

1 **BEFORE THE FEDERAL ELECTION COMMISSION**2
3 **ENFORCEMENT PRIORITY SYSTEM**
4 **DISMISSAL REPORT**5
6 **MUR:** 80527 **Respondent:** American Muckrakers PAC and
8 David Wheeler in his official
9 capacity as treasurer10 **Complaint Receipt Date:** August 12, 202211 **Response Date:** October 17, 202212
13 **EPS Rating:**14
15 **Alleged Statutory and**
16 **Regulatory Violations:**17 52 U.S.C. §§ 30104(b), (g); 30120(a)
18 11 C.F.R. §§ 100.16; 102.5(a)(2); 104.4;
19 110.11(a)-(c)20 The Complaint alleges that American Muckrakers PAC and David Wheeler in his official
21 capacity as treasurer (the “Committee”), an independent expenditure-only political committee,
22 did not report independent expenditures (“IEs”) related to its efforts to defeat Lauren Boebert, a
23 candidate in the 2022 election for Colorado’s Third Congressional District, and failed to include
24 required disclaimers on advertising and solicitation materials, in violation of the Federal Election
25 Campaign Act of 1971, as amended (the “Act”).¹ The Complaint alleges that the Committee
26 created a website, fireboebert.com, videos, and other communications that expressly advocated
27 the defeat of Boebert and explicitly supported her primary opponent Don Coram.²28 The Complaint alleges that the Committee did not disclose the costs of the website, its
29 content development, or social media distribution as IEs made against Boebert, nor did the
30 website and social media communications contain the required disclaimers stating that the

1 Compl. at 1 (Aug. 12, 2022).2 *Id.* at 2, Ex. B (“No. Second. Term. For. Lauren. Boebert.” “Don Coram is a safe alternative.” “Help us FIRE Congresswoman Lauren Boebert” “Vote for Colorado Senator Don Coram for Congress.” “Vote for Don Coram in order to #FireBoebert!”).

1 communications were not authorized by any candidate.³ Further, the Complaint alleges that the
2 Committee failed to inform donors that their contributions would be used in connection with a
3 federal election or that the contributions are subject to the limitations and prohibitions of the
4 Act.⁴ The Complaint states the Committee’s disclosure reports include disbursements for text-
5 messaging services on its 2022 Pre-Primary Report totaling \$1,928.15, and though Complainant
6 does not have copies of the text messages, alleges that it is “likely that the messages expressly
7 advocated against Rep. Boebert,” and therefore should have been reported as IEs.⁵

8 In response to the Complaint, the Committee states that it did not report an IE for the
9 creation, maintenance, and content of the website because such activity does not constitute an
10 IE.⁶ The Committee states that its treasurer created the website and that there were no third party
11 payments, expenditures, or contracts with vendors, and no paid advertising or placement fees on
12 social media.⁷ The Committee argues that the URL of the website, fireboebert.com, is not
13 express advocacy because it does not contain the words associated with express advocacy
14 communications.⁸ The Committee also states that the social media posts and videos at issue
15 appeared only on its website and the Committee’s social media pages, and while available to the
16 public, were not “distributed” to voters.⁹ Regarding the missing disclaimer on its website, the
17 Committee states that the treasurer was unfamiliar with a platform used to create and host the
18 website, Wix, and accidentally displayed the disclaimers as a footer in “hidden mode” but that

³ Compl. at 2.

⁴ *Id.*

⁵ *Id.*

⁶ Resp. at 1 (Oct. 17, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ Resp. at 2.

1 the problem has since been corrected.¹⁰ The Committee disclosed disbursements totaling \$1,164
2 to Wix during the 2022 election cycle.¹¹ The Committee disclosed disbursements totaling
3 \$5,488.75 with a description containing “web” during the 2022 election cycle.¹²

4 Regarding solicitations, the Committee states that the exhibits in the Complaint show a
5 landing page prior to the donation page, and that disclaimers are present on all platforms where
6 the Committee solicits contributions.¹³ Attached to the Response are exhibits showing the
7 Committee’s donation pages on its websites and on donation platforms with disclaimers.¹⁴
8 Further, the Committee asserts that the text messages it sent are not IEs but are fundraising
9 solicitations, and that the expenses associated with the text messages were disclosed as
10 disbursements.¹⁵ The Committee disclosed disbursements totaling \$1,928.15 to Simple Texting
11 with the description “text messaging services” during the 2022 election cycle.¹⁶

12 Based on its experience and expertise, the Commission has established an Enforcement
13 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
14 assess whether particular matters warrant further administrative enforcement proceedings. These
15 criteria include (1) the gravity of the alleged violation, taking into account both the type of

¹⁰ *Id.*

¹¹ *See* American Muckrakers PAC, Filtered Disbursements, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00776062&recipient_name=Wix&two_year_transaction_period=2022 (last visited Mar. 15, 2024).

¹² *See* American Muckrakers PAC, Filtered Disbursements, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00776062&two_year_transaction_period=2022&disbursement_description=web (last visited Mar. 15, 2024).

¹³ Resp. at 2.

¹⁴ *Id.*; Ex. 1-6.

¹⁵ *Id.*

¹⁶ *See* American Muckrakers PAC, Filtered Disbursements, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00776062&recipient_name=Simple+Texting&two_year_transaction_period=2022 (last visited Mar. 5, 2024).

1 activity and the amount in violation; (2) the apparent impact the alleged violation may have had
2 on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent
3 trends in potential violations and other developments in the law. This matter is rated as low
4 priority for Commission action after application of these pre-established criteria. Given that low
5 rating and apparent low dollar amount at issue, we recommend that the Commission dismiss the
6 Complaint consistent with the Commission's prosecutorial discretion to determine the proper
7 ordering of its priorities and use of agency resources.¹⁷ We also recommend that the
8 Commission close the file effective 30 days from the date of certification of this vote (or on the
9 next business day after the 30th day, if the 30th day falls on a weekend or holiday) and send the
10 appropriate letters.

11 Lisa J. Stevenson
12 Acting General Counsel

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15 Charles Kitcher
16 Associate General Counsel

17
18
19 Mar. 18, 2024
20 Date

BY:



21 Claudio J. Pavia
22 Deputy Associate General Counsel

23 *Wanda D. Brown*

24 Wanda D. Brown
25 Assistant General Counsel

26
27
28 *Gordon King*

29 Gordon King
30 Attorney
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¹⁷ See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).