

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
4 ) MURs 7058, 7228 & 7233  
5 Duncan D. Hunter for Congress and )  
6 Chris Marston in his official capacity )  
7 as treasurer )  
8 Duncan D. Hunter )  
9 Margaret Hunter<sup>1</sup> )  
10 )

11 **SECOND GENERAL COUNSEL'S REPORT**

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13 **I. ACTIONS RECOMMENDED**

14 We recommend that the Commission: (1) enter into pre-probable cause conciliation with  
15 Duncan D. Hunter, Margaret Hunter, and Duncan D. Hunter for Congress and Chris Marston in  
16 his official capacity as treasurer (the "Committee"); and (2) approve the attached proposed  
17 global conciliation agreement.

18 **II. BACKGROUND**

19 Duncan D. Hunter served as a Member of Congress, representing California's 52nd  
20 congressional district from 2009 to 2013 and California's 50th congressional district from 2013  
21 until his resignation on January 13, 2020. Duncan D. Hunter for Congress is Hunter's principal  
22 campaign committee, and Chris Marston is the Committee's treasurer.<sup>2</sup> Margaret Hunter, the  
23 candidate's wife, served as campaign manager and received a salary from the Committee for  
24 "campaign consulting" and "campaign management services."<sup>3</sup>

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<sup>1</sup> Margaret Hunter is a respondent in MURs 7058 and 7233, but not in MUR 7228.

<sup>2</sup> Duncan D. Hunter for Congress ("DDHC"), Statement of Organization (Apr. 17, 2019). Marston has served as treasurer since 2013. DDHC, Statement of Organization (Feb. 4, 2013).

<sup>3</sup> See, e.g., DDHC, Amended 2017 April Quarterly Report at 53 (July 15, 2017); DDHC, 2012 Year-End Report at 8 (Jan. 30, 2013); Hunter-00015874-75, Hunter-00020263 (signed 2014 contract for Margaret Hunter as campaign manager).

1           On April 24, 2018, the Commission found reason to believe that Duncan D. Hunter,  
2 Margaret Hunter, and the Committee violated 52 U.S.C. § 30114(b) of the Federal Election  
3 Campaign Act of 1971, as amended (the “Act”), by converting campaign funds to personal use  
4 and that the Committee violated 52 U.S.C. § 30104(b)(6)(A) by failing to accurately report  
5 disbursements.<sup>4</sup> The Office of General Counsel (“OGC”) commenced an investigation to  
6 complete the factual record and determine whether Respondents’ conduct was knowing and  
7 willful.<sup>5</sup>

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9   On August 10, 2018, the Committee submitted documents  
10 to OGC,

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12           On August 21, 2018, the U.S. Attorney for the Southern District of California filed a  
13 criminal indictment against the Hunters. They were each charged with: (1) one count of  
14 conspiracy to commit offenses against the United States in violation of 18 U.S.C. § 371,  
15 involving predicate violations of the Act’s personal use restriction at 52 U.S.C. § 30114(b);  
16 (2) forty-three counts of wire fraud; (3) thirteen counts of falsifying FEC disclosure reports; and  
17 (4) three counts of converting campaign funds to personal use, in violation of 52 U.S.C.  
18 § 30114(b).<sup>8</sup> On February 25, 2019, following a request from the Committee, the Commission

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<sup>4</sup> Certification (“Cert.”) ¶¶ 1-2 (Apr. 26, 2018), MURs 7058, 7228 & 7233 (DDHC, *et al.*).

<sup>5</sup> *Id.* ¶ 4; *see* First Gen. Counsel’s Rpt. (“First GCR”) at 3, 15, MURs 7058, 7228 & 7233 (DDHC, *et al.*).

<sup>8</sup> Indictment ¶¶ 18-22, 23-26, 27-28; 29-34, *United States v. Duncan D. Hunter and Margaret E. Hunter*, 3:18-cr-3677 (S.D. Cal. Aug. 21, 2018) (“Indictment”).

1 agreed to hold the investigation in full abeyance during the pendency of the related criminal  
2 matter in exchange for tolling from Respondents.<sup>9</sup>

3 On June 13, 2019, Margaret Hunter pleaded guilty to the first count — conspiring to  
4 knowingly and willfully convert campaign funds to personal use — and, on August 24, 2020,  
5 was sentenced to eight months' home confinement, three years' probation, and a \$100 special  
6 assessment.<sup>10</sup> Her term of confinement began immediately.<sup>11</sup> On December 3, 2019, Duncan  
7 Hunter pleaded guilty to the same single count and, on March 17, 2020, was sentenced to a  
8 prison term of 11 months and three years of supervised release.<sup>12</sup> After the government and  
9 Mr. Hunter jointly requested an extension in light of the ongoing COVID-19 pandemic, his  
10 surrender date was delayed until January 4, 2021.<sup>13</sup> On December 22 and 23, 2020, President

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<sup>9</sup> Cert. (Feb. 25, 2019), MURs 7058, 7228 & 7233 (DDHC, *et al.*). Respondents agreed to toll “until the conclusion by verdict, guilty plea, or dismissal of the criminal case entitled *United States vs. Duncan D. Hunter and Margaret E. Hunter*, 3:18-cr-03677 (S.D. Cal.)” See e.g., Duncan D. Hunter, Consent to Extend the Time to Institute a Civil Law Enforcement Suit (Mar. 8, 2019). August 24, 2020, the date on which the court entered final judgment as to Margaret Hunter, is the operative date when the criminal matter concluded by guilty plea, thus lifting the period of tolling pursuant to the agreement with Respondents. See *infra* note 10.

<sup>10</sup> Plea Agreement, *United States v. Margaret E. Hunter*, 3:18-cr-3677 (S.D. Cal. June 13, 2019), ECF No. 34 (“Margaret Hunter Plea Agreement”); Minute Entry, *United States v. Margaret E. Hunter*, 3:18-cr-3677 (S.D. Cal. Aug. 24, 2020), ECF No. 164; Judgment, *United States v. Margaret E. Hunter*, 3:18-cr-3677 (S.D. Cal. Aug. 24, 2020), ECF No. 165 (dismissing remaining counts).

<sup>11</sup> City News Service, *Margaret Hunter Sentenced to 8 Months Home Confinement for Misusing Campaign Funds*, NBC SAN DIEGO (Aug. 24, 2020), <https://www.nbcsandiego.com/news/local/margaret-hunter-due-for-sentencing-for-misusing-campaign-funds/2391695/> (“Margaret Hunter’s home confinement is set to begin immediately on Monday, according to U.S. Attorney Mark Conover.”).

<sup>12</sup> Plea Agreement, *United States v. Duncan D. Hunter*, 3:18-cr-3677 (S.D. Cal. Dec. 3, 2019), ECF No. 113 (“Duncan Hunter Plea Agreement”); Minute Entry, *United States v. Duncan D. Hunter*, 3:18-cr-3677 (S.D. Cal. Mar. 17, 2020), ECF No. 139; Judgment, *United States v. Duncan D. Hunter*, 3:18-cr-3677 (S.D. Cal. Mar. 17, 2020), ECF No. 140 (dismissing remaining counts).

<sup>13</sup> Joint Mot. to Modify Surrender Date, *United States v. Duncan D. Hunter*, 3:18-cr-3677 (S.D. Cal. May 5, 2020), ECF No. 149; Order Modifying Surrender Date, *United States v. Duncan D. Hunter*, 3:18-cr-3677 (S.D. Cal. May 7, 2020), ECF No. 150.

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1 Donald J. Trump granted pardons to Duncan Hunter and Margaret Hunter for their criminal  
2 convictions.<sup>14</sup> The Hunters accepted their pardons.<sup>15</sup>

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8 Having obtained the necessary information from the investigation, this Office

9 recommends that the Commission enter into pre-probable cause conciliation with Respondents

10 on a knowing and willful basis.

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8 **IV. LEGAL ANALYSIS**9 **A. The Pardons Related to the Hunters' Criminal Convictions Do Not Appear**  
10 **to Absolve the Hunters of Civil Liability**

11 As stated above, in December 2020, President Trump granted both Hunters "full and  
12 unconditional" pardons for their criminal convictions under 18 U.S.C. § 371 in the U.S. District  
13 Court of the Southern District of California.<sup>51</sup> The Hunters' convictions under 18 U.S.C. § 371,  
14 the federal general conspiracy statute, involved predicate violations of the Act's personal use  
15 restriction at 52 U.S.C. § 30114(b).<sup>52</sup>

16 The Constitution provides that the president "shall have power to grant reprieves and  
17 pardons for offenses against the United States, except in cases of impeachment."<sup>53</sup> Courts have

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<sup>48</sup> See Fed. R. Crim. P. 6(e) (outlining secrecy rules pertaining to grand juries).

<sup>49</sup> See Sentencing Memo (attaching 213 exhibits including credit card statements, detailed receipts, grand jury testimony, photographs, emails, and text messages); United States' Consolidated Resp. in Opp'n to Hunter's Mots. (1) to Dismiss Indictment for Violation of Speech or Debate Clause of the Constitution; & (2) for Disclosure and Production of Grand Jury Materials, *United States v. Duncan D. Hunter*, 3:18-cr-3677 (S.D. Cal. June 28, 2019), ECF No. 70 (attaching 60 pages of exhibits including emails, photographs, text messages, and bank statements).

<sup>50</sup> *Supra* note 7 and accompanying text.

<sup>51</sup> *Supra* note 14.

<sup>52</sup> *Supra* note 8 and accompanying text.

<sup>53</sup> U.S. CONST. art II, § 2.

1 generally held that “[a] presidential pardon must be accepted to be effective,” and that “[o]nce  
2 accepted, a full and absolute pardon ‘releases the wrongdoer from punishment and restores the  
3 offender’s civil rights without qualification.’”<sup>54</sup> However, “the acceptance of a pardon implies a  
4 ‘confession’ of guilt,” and therefore “does not necessarily render ‘innocent’ a defendant of any  
5 alleged violation of law.”<sup>55</sup> Accordingly, “[b]ecause a pardon does not blot out guilt or expunge  
6 a judgment of conviction, one can conclude that a pardon does not blot out probable cause of  
7 guilt or expunge an indictment.”<sup>56</sup>

8 Courts have not squarely addressed the issue of whether the presidential pardon power  
9 extends to civil offenses,<sup>57</sup> and there is no academic consensus on the subject.<sup>58</sup> However, even  
10 if the president has the authority to pardon civil offenses, as a practical matter, it does not appear

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<sup>54</sup> *United States v. Arpaio*, No. CR-16-01012-001-PHX-SRB, 2017 WL 4839072, at \*1 (D. Ariz. Oct. 19, 2017), *aff’d* 951 F.3d 1001 (9th Cir. 2020) (quoting *Absolute Pardon*, BLACK’S LAW DICTIONARY (10th ed. 2014) (citing *Burdick v. United States*, 236 U.S. 79, 94 (1915); *United States v. Wilson*, 32 U.S. 150, 160 (1833)); see *Hirschberg v. CFTC*, 414 F.3d 679, 682 (7th Cir. 2005) (“The effect of a pardon is not to prohibit all *consequences* of a pardoned conviction, but rather to preclude future *punishment* for the conviction.” (emphasis in original) (citations omitted))).

<sup>55</sup> *United States v. Flynn*, Crim. Action No. 17-232, --- F. Supp. 3d ---, 2020 WL 7230702, at \*14 (D.D.C. Dec. 8, 2020) (citing *Burdick*, 236 U.S. at 94; *Wilson*, 32 U.S. at 150; *United States v. Shaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001)); see *United States v. Noonan*, 906 F.2d 952, 960 (3d Cir. 1990) (concluding that a pardon does not create a fiction that a conviction never occurred).

<sup>56</sup> *In re North*, 62 F.3d 1434, 1437 (D.C. Cir. 1994); see also *Arpaio*, 2017 WL 4839072, at \*2.

<sup>57</sup> Noah A. Messing, *A New Power?: Civil Offenses and Presidential Clemency*, 64 BUFF. L. REV. 661, 724 (2016) (“No court has expressly addressed whether presidents may pardon civil offenses.”).

<sup>58</sup> Compare Zachary S. Price, *Law Enforcement as Political Question*, 91 NOTRE DAME L. REV. 1571, 1597 n.142 (2016) (“At any rate, the pardon power is limited to criminal rather than civil offenses . . .”), and Samuel T. Morrison, *Presidential Pardons and Immigration Law*, 6 STAN. J. CIV. RTS. & CIV. LIBERTIES 253, 278 (2010) (“[T]he pardon power extends only to ‘[o]ffenses against the United States,’ as distinguished from civil penalties or state offenses.”), with Harold J. Krent, *Conditioning the President’s Conditional Pardon Power*, 89 CAL. L. REV. 1665, 1673 (2001) (citing Edward S. Corwin, *THE PRESIDENT: OFFICE AND POWERS, 1787-1984*, at 189 (rev. ed. 1984); W.H. Humbert, *THE PARDONING POWER OF THE PRESIDENT* 51-52 (1941)) (“Indeed, the [Pardon] Clause covers civil as well as criminal sanctions imposed by the federal government.”), and Messing, 64 BUFF. L. REV. at 687-731 (concluding, based on historical evidence of English pardons and early U.S. and colonial pardons, debate at the Constitutional Convention, and post-convention pardons, *inter alia*, that “the pardon power is best read as reaching civil offenses”).

1 that it was President Trump's intent to pardon civil liability in this instance.<sup>59</sup> The President  
2 limited the text of the Hunters' pardons specifically to the criminal matter. Duncan Hunter, for  
3 example, received a pardon "[f]or his conviction in the United States District Court for the  
4 Southern District of California on an indictment (Docket No. 3:18-CR-03677-W-1) charging  
5 violation of Section 371, Title 18, United States Code, for which he was sentenced on March 17,  
6 2020, to 11 months' imprisonment, three years' supervised release, and a \$100 special  
7 assessment."<sup>60</sup> The text is directed squarely at the criminal conviction and resulting punishment.  
8 Margaret Hunter's pardon differs only with respect to date and penalties.<sup>61</sup> By contrast, other  
9 pardons issued by President Trump included more expansive language to broadly cover not just  
10 the specific criminal charges in the indictment or that were the subject of the criminal conviction,  
11 as was the case with the Hunters, but "any and all possible offenses" arising from the facts of the  
12 criminal conviction.<sup>62</sup> Further, in announcing the pardon, the White House issued a press release  
13 stating that "the conduct forming the basis of [the Hunter's guilty pleas] to one count conspiracy

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<sup>59</sup> *Cf. Flynn*, Crim. Action No. 17-232, 2020 WL 7230702, at \*14 (interpreting another pardon granted by President Trump to Michael Flynn as "extraordinarily broad" in that the text "applies not only to the false statements offense to which Mr. Flynn twice pled guilty in this case, but also purports to apply to 'any and all possible offenses' that he might be charged with in the future in relation to this case" (citations omitted)).

<sup>60</sup> *Supra* note 14.

<sup>61</sup> *Id.*

<sup>62</sup> *Michael T. Flynn, Executive Grant of Clemency*, U.S. DEP'T OF JUSTICE (Nov. 25, 2020), <https://www.justice.gov/pardon/page/file/1341606/download> (granting pardon for specific criminal charge as well as "for any and all possible offenses arising out of facts and circumstances known to, identified by, or in any matter related to the investigation of the Special Counsel . . ."); *see also Joseph M. Arpaio, Executive Grant of Clemency*, U.S. DEP'T OF JUSTICE (Aug. 25, 2017), <https://www.justice.gov/pardon/file/993586/download> (granting pardon for criminal conviction under 18 U.S.C. § 401(3), as well as "for any other offenses under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with *Melendres v. Arpaio* . . . in the United States District Court of the District of Arizona.").

1 to misuse campaign funds for personal expenses should have been treated as a civil case by the  
2 [Federal Election Commission].”<sup>63</sup>

3 Under these circumstances, to the extent that the presidential pardon power extends to  
4 civil liability, which is an open legal question, there is no basis to conclude that the Hunters’  
5 pardons should be interpreted as absolving their civil liability. It appears that the pardons were  
6 intended to absolve only the Hunters’ criminal convictions. Moreover, the enforcement  
7 proceedings here are not premised on the fact of the Hunters’ convictions alone, but rather the  
8 conduct underlying the convictions, which is evidenced by the robust documentary record as  
9 well as the Hunters’ own statements under penalty of perjury.<sup>64</sup>

10 **B. Duncan D. Hunter, Margaret Hunter, and the Committee Knowingly and**  
11 **Willfully Violated 52 U.S.C. § 30114(b) by Converting Campaign Funds to**  
12 **Personal Use**

13 The Act provides that campaign funds “shall not be converted by any person to personal  
14 use,” and defines personal use as using funds “to fulfill any commitment, obligation, or expense  
15 of a person that would exist irrespective of the candidate’s election campaign or individual’s

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<sup>63</sup> *Statement from the Press Secretary Regarding Executive Grants of Clemency*, THE WHITE HOUSE (Dec. 23, 2020), <https://trumpwhitehouse.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122320/> (statement on Margaret Hunter); *accord Statement from the Press Secretary Regarding Executive Grants of Clemency*, THE WHITE HOUSE (Dec. 22, 2020), <https://trumpwhitehouse.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122220/> (similar statement on Duncan Hunter); see Letter from Bradley A. Smith, Esq., to President Donald J. Trump (Nov. 7, 2020) (letter in support of Duncan Hunter’s pardon cited by the White House announcement, explaining the role of the FEC in enforcing campaign finance violations and why the FEC is well suited to handling this matter).

<sup>64</sup> *See Hirschberg*, 414 F.3d at 683 (“In cases where governmental action has been held to violate the pardon clause . . . the pardoned individual is stripped of his rights based not on the conduct underlying the conviction, but on the fact of conviction alone.”). In *Hirschberg*, the court held that the Commodity Futures Trading Commission did not violate the pardon clause by revoking the plaintiff’s floor broker registration after he was convicted of mail fraud, a crime for which he later received a presidential pardon, because the CFTC “rationally considered the conduct underlying Hirschberg’s conviction in ascertaining whether he would be fit to act as a floor broker.” *Id.* at 686.

1 duties as holder of Federal office.”<sup>65</sup> Examples of personal use, as outlined in the statute, include  
 2 utility payments, non-campaign-related automobile expenses, vacations or other non-campaign-  
 3 related trips, household food items, and tuition payments.<sup>66</sup>

4 The Commission’s implementing regulation enumerates types of disbursements that are  
 5 *per se* personal use.<sup>67</sup> These include household food items or supplies, tuition payments other  
 6 than those associated with training campaign staff, utility payments for any part of any personal  
 7 residence of the candidate, salary payments to a member of the candidate’s family unless the  
 8 family member is providing *bona fide* services and the payments are not in excess of the fair  
 9 market value, and vacations.<sup>68</sup> For all other disbursements, the regulation provides that the  
 10 Commission shall determine on a case-by-case basis whether a given disbursement is personal  
 11 use by applying the “irrespective test” formulated in the statute.<sup>69</sup>

12 A violation of the Act is knowing and willful if the “acts were committed with full  
 13 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”<sup>70</sup> This  
 14 does not require proving knowledge of the specific statute or regulation the respondent allegedly  
 15 violated.<sup>71</sup> Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was

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<sup>65</sup> 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see* 11 C.F.R. § 113.2.

<sup>66</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

<sup>67</sup> 11 C.F.R. § 113.1(g)(1)(i).

<sup>68</sup> *Id.* § 113.1(g)(1)(i)(A), (D), (E)(1), (F), (H), (J).

<sup>69</sup> *Id.* § 113.1(g)(1)(ii). Meal, travel, and vehicle expenses are examples of disbursements that may be personal use. *Id.*

<sup>70</sup> 122 CONG. REC. 12,197, 12,199 (May 3, 1976); *see* Factual & Legal Analysis (“F&LA”) at 17, MUR 6766 (Jesse Jackson, Jr., *et al.*).

<sup>71</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998)) (holding that to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not with knowledge of the specific statutory provision violated).



1 aware that his conduct was unlawful.”<sup>72</sup> This may be shown by circumstantial evidence, such as  
2 a “defendant’s elaborate scheme for disguising” her actions, or other “facts and circumstances  
3 from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized  
4 and illegal.”<sup>73</sup>

5 At the reason to believe stage, the Commission made findings under section 30114(b)  
6 regarding the Hunters and the Committee on a non-knowing and willful basis.<sup>74</sup> Based on the  
7 information obtained during the investigation, it is apparent that the violations were knowing and  
8 willful. In their plea agreements, the Hunters admitted to “knowingly and willfully” converting  
9 campaign funds “to personal use.”<sup>75</sup> They further admitted to concealing their illicit personal  
10 spending by “either falsely stating the expenses were ‘campaign related’ or by falsely reporting  
11 the item or service purchased when providing information to the Treasurer.”<sup>76</sup> Their admissions  
12 are confirmed by the documentary evidence, which includes numerous examples of payments  
13 made by one or both of the Hunters for personal expenses, as well as efforts taken by the Hunters  
14 to generate fictitious campaign-related purposes.<sup>77</sup> The Hunters spent campaign funds on family  
15 and household expenses, including vacations, nights out, golf and racetrack outings, tuition,  
16 utilities, groceries, gasoline, video games, meals, healthcare, household repair, clothing, and an

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<sup>72</sup> *Id.* (internal quotation marks omitted); *see* F&LA at 17, MUR 6766 (Jesse Jackson, Jr., *et al.*).

<sup>73</sup> *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court observed, “[i]t has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

<sup>74</sup> First GCR at 3, 15, MURs 7058, 7228, & 7233 (DDHC, *et al.*); Cert. (Apr. 26, 2018), MURs 7058, 7228, & 7233 (DDHC, *et al.*).

<sup>75</sup> Margaret Hunter Plea Agreement at 3:4-17; Duncan Hunter Plea Agreement at 3:4-17.

<sup>76</sup> Margaret Hunter Plea Agreement at 5:14-17; Duncan Hunter Plea Agreement at 3:18-21.

<sup>77</sup> *Supra* notes 32-39 and accompanying text.

1 assortment of retail purchases, among other things.<sup>78</sup> Moreover, on multiple occasions, the  
2 former treasurer warned one or both of the Hunters about personal use spending.<sup>79</sup> Based on the  
3 available information, between approximately 2010 and 2016, the Hunters converted campaign  
4 funds totaling at a minimum \$241,390 to personal use, though the full extent of the scheme may  
5 have included more than \$420,776.<sup>80</sup>

6 The Committee is liable for the Hunter's knowing and willful conduct. Any expenditure  
7 of campaign funds by Duncan Hunter, the candidate, is as an agent of his authorized campaign  
8 committee.<sup>81</sup> Not only did Mr. Hunter spend campaign funds for personal use, for which the  
9 Committee is therefore liable, but he and Margaret Hunter "had an implicit agreement that they  
10 would and could illegally use Campaign funds for personal use, both when they were together  
11 and when they were apart."<sup>82</sup> By virtue of this agreement, Ms. Hunter's actions are also imputed  
12 to the Committee because they were on behalf of the candidate.<sup>83</sup> The Committee's liability is

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<sup>78</sup> See Attachment 1 (showing categories of funds converted personal use expenses).

<sup>79</sup> *Supra* note 40 and accompanying text.

<sup>80</sup> *Supra* notes 44-46 and accompanying text.

<sup>81</sup> See 52 U.S.C. § 30102(e)(2) ("Any candidate . . . who . . . makes a disbursement in connection with [his or her] campaign, shall be considered, for purposes of this Act, as . . . having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate."); 11 C.F.R. §§ 101.2(a), 102.7(d). A candidate's use of funds drawn from the campaign depository of his or her own authorized committee is fairly described as "in connection with" his or her campaign. See *FEC v. Craig for U.S. Senate*, 816 F.3d 829, 844 (D.C. Cir. 2016); *FEC v. O'Donnell*, 209 F. Supp. 3d 727, 738 (D. Del. 2016). Accordingly, in prior matters, including at the reason to believe stage here, the Commission has held the authorized committee liable for the candidate's personal spending. See, e.g., Cert. ¶ 2(a) (Mar. 20, 2019), MUR 7292 (Clifford "Cliff" B. Stearns, *et al.*) (finding reason to believe authorized committee violated § 30114(b) where candidate converted funds to personal use); Cert. ¶ 3 (Nov. 20, 2012), MUR 6585 (Edolphus Towns, *et al.*) (same); Cert. ¶ 1 (May 21, 2009), MUR 6128 (Craig for U.S. Senate, *et al.*) (same).

<sup>82</sup> Margaret Hunter Plea Agreement at 6:8-12.

<sup>83</sup> *Supra* note 29 and accompanying text; RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.").

1 further supported by information that the treasurers were aware of the Hunters' use of campaign  
2 funds for personal spending.<sup>84</sup>

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4 The Committee's treasurers,  
5 despite indications that they knew that the Hunters were engaged in personal spending, accepted  
6 the Hunters' fictitious purposes for their spending and may have generated purposes when the  
7 Hunters simply stated, without providing specifics, that questionable spending was campaign  
8 related.<sup>86</sup>

9 **C. The Committee Knowingly and Willfully Violated 52 U.S.C. § 30104(b)(6)(A)**  
10 **by Failing to Accurately Report Disbursements**

11 Authorized committees are required to disclose the name and address of each person who  
12 has received a disbursement in an aggregate amount or value in excess of \$200 within the  
13 calendar year or election cycle, in the case of an authorized committee, together with the date,  
14 amount, and purpose of any such disbursement.<sup>87</sup> Commission regulations state that reportable

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<sup>84</sup> See *infra* note 86.

<sup>86</sup> The Hunters admitted that they concealed the scheme, in part, by falsely stating to the treasurers that their personal expenses were simply "campaign related." Margaret Hunter Plea Agreement at 5:14-17; Duncan Hunter Plea Agreement at 3:18-21. The treasurer thereafter reported such payments with campaign-related purposes on the Committee's FEC disclosure reports. There is also information that, despite knowledge that certain expenses were for personal use, or were likely were for personal use, the treasurer nonetheless reported them as being made for a legal, charitable purpose. Compare Hunter-00013756 (Aug. 8, 2015 email from Margaret Hunter to treasurer describing \$700 July 2015 disbursement to dentist as "personal so I will cover from personal funds"), and Hunter-00012565 (Oct. 14, 2015 email from Margaret Hunter to treasurer stating that another \$700 disbursement in August 2015 to the same dentist was "actually contribution to 'Smiles for Life' children[']s charity through Garth Brooks partnership"), with DDHC, Amended 2015 October Report at 72 (Apr. 15, 2016) (reporting both disbursements, including the July 2015 disbursements which Margaret Hunter acknowledged was personal, as for "Gift Certificate to Smiles for Life").

<sup>87</sup> 52 U.S.C. § 30104(b)(6)(A); 11 C.F.R. § 104.3(b)(4).

1 disbursements must include a “purpose,” defined as “a brief statement or description of why the  
2 disbursement was made.”<sup>88</sup>

3 As a result of the Hunters’ admitted efforts “to conceal[] the personal nature” of their  
4 illicit spending by “either falsely stating the expenses were ‘campaign related’ or by falsely  
5 reporting the item or service purchased when providing information to the Treasurer,”<sup>89</sup> the  
6 Committee failed to accurately describe the purpose of numerous disbursements.<sup>90</sup> As detailed  
7 above, the Hunters converted between \$241,390 and \$420,776 in campaign funds to personal  
8 use, and, among these disbursements, approximately \$200,000 exceeded the \$200 itemization  
9 threshold and therefore required a purpose of disbursement which, in order to conceal the  
10 scheme, was inevitably false.<sup>91</sup>

11 As of the date of this Report, the Committee has not amended any of its filings to correct  
12 the false reports. Although the Committee filed a Miscellaneous Text Report on November 16,  
13 2016, to disclose a subset of “personal expenditures,” none of the corresponding disbursements  
14 were amended in the affected reports.<sup>92</sup> Although the Committee reported a series of payments  
15 as “personal” or “mistaken,” they were all eventually amended to “mistaken,” which, given the

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<sup>88</sup> 11 C.F.R. § 104.3(b)(4)(i)(A).

<sup>89</sup> Margaret Hunter Plea Agreement at 5:14-17; Duncan Hunter Plea Agreement at 3:18-21.

<sup>90</sup> *See, e.g., supra* notes 33-38 and accompanying text.

<sup>91</sup> This figure represents total disbursements in the “illegal” category of the spreadsheet provided by the United States Attorney’s Office for the Southern District of California, when aggregated by payee, exceed the \$200 threshold. We note there is also a limited number of disbursements, totaling approximately \$2,561, which exceed the \$200 threshold but that the Committee failed to properly itemize.

<sup>92</sup> *See* First GCR at 7, MURs 7058 7228, & 7233 (DDHC, *et al.*).

1 Hunters' admissions, is itself an inaccurate disclosure.<sup>93</sup> The Committee reported \$1,302 in  
 2 online video game purchases as "Fraudulent Charge[s]," which was also inaccurate.<sup>94</sup>

3 The Committee's false reporting was knowing and willful.<sup>95</sup> As stated above, the  
 4 Hunters admitted to falsely stating their expenses were "campaign related" or by generating a  
 5 fictitious purpose.<sup>96</sup> The fictitious purposes appeared on the FEC disclosure reports to conceal  
 6 the true, personal nature of their spending. The Hunters acted as the candidate and campaign  
 7 manager and apparently were the only people with primary access to campaign funds. There is  
 8 no information that the Committee had any sort of internal controls. Moreover, the Committee's  
 9 treasurers were apparently aware of the Hunters' personal spending.<sup>97</sup> They accepted false

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<sup>93</sup> First GCR, Attach. 1, MURs 7058, 7228 & 7233 (Duncan D. Hunter for Congress, *et al.*) (listing disbursements). A handful of the disbursements were unitemized but identified as "Mistaken Charges" on miscellaneous text forms attached to disclosure reports.

<sup>94</sup> DDHC, Second Amended 2015 Year-End Report at 56-62, 71-81, 99-100, 115-16, 135-37 (June 20, 2016). There is information that Margaret Hunter was aware that one of her children had used the campaign credit card to purchase online video games but that she contacted the credit card company claiming that the account had experienced fraudulent activity. *See* Sentencing Memo at 52:18-53:3.

<sup>95</sup> *See* F&LA at 14, MUR 7126 (Michigan Democratic State Central Committee) ("The knowing and willful nature of this conduct is evidenced by the efforts to conceal the fraudulent contributions."). There is arguably a basis to hold the Committee's treasurers personally liable for the inaccurate reporting either because they were aware of the Hunters' personal spending (and fictitious purposes) or should have reasonably been aware. *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005). However, neither of the Committee's treasurers — Chris Marston, the current treasurer has served since 2013, and Bruce Young, was treasurer from the Committee's inception in 2007 through 2013 — was notified in his personal capacity and therefore no tolling agreements were obtained.

<sup>96</sup> Margaret Hunter Plea Agreement at 5:14-17; Duncan Hunter Plea Agreement at 3:18-21.

<sup>97</sup> *E.g.*, Hunter-00018777 (January 2014 email from Margaret Hunter to treasurer stating: "There will be 2 charges for December which are personal if you can please let me know amount"); Hunter-00013756 (August 2015 email from Margaret Hunter responding to treasurer's inquiry regarding disbursements to dentist, Steam Games, and World of Warcraft by stating they "are personal so I will cover from personal funds"); Hunter-00022640 (December 2015 email from treasurer explaining to Margaret that the personal spending "just keeps happening over and over" and that "every time it happens, campaign funds are being converted to personal use, which, as you know[,] is prohibited"); *see also* Hunter-00021534 (July 2013 email from treasurer to chief of staff deferring to explanation provided by Duncan Hunter because "[h]e's the boss"); Hunter-00016967 (August 2014 email from treasurer stating to chief of staff that Margaret Hunter does not provides names of supporters she takes for meals using campaign funds "[g]enerally just says supporters"); Sentencing Memo, Ex. 49 (December 2010 email chain reflecting treasurer asking Hunters whether charges are campaign related and Duncan responding "Are

1 descriptions they knew, or should have reasonably known, to be covers for personal use, and  
2 may have also generated false descriptions based on payee when the Hunters simply stated an  
3 expense was campaign related.<sup>98</sup> Under these circumstances, this case is readily distinguishable  
4 from embezzlement by a rogue employee, where the Commission has taken a flexible approach  
5 with respect to committees that otherwise acted in good faith.<sup>99</sup>

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we attempting to create an email trail for some reason?"); *supra* note 40 (citing efforts by treasurers to warn Hunters about personal use).

<sup>98</sup> See *supra* notes 35-38, 86 and accompanying text.

<sup>99</sup> See Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695, 16,695 (Apr. 5, 2007) (providing safe harbor, by refraining from seeking a monetary penalty, in instances of embezzlement for political committees that have articulated internal controls designed to prevent misappropriation of campaign funds and that take pro-active steps to notify appropriate authorities and voluntarily file amended reports when misappropriation is discovered).

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15 **VI. RECOMMENDATIONS**

16 1. Enter into pre-probable cause conciliation with Duncan D. Hunter, Margaret  
17 Hunter, and Duncan D. Hunter for Congress and Chris Marston in his official  
18 capacity as treasurer;

19 2. Approve the attached proposed conciliation agreement; and

1           3.       Approve the appropriate letters.

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Lisa J. Stevenson  
Acting General Counsel

June 7, 2021

*Charles Kitcher*

Date

Charles Kitcher  
Acting Associate General Counsel for Enforcement

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