

CJ 2022-2760

Andrews

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

JUN 13 2022

RICK WARREN  
COURT CLERK

State of Oklahoma ex rel. Oklahoma )  
Ethics Commission, )  
 )  
Plaintiff, )  
 )  
Conservative Alliance PAC, a political )  
action committee; and Chris Marston, )  
Individual and as Treasurer of )  
Conservative Alliance PAC )  
 )  
Defendants. )

CJ-2022-2760  
Case No. CJ-2022-<sup>73</sup>2760

PETITION

1. This is an action for violations of Oklahoma campaign finance laws under Title 74, Chapter 62, Appendix 1 (“Ethics Rule” or “Ethics Rules”). Defendants—a Virginia-based political action committee (“PAC”) and its Treasurer—disseminated over one-hundred and fifty thousand dollars (\$150,000) of campaign communications throughout Oklahoma during the 2018 election cycle to influence the outcomes in multiple Oklahoma legislative races. These communications advocated the election or defeat of specific Oklahoma legislative candidates and were disbursed through mail, radio, and other mediums to Oklahoma citizens without the proper disclosure of the source of such communications.
2. Despite their activity in Oklahoma elections, Defendants failed to report their activity with the Oklahoma Ethics Commission (“Commission”), as required by the state’s campaign finance laws. The Ethics Rules require those making campaign communications in Oklahoma elections to inform Oklahoma citizens *prior to the election* of the source and details of the communication. For instance, those making independent expenditures in Oklahoma are required to disclose specific information related to the communication, including but not limited to, the source of the communication, the contact information of those making the

communication, the value of the communication, and the identity of the specific candidate or candidates that the communication supports or opposes. This is accomplished by including disclosures on campaign communications and filing reports with the Commission in accordance with the Ethics Rules.

3. Instead, Defendants partially disclosed the Oklahoma campaign communications with the Federal Election Commission (“FEC”) and failed to include the proper disclosure on its communications. Defendants registered with the FEC as an independent expenditure only Super PAC organized to support or oppose *federal* candidates, notwithstanding its reported activity only taking place at the state level. Only after significant expenditures before the 2018 primary election and numerous discussions with Commission staff did Defendants register in Oklahoma as a PAC. Yet, they continued to engage in pre-election communications without filing any reports outside of its registration with the Commission. Defendants also notably did not provide their accurate phone number or any address on these communications that would have identified the actual source of the communications as that of the out-of-state PAC. Instead, Defendants opted to mislead the public by only including part of the disclosure, along with its name, and a telephone number with an Oklahoma area code.
4. Oklahomans rightly deserve and expect to have access to information on entities seeking to influence Oklahoma elections, regardless of whether they are in or out of state. That is why Plaintiff, State of Oklahoma ex rel. Oklahoma Ethics Commission (“Commission” or “Plaintiff”) seeks to hold Defendants accountable for their conduct in Oklahoma campaigns. Accordingly, Plaintiff alleges that Defendants violated the Oklahoma Ethics Rules by (1) failing to disclose required information of independent expenditures in reports; (2) failing to properly identify the source of expenditure on its campaign communications, including the

address of the source; (3) failing to maintain PAC records; and (4) failing to provide PAC records upon Commission's request.

5. Plaintiff respectfully asks the Court to order penalties as set forth in Title 74, Chapter 62, Appendix 1, Rule 6, including monetary penalties not less than \$10,000, payment of the value of unreported independent expenditures and campaign communications made by Defendants in Oklahoma to the General Revenue Fund of Oklahoma as restitution to the State for the misleading or undisclosed communications Defendants disseminated during the 2018 elections, the cost of attorney fees, costs and other expenses of litigation incurred by the Commission, and any other relief the Court deems just and equitable.

#### **THE PARTIES**

6. The Commission was created under Article XXIX of the Oklahoma Constitution to, among other duties, promulgate rules of ethical conduct for campaigns, investigate possible violations of the Ethics Rules, and, when necessary, prosecute alleged violations of such rules in District Court.
7. Defendant *Conservative Alliance PAC* ("CAP") is a Virginia based PAC that is registered with the FEC as a Super PAC organized exclusively to make independent expenditures. Defendant CAP is also registered in Commission's online reporting system, The Guardian System ("Guardian"), as an unlimited committee organized to make independent expenditures or electioneering communications.
8. Defendant Marston is the named treasurer of Defendant CAP, as registered both with the FEC and the Ethics Commission in The Guardian. Defendant Marston is a resident of Virginia.

#### **JURISDICTION AND VENUE**

9. Article XXIX, §3 of the Oklahoma Constitution requires the Commission to promulgate rules

regarding the ethical conduct of campaigns for elective state office, including civil penalties for violation of the Ethics Rules. Article XXIX, § 4 of the Oklahoma Constitution also requires the Commission to investigate violations of its rules, and, when it deems appropriate, to prosecute alleged violations of its rules.

10. Effective Ethics Rules for the ethical conduct for campaigns and penalties for violations of the Ethics Rules are set forth in 74 O.S. Ch. 62 App. 1, Rules 2 and 6, respectively.
11. On June 10, 2022, after providing Defendants with notice of the allegations and an opportunity to respond, the Commission authorized the filing of this lawsuit against Defendants in accordance with and in compliance with Ethics Rule 6.10.
12. This Court has subject matter jurisdiction pursuant to Okla. Const. art. VII, § 7 and Okla. Const. art. XXIX.
13. The Court has personal jurisdiction over Defendant CAP, a registered unlimited committee in Oklahoma. CAP made and disseminated independent expenditures and other communications in Oklahoma for the 2018 campaign election cycle that advocated the election or defeat of candidates for Oklahoma state office. 12 O.S., Chapter 6, § 187.
14. The Court has personal jurisdiction over Defendant Marston because he is the Treasurer for Defendant CAP as identified on the Statement of Organization he filed with the Commission in the Guardian on behalf of Defendant CAP. His registration information is consistent with the registration of the PAC with the FEC where he is also identified as the PAC's Treasurer. 12 O.S., Chapter 6, § 187.
15. Venue is proper in Oklahoma County District Court pursuant to Okla. Const. art. XXIX, § 4, where the evidence indicates violation(s) of the Ethics Rules were committed in whole or in part in Oklahoma County.

## RELEVANT LAW

16. A PAC, under Oklahoma law, is any group of two or more persons that receives contributions or makes expenditures for specific purposes listed in Ethics Rule 2.79, including making independent expenditures in Oklahoma campaigns. A PAC is further defined as in Ethics Rule 2.2(15) a limited or unlimited committee that has filed or should have filed a Statement of Organization with the Commission.
17. Independent expenditure reports are required by in-state, out of state, and FEC PACs and are also required by Non-Committees that make independent expenditures in Oklahoma. Ethics Rule 2.107.
18. Independent expenditures are expenditures for a communication that expressly advocates the election or defeat of a clearly identified candidate that are not made in coordination with, cooperation with, consultation with, or concert with, or at the request or suggestion of a candidate or candidate committee. Ethics Rules 2.2(2), (3) & (10).
19. Independent Expenditures require the following disclosure, pursuant to Ethics Rules 2.57 and 2.58:
- Not authorized by any candidate or candidate committee. Authorized and paid for by [name of the person who paid for the communication, the person's permanent street address, and telephone number]
20. A PAC is required to file a Statement of Organization in the Guardian no later than 10 days after spending or receiving in excess of \$1,000. Ethics Rule 2.80.
21. A PAC, under Oklahoma law, can be either an unlimited committee or a limited committee. An unlimited committee is a PAC "organized exclusively for the purposes of making independent expenditures or electioneering communications...." Ethics Rule 2.2(20).

Unlimited committees can accept corporate and labor union contributions but cannot contribute to candidates. Ethics Rules 2.2(15) & (20), 2.23, 2.35, and 2.42. Unlimited committees may only make expenditures pursuant to Ethics Rule 2.42, including independent expenditures and expenditures that further the purpose of the committee.

22. The PAC Treasurer is responsible for keeping the committee's financial records and accounts for a minimum of four years and is responsible for timely and accurately filing all Reports of Contributions and Expenditures for the PAC. Ethics Rule 2.83.

23. The Commission has the constitutional authority to subpoena documents during an investigation pursuant to Okla. Const., art. XXIX, § 4. Once the Commission opens a formal investigation, it may issue a subpoena. Ethics Rule 6.8.

24. In accordance with Ethics Rule 6.10, before the Commission may prosecute alleged violations of the Ethics Rules, it must first give written notice of the allegations to any alleged violator and provide them with at least twenty days (20 days) to respond to those allegations. Failure to respond to the allegations is deemed admittance. Ethics Rule 6.10 provides as follows, in pertinent part:

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In no event shall the Commission authorize the prosecution of a civil lawsuit in the District Court until any person who is alleged to have violated these Rules has had an opportunity to respond in writing to allegations of any violation. Such person shall be given notice of the allegations in writing and shall have twenty (20) days in which to file a written response. Upon application, such person shall be granted no more than one extension of twenty (20) additional days in which to file a response. Any additional response shall be granted at the exclusive discretion of the Commission. **Failure to respond shall be deemed an admission of the allegations.** Such person and/or an attorney representing such person also shall be granted an opportunity to personally appear before the Commission to make an oral response, provided such response is within the time frame provided for a written response.

## FACTS

25. Defendant Marston registered Defendant CAP as an independent expenditure only Super PAC with the FEC on March 27, 2018 by filing a Statement of Organization to that effect (FEC ID No. C00674432). Under the “Type of Committee” section on the Statement of Organization, Defendant Marston selected “this committee supports/opposes more than one Federal candidate....” The Statement of Organization was never amended.
26. The FEC identifies Defendant CAP on its website at <https://www.fec.gov/data/committee/C00674432/> as a “Super PAC (Independent Expenditure – Only) – *Unauthorized*” [emphasis added].
27. The Statement of Organization filed with the FEC identifies Chris Marson as both the Custodian of Records and Treasurer for Defendant CAP.
28. Defendants reported to the FEC that it received over One Million Dollars (\$1,000,000.00) in contributions from 2017 to 2018. All of the contributions were reported as being received from a single contributor, Prosperity Alliance, an organization out of Washington, D.C.
29. Defendants reported to the FEC that it spent One million, fifteen thousand and four hundred and fifteen dollars and seventy-two cents (\$1,015,415.72) on “operating expenditures” from 2017 to 2018, including on expenditures in Oklahoma. Defendants reported operating expenses made in Oklahoma with the following descriptions: “Non-federal IE” and “Direct Mail (Non-federal IE).”
30. Defendants did not report making *any* independent expenditures, let alone any independent expenditures in Oklahoma, in the reports filed with the FEC from the time of its registration with the FEC on March 27, 2018 until the filing of the PAC’s termination report with the FEC on August 22, 2019.

31. Defendants made at least \$150,000 worth of independent expenditures in Oklahoma for or against Oklahoma candidates for state office during the 2018 election cycle.
32. Defendants disseminated independent expenditures and other campaign communications in Oklahoma during the 2018 election cycle using different mediums, including but not limited, the mail, radio, and internet.
33. Defendants included disclosures on the independent expenditures and other campaign communications it made in Oklahoma during the 2018 election cycle with the following language: "Paid for by Conservative Alliance PAC. Not authorized by any candidate or candida's committees. (918) 347-7031."
34. Joel Riter approved many of the disclosure statements and at least some media buys for Defendant CAP.
35. Defendants worked with and used a letter written and/or authorized by an Oklahoma state legislative candidate, as defined by Ethics Rule 2.2(6), to create and/or disseminate in Oklahoma at least one communication against another candidate for Oklahoma House of Representatives during the 2018 election cycle.
36. Defendant Marston filed a Statement of Organization on August 5, 2018, registering Defendant CAP in Oklahoma with the Commission as an unlimited independent expenditure or electioneering communication committee whose purpose is "to support conservative candidates." Defendant Marston lists himself as the Chair and Treasurer for CAP. The Statement of Organization has not been amended.
37. As of the date of this Petition, Defendants have not filed reports disclosing its contributions or expenditures, including but not limited to reports disclosing independent expenditures in Oklahoma, with the Commission.



38. On June 8, 2018, the Commission opened a formal investigation in Complaint C-18-10 based on a determination that there is reasonable cause to believe that Defendants violation Campaign Finance Ethics Rule 2. Such was recorded in the Commission's meeting minutes available on the Commission's website at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ok.gov/ethics/documents/July%20SIGNED%20Minutes.pdf.
39. On June 25, 2018, the Commission issued a letter to Defendant Marston alleging violations of Ethics Rules 2.80 and 2.100 for failure to register as a PAC and file quarterly reports with the Commission in the Guardian.
40. On July 18, 2018, James E. Tyrrell III, with Venable LLP in Washington D.C., responded to the allegations in the June 25, 2018 letter as counsel for Defendants, arguing that CAP was not required to register and file quarterly reports. To which the Commission's General Counsel at the time replied and provided Mr. Tyrell a *Subpoena duces tecum* ("Subpoena") pursuant to Okla. Const. art. XXIX, §4 and Ethics Rule 6.8.
41. Mr. Tyrell provided a supplement response on July 31, 2018 but never responded to, produced documents in response to, or objected to the Subpoena.
42. A *Notice of Allegations* ("Notice") was issued by the Commission on April 29, 2022 to counsel for Defendants, which contained allegations, including but not limited to, that Defendants violated Campaign Finance Ethics Rule 2 by failing to publicly disclose with the Commission its activity—including independent expenditures made—in Oklahoma in reports, misleading the public with improper disclosures on its communications disseminated in Oklahoma, failing to maintain proper records, and failing to respond to the Subpoena.
43. Defendants were notified in the April 29, 2022 Notice that they had twenty days to respond,

there are opportunities to request and extension, and that “*[f]ailure to respond shall be deemed an admission of the allegations.*”

44. Defendants did not respond to the Notice. Therefore, the allegations in the Notice are deemed admitted.

45. The Commission unanimously voted to the filing of this lawsuit against Defendants at its meeting on June 10, 2022, pursuant to Ethics Rule 6.10.

**Claim One: Failure to File Reports of Independent Expenditures**

[Ethics Rules 2.107 and 6.10]

46. Plaintiff incorporates by reference ¶¶ 11-45.

47. Defendants failed to report the independent expenditures they made in Oklahoma during the 2018 election cycle as required by Ethics Rule 2.107.

48. Defendants admitted the allegations in Claim One by failing to respond to the Notice, pursuant to Ethics Rule 6.10.

**Claim Two: Failure to Include the Proper Disclosure**

[Ethics Rules 2.2(6), 2.57, 2.58 and 6.10]

49. Plaintiff incorporates by reference ¶¶ 1-48.

50. Defendants did not include the proper disclosure on its independent expenditures when they failed to include Defendant CAP’s permanent street address and telephone number; instead, it appears Defendants misled citizens to believe it was an Oklahoma-based PAC by including on its communications it disseminated during the 2018 Oklahoma election cycle the PAC name, a phone number with an Oklahoma area code, and no address. Ethics Rule Ethics Rules 2.57 and 2.58.

51. Defendants misled the public by including “Not authorized and paid for by a candidate or

candidate committee” on at least one communication they disbursed in Oklahoma during the 2018 election cycle that was made in with the authorization and coordination with a candidate, as defined in Ethics Rules 2.2(6), 2.57 and 2.58.

52. Defendants admitted to the allegations in Claim Two by failing to respond to the Notice, pursuant to Ethics Rule 6.10.

**Claims Three and Four: Failure to Provide Documents Upon Request**

[Okla. Const., art XXIX, § 4 and Ethics Rules 2.83, 6.8 and 6.10]

53. Plaintiff incorporates by reference ¶¶ 10-52.

54. Defendants failed to maintain records for Defendant CAP as required by the Ethics Rule 2.83, including but not limited to, bank records and documents related independent expenditures and other communications Defendant CAP made during the 2018 election in Oklahoma.

55. Defendants failed to produce Defendant CAP’s records pursuant to the Subpoena, including but not limited to, bank records and documents related to independent expenditures and other communications Defendant CAP made during the 2018 election in Oklahoma. Okla. Const., art XXIX, § 4 and Ethics Rule 6.8.

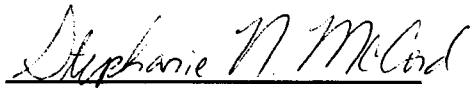
56. Defendants admitted to the allegations in Claims Three and Four when they failed to respond to the Notice, pursuant to Ethics Rule 6.10.

**PRAYER FOR RELIEF**

Plaintiff respectfully asks the Court to order penalties as set forth in Title 74, Chapter 62, Appendix 1, Rule 6, including monetary penalties not less than \$10,000, payment of the value of unreported independent expenditures and campaign communications made by Defendants in Oklahoma to the General Revenue Fund of Oklahoma as restitution to the State for the misleading or undisclosed communications Defendants disseminated during the 2018 elections, the cost of

attorney fees, costs and other expenses of litigation incurred by the Commission, and any other relief the Court deems just and equitable.

Respectfully submitted,



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