4 description of why the disbursement was made.”¹⁷ The Commission has publicly explained that
5 “[t]he ‘purpose of disbursement’ entry, when considered along with the identity of the
6 disbursement recipient, must be sufficiently specific to make the purpose of the disbursement
7 clear.”¹⁸ The Commission has determined that the description of a disbursement’s purpose
8 should be sufficiently detailed to allow “a person not associated with the committee [to] easily
9 discern why the disbursement was made when reading the name of the recipient and the
10 purpose.”¹⁹ Commission regulations illustrate sufficient statements of purpose, including, *e.g.*,
11 dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel
12 expense reimbursement, and catering costs.²⁰

13 The Commission has provided guidance that disbursements for salary payments to
14 employees are to be disclosed in the same manner as credit card payments and ultimate payees.²¹
15 Although neither the Act nor Commission regulations expressly address the reporting of ultimate

¹⁶ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(4)(i), (vi).

¹⁷ 11 C.F.R. § 104.3(b)(3)(i)(A)-(B), (b)(4)(i)(A).

¹⁸ See Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (b)(4)(i)(A)).

¹⁹ *Id.*, 72 Fed. Reg. at 888.

²⁰ 11 C.F.R. § 104.3(b)(3)(i)(B), (b)(4)(i)(A).

²¹ See *RAD FAQs for Political Action Committees* at 9, https://www.fec.gov/resources/cms-content/documents/RAD_FAQs-PACs_last_visited_september_21_2020.pdf (“RAD FAQs”) (“The lump sum paid to the payroll company must be followed by MEMO entries that include the individuals that were the ultimate recipients of the salary payment. Payroll company disbursements and employee MEMO entries are disclosed in the same manner as credit card payments and ultimate recipients.”) (citing 11 C.F.R. § 104.9).

1 payees such as subvendors, subcontractors, or vendor employees, in a 2013 interpretive rule, the
 2 Commission clarified the itemization requirement and specifically addressed the proper
 3 disclosure of ultimate payees where a committee pays a credit card bill that includes charges
 4 exceeding \$200 from a single vendor.²² It explained that a committee itemizing a disbursement
 5 to a credit card company “must itemize as a memo entry any transaction with a single vendor
 6 charged on the credit card that exceeds the \$200 itemization threshold” in order to itemize the
 7 “ultimate payee, as the provider of the goods or services to the political committee” and to reflect
 8 that the credit card company was not the provider of those goods and services.²³

9 The Commission’s guide for candidates also includes instructions for interpreting the
 10 regulatory requirement for itemizing operating expenditures under 11 C.F.R. § 104.3(b)(4)(i),
 11 and provides specific guidance for properly itemizing operating expenditures charged on a credit
 12 card using memo entries that disclose the ultimate recipient of the payment.²⁴ Specific guidance
 13 concerning the proper reporting of disbursements *when using payroll companies* likewise
 14 appears on the Commission’s website, which explains that “[t]he payroll disbursement will be
 15 itemized . . . once payments to the payroll company aggregate more than \$200 in an election

²² In the rule, the Commission describes a committee’s obligation to report “ultimate payees” in three specific circumstances: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) payments by candidates who use personal funds to pay committee expenses without reimbursement. *See* Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (Jul. 8, 2013) (“Ultimate Payee Interpretive Rule”).

²³ Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626. In explaining the rule, “the Commission makes clear that this interpretation is based on long-standing Commission practice and is not making any fundamental changes to its rules or processes.” *Id.*

²⁴ FEC Candidate Guide at 104-105. *See, e.g.,* Factual and Legal Analysis (“F&LA”) at 5-6, MUR 6818 (Allen Weh) (dismissing committee’s failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject); F&LA at 12-13, MUR 6576 (McLeod) (dismissing committee’s failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject and before the election); F&LA at 1-3, MUR 4822 (Friends for Harry Reid) (finding reason to believe the committee violated the Act by failing to itemize payroll expenditures).

cycle,” and that the reporting committee “will also itemize the ultimate recipients of the salary payments as memo entries . . . once aggregate payments made to the individual are more than \$200 in an election cycle.”²⁵ In sum, the Commission’s publicly available guidance provides that reporting disbursements for salary payments to employees is analogous to reporting credit card payments, and thus that any such payments are to be disclosed in the same manner as credit card payments and ultimate payees.²⁶

In prior enforcement matters, the Commission has determined that merely reporting the immediate recipient of a committee’s payment will not satisfy the requirements of Section 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds.²⁷ For example, the Commission has found reason to believe in ultimate payee matters where it had information that a committee undertook efforts to actively conceal the ultimate payee.²⁸ In MUR 6724 (Bachmann for President), information in the record indicated that the campaign committee paid a consultant through an intermediary in order to conceal the true payee because it believed that state ethics rules prohibited the ultimate payee from receiving the funds.²⁹ The Commission found reason to believe that the committee

²⁵ See *HOW TO REPORT/Using a payroll company/Reporting on candidate forms*, <https://www.fec.gov/help-candidates-and-committees/filing-reports/using-payroll-company> (“Payroll Reporting Guidance”) (“The committee reports the disbursement to Virginia Payroll company as an operating expenditure . . . [and] includes the staff members receiving payments as memo entries”).

²⁶ See *supra* Ultimate Payee Interpretive Rule; RAD FAQs.

²⁷ F&LA at 9, MUR 6724 (Bachmann for President, *et al.*) (citing Conciliation Agreement at 3, MUR 4872 (Jenkins)).

²⁸ See, e.g., F&LA at 10-11, MUR 6724 (Bachmann for President) (finding reason to believe where a committee used an intermediary to disguise the “true, intended recipient of the disbursements”); Conciliation Agreement at 2-4, MUR 4872 (Jenkins for Senate) (finding reason to believe where a vendor’s only role was “to serve as a conduit for payment . . . so as to conceal the transaction”).

²⁹ F&LA at 3, MUR 6724 (Bachmann for President).

1 misreported the ultimate payee because the disclosed payee was merely a conduit, “thereby
2 concealing the true, intended recipient of the disbursements.”³⁰

3 Respondents assert that MCS is not a payroll management company, and therefore that
4 itemization of the firm’s employees is not required under the Commission’s guidance because
5 the regulations governing the disclosure of ultimate payees in certain circumstances do not apply
6 unless: (1) the committee reimburses an individual (such as a campaign staffer) who used
7 personal funds to pay committee expenses aggregating more than \$200 to a single vendor; (2) the
8 committee pays a credit card bill that includes charges of more than \$200 to a single vendor; or
9 (3) the committee is the authorized committee of a candidate who used personal funds to pay
10 committee expenses aggregating more than \$200 to a single vendor without receiving
11 reimbursement.³¹ The Committee admits that it failed to identify the ultimate recipients of its
12 payroll and salary payments, although it argues that none of these enumerated circumstances
13 apply here, and thus asserts that it was not required to disclose the names of the professional staff
14 hired by the vendor, MCS, to whom it made these disbursements. The Respondents’ argument is
15 inapposite, however, because as noted above, the Commission has provided publicly available
16 guidance indicating that payments for salary payments to employees are to be disclosed in the
17 same manner as credit card payments and ultimate payees.³²

18 On the Committee’s disclosure reports, in some months there are multiple disbursements
19 to MCS that are described as “campaign consulting,” “salary,” or “payroll” (Mar. 2020 – Jun.

³⁰ *Id.* at 10.

³¹ Resp. at 2-3 (citing Ultimate Payee Interpretive Rule); *see* 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9.

³² *See supra* Ultimate Payee Interpretive Rule; RAD FAQs; Payroll Reporting Guidance.

2020), while in other months there are only disbursements for “salary” or “payroll” (Nov. 2019 – Feb 2020 and July 2020 – Dec 2020); all of the entries for “salary” or “payroll” fail to itemize which individuals were the ultimate recipients of those payments.³³ Thus, based on the Committee’s own description of its disbursements, it appears that the Committee’s payments to MCS were *not* solely for “campaign consulting” services, as the Committee asserts, but were also — as the reports indicate — for “salary” and “payroll.”

The Committee provides no explanation as to why it made such distinctions in describing the purpose of the disbursements in its reporting, or why the amounts for “campaign consulting” were similar, but the amounts for “salary” and “payroll” were both varied and significantly higher: During the 2019-2020 cycle, the Committee’s disbursements for campaign consulting totaled \$39,374, whereas its disbursements for salary and payroll totaled \$268,627 and \$348,579, respectively, with the salary and payroll disbursements totaling \$617,206.³⁴ The Committee asserts that it hired MCS staff to perform all of the functions of a campaign staff, and that the MCS employees did not work for the campaign,³⁵ but its disclosure reports indicate that it had no other campaign staff, and paid no salaries to anyone other than MCS until November 2020.³⁶

The Committee admits that MCS employees served all the functions of its campaign staff and that MCS was the exclusive provider of paid staff for the Committee — although it provides no contract to support its contention. Additionally, the Committee’s reports disclose no

³³ See Chart A., *supra*; see also <https://www.fec.gov/data/committee/C00725101/?cycle=2020&tab=filings>.

³⁴ See Chart A, *supra*.

³⁵ Resp. at 2.

³⁶ 2020 Year-End Report (Jan. 29, 2020).

1 disbursements to staff until after the election, and its Response makes no claim that volunteers
2 staffed the campaign.

3 Finally, the Response provides no explanation as to why the Committee reported
4 “payroll” and “salary” disbursements to MCS separately from the “campaign consulting.” These
5 separate payments, without further itemization or explanation, leave the public without a basic
6 understanding of the purpose of those disbursements and to whom they were actually made. If
7 the disbursements were all for “campaign consulting” services, as the Committee now claims,
8 there is no explanation for why there are additional disbursements for “payroll” and “salary” in
9 the reports (sometimes in the same months), and the reporting fails to correctly provide an
10 adequate explanation of the purpose for the disbursements. For example, if a “payroll”
11 disbursement was for staff that provided “canvassing” or “voter outreach” services, the latter
12 descriptions would be more appropriate explanations of the purpose of the disbursement.
13 Alternatively, if the disbursements were for “payroll” and “salary” for campaign employees and
14 MCS was simply acting as a payroll vendor, as alleged in the Complaint, then further itemization
15 as to the ultimate payee of those disbursements is required.

16 In sum, the Committee failed to properly disclose the purpose of \$617,206 in
17 disbursements to MCS for salary and payroll, either by not properly itemizing those
18 disbursements or by not providing an appropriate description of the purposes for the
19 disbursements. Thus, the Committee’s reporting does not comply with the 11 C.F.R.
20 § 104.3(b)(4)(i) and (vi) requirements, which implement the statutory requirement at 52 U.S.C.
21 § 30104(b), for the reporting of disbursements by a candidate’s authorized committee.

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1 Accordingly, the Commission finds reason to believe that the Committee violated
2 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(4) based on its failure to properly disclose the
3 purpose of its disbursements.