

April 29, 2024

VIA ELECTRONIC MAIL

mlweisel@caplawgrp.com, cpatterson@caplawgrp.com Michael L. Weisel, Esquire & Courtney Patterson, Esquire Capital Law Group 1101 Haynes Street, Suite 205 Raleigh, NC 27602-0121

RE: MUR 8052

American Muckrakers PAC

Dear Mr. Weisel and Ms. Patterson:

On August 15, 2022, the Federal Election Commission notified your client, American Muckrakers PAC (the "Committee"), 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 information supplied by your client, the Commission, on March 28, 2024, voted to dismiss this matter and close the file effective April 29, 2024. The General Counsel's Report, 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 today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

Sincerely,

Lisa J. Stevenson Acting General Counsel

BY: Wanda D. Brown

Assistant General Counsel

Wanda D. Brown

Enclosure
General Counsel's Report

1	BEFORE THE FEDERAL ELECTION COMMISSION ENFORCEMENT PRIORITY SYSTEM DISMISSAL REPORT		
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5 6 7 8 9	MUR: 8052	Respondent: American Muckrakers PAC and David Wheeler in his official capacity as treasurer	
10 11 12	Complaint Receipt Date: August 12, 202 Response Date: October 17, 2022	22	
13	EPS Rating:		
14 15 16 17 18 19	Alleged Statutory and Regulatory Violations:	52 U.S.C. §§ 30104(b), (g); 30120(a) 11 C.F.R. §§ 100.16; 102.5(a)(2); 104.4; 110.11(a)-(c)	
20	The Complaint alleges that America	can Muckrakers PAC and David Wheeler in his official	
21	capacity as treasurer (the "Committee"), a	n independent expenditure-only political committee,	
22	did not report independent expenditures ("	TEs") related to its efforts to defeat Lauren Boebert, a	
23	candidate in the 2022 election for Colorad	o's Third Congressional District, and failed to include	
24	required disclaimers on advertising and so	licitation materials, in violation of the Federal Election	
25	Campaign Act of 1971, as amended (the "	Act"). 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 support	rted her primary opponent Don Coram. ²	
28	The Complaint alleges that the Con	mmittee did not disclose the costs of the website, its	
29	content development, or social media distr	ribution as IEs made against Boebert, nor did the	
30	website and social media communications	contain the required disclaimers stating that the	

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!").

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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. The Complaint states the Committee's disclosure reports include disbursements for text-

messaging services on its 2022 Pre-Primary Report totaling \$1,928.15, and though Complainant

does not have copies of the text messages, alleges that it is "likely that the messages expressly

advocated against Rep. Boebert," and therefore should have been reported as IEs.⁵

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

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Compl. at 2.

⁴ *Id*.

⁵ *Id*.

⁶ Resp. at 1 (Oct. 17, 2022).

⁷ Id.

⁸ *Id*.

⁹ Resp. at 2.

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- 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
- disbursements.¹⁵ The Committee disclosed disbursements totaling \$1,928.15 to Simple Texting
- with the description "text messaging services" during the 2022 election cycle. 16
- 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
- criteria include (1) the gravity of the alleged violation, taking into account both the type of

¹⁰ *Id*.

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 per iod=2022 (last visited Mar. 15, 2024).

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*.

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_tra_nsaction_period=2022 (last visited Mar. 5, 2024).

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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 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	Mar. 18, 2024 BY:	Lisa J. Stevenson Acting General Counsel Charles Kitcher Associate General Counsel Laudio J. Pavia Claudio J. Pavia Deputy Associate General Counsel Wanda D. Brown Wanda D. Brown Assistant General Counsel Gordon King Gordon King Attorney		

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