



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 26, 2021

Via First Class Mail

Stephen K. Bannon

Los Angeles, CA 90048-2633

Re: MUR 7147
Stephen K. Bannon

Dear Mr. Bannon:

On April 12, 2017, the Federal Election Commission notified you 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 you at that time. You were also notified on November 15, 2016 that you were designated as a respondent in MUR 7193. As part of its administrative process, the Commission severed the allegations as to you in MUR 7193 and merged them with this matter, where they could more appropriately be addressed.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 23, 2021, voted to dismiss the allegations that you violated 52 U.S.C. § 30116 by making excessive contributions in the form of services rendered to Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer. The Factual and Legal Analysis, which more fully explains the Commission’s decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650 or cjacksonjones@fec.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Stephen K. Bannon **MUR 7147**

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8 **I. INTRODUCTION**

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10 The Complaint in MUR 7147 alleges that, during the 2016 general election, Make
11 America Number 1 and Jacquelyn James in her official capacity as treasurer (“MAN1”), an
12 independent expenditure-only political committee (“IEOPC”) supporting Donald J. Trump for
13 President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”)¹
14 paid for the personal services of senior Trump campaign staffer Stephen K. Bannon, which
15 resulted in excessive contributions from Bannon to the Trump campaign, in violation of
16 52 U.S.C. § 30116(a).²

17 For the reasons that follow, the Commission dismisses the allegation that Stephen K.
18 Bannon violated 52 U.S.C. § 30116(a) by making excessive contributions in the form of services
19 rendered to the Trump campaign and closes the file as to Stephen K. Bannon.

¹ Bradley T. Crate became treasurer for Donald J. Trump for President, Inc. on January 20, 2017. Timothy Jost was the treasurer at the time the Committee was notified of the allegations raised in the Complaint.

² See MUR 7147 Compl.at ¶ 6 (Oct. 6, 2016); MUR 7147 First Supp. Compl. at 1 (Dec. 2, 2016); MUR 7147 Second Supp. Compl. at 1 (Apr. 12, 2017). Bannon was also named as a respondent in MUR 7193. MUR 7193 Compl. (Nov. 7, 2016). As part of its administrative process, the Commission severed the allegations as to Bannon in MUR 7193 and merged them with this matter, where they could more appropriately be addressed.

1 **II. FACTS**

2 On June 22, 2015, Donald Trump filed a Statement of Candidacy with the Commission
3 for the 2016 presidential election, designating Donald J. Trump for President, Inc., as his
4 principal campaign committee.³ MAN1 initially registered with the Commission on April 6,
5 2015 as an IEOPC named “Keep the Promise 1” (“KTP1”); on June 22, 2016, it filed an
6 amended Statement of Organization with the “Make America Number 1” name.⁴

7 The Complaint alleges that MAN1 paid compensation to Stephen K. Bannon, through
8 companies in which he had ownership interests, for personal services Bannon rendered to the
9 Trump campaign resulting in excessive contributions from Bannon to the Trump campaign.
10 Bannon joined the Trump campaign in August 2016 as CEO; Bannon asserts that he worked for
11 the campaign as a volunteer.⁵ The only reported payment from the Trump campaign to Bannon
12 was \$7,576 for “travel reimbursement” paid to his wholly owned company, Bannon Strategic
13 Advisors.⁶ Prior to joining the Trump campaign, Bannon was CEO of the Breitbart News
14 Network and held ownership interests in Glittering Steel, LLC (“Glittering Steel”), a television

³ Donald J. Trump Statement of Candidacy (June 22, 2015).

⁴ MAN1 Statement of Organization (Apr. 6, 2015); MAN1 Amended Statement of Organization (June 22, 2016); *see also* MURs 7147 and 7193 Consolidated MAN1 Response (“MAN1 Resp.”) at 1-2 (Feb. 22, 2017) (noting that KTP1 initially supported the candidacy of Ted Cruz for president but “reformed under its current name to support the Trump candidacy” after Cruz’s primary defeat).

⁵ MUR 7147 Compl. ¶ 31; Bannon Aff. ¶ 7.

⁶ Donald J. Trump for President, Inc., First Amended 2016 Post General Disclosure Report at 46,842 (Feb. 14, 2017), <http://docquery.fec.gov/pdf/107/201702149049390107/201702149049390107.pdf>.

1 and film production company whose business included producing campaign advertisements, and
2 Cambridge Analytica, a data analytics company.⁷

3 MAN1 retained Glittering Steel, paying it a total of \$724,949 for the 2016 election cycle,
4 \$252,500 of which came after Bannon joined the Trump campaign on August 17, 2016.⁸ The
5 Trump campaign has not disclosed any payments directly to Glittering Steel, and Glittering Steel
6 asserts that it was never provided “any non-public, information regarding messaging by the
7 Trump campaign.”⁹

8 Cambridge Analytica provided data analytic services to both the Trump campaign and
9 MAN1 during the general election.¹⁰ After Bannon joined the Trump campaign, the Trump
10 campaign reported payments to Cambridge Analytica in the amounts of \$5 million in September
11 2016 and \$250,000 in October 2016¹¹ and MAN1 reported payments totaling \$4,633,876 to
12 Cambridge Analytica.¹²

13 Cambridge Analytica and Glittering Steel paid Bannon a combined total of \$493,836 in
14 “consulting and director fees” through Bannon Strategic Advisors in 2016.¹³

⁷ Bannon Aff. ¶ 1.

⁸ See MAN1, Summary of Independent Expenditures, 2016 Election Cycle, Glittering Steel Entries.

⁹ MAN1 Resp., Ex. 4, Daniel Fleurette Aff. (Feb. 13, 2017) ¶ 14 (setting out averments of Glittering Steel’s co-founder/Chief Operating Officer).

¹⁰ Wheatland Aff. ¶¶ 7-8.

¹¹ MUR 7147 First Supp. Compl. at 4, n. 17-18; Donald J. Trump for President, Inc. Amended October Monthly Report at 16,043 (May 12, 2017); Donald J. Trump for President, Inc. 2016 Second Amended Pre General Report at 12,065 (May 12, 2017).

¹² MUR 7147 First Supp. Compl. ¶ 4 n.14-18 and disclosure reports cited therein.

¹³ Bannon Ethics Disclosure Report, <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>.

1 **III. LEGAL ANALYSIS**

2 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
3 deposit of money or anything of value made by any person for the purpose of influencing any
4 election for Federal office.”¹⁴ “Anything of value” includes in-kind contributions.¹⁵ When a
5 person makes an expenditure in cooperation, consultation, or in concert with, or at the request or
6 suggest of, a candidate or the candidate’s authorized committee or their agents, it is treated as an
7 in-kind contribution.¹⁶ In-kind contributions also include “any goods or services [provided]
8 without charge or at a charge that is less than the usual and normal charge for such goods or
9 services.”¹⁷ However, the value of services provided without compensation by any individual
10 who volunteers on behalf of a candidate or political committee is not a contribution.¹⁸

11 The Complaint alleges that MAN1’s payments to companies in which Bannon had an
12 ownership interest — specifically, Cambridge Analytica and Glittering Steel — were in reality

¹⁴ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

¹⁵ 11 C.F.R. § 100.52(d)(1).

¹⁶ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

¹⁷ 11 C.F.R. § 100.52(d)(1). Usual and normal charge for “goods” means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; usual and normal charge for “services,” other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

¹⁸ 11 C.F.R. § 100.74. Generally, the payment by any person of compensation to an individual for providing services to a political committee without charge is a contribution from the payor to the political committee; however, Commission regulations provide that payments to an employee who provides personal services to a political committee do not result in a contribution from the payor to the political committee where (a) an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period provided that the taken or released time is made up or completed by the employee within a reasonable time; (b) an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is considered his or her own to use as he or she sees fit; or (c) the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. 11 C.F.R. § 100.54.

1 disguised salary payments to Bannon for services he rendered to the Trump campaign. Bannon
2 resigned his managerial positions in these companies upon joining the campaign.¹⁹ However, he
3 did not divest his ownership interests in these companies and continued to benefit financially
4 from the companies' business, while purportedly volunteering for the campaign and steering
5 business to these companies.

6 Bannon admits that he did not sell his ownership interests in Cambridge Analytica until
7 April 12, 2017.²⁰ He had not divested his ownership interest in Glittering Steel as of the time of
8 MAN1's response.²¹ Bannon makes no claim that his assets were frozen as of the date he joined
9 the campaign, or held in a blind trust. Rather, he simply states that after joining the Trump
10 campaign he took leave from Cambridge Analytica, agreed to sell his interest in Cambridge
11 Analytica and Glittering Steel, and, starting on August 17, 2016, began the process of divesting
12 from Cambridge Analytica, participated in no Cambridge Analytica board decision-making, and
13 received no payments from Cambridge Analytica or Glittering Steel for "the duration of the
14 campaign."²²

15 The Complaint argues that while Bannon was purportedly an unpaid volunteer for the
16 campaign, he directly benefitted from his continued financial stake in Cambridge Analytica and
17 Glittering Steel in increasing amounts as MAN1 increased its expenditures for services rendered

¹⁹ There is conflicting information as to whether Bannon resigned from Breitbart in November instead of August 2016. Bannon contends he resigned in August, while a news report cites the current CEO of Breitbart stating that Bannon's resignation was effective in November. The Complaint does not, however, allege that MAN1's disguised salary payments included such payments to Breitbart.

²⁰ While Bannon asserts that he was awaiting OGE approval to sell his interest in Cambridge Analytica, he cites no statutory requirement for him to wait to divest his corporate interests after he agreed to join the campaign.

²¹ Bannon Aff. ¶ 2.

²² *Id.* ¶¶ 4-5.

1 by Cambridge Analytica and Glittering Steel, which amounted to an in-kind contribution to the
2 Trump Campaign from MAN1.²³ While the Complaint contends that these ownership interests
3 amounted to pass-through compensation because Cambridge Analytica and Glittering Steel
4 received more business from MAN1 once Bannon began to work for the Trump campaign, it
5 does not provide information regarding the companies' actual payments to Bannon, any increase
6 in the value of Bannon's ownership interest, any payments that were unrelated to work
7 performed by Cambridge Analytica and Glittering Steel for its clients, including MAN1, or any
8 payments that were not for the usual and normal charge for such work.

9 Commission regulations provide that, in order for payment to a campaign volunteer to be
10 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
11 must receive compensation for work performed on behalf of that candidate.²⁴ There is no
12 information in the record that Bannon received any compensation from Glittering Steel or
13 Cambridge Analytica for services rendered once he began working for the Trump campaign, and
14 Bannon states under oath that he was not compensated for "the duration of the campaign."²⁵
15 Therefore there is insufficient information to suggest that MAN1's payments to Cambridge
16 Analytica or Glittering Steel were payments for personal services rendered by Bannon to the
17 Trump campaign. Moreover, even if MAN1's payments to Cambridge Analytica or Glittering
18 Steel were compensation to Bannon for personal services rendered to the Trump campaign, the

²³ MUR 7147 Compl. ¶¶ 37-38; MUR 7193 Compl. at 4-5.

²⁴ 11 C.F.R. § 100.74. See MURs 6566 and 6604 (Lisa Wilson-Foley for Congress); MUR 6494 (Schmidt for Congress); cf. 11 C.F.R. §§ 100.54, 114.9 (compensation for personal services as contributions, use of corporate resources by stockholder volunteers, respectively).

²⁵ Bannon Aff. ¶ 5. Bannon's affidavit does not address whether Bannon received any compensation from either company after the election for work performed during the campaign.

1 Commission has never concluded that the payment of compensation to an individual who renders
2 services without charge to a political committee results in a contribution from the individual to
3 the political committee.²⁶

4 Accordingly, the Commission dismisses the allegation that Stephen K. Bannon violated
5 52 U.S.C. § 30116(a) by making excessive contributions in the form of services rendered to the
6 Trump campaign, and closes the file as to Bannon.

²⁶ Advisory Opinion 1982-04 (Apodaca) at 2 (volunteer services provided by individuals need not be reported by the political committee as contributions; however, if any of the individuals were paid by their employer for the work, those payments would be considered contributions to the political committee by the payor); *see also* Advisory Opinion 2006-22 (Jenkins & Gilchrist) at 4 (concluding that law firm's provision of free legal services would be a prohibited corporate contribution to political committee, but not addressing whether individual lawyer who provided such services would have made contribution); *cf.* MUR 6566 (Lisa Wilson-Foley for Congress), Factual and Legal Analysis to John Rowland (finding no reason to believe that individual who was paid by corporation while providing services for free to committee made contribution to political committee because individual was not an officer or director of the corporation and did not authorize the payment); *but see* Advisory Opinion 2011-14 (Utah Bankers Association) at 6 (concluding that individuals who serve on councils organized by SSF would be considered to serve as volunteers and the value of their service would not be a contribution to the SSF, provided that they do not receive any payment or other form of compensation for their services).