APPENDIX TABLE OF CONTENTS

Opinion of the Eighth Circuit Court of Appeals (May 11, 2018) 1a

Judgment and Commitment Order of the United States District Court for the Southern District of Iowa (September 21, 2016)..... 35a

Order of the United States District Court for the Southern District of Iowa (October 24, 2016) 44a

Order of the United States District Court for the Southern District of Iowa (November 23, 2015) 56a

Order of the Eighth Circuit Denying Petition for Rehearing (July 6, 2018) 62a

Relevant Statutory Provisions 63a

OPINION OF THE EIGHTH CIRCUIT COURT OF APPEALS (MAY 11, 2018)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESSE R. BENTON,

Defendant-Appellant.

No. 16-3861

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN FREDERICK TATE, A/K/A JOHN M. TATE,

Defendant-Appellant.

No. 16-3862

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DIMITRIOS N. KESARI, A/K/A DIMITRI KESARI,

Defendant-Appellant.

No. 16-3864

Appeals from United States District Court
for the Southern District of Iowa–Des Moines

Before: WOLLMAN and LOKEN, Circuit Judges,
and NELSON,[1] District Judge.

WOLLMAN, Circuit Judge.

Jesse R. Benton, John Frederick Tate, and Dimitrios N. Kesari (Defendants) were convicted by a jury of causing false records, in violation of 18 U.S.C. §§ 2 and 1519 (Count 2); causing false campaign expenditure reports, in violation of the Federal Election Campaign Act (the Act), 52 U.S.C. §§ 30104(a)(1), (b)(5)(A), and 30109(d)(1)(A)(i) and 18 U.S.C. § 2 (Count 3); engaging in a false statements scheme, in violation of 18 U.S.C. §§ 2 and 1001(a)(1) (Count 4); and conspiring to commit the offenses listed above, in violation of 18 U.S.C. § 371 (Count 1). Defendants appeal, arguing that the

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[1] The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota, sitting by designation.

district court[2] erred in denying their motions to dismiss, for judgment of acquittal, and for a new trial; in instructing the jury; in issuing certain evidentiary rulings; in denying Tate's motion for severance; and in issuing a discovery ruling. We affirm.

I. Background

Defendants were officials with Ron Paul's 2012 presidential campaign. Benton served as campaign chairman, Tate served as campaign manager, and Kesari served as deputy campaign manager. During the primary campaign for the Republican Party nomination, Defendants sought the endorsement of Iowa State Senator Kent Sorenson, who had previously endorsed rival Republican candidate Michelle Bachmann and was employed as Bachmann's Iowa campaign chairman, in which capacity he worked seventy to eighty hours a week and was paid $7,500 a month.

On October 29, 2011, Aaron Dorr, the brother of Sorenson's legislative aide, Chris Dorr, emailed Tate a proposal, which stated that Sorenson would need to be paid a salary of $8,000 a month to endorse Paul, Chris Dorr would need to be paid a salary of $5,000 a month, and a $100,000 donation would need to be made to a political action committee established by Sorenson. Tate shared the proposal with Benton, among others, describing it as "insulting," "offensive," and "unethical," and stating that the Paul campaign could make a counter-proposal, simply refuse the proposal, or communicate the proposal to the press, which he believed "would destroy the Bachman[n] campaign, Kent, and

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[2] The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

possibly Aaron." In reply, Benton sent an email on October 31 addressed to Sorenson and Aaron and Chris Dorr, stating that although he was pleased that Sorenson was considering supporting Paul, he was surprised by the proposal because it appeared to be "trying to sell Kent's endorsement for hundreds of thousands of dollars and other in-kind support for future political ventures," which "would be unethical and illegal." Benton further stated that the Paul campaign "would be happy to employ [Sorenson] at fair market value," which the Bachmann campaign had set at $8,000 a month for Sorenson and $5,000 a month for Chris Dorr, and that Sorenson should respond to this offer by November 2. Later the same day, Kesari told Tate in an email that he and Sorenson had arranged to meet for dinner the following week. Tate responded by saying that Kesari should not "firm up anything yet."

Aaron Dorr responded to Benton's counter-offer on November 2, stating that he alone was responsible for the earlier proposal and that Sorenson was unaware of its details. He also stated that Sorenson would be unable to consider Benton's counter-offer until after November 8. Benton replied that the offer for Sorenson and Chris Dorr to join the Paul campaign remained open but that it would require a response by November 7.

On November 13, Benton emailed Tate and Kesari that he was considering telling the press about Sorenson's endorsement proposal in light of a "cheap shot" from Bachmann toward Paul. Tate replied that Benton should first contact Aaron Dorr regarding the possibility of Sorenson's endorsement. Kesari suggested that he could meet with Sorenson and Sorenson's wife, but Tate stated that Benton should contact Aaron Dorr instead,

which Benton agreed to do that night. On November 15, after Dorr had failed to respond, Benton gave Kesari permission to meet with Sorenson and Sorenson's wife. Tate told Kesari, "Make sure you talk to Jesse about how we want to do this and what you are supposed to say. We need to be very careful." Kesari agreed to do so.

On November 21, Kesari emailed Tate and Benton that he had spoken with Sorenson and his family over dinner the previous evening and learned that Sorenson wanted to defect to the Paul campaign but in a way that would cause the least harm to Bachmann. Tate replied, "Seems to me, next step is to make him an offer (in person, not in writing) and give him a firm but polite deadline. In my view we would want it to occur after Christmas, a few days before Caucus." On December 23, Benton sent an email to Tate and others stating, "Sorenson is endorsing [Paul] on Monday. We have his statement already."

Sorenson requested a meeting with Kesari on December 26. Kesari, Sorenson, and Sorenson's wife met at a restaurant to discuss Sorenson's endorsement of Paul. In Sorenson's absence, Kesari gave Sorenson's wife a $25,000 check made out to Grassroots Strategy, a corporation owned by Sorenson. After the meeting, Kesari sent an email to campaign staffers saying, "The deal is done. Please draft a press release and send to me and Jesse." Attached to the email was Sorenson's draft statement endorsing Paul.

On December 27, however, Kesari sent an email to Tate, Benton, and others saying, "Hold the release. Kent is getting cold feet. He wants to meet with me in about 2 hours. Any advice? Damn I was afraid of this." Tate asked, "Why is he getting cold feet? What can we

do, say to help him? What time are you meeting him, and where?" Benton replied, "I am not interested in this game any more. Dimitri, pull the offer. If we can't depend on him, I don't want him involved." Benton then sent another email, saying, "In all seriousness, I am [not] sure what to do about this. The DMR [*Des Moines Register*] has his statement, I sent last night since Kent said [he] [was] [c]omfortable." Benton told Tate and Kesari in subsequent emails that he was considering telling the press about Sorenson's request for payment if Sorenson did not uphold his agreement to endorse Paul.

According to Sorenson, he had a heated argument with Bachmann's campaign staff on December 28. Later that day, he drove to a rally for Paul at the Iowa State Fairgrounds in Des Moines. Sorenson met Kesari in the parking lot and asked if Kesari, Benton, and Tate were still "on board" with his endorsement of Paul; Kesari replied that they were. Sorenson spoke with Benton and Kesari in the backstage area of one of the buildings at the Fairgrounds, where Tate was also present. Sorenson testified that Benton told him something to the effect of, "[Y]ou bled for us, we'll take care of you," which Sorenson understood to mean that he would be "financially taken care of and politically taken care of." Sorenson thereafter went on stage and publicly endorsed Paul. Shortly after Sorenson's endorsement, Kesari sent an email to Fernando Cortes, the Paul campaign's assistant controller, requesting a $25,000 wire transfer for the next morning. Copies of the email were sent to Benton and Tate and stated that Benton had approved the wire. Tate replied the following day that the wire was approved. The Paul

campaign issued a press release announcing Sorenson's endorsement.

After Sorenson endorsed Paul, members of the Bachmann campaign began telling the press that the Paul campaign had paid Sorenson for his endorsement. Responding to media inquiries, Benton stated that Sorenson would not be paid by the Paul campaign, in one instance explicitly denying that Sorenson would be paid a salary by the campaign. Tate sent an email to Benton, saying, "We need to make sure anyone asked about this . . . is prepared to say the same thing. I would assume that is something like: The Ron Paul campaign has not and is not paying Kent for his endorsement. Kent decided to endorse Ron because blah blah blah. Short sweet and truthful."

On December 29, the Paul campaign issued a press release that included a statement from Sorenson that he "was never offered money from the Ron Paul campaign or anyone associated with them and certainly would never accept any." The statement further stated, "Financial reports come out in just days which will prove what I'm saying is true." Benton had approved this release before it was made public. In television interviews, Sorenson also denied being paid by the campaign. He had been urged by Kesari to support this denial by referring to the forthcoming financial reports and was told by Kesari not to cash the $25,000 check that Kesari had given to Sorenson's wife. Also on December 29, Cortes sent an email to Kesari, Benton, and Tate, with the subject line "25k wire," asking "Is this invoice still on for today? Please send when you get." Benton told Cortes to "[h]old for a couple days." Tate agreed that the wire should be held, and Kesari stated, "We are holding till after the filing." Kesari

also explained that he did not want the wire "showing up on this quarter filings." Later that day, Cortes sent Tate a list of outstanding invoices, which included "$25k-Dimitri's mystery wire." Tate responded, "Thanks. There will not be the 25k dimitri wire for now. Wipe it off the books."

Kesari then arranged to pay Sorenson through a third party. He asked his brother, Pavlo Kesari, if Pavlo could pay, via Pavlo's video production company, a graphic designer who had done work for the campaign. Pavlo replied that he could not do so, but referred Kesari to his friend Sonny Izon, who owned a video production company called Interactive Communications Technology (ICT). On January 24, 2012, Sorenson sent Kesari an invoice addressed to ICT from Grassroots Strategy Inc., the corporation owned by Sorenson, for "Consulting Services," consisting of $25,000 for "Retainer to provide services" and $8,000 for services provided during the month of January 2012. Kesari sent the invoice to Pavlo, saying, "Here is the invoice that needs to be taken care of. Send me an invoice for video services." Pavlo forwarded the invoice to Izon and added a $3,125 invoice for audio equipment that Pavlo had rented to the Paul campaign. On February 5, Izon sent Kesari an invoice charging the Paul campaign $38,125 for "Production Services."

After receiving the February 5 invoice, Kesari sent Tate an email asking "[d]id jesse get kent paid?" Tate replied, "No idea. Ask him." Kesari then emailed Benton, asking "Did you get kent paid? Or should I submit the payment and pay him?" Benton replied, "Yo[u] handle." Kesari forwarded the invoice to Cortes, saying "Please wire tomorrow morning[.] This is approved by jesse." On March 21, Izon sent Kesari an

invoice charging the Paul campaign $8,850 for production services rendered in February. Kesari forwarded the invoice to Cortes, saying that it was "[a]pproved by jesse." Cortes forwarded the invoice to Tate, asking if the payment was approved, with Tate responding that it was. The same exchange took place regarding the invoice for services in March. After receiving the invoice for services in April, Kesari forwarded it to Benton, asking "Kent's bill[.] Pay?" Kesari then forwarded the invoice to Cortes, saying that it was "[a]pproved by Jesse." After receiving the May invoice, Kesari forwarded it to Cortes, saying, "This should be the last one." Cortes forwarded the invoice to Tate, asking "[A]pproved? Dimitri said it is the last one." Tate approved the payment. After receiving the June invoice, Kesari forwarded it to Cortes, saying, "This is the last one." Cortes forwarded the invoice to Tate, saying, "According to dimitri [this is] the last one (again)[.] Approved? 8k." Tate told Cortes, "I will find out what it is." Tate emailed Kesari, asking, "What is this? What is it for, who is it? Why do we keep paying them? The last payment was supposedly the last." Kesari replied, "This [is] the last payment for kent Sorenson. The deal jesse agreed to with kent." Kesari sent Tate another email, saying, "I[t] was for 6 months." Tate then approved the payment.

Sorenson testified that he performed some services for the Paul campaign while being paid by it. He posed for photographs, made two television appearances, sent emails, and recorded a phone call on behalf of the campaign. He traveled to South Carolina and appeared at rallies in support of Paul, although he did not organize these rallies, as he had done while working for the Bachmann campaign. While in South Carolina

he also met with state legislators and encouraged them to endorse Paul.

Based on the invoices, Cortes and other campaign staff prepared wire instructions for the payments to ICT, using a code designating the payments as "audio/visual expenses." The campaign used this information to report the payments to the Federal Election Commission (the Commission). The campaign reported the payments to ICT to the Commission as "audio/visual expenses," using the code assigned by Cortes.

In response to media reports regarding the $25,000 check that Kesari had given to Sorenson's wife, Sorenson sent Kesari a draft press release in August 2013, which stated that he had been offered the check but never cashed it and thus he "was never paid." Kesari told Sorenson to hold the release until after Kesari had returned from a trip abroad. Upon arriving in Toronto, Kesari placed phone calls to Sorenson, Tate, and Benton. He placed several more phone calls to Sorenson, Tate, and Benton after returning to Virginia. Kesari traveled to meet with Sorenson at his home. Sorenson testified that upon arriving, Kesari lifted up his shirt and asked Sorenson to do the same, to prove that neither was wearing a wire. Kesari asked Sorenson to give him the check back or to alter it to show either a smaller amount or to show "Loan" as the check's purpose. Sorenson refused these requests.

Defendants were indicted by a federal grand jury on Counts 1 through 4 as described above. Benton was indicted on a count of making false statements to law enforcement, in violation of 18 U.S.C. §§ 2 and 1001(a)(2) (Count 5) and Kesari was indicted on a count of obstruction of justice, in violation of 18 U.S.C. § 1512(b)(3) (Count 6). The district court dismissed without

prejudice Counts 1 through 4 against Benton and Tate because the government had presented information to the grand jury that Benton and Tate had proffered to the FBI, in violation of their proffer agreements. The jury convicted Kesari of Count 2, causing false records; acquitted Kesari of Count 6, obstruction of justice; and acquitted Benton of Count 5, making false statements to law enforcement. The jury was unable to reach a verdict on the remaining counts.

By way of a superseding indictment, a grand jury again charged Defendants with Counts 1 through 4, except Kesari. who was not indicted on Count 2. After a second trial, the jury convicted Defendants on all counts.

II. Discussion

A. Statutory Construction and Sufficiency of the Evidence

Defendants argue that the district court erred in denying their motions for judgment of acquittal and for a new trial because the court misconstrued the relevant statutes and the evidence was insufficient to support Defendants' convictions.[3] "The district court's statutory construction is a legal determination that we review de novo." *United States v. Mack*, 343 F.3d 929, 933 (8th Cir. 2003). "A motion for judgment of acquittal should be granted only if there is no interpretation of the evidence that would allow a reasonable jury to find the defendant guilty beyond a reasonable doubt." *United States v. Boesen*, 491 F.3d 852, 855 (8th Cir. 2007)

[3] Benton also appeals from the denial of his motion to dismiss the indictment, a ruling that we review *de novo*. *United States v. Sewell*, 513 F.3d 820, 821 (8th Cir. 2008).

(quoting *United States v. Cacioppo*, 460 F.3d 1012, 1021 (8th Cir. 2006)). "This court views the entire record in the light most favorable to the government, resolves all evidentiary conflicts accordingly, and accepts all reasonable inferences supporting the jury's verdict." *Id.* at 856. "We review the district court's denial of a motion for new trial for abuse of discretion." *United States v. Davis*, 534 F.3d 903, 912 (8th Cir. 2008).[4]

1. Federal Election Campaign Act

The Act requires the treasurer of a political campaign committee to file with the Commission a report disclosing "the name and address of each [] person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure." 52 U.S.C. § 30104(a)(1), (b)(5)(A). Violations of the Act's reporting requirements committed "knowingly and willfully" and "aggregating $25,000 or more during a calendar year" may be punished by up to five years' imprisonment. *Id.* § 30109(d)(1)(A)(i).

Defendants argue that the Act does not prohibit a campaign from paying a vendor, which in turn pays a sub-vendor, while reporting only the payment to the

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[4] We reject at the outset Benton's argument that the evidence was insufficient because the district court erred in relying on Sorenson's testimony. In considering a motion for a new trial, "the district court may weigh the evidence and evaluate the credibility of the witnesses, but the 'authority to grant a new trial should be exercised sparingly and with caution.'" *Davis*, 534 F.3d at 912 (quoting *United States v. Sturdivant*, 513 F.3d 795, 802 (8th Cir. 2008)).

first vendor. As the district court noted in its order denying Defendants' motions, this argument is unavailing because Defendants were not charged with violating the Act merely by failing to report Sorenson as the ultimate recipient of the campaign's payments to ICT. Rather, the government "was properly permitted to argue that [the] combination of a payee used to disguise the true payee, together with a false statement of purpose, was sufficient to violate the statutes alleged in the indictment." D. Ct. Order of Oct. 24, 2016, at 4-5.

The district court's analysis does not conflict with the Commission's decisions. In *Mondale for President*, the Commission advised that a campaign may report expenditures to a corporation it hired to provide media consulting services without reporting the corporation's expenditures to its sub-vendors. FEC Advisory Opinion 1983-25 (*Mondale for President*). And in *Kirk for Senate*, the Commission concluded that a campaign had not violated the Act's reporting requirements by paying a vendor for media services, who in turn paid a sub-vendor that allegedly used some of the funds to pay the personal expenses of the candidate's girlfriend. *Kirk for Senate*, Matter Under Review (MUR) 6510 (FEC July 16, 2013). In both matters, however, the Commission concluded that the vendors and sub-vendors had provided the services described by the campaign. Indeed, in *Mondale*, the Commission noted that itemization of the vendor's payments to sub-vendors would not be required because the campaign would report "specific information describing the various purposes of each expenditure made" to the vendor, such as "media consulting fees, media photocopy expenses, media buys, media production, and other similar descriptive language that reflects the actual purpose of each" of the

campaign's expenditures to the vendor. Here, by contrast, the government presented evidence that Defendants caused false reports to the Commission that the payments to ICT were for "audio/visual expenses," when in reality ICT had provided no such services to the campaign and the payments were instead for Sorenson's endorsement.

The Commission found a violation of the Act's reporting requirements in a matter whose facts are similar to those here, *In the Matter of Jenkins for Senate 1996 and Woody Jenkins*, MUR 4872 (FEC Feb. 15, 2002).[5] The campaign had contracted with a company called Impact Mail & Printing for computerized phone bank services. The campaign wanted to conceal its association with Impact Mail, however, and to that end it issued payments to its media firm, Courtney Communications, which then transmitted the payments to Impact Mail. The campaign's reports to the Commission reflected disbursements to Courtney Communications and not to Impact Mail. The Commission reasoned that because Courtney Communications "had no involvement whatsoever with the services provided by Impact Mail," and served only "as a conduit for payment to Impact Mail so as to conceal the transaction with Impact Mail," the campaign had violated the Act's reporting requirements.

Defendants cite *Boustany, Jr. MD for Congress*, MUR 6698 (FEC Feb. 23, 2016), in support of their

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[5] Defendants contend that this matter lacks persuasive value because the Commission's views were set forth in a conciliation agreement reached by the Commission and Respondents. We note, however, that the conciliation agreement was accepted by majority vote of the Commissioners.

argument, but we do not find that case persuasive. The supplement to the complaint in that matter set forth allegations similar to those in this case, and in a three-to-three vote the Commission failed to find legal violations. Those Commissioners voting to take no action pointed to the campaign's descriptions of the disbursement's purpose as "[d]oor-to-door get-out-the-vote," and noted that while "a portion of the disbursement was ultimately used for another kind of [get-out-the-vote] activity," it would not be "a prudent use of Commission resources" to investigate such a "minor discrepancy." Here, by contrast, reporting the payments to ICT as "audio/visual expenses," when the actual purpose of the payments was for Sorenson's endorsement, can hardly be characterized as a "minor discrepancy."

We also reject Defendants' argument that the coding of the disbursements to ICT as "audio/visual expenses" did not render the reports false. That Sorenson performed some work for the campaign that might arguably be described as an audio/visual expense is beside the point. The government's theory was that the payments to Sorenson were for his endorsement and not for any audio/visual services, a theory bolstered by the fact that the payments were arranged before Sorenson performed any services. Based on Commission Branch Chief Michael Hartsock's trial testimony, Defendants contend that "a campaign is limited in the way that it can report disbursements and still comply with the Commission's facial review," that the Commission considers "audio/visual" to be an adequate expenditure purpose, and that it considers "political consulting" or "endorsement" to be inadequate purposes. Benton Br. 28-29. Hartsock's testimony, however, was that the Commission's lists of adequate and inadequate

disbursement purposes are non-exhaustive, and he agreed that "while consulting is not an acceptable purpose, specifying the type of consulting services provided can help to ensure that the purpose is considered adequate." He also testified that "audio/visual" does not appear on either the list of adequate or the list of inadequate purposes. This testimony thus did not establish that "audio/visual" was an accurate description of the purpose for the disbursements to ICT, nor did it establish that Defendants could not have accurately described the purpose for the disbursements in a manner that would have been accepted by the Commission.

Benton and Tate contend that the evidence was insufficient to support their convictions under the Act because it did not show that they were involved in preparing the false Commission reports. We disagree. The government presented evidence that Benton and Tate coordinated with Kesari to offer Sorenson money in return for endorsing Paul and that they approved a wire transfer to pay Sorenson after he had done so. After the Bachmann campaign claimed that Sorenson had been paid for his endorsement, Tate told Benton that everyone involved should be "prepared to say the same thing," namely, that Sorenson had not been paid for his endorsement. Benton told members of the media that Sorenson would not be paid by the Paul campaign. The Paul campaign issued a Benton-approved statement from Sorenson that Sorenson would not be paid by the campaign and that the campaign's forthcoming Commission reports would bear out this claim. Tate and Benton instructed Cortes to hold the previously-approved wire, which, Kesari explained, was intended

to prevent it from appearing on that quarter's Commission report. Later, Tate told Cortes to "[w]ipe [the wire] off the books." Benton told Kesari to handle the payments to Sorenson. Kesari sent several invoices from ICT to Cortes, saying in nearly every case that the disbursements had been approved by Benton. Kesari told Benton that the April invoice was for "Kent's bill." Tate approved the invoices after Cortes forwarded them to him. Although Tate asked what the June invoice was for, he approved the invoice immediately after Kesari told him that it was for "[t]he deal jesse agreed to with kent." The jury was entitled to infer from these facts that Benton and Tate had knowingly and willfully caused Commission reports to be filed which falsely reported the payments to Sorenson for his endorsement as payments to ICT for audio/visual services.

We reject Defendants' arguments that the reporting requirements are so vague or confusing that we should either apply the rule of lenity or determine that criminal enforcement is not appropriate in this case. As set forth above, Defendants were not convicted for an unsuccessful, good-faith attempt to accurately report the disbursements to ICT, but for knowingly and willfully causing false reports to be filed with the Commission, a conviction that we conclude finds ample evidentiary support in the record.

2. Causing False Records

Defendants challenge their convictions under 18 U.S.C. § 1519, which provides:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible

> object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

Tate argues that applying § 1519 to false reports of campaign expenditures would render the Act superfluous. "Section 1519 was enacted as part of the Sarbanes-Oxley Act of 2002, 116 Stat. 745, legislation designed to protect investors and restore trust in financial markets following the collapse of Enron Corporation." *Yates v. United States*, 135 S. Ct. 1074, 1079 (2015). The Supreme Court has cautioned against "cut-[ting] § 1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance, destroyed with obstructive intent." *Id.* We conclude that applying § 1519 in the context of this case does not pose such a risk. In *Yates*, the Court held that § 1519 was not applicable to a fisherman's actions in throwing undersized fish overboard in order to evade punishment. *Id.* at 1078-79. The Court concluded that "[a] tangible object captured by § 1519 . . . must be one used to record or preserve information." *Id.* at 1079. The production of false financial records by a political campaign falls within that framework. Accordingly, we join the Second Circuit in holding that a defendant may properly be convicted for violations of the Act and of § 1519. *See United States v. Rowland*, 826 F.3d 100 (2d Cir. 2016) (affirming convictions for violations of the Act and 18

U.S.C. §§ 371, 1001, and 1519), *cert. denied*, 137 S. Ct. 1330 (2017).

Tate also argues that Defendants' § 1519 convictions fail because the false reports alleged in this case do not implicate a "matter within the jurisdiction of" the Commission. Regarding the identical phrase used in 18 U.S.C. § 1001, the Supreme Court has stated that "[t]he most natural, nontechnical reading of the statutory language is that it covers all matters confided to the authority of an agency or department." *United States v. Rodgers*, 466 U.S. 475, 479 (1984). "A department or agency has jurisdiction, in this sense, when it has the power to exercise authority in a particular situation." *Id.* "Understood in this way, the phrase 'within the jurisdiction' merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body." *Id.*

We conclude that the filing of campaign-expenditure reports constitutes a matter within the Commission's jurisdiction under § 1519. As set forth above, the Act requires campaigns to submit these reports and establishes penalties for their falsity. The Commission is statutorily required to make these reports available for public inspection. 52 U.S.C. § 30111(a); 11 C.F.R. § 5.4(a). Accordingly, and in contrast to the situation that existed in *United States v. Facchini*, 874 F.2d 638 (9th Cir. 1989) (en banc), where the Department of Labor's authorization was only to monitor the administrative structure of the state's unemployment benefits program, here the false Commission reports did not constitute "[m]ere access to information," but rather "information received [that was] directly related to an authorized function" of the Commission. *Id.* at 642. We conclude that for the same reasons as described above

regarding the violation of the Act, the evidence was sufficient for the jury to find that Defendants knowingly falsified documents with the intent to impede the Commission's administration of that matter.

3. False Statements Scheme

Under 18 U.S.C. § 1001(a)(1), "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully [] falsifies, conceals, or covers up by any trick, scheme, or device a material fact" may be imprisoned for up to five years. Defendants argue that, even assuming that they caused false reports to be submitted to the Commission, the evidence was insufficient for the jury to convict them of violating § 1001(a)(1) because the false statements were not material. We disagree.

"A false statement is material if it has a natural tendency to influence or was capable of influencing the government agency or official to which it was addressed." *United States v. Chmielewski*, 218 F.3d 840, 842 (8th Cir. 2000); *see also United States v. Gaudin*, 515 U.S. 506, 509 (1995) ("The statement must have 'a natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed.'" (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988))). Defendants contend that this standard was not met in light of Hartsock's testimony that a completed report filed with the Commission is automatically posted on the Commission's website and is taken down only if a subsequent review determines that the report is incomplete. Defendants argue that the false statements of purpose were not material because they did not influence the Commission in light

of the fact that accurate reports would have been published, just as the false reports were.

Perhaps so, but that does not foreclose the possibility that the Commission might have taken different action had the reports truthfully described the disbursements' purpose. To prove materiality, the Commission needed to show only that the false reports were capable of influencing its decision and not that they succeeded in doing so. *United States v. Wintermute*, 443 F.3d 993, 1001 (8th Cir. 2006). We conclude that the false statements in the reports satisfied § 1001(a)(1)'s materiality requirements.

4. Conspiracy

Under 18 U.S.C. § 371, "[i]f two or more persons conspire [] to commit any offense against the United States . . . or any agency thereof . . . and one or more of such persons do any act to effect the object of the conspiracy," each conspirator may be imprisoned for up to five years. "Conspiracy is an . . . agreement to commit an unlawful act." *United States v. Pullman*, 187 F.3d 816, 820 (8th Cir. 1999) (quoting *Iannelli v. United States*, 420 U.S. 770, 777 (1975)). "Proof of a defendant's involvement in a conspiracy may of course be demonstrated by direct or circumstantial evidence." *United States v. Lopez*, 443 F.3d 1026, 1030 (8th Cir. 2006) (en banc).

We conclude that the evidence was sufficient for the jury to convict Defendants of conspiracy. The government presented evidence that Defendants coordinated with one another to conceal the payments to Sorenson by paying him through ICT and that Defendants knew that the purpose of those payments would ultimately be falsely reported to the Commission. That

same evidence was sufficient to permit the jury to find that Defendants entered into an agreement to take such action.

B. Multiplicity

Kesari argues that Counts 2, 3, and 4 were multiplicitous and thus violated his rights under the Fifth Amendment's Double Jeopardy Clause. We review this claim *de novo*. *United States v. Emly*, 747 F.3d 974, 977 (8th Cir. 2014). Kesari argues that we must determine "whether Congress intended the facts underlying each count to make up a separate unit of prosecution." *Id.* (quoting *United States v. Chipps*, 410 F.3d 438, 447 (8th Cir. 2005)). This test applies, however, only when multiple counts of an indictment charge the same statutory violation. *Id.* Here, each count charged a violation of a different statute. Accordingly, we apply the test derived from *Blockburger v. United States*, 284 U.S. 299 (1932), which provides that "if each offense requires proof of an element not required by the other, the crimes are not considered the same, and a double jeopardy challenge necessarily fails." *United States v. Sandstrom*, 594 F.3d 634, 654 (8th Cir. 2010) (quoting *United States v. Gamboa*, 439 F.3d 796, 809 (8th Cir. 2006)). Each of the three counts requires proof of an element the others do not: the Act requires a monetary threshold to be met; § 1519 requires an intent to impede, obstruct, or influence a federal matter; and § 1001 requires a showing of materiality.

C. Severance

Prior to the second trial, Tate moved to sever his trial from his codefendants so that Kesari could testify on his behalf. A hearing was held before a magistrate

judge,[6] during which Kesari's counsel stated that if Tate's trial were severed, Kesari would testify that on December 28, the day Sorenson endorsed Paul, Tate was told that Sorenson had not been promised anything in return for endorsing Paul; that Kesari did not tell Tate about the $25,000 check he gave to Sorenson's wife; that Kesari had no recollection of telling Tate about the $25,000 wire; that no deal to pay Sorenson existed until January 2012; that Kesari never passed on to Tate any information about ICT or the method of paying Sorenson; and that Kesari does not recall telling Tate anything about payments to Sorenson, including how they would be reported to the Commission, other than in the emails offered into evidence. In opposition, the government offered some of Kesari's emails and an interview with the FBI, in which Kesari stated that Paul and another campaign officer did not know about the deal to pay Sorenson but did not say the same about Tate. The district court adopted the magistrate judge's report and recommendation that the motion be denied in light of the equivocal nature of Kesari's testimony and the impeachment evidence available to the government.

"There is a preference in the federal system for joint trials of defendants who are indicted together." *United States v. Anderson*, 783 F.3d 727, 743 (8th Cir. 2015) (quoting *Zafiro v. United States*, 506 U.S. 534, 537 (1993)). "This preference is 'especially compelling when the defendants are charged as coconspirators.'" *Id.* (quoting *United States v. Basile*, 109 F.3d 1304, 1309 (8th Cir. 1997)). "It is settled in this circuit that

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[6] The Honorable Helen C. Adams, United States Magistrate Judge for the Southern District of Iowa.

a motion for relief from an allegedly prejudicial joinder of charges or defendants raises a question that is addressed to the judicial discretion of the trial court, and this court will not reverse in the absence of a clear showing of abuse of discretion." *United States v. Starr*, 584 F.2d 235, 238 (8th Cir. 1978) (quoting *United States v. Rochon*, 575 F.2d 191, 197 (8th Cir. 1978)). "[I]n view of the strong policies favoring joint trials where permissible, the defendant must show that the co-defendant's testimony would be substantially exculpatory. The defendant must show that the co-defendant's testimony would do more than 'merely tend to contradict a few details of the government's case against [him or her].'" *United States v. DeLuna*, 763 F.2d 897, 920 (8th Cir. 1985) (quoting *United States v. Garcia*, 647 F.2d 794, 796 (8th Cir. 1981)), *abrogated on other grounds by United States v. Inadi*, 475 U.S. 387 (1986). In deciding whether a co-defendant's testimony would be substantially exculpatory, the district court was entitled to take into account "the other trial evidence and the impeachment evidence available to the government." *United States v. Oakie*, 12 F.3d 1436, 1441 (8th Cir. 1993).

Kesari's proffered statements that Tate was told that Sorenson was promised nothing for his endorsement, that Kesari could not recall telling Tate about the $25,000 wire, that no deal to pay Sorenson existed until January 2012, and that Kesari could not recall telling Tate about the payments to ICT or the method of paying Sorenson were contradicted by the record of emails between Benton, Tate, and Kesari. Accordingly, although some of Kesari's statements were unequivocal, and even though Kesari's failure to exonerate Tate during his interview with the FBI may have had only

weak impeachment value, we conclude that the district court did not abuse its discretion in denying the motion.

D. Jury Instructions

Defendants argue that the district court erred in instructing the jury. "We review defense challenges to the district court's jury instructions for abuse of discretion." *United States v. Carlson*, 810 F.3d 544, 554 (8th Cir. 2016). "The test is 'whether the instructions, taken as a whole and viewed in light of the evidence and applicable law, fairly and adequately submitted the issues in the case to the jury.'" *Id.* (quoting *United States v. Beckman*, 222 F.3d 512, 520 (8th Cir. 2000)). When review of jury instructions requires statutory interpretation, our review is *de novo*. *Id.* at 551.

Benton requested that the district court instruct the jury that it is not illegal: 1) for a campaign to pay for an endorsement; 2) for a campaign to delay the timing of payments from one reporting period to another; 3) for a campaign not to report payments from vendors to sub-vendors; 4) for a campaign to make an expenditure to a limited liability company without identifying its members or employees; or 5) for a campaign to pay a vendor more than market value for services. The district court instructed the jury on the first and third points. The court did not abuse its discretion in denying the proposed instructions because none of the issues set forth therein related to the government's proffered theory of conviction. *See United States v. Wisecarver*, 644 F.3d 764, 772 (8th Cir. 2011) ("A legally accurate but irrelevant jury instruction may be error to the extent it misleads the jury.").

Benton also requested that the district court instruct the jury that the term "willfully," which appears in both the Act and § 1001, should be defined as follows: "A person acts willfully if he acts voluntarily and intentionally to violate a known legal duty. It means that the defendant had knowledge of what the law required and acted with the specific purpose to disobey the law." Instead, the district court issued the following instruction:

> A person acts willfully if he acts knowingly, purposely, and with the intent to do something the law forbids. That is, a person acts willfully when they act with the purpose to disobey or to disregard the law. A person need not be aware of the specific law or rule that his conduct may be violating, but he must act with the intent to do something that he knows the law forbids.

Benton argues that the term "willfully" is vague because this court recognizes more than one definition of the term and thus he was entitled to have the district court give his proposed instruction because it was the more lenient of the two. In *Bryan v. United States*, however, the Supreme Court approved nearly identical jury instructions, except with regard to "highly technical statutes that presented the danger of ensnaring individuals engaged in apparently innocent conduct." 524 U.S. 184, 194-95 (1998). Because Benton has not shown that this case falls within such an exception, we find no abuse of discretion in the district court's denial of his proposed jury instruction.

Likewise, the district court did not abuse its discretion in refusing to give Benton's proposed "debatable law" instruction, which stated:

> One factor for you to consider in deciding whether the defendants "knowingly and willfully" broke the law is whether the requirements of the law were vague or highly debatable. The more uncertain and debatable a law may be, the more difficult it may be to know whether certain conduct may violate the law. Sometimes the applicability of a law may be very clear in some instances, but not in others. If the law is so uncertain or highly debatable that reasonable persons could disagree, then the defendants could not knowingly and willfully violate the law and you must find them not guilty.

The district court instead issued the following instruction:

> Good-faith is a complete defense to Counts 1, 2, 3 and 4 in this case because good faith on the part of the defendants is inconsistent with willfulness as alleged in Counts 1, 3, and 4 and an intent to impede as alleged in Counts 1 and 2. If the defendants acted in good faith, sincerely believing themselves to be exempt by the law from the conduct constituting any of the above charges, then the defendants did not intentionally violate a known legal duty, that is, the defendants did not act "willfully." The burden of proof is not on the defendants to prove good-faith intent because the defendant does not need to prove anything. The government must establish beyond a reasonable doubt that the defendants acted willfully as charged.

The district court's instruction accurately set forth the law, and Benton did not show that the law was "vague or highly debatable" so as to warrant the issuance of his proposed instruction. *See United States v. Picardi*, 739 F.3d 1118, 1126-27 (8th Cir. 2014) (holding that district court did not abuse its discretion in refusing to issue "debatable law" instruction because the issue of vagueness was reserved for the court).

Kesari argues that the district court erred in failing to instruct the jury that a conviction for violation of § 1519 required a finding that the defendant acted willfully. Although Kesari concedes that the text of § 1519 includes no willfulness requirement, he contends that the relationship between the Act—which includes a willfulness requirement and authorizes comparatively lenient penalties—and § 1519—which includes no willfulness requirement yet authorizes comparatively harsh penalties—creates a "positive repugnancy" such that Congress must have intended for § 1519 to include a heightened *mens rea* requirement of willfulness. *United States v. Batchelder*, 442 U.S. 114, 122 (1979). *Batchelder* undermines Kesari's argument, however, because there the Court held that without further evidence of inconsistency, two statutes authorizing different punishments for the same conduct may coexist. *Id.* Further, the Court considered whether a later-enacted, more lenient statute should be read to implicitly repeal an earlier-passed harsher one. *Id.*; *see also United States v. Richardson*, 8 F.3d 15, 17 (9th Cir. 1993) (per curiam) (holding that 18 U.S.C. § 1920 narrowed § 1001, which predated § 1920 by 40 years). Here, by contrast, Kesari makes a far less intuitive argument—that § 1519, which was enacted after the Act and which, according to Kesari, is broader than the

Act, must have been intended to include an implicit heightened *mens rea* element to avoid broadening the liability for conduct punishable under the Act. We decline to read § 1519 as including such an implicit element, all the more so because the cases Kesari cites in support of his argument included a willfulness requirement. *See Bryan*, 524 U.S. at 188-90; *Ratzlaf v. United States*, 510 U.S. 135, 138-40 (1994); *Cheek v. United States*, 498 U.S. 192, 194 (1991); *United States v. Curran*, 20 F.3d 560, 569 (3d Cir. 1994). Accordingly, we conclude that the district court did not err in refusing to give Kesari's proposed instructions.

E. Evidentiary Rulings

"We review evidentiary rulings for clear abuse of discretion, 'reversing only when an improper evidentiary ruling affected the defendant's substantial rights or had more than a slight influence on the verdict.'" *Anderson*, 783 F.3d at 745 (quoting *United States v. Henley*, 766 F.3d 893, 914 (8th Cir. 2014)).

1. Exclusion of Defense Experts

Defendants argue that the district court erred in excluding the testimony of two expert witnesses, David Mason and Jeff Link. Mason, a campaign consultant and former Commissioner and Commission Chairman, testified at the first trial in 2015. During direct examination, defense counsel asked several questions regarding general campaign-finance legal requirements, to which the district court sustained several relevance-based objections saying to defense counsel,

> This is not the subject matter that you represented would be his testimony. You were

> very specific about what you wanted this for. . . . It was represented as associated with the campaigns, how hectic the campaigns and things like that were. That was the representation, and the organizational structure of campaigns, not the difficulty complying with the law.

After defense counsel asked Mason if there was "any confusion about the compliance issues with vendors and sub vendors," the court sustained another objection and called counsel to a sidebar conference, during which the court stated,

> Confusion goes to the state of mind of another, whether it's one person or a whole bunch. This gets back to the exact same concern I had last week about whether the Mondale Campaign sought an advisory opinion. Until I find out that that's—that your client heard it and relied upon it and bases a good faith defense on that, it's not relevant. Confusion generally is not relevant.

The district court sustained a relevance objection when government counsel asked Mason on cross-examination if he had ever advised a campaign that it could report a disbursement to the Commission as an audiovisual expense when the disbursement was for something else. Government counsel then asked Mason a series of questions regarding the legality of paying sub-vendors through an "umbrella vendor," including whether the umbrella vendor would have to actually work with the sub-vendors. On redirect examination, defense counsel asked Mason about the rules regarding paying sub-vendors through an umbrella vendor and possible confusion surrounding those rules. The district

court overruled the government's objections, ruling that the government had opened the door to the issue through its line of questioning on cross-examination. Mason continued to testify on this topic during the remainder of his testimony.

Prior to the beginning of the second trial, the district court granted the government's motion *in limine* to exclude Mason's testimony. It did so because Mason's testimony at the first trial "did not provide helpful context regarding the inner workings of federal campaigns at all, and only arguably touched on any relevant standard of care by alluding to general confusion," and instead offered an impermissible legal conclusion that the Commission regulations were confusing and that payments to sub-vendors through an umbrella vendor did not violate these regulations. *See S. Pine Helicopters, Inc. v. Phoenix Aviation Managers, Inc.*, 320 F.3d 838, 841 (8th Cir. 2003) ("[E]xpert testimony on legal matters is not admissible."). The court accordingly excluded the evidence under Rule 403 of the Federal Rule of Evidence, finding that the "helpfulness of Mr. Mason's testimony to the jury's clear understanding of the general context of a political campaign and how a political campaign operates is outweighed by the danger of confusion of the issues and impermissible instruction on the law." The court noted that it would instruct the jury that the use of an umbrella vendor to pay sub-vendors would not alone violate the Act and that Defendants were free to elicit testimony from other witnesses "regarding the hectic nature of political campaigns."

Benton served pretrial notice that he intended to call Link as an expert witness to testify regarding "the operating environment within federal candidate

campaigns and the customs and practices and standards of care with respect to organizational structure;" "the customs and practices of federal candidate campaigns with respect to paying outside consultants through the use of corporations . . . and other similar entities;" and "the customs and practices of federal candidate campaigns with respect to the use of vendors who subcontract for services intended for the benefit of the federal candidate campaign." The government filed a motion *in limine* to exclude Link's testimony, which the court orally granted during trial.

Tate contends that the district court abused its discretion in excluding the experts' testimony because the impermissible legal testimony that the district court was concerned about was elicited by the government. The record shows, however, that the testimony was elicited by both sides. As the district court noted, testimony about the "hectic nature" and operational structure of the Paul campaign was available from other witnesses with direct knowledge thereof, and so the court acted well within its discretion in excluding the proposed testimony.

2. Admission of the $25,000 Check

Benton argues that the district court abused its discretion in admitting evidence of the $25,000 check because it was not relevant to the theory of conviction and that any tangential relevance was outweighed by the danger of unfair prejudice. We disagree. The check was relevant to show that the purpose of the payments to Sorenson was to purchase his endorsement, rather than for "audio/visual expenses," as was reported to the Commission. Any potential prejudice resulting from admission of this evidence was mitigated by the

district court's instruction that paying for an endorsement alone is not illegal.

3. Admission of Cortes Email

Kesari argues that the district court abused its discretion in admitting an email sent from Cortes to other campaign staff. The email stated that "Dennis is not a good guy . . . but neither is Dimitri IMO-but then again I don't know it all so I leave it to you." The email also included several attachments, including the ICT invoices; one attachment bore a lewd title. Cortes opined, "The last attachment is an email (sorry for the lewdness) I got about a month ago—not sure who its [sic] from-my two guesses-Dennis or Dimitri using dummy accounts." The district court did not abuse its discretion in admitting this evidence. In any event, any prejudice to Kesari was so slight as to render any error harmless. *United States v. Falls*, 117 F.3d 1075, 1077 (8th Cir. 1997).

F. Impeachment Evidence

Kesari argues that the government withheld favorable information derived from an October 9, 2015, interview between Sorenson and agents of the FBI, in violation of the Jencks Act, 18 U.S.C. § 3500(b), and *Giglio v. United States*, 405 U.S. 150, 154-55 (1972).

Kesari did not establish a violation of the Jencks Act because he has not shown that notes of this meeting exist. The Jencks Act requires a court to order the government, upon request by the defendant, to produce any statement in the government's possession which relates to the matter on which a witness called by the government has testified on direct examination. 18 U.S.C. § 3500(b). In response to subpoenas issued

by Defendants, the government stated that Sorenson had met with FBI agents on October 9 and that no notes were taken at the meeting. Kesari argues that trial testimony established that notes were taken at the meeting, but that testimony was equivocal. During the first trial, Sorenson was asked if people at the meeting were taking notes, and he responded, "I don't recall." Then, when asked, "Were [note] pads out?" Sorenson said, "Yes." When asked "And were people writing on those pads as you spoke to them?" he replied, "I would assume so, yes." During the second trial, FBI Special Agent Karen LoStracco, who attended the October 9 meeting along with two other agents, testified, "I think I usually take at least some notes. I don't recall an occasion where I didn't take notes. If I wasn't taking notes, somebody else was taking notes, meaning another agent." In the absence of any probative evidence that notes were taken at the October 9 meeting, no Jencks Act violation was established.

Kesari argues that even if no tangible notes exist, *Giglio* nonetheless entitled him to impeachment evidence from the meeting. As Kesari offers only the speculative claim that the October 9 meeting must have produced impeachment evidence in light of Sorenson's penchant for dishonesty, he has not shown that any impeachment evidence existed and thus has established no *Giglio* violation.

The judgments are affirmed.

JUDGMENT AND COMMITMENT ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA (SEPTEMBER 21, 2016)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

DIMITRIOS N. KESARI

Case Number: 4:15-cr-00103-003

USM Number: 15507-030

Before: John A. JARVEY, Chief U.S. District Judge.

THE DEFENDANT: was found guilty on count(s) Two of the Indictment filed July 30, 2015, and Counts One, Three, and Four of the Superseding Indictment filed November 19, 2015 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Offense Ended	Count
18 U.S.C. § 371	08/2013	One
Nature of Offense		
Conspiracy to Commit an Offense Against the United States		

Title & Section	Offense Ended	Count
18 U.S.C. § 1519	08/2012	Two
Nature of Offense		
Causing False Records		

The defendant has been found not guilty on count(s) Six of the Indictment filed July 30, 2015.

It is Ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 21, 2016
Date of Imposition of Judgment

/s/ John A. Jarvey
Chief U.S. District Judge

Date: September 21, 2016

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Offense Ended	Count
52 U.S.C. §§ 30104(a)(1), 30104(b)(5)(A), 30109(d)(1)(A)(i)	08/2012	Three
Nature of Offense		
Causing False Campaign Contribution Reports		
Title & Section	**Offense Ended**	**Count**
18 U.S.C. § 1001(a)(1)	08/2012	Four
Nature of Offense		
False Statements Scheme		

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

> Three months on Counts One, Three, and Four of the Superseding Indictment filed November 19, 2015, and Count Two of the Indictment filed July 30, 2015, all counts to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:

- The defendant should be incarcerated as close to home as possible.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

  as notified by the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Two years on Counts One, Three, and Four of the Superseding Indictment filed November 19, 2015, and Count Two of the Indictment filed July 30, 2015, all counts to be served concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

- The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the schedule of payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation office;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any

paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant s compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search of his person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C.

§ 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

The defendant shall pay a fine in the amount of $10,000. The defendant shall cooperate with the U.S. Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the U.S. Probation Office. The defendant may be required to participate in an IRS offset program which may include the garnishment of wages or seizure of all or part of any income tax refund to be applied toward the fine balance. You may be required to participate in the Treasury Offset Program which would include the seizure of any government payment to be applied toward the fine balance.

The defendant shall perform 80 hours of unpaid community service per year (for a total of 160 hours) at a non-profit agency as directed and monitored by the U.S. Probation Officer.

The defendant shall serve three months of home confinement. During this time, the defendant shall remain at his place of residence except for employment

and other activities approved in advance, and provide the U.S. Probation Officer with requested documentation. The defendant will not be required to wear an electronic monitoring device as long as he/she remains in compliance with the terms of the program; however, if the defendant violates the terms of supervision, the probation officer shall require the defendant to wear an electronic monitoring device. In lieu of wearing such device, the defendant will be subject to random telephone calls at his residence to verify the defendant's location and compliance with the approved curfew schedule. The defendant shall pay for the aforementioned services at the prevailing rate or in accordance with the ability to pay.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Totals

Assessment: $400.00

Fine: $10,000.00

Restitution: $0.00

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of $10,400.00 due immediately, balance due

- in accordance F below; or

[. . .]

F. Special instructions regarding the payment of criminal monetary penalties:

- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA (OCTOBER 24, 2016)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE R. BENTON, JOHN F. TATE,
and DIMITRIOS N. KESARI,

Defendants.

No. 4:15-cr-00103-JAJ

Before: John A. JARVEY, Chief Judge.

The indictment in this case charged that Defendants Benton, Tate, and Kesari, in their capacity as officials or political operatives with the 2012 Ron Paul Presidential Campaign ("RPPC"), violated the Federal Election Campaign Act ("FECA") by using a third party to disguise payments made to former Iowa State Senator Kent Sorenson for endorsing Ron Paul. The four-count indictment alleged that Defendants participated in a conspiracy, knowingly concealed a scheme of false payments, caused false campaign contribution

reports, and that Defendants Benton and Tate caused false records. [Dkt. No. 323]. This matter was tried to a jury April 26, 2016 through May 4, 2016. On May 5, 2016, the jury reached verdicts of guilty on all counts as to Benton, guilty on all counts as to Tate, and guilty on all counts as to Kesari. The Court sentenced Benton and Tate on September 20, 2016 and sentenced Kesari on September 21, 2016.

This matter comes before the Court pursuant to Defendants' Motions for Judgment of Acquittal or New Trial [Dkt. Nos. 532, 543, 544, 581, 583, 584] and pursuant to Defendants Tate and Kesari's Motions for Release on Bond Pending Appeal and Defendant Kesari's Motion Regarding Failure of Government to Produce Notes of Witness Interviews. [Dkt. Nos. 545, 643, 646]. Defendants argue that an acquittal or a new trial is warranted because the acts underlying the indictment do not constitute a crime and because the Government presented insufficient evidence at trial to sustain convictions against the Defendants. The Government opposes each of the above arguments, and maintains that the indictment specifically delineates conduct that constitutes a crime under the relevant federal law and that the Government's presentation of evidence at trial was sufficient to sustain the guilty verdicts rendered by the jury. [Dkt. No. 595]. For the reasons that follow, Defendants' Motions for Judgment of Acquittal or New Trial are DENIED, Defendants Tate and Kesari's Motions for Release on Bond Pending Appeal are DENIED, and Defendant Kesari's Motion Regarding Failure of Government to Produce Notes of Witness Interviews is DENIED.

I. Background

The indictment contains the following factual allegations: From on or about October, 2011, to on or about August, 2014, Defendants Benton, Tate, and Kesari worked for the RPPC. Defendants Benton and Tate were senior officials, while Defendant Kesari was a political operative. Defendant Kesari reported to Defendants Benton and Tate, who ran the RPPC's campaign operations.

During that time, Sorenson was a Republican Iowa State Senator. Sorenson had already begun working for another Republican candidate, Michele Bachmann. On or about October 31, 2011, Defendant Benton emailed Sorenson and one of Sorenson's representatives offering to pay Sorenson the salary he was receiving for his work on Bachmann's campaign if Sorenson would withdraw his endorsement of Bachmann and endorse Paul. Between November 15, 2011, and December 28, 2011, Defendant Kesari spoke with Sorenson several times in an effort to persuade him to endorse Paul. On December 24, 2011, Sorenson sent Defendants a draft press release endorsing Paul, and Defendants edited that release. On or about December 26, 2011, Defendant Kesari issued a check to Sorenson in the amount of $25,000 through an account held by a jewelry company for which Kesari was a registered agent, and a few days later, Sorenson publicly endorsed Paul. Several days later, Defendants caused the RPPC to issue a statement from Sorenson denying that the RPPC had paid Sorenson for his endorsement after Bachmann publicly alleged such conduct.

At this point, Sorenson had yet to cash the original $25,000 check, and Defendants had made arrangements

to pay Sorenson instead by wire transfer. Following Bachmann's public allegations, Defendant Benton emailed Defendants Kesari and Tate telling them to hold the wire transfer "for a couple of days." Defendant Tate responded by affirming Defendant Benton's decision to hold the transfer.

All Defendants proceeded to engage in numerous email exchanges regarding the original $25,000 wire transfer as well as further payments made to Sorenson. Defendants gave money to a film production company called Interactive Communication Technology ("ICT"), who in turn paid Sorenson's company Grassroots Strategy, Inc. ("GSI"), who then paid Sorenson. However, neither GSI nor ICT ever did any work for the RPPC. According to the Government, the money provided to these organizations was simply for payment to Sorenson for his endorsement of Ron Paul. However, in filing paperwork documenting the RPPC's campaign expenditures, Defendants caused the RPPC to label these payments, ultimately made to Sorenson, as payments to ICT for "audio/visual expenses." None of the RPPC's filings referenced GSI or Sorenson. Sorenson did not do audio/visual work for the RPPC.

II. Legal Standards for Motions for Judgment of Acquittal or New Trial

Defendants move for judgments of acquittal pursuant to Federal Rule of Criminal Procedure 29. "A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later." Fed. R. Crim. P. 29(c)(1). In considering a motion for judgment of acquittal, the Court must "view

the evidence in the light most favorable to the government, resolving evidentiary conflicts in favor of the government, and accepting all reasonable inferences drawn from the evidence that support the jury's verdict." *United States v. Davis*, 588 F.3d 1173, 1176 (8th Cir. 2009) (citation omitted). A motion for judgment of acquittal should be granted only if "no rational fact finder could have found the defendant guilty beyond a reasonable doubt." *Id.* "When a district court considers a motion for acquittal, it does so with very limited latitude. The court should not assess the credibility of the witnesses or weigh the evidence." *United States v. Starr*, 533 F.3d 985, 997 (8th Cir. 2008) (quotation and citation omitted).

Defendants move for new trials pursuant to Federal Rule of Criminal Procedure 33. Rule 33(a) allows a district court to "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). "Motions for new trials based on the weight of the evidence are generally disfavored." *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002). The Court must exercise its Rule 33 authority "sparingly and with caution." *Id.* If, "despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, [the district court] may set aside the verdict, grant a new trial, and submit the issues for determination by another jury." *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980).

III. Analysis

Tate, joined by Benton and Kesari, moves for a judgment of acquittal or new trial, renewing and reincorporating arguments made in several prior motions to dismiss.[1] [Dkt. Nos. 91, 394, 495, 543]. The Court has addressed most, if not all, of the claims asserted in current motions multiple times in pre-and post-trial litigation for both the October 2015 and April 2016 trials in this matter. The Court briefly resolves the current claims below and incorporates by reference all of analysis included in its prior orders.

First, the Defendants reassert that the acts they were charged with were not criminal violations under the FECA.[2] The Defendants contend that once a campaign makes an initial payment, there is no obligation to report any subsequent payments that might be made by the initial payee to an ultimate payee. In this case, Defendants allege ICT was an initial payee and GSI/Kent Sorenson was an ultimate payee. [Dkt. No. 91, 394-1]. The mere fact that certain payment structures do not violate the FECA's reporting requirements has no bearing the Government's allegations against Defendants here—the statements made on the RPPC's

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[1] Numerous motions were filed by the Defendants seeking judgments of acquittal or new trials, however, the Court's order focuses on the analysis contained in the largest and most thoroughly briefed motion by Tate, joined by Benton and Kesari, while fully resolving the claims contained in each of the following motions: Dkt. Nos. 532, 543, 544, 581, 583, 584-1.

[2] The Court has reviewed the new FEC decision heavily relied on by Defendants' most recent motions, Charles Boustany, Jr. MD for Congress, MUR 6698 (February 23, 2016), and does not find the decision persuasive, namely because the decision was a tie vote that did not include a statement of reasons.

FEC filings regarding ICT were false. The Government's theory throughout this case has been that the payments at issue were not payments to ICT for audio/visual expenses, and instead, the payments to ICT were used to disguise the RPPC's payments to Kent Sorenson (through his company, GSI) for his endorsement of Ron Paul.

The Court recognizes the difficulty of the regulatory minutia regarding campaign payments to initial and ultimate payees that has been briefed by Defendants, but also recognizes that it is not necessary to delve into these distinctions in this case. The Government did not argue that use of a payment structure wherein an initial disclosed payee goes on to pay other undisclosed payees, in and of itself, violates the FECA. The Government did argue that the Defendants caused a false report on an FEC filing, claiming that listing an expenditure to ICT for audio/visual services was a false statement. The Government was not permitted to argue that merely listing ICT as the recipient was sufficient to render the report false at trial, but was properly permitted to argue that combination of a payee used to disguise the true payee, together with a false statement of purpose, was sufficient to violate the statutes alleged in the indictment.

Second, the Defendants contend that the Government presented insufficient evidence that the RPPC's statements about expenditures on reports filed with the FEC were material. [Dkt. No. 582-1 Pg. 7]. The Defendants claim that the alleged false reporting in this case was incapable of influencing an FEC action. *Id.* The Government asserts that the "false statements caused by the Defendants could and did cause the FEC (1) to immediately publish the RPPC's false expenditure

reports to the public, and (2) to continue the publication of the RPPC's false expenditure reports after specific FEC review." [Dkt. No. 595 Pg. 18]. As the Court instructed the jury, a material fact is a fact that "would naturally influence or is cable of influencing a decision of the agency." [Dkt. No. 546 Pg. 12]. The Government presented sufficient evidence at trial that the Defendants' false statements on FEC filings influenced actions of the FEC to sustain convictions, particularly through the testimony of Michael Hartsock, the Branch Chief for the Reports Analysis Division of the FEC.

Third, the Defendants allege that the Government failed to prove that the Defendants knowingly and willfully falsified documents in a federal investigation in violation of 18 U.S.C. § 1519. [Dkt. No. 582-1 Pg. 24]. The Defendants contend that the Court improperly instructed the jury as to the intent element of Count II, asserting that the instruction should have included a "knowingly and willfully" mens rea. However, a "knowingly and willfully" instruction is foreclosed by the plain language of the statute. 18 U.S.C. § 1519 states:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 1519 (emphasis added). The statute does not contemplate "willfully" as a requisite mens rea, it only requires that a defendant act "knowingly" and "with the intent to impede, obstruct, or influence . . . " *Id.* Therefore, there was no burden on the Government to prove that the Defendants acted knowingly and willfully and the Court properly instructed the jury.

Fourth, the Defendants allege that the Government failed to prove that they knowingly or willfully participated in a scheme to obfuscate the identity and purpose of payments where Sorenson was the ultimate payee. [Dkt. No. 582-1 Pg. 14]. The Government's evidence at trial established that from October 2011 to December 2011, the Defendants were actively pursuing Sorenson's endorsement and were willing to pay for the endorsement. The evidence demonstrated that the scheme to conceal the payments to Sorenson for his endorsement was created and executed largely by email exchanges between the Defendants. The jury's verdict that the Defendants entered into an agreement to conceal payments to Sorenson and make false statements on FEC filings was supported by the evidence introduced by the Government at trial and will not be overturned.

Fifth, Tate claims that he is entitled to a new trial because the Court erred in not severing his case from that of Kesari. [Dkt. No. 582-1 Pg. 28]. "Because defendants who are jointly indicted on similar evidence from the same or related events should normally be tried together, to warrant severance a defendant must show 'real prejudice,' that is, 'something more than the mere fact that he would have had a better chance for acquittal had he been tried separately.'" *United States v. Mickelson*, 378 F.3d 810, 817-18 (8th Cir. 2004)

(quoting *United States v. Oakie*, 12 F.3d 1436, 1441 (8th Cir. 1993)). "A defendant can demonstrate real prejudice to his right to a fair trial by showing (a) his defense is irreconcilable with that of his co-defendant or (b) the jury will be unable to compartmentalize the evidence as it relates to the separate defendants." *Id.* Tate states that:

> [a]t the hearing on the motion to sever, Kesari's counsel represented that if Tate's case were severed, then Kesari would testify that Sorenson was not promised anything for his endorsement; there was no deal in place on December 28, 2011; Kesari never told Tate about the $25,000 check that Kesari gave to Sorenson's wife; Kesari does not recall telling Tate the purpose of the $25,000 wire; and Kesari never passed Tate any information about ICT or methods of payment to Sorenson or how they would be reported to the FEC.

[Dkt. No. 582-1 Pg. 29]. However, it is not "enough for a defendant to claim . . . that he needed a separate trial in order to call a co-defendant as a witness. He must show that it is likely his codefendant actually would have testified and that this testimony would have been exculpatory." *Id.* at 818. Tate has not shown that Kesari actually would have testified and merely relies on representations by Kesari's counsel, but more importantly, Tate has not shown that Kesari's alleged testimony would have been exculpatory. In his brief, "Tate concedes that the Government may be able to impeach some of what Mr. Kesari [would] say, especially his inability to 'recall' what he told Tate about the reasons behind the $25,000 wire request." [Dkt. No. 582-1 Pg. 29]. The joint trial of Tate, Benton, and Kesari

did not result in real prejudice and severance was not warranted or grounds for a new trial.

Sixth, Kesari claims that the Government wrongly withheld notes from witness interviews with Sorenson in violation of *Brady v. Maryland* and the Jencks Act. [Dkt. No. 545]. Kesari argues that the charges against him should be dismissed, his conviction should be vacated, or other appropriate relief should be given. *Id.* The Government stated in oral argument on Kesari's motion on May 3, 2016 that all notes taken by agents during meetings with Sorenson, as well as reports of interviews with Sorenson, were produced to Kesari. The Government continues to aver that it has "memorialized and produced any and all information regarding Mr. Sorenson that it possesses which may arguably qualify as discoverable under *Brady* and *Giglio*." [Dkt. No. 574 Pg. 2]. The Court has no reason to doubt the Government's assertions that all discoverable materials have been produced to Kesari, and is confident that the Government knows the ramifications of any misrepresentations on this issue.

IV. Conclusion

The Court finds that: (1) the acts the Government charged the Defendants with in the indictment were violations of federal law under the FECA; (2) the Government presented sufficient evidence that the RPPC's statements about expenditures on reports filed with the FEC were material; (3) the jury was properly instructed on the intent element of Count II; (4) the Government presented sufficient evidence at trial that the Defendants entered into an agreement to conceal payments to Sorenson and make false statements on FEC filings; (5) Tate's motion to sever was properly

denied and the joint trial of the Defendants did not result in real prejudice. Further, the Court ruled on Tate and Kesari's Motion for Release on Bond Pending Appeal from the bench at the time of sentencing and the motions are denied. Lastly, the Court finds that the Government has produced all discoverable materials to Kesari that *Brady*, *Giglio*, and the Jencks Act require.

Upon the foregoing,

IT IS ORDERED that Defendants' Motions for Judgment of Acquittal or New Trial [Dkt. Nos. 532, 543, 544, 581, 583, 584] are DENIED, Defendants Tate and Kesari's Motions for Release on Bond Pending Appeal are DENIED, and Defendant Kesari's Motion Regarding Failure of Government to Produce Notes of Witness Interviews is DENIED.

DATED this 24th day of October, 2016.

/s/ John A. Jarvey
Chief Judge
United States District Court
Southern District of Iowa

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA (NOVEMBER 23, 2015)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE R. BENTON, DIMITRIOS N. KESARI,

Defendants.

No. 4:15-cr-00103-JAJ-HCA

Before: John A. JARVEY, Chief Judge.

This matter comes before the Court pursuant to Defendant Kesari's November 4, 2015 motion for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. [Dkt. No. 318]. The Government opposed Defendant Kesari's motion on November 12, 2015. [Dkt. No. 320]. Defendant Kesari argues that a judgment of acquittal is warranted because the Government presented insufficient evidence at trial to sustain a conviction against him on Count II of the indictment. The Government maintains that sufficient evidence was presented at trial for the jury to convict

on Count II of the indictment. For the reasons that follow, Defendant Kesari's motion for judgment of acquittal is DENIED.

BACKGROUND

The July 30, 2015 indictment in this case charged Jesse Benton, Dimitrios Kesari, and John Tate for several offenses arising out of an alleged conspiracy between the three men. Specifically, in their capacity as officials or political operatives with the 2012 Ron Paul Presidential Campaign ("RPPC"), Defendants were purported to have violated the Federal Election Campaign Act ("FECA") by using a third party to disguise payments made to former Iowa state senator Kent Sorenson for endorsing Paul. The six-count indictment alleged that Defendants participated in a conspiracy, caused false records, caused false campaign contribution reports, knowingly concealed a scheme of false payments, that Defendant Benton made false statements to law enforcement, and that Defendant Kesari made false statements to both law enforcement and the courts. On October 9, 2015, Counts I–IV were dismissed without prejudice against Defendants Benton and Tate because the indictments on those counts were obtained in breach of proffer agreements.

A five-day jury trial was held beginning on October 13, 2015. On October 19, 2015, the Government finished its presentation of evidence and rested, at which point Defendant Benton moved for judgment of acquittal on Count V and Defendant Kesari moved for judgment of acquittal on Counts I–IV & VI. The government resisted both of these motions in court. Additionally, the Defendants finished their presentation of evidence and rested on October 19, 2015, at which time Defendant Kesari

once again moved for judgment of acquittal. On October 21, 2015, Defendant Benton filed a motion for judgment of acquittal with the Court. [Dkt. No. 281]. On October 22, 2015, the jury returned a verdict finding Defendant Kesari guilty on Count II and not guilty on Count VI, and Defendant Benton not guilty on Count V. [Dkt. No. 296]. The jury was not able to reach a verdict on Counts I, III, or IV against Defendant Kesari and the Court declared a mistrial on those counts. [Dkt. No. 296].

ANALYSIS

Defendant Kesari moves for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. "A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later." Fed. R. Crim. P. 29(c)(1). In considering a motion for judgment of acquittal, the Court must "view the evidence in the light most favorable to the government, resolving evidentiary conflicts in favor of the government, and accepting all reasonable inferences drawn from the evidence that support the jury's verdict." *United States v. Davis*, 588 F.3d 1173, 1176 (8th Cir. 2009) (citation omitted). A motion for judgment of acquittal should be granted only if "no rational fact finder could have found the defendant guilty beyond a reasonable doubt." *Id.* "When a district court considers a motion for acquittal, it does so with very limited latitude. The court should not assess the credibility of the witnesses or weigh the evidence." *United States v. Starr*, 533 F.3d 985, 997 (8th Cir. 2008) (quotation and citation omitted).

First, Defendant Kesari contends that based on the evidence presented at trial, even viewed in a light

most favorable to the Government, "the United States cannot prove beyond a reasonable doubt that Mr. Kesari knowingly and willfully falsified a documents in a federal investigation in violation of 18 U.S.C. § 1519." [Dkt. No. 319 Pg. 2]. Defendant Kesari takes issue with the Court's jury instruction as to Count II, stating that "the jury should have been instructed that as to element one, they must determine whether Dimitrios N. Kesari knowingly and willfully made or caused to be made a false entry in a record or document." [Dkt. No. 319 Pg. 3]. The Government correctly asserted that including the requirement that the defendant acted "knowingly and willfully" in Count II "is foreclosed by the plain language of the statute." [Dkt. No. 320 Pg. 5]. Count II of the indictment charged Defendant Kesari with causing false records under 18 U.S.C. § 1519 which states:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 1519 (emphasis added). The statute does not contemplate "willfully" as a requisite mens rea, it only requires that a defendant act "knowingly" and "with the intent to impede, obstruct, or influence . . . " *Id.* Although Defendant Kesari says the Government presented "zero evidence" as to willfulness on Count II

and so he must be acquitted, the Government has no burden to prove a mens rea not required by statute.

Second, Defendant Kesari contends that the Court's instruction on Count II was "incorrect and therefore misleading to the jury" because "the statute neither contemplates nor prohibits the causing of a false entry in a record or document" rather, the statute refers to the "the act of making a false record." [Dkt. No. 319 Pg. 5]. Defendant Kesari asserts the "Government put on no evidence that Mr. Kesari made a false entry in a record or document at any time." [Dkt. No. 319 Pg. 5]. However, Defendant Kesari was not charged solely under 18 U.S.C. § 1519, the indictment charged him with causing a false record in violation of 18 U.S.C § 1519 and 18 U.S.C. § 2. The Court instructed the jury on 18 U.S.C. § 2 in Instruction No. 6. [Dkt. No. 280 Pg. 15]. In part, the instruction states, "A person may also be found guilty of a crime even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the charged offense." The Government's theory in the indictment and throughout trial was that "Kesari intentionally caused the campaign to create records falsely listing the payments to Sorenson as expenditures to ICT for 'audio/visual expenses.'" [Dkt. No. 320 Pg. 5]. As the Government charged Defendant Kesari with causing false records, and not making false records, Kesari's assertion that the Government offered no evidence against him that he made false records is immaterial.

CONCLUSION

The Court finds that the jury was properly instructed on Count II. The Court further finds that Defendant Kesari has failed to satisfy the heaving

burden required for a Rule 29 judgment of acquittal, and that the Government presented sufficient evidence at trial for the jury to find Defendant Kesari guilty on Count II beyond a reasonable doubt.

Upon the foregoing,

IT IS ORDERED that Defendant Kesari's motion for judgment of acquittal is DENIED.

DATED this 23rd day of November, 2015.

/s/ John A. Jarvey
Chief Judge
United States District Court
Southern District of Iowa

ORDER OF THE EIGHTH CIRCUIT DENYING PETITION FOR REHEARING (JULY 6, 2018)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

DIMITRIOS N. KESARI, A/K/A DIMITRI KESARI,

Appellant.

No: 16-3864

Appeal from U.S. District Court for the Southern District of Iowa-Des Moines (4:15-cr-00103-JAJ-3)

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly and Judge Stras did not participate in the consideration or decision of this matter.

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit

July 06, 2018

RELEVANT STATUTORY PROVISIONS

52 U.S.C. § 30104
REPORTING REQUIREMENTS

(a) Receipts and Disbursements by Treasurers of Political Committees; Filing Requirements

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—

(A) in any calendar year during which there is[1] regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be

[1] So in original. Probably should be followed by "a".

complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(A) in any calendar year during which a general election is held to fill such office—

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating

$100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either—

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each

month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either—

(A)

(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confir-

mation, the United States postmark shall be considered the date of filing the designation, report or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.

(6)

(A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) Notification of expenditure from personal funds.—

(i) Definition of expenditure from personal funds .—In this subparagraph, the term "expenditure from personal funds" means—

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan

secured using such funds to the candidate's authorized committee.

(ii) Declaration of intent.—Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with—

(I) the Commission; and

(II) each candidate in the same election.

(iii) Initial notification.—Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with—

(I) the Commission; and

(II) each candidate in the same election.

(iv) Additional notification.—After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed[2] $10,000 with—

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[2] So in original. Probably should be "exceeds".

(I) the Commission; and

(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) Contents.—A notification under clause (iii) or (iv) shall include—

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(C) Notification of disposal of excess contributions.—

In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 30116(i) of this title) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) Enforcement.—

For provisions providing for the enforcement of the reporting requirements under this paragraph, *see* section 30109 of this title.

(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4)

is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(11)

(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act—

(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement,

report, or notification filed electronically) after receipt by the Commission.

(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

(12) SOFTWARE FOR FILING OF REPORTS.—

(A) In general.—The Commission shall—

(i) promulgate standards to be used by vendors to develop software that—

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) Additional information.—To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) Required use.—Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) Required posting.—The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.

(b) Contents of Reports

Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;

(3) the identification of each—

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an

aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal

office), together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 30116(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 30116(b) of this title;

(5) the name and address of each—

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated,

together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)

(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting

period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 30116(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this

paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office); and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) Statements by Other than Political Committees; Filing; Contents; Indices of Expenditures

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2), and shall include—

(A) the information required by subsection (b)(6)(B)(iii), indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii), made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(d) Filing by Facsimile Device or Electronic Mail

(1) Any person who is required to file a statement under subsection (c) or (g) of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission.

(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(e) Political Committees

(1) National and Congressional Political Committees

The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) Other Political Committees to Which Section 30125 of This Title Applies

(A) In general

In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 30125(b)(1) of this title applies shall report all receipts and disbursements made for activities described in section 30101(20)(A) of this title, unless

the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) Specific disclosure by State and local parties of certain non-Federal amounts permitted to be spent on Federal election activity

Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 30101(20) (A) of this title shall include a disclosure of all receipts and disbursements described in section 30125(b)(2)(A) and (B) of this title.

(3) Itemization

If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3) (A), (5), and (6) of subsection (b).

(4)Reporting Periods

Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4) (B).

(f) Disclosure of Electioneering Communications

(1) Statement Required

Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission

a statement containing the information described in paragraph (2).

(2) Contents of Statement

Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account

during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) Electioneering Communication—For purposes of this subsection—

(A) In general

(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which—

(I) refers to a clearly identified candidate for Federal office;

(II) is made within—

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to

nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term "electioneering communication" means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates as vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) Exceptions

The term "electioneering communication" does not include—

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 30101(20)(A)(iii) of this title.

(C) Targeting to relevant electorate

For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication can be received by 50,000 or more persons—

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) Disclosure Date

For purposes of this subsection, the term "disclosure date" means—

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) Contracts to Disburse

For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) Coordination with Other Requirements

Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) Coordination with Title 26

Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of title 26.

(g) Time for Reporting Certain Expenditures

(1) Expenditures Aggregating $1,000

(A) Initial report

A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) Additional reports

After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

(2) Expenditures Aggregating $10,000

(A) Initial report

A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) Additional reports

After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent

expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) Place of Filing; Contents—A report under this subsection—

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) Time of Filing for Expenditures Aggregating $1,000

Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

(h) Reports from Inaugural Committees

The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36 accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

(i) Disclosure of Bundled Contributions

(1) Required Disclosure

Each committee described in paragraph (6) shall include in the first report required to be filed under this section after each covered period (as defined in paragraph (2)) a separate schedule setting forth the name, address, and employer of each person reasonably

known by the committee to be a person described in paragraph (7) who provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold (as defined in paragraph (3)) during the covered period, and the aggregate amount of the bundled contributions provided by each such person during the covered period.

(2) Covered Period

In this subsection, a "covered period" means, with respect to a committee—

(A) the period beginning January 1 and ending June 30 of each year;

(B) the period beginning July 1 and ending December 31 of each year; and

(C) any reporting period applicable to the committee under this section during which any person described in paragraph (7) provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold.

(3) Applicable Threshold

(A) In general

In this subsection, the "applicable threshold" is $15,000, except that in determining whether the amount of bundled contributions provided to a committee by a person described in paragraph (7) exceeds the applicable threshold, there shall be excluded any contribution made to the committee by the person or the person's spouse.

(B) Indexing

In any calendar year after 2007, section 30116(c)(1)(B) of this title shall apply to the amount applicable under subparagraph (A) in the same manner as such section applies to the limitations established under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of such section, except that for purposes of applying such section to the amount applicable under subparagraph (A), the "base period" shall be 2006.

(4) Public Availability

The Commission shall ensure that, to the greatest extent practicable—

(A) information required to be disclosed under this subsection is publicly available through the Commission website in a manner that is searchable, sortable, and downloadable; and

(B) the Commission's public database containing information disclosed under this subsection is linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995 [2 U.S.C. 1601 et seq.].

(5) Regulations

Not later than 6 months after September 14, 2007, the Commission shall promulgate regulations to implement this subsection. Under such regulations, the Commission—

(A) may, notwithstanding paragraphs (1) and (2), provide for quarterly filing of the schedule described in paragraph (1) by a committee

which files reports under this section more frequently than on a quarterly basis;

(B) shall provide guidance to committees with respect to whether a person is reasonably known by a committee to be a person described in paragraph (7), which shall include a requirement that committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995;

(C) may not exempt the activity of a person described in paragraph (7) from disclosure under this subsection on the grounds that the person is authorized to engage in fundraising for the committee or any other similar grounds; and

(D) shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

(6) Committees Described

A committee described in this paragraph is an authorized committee of a candidate, a leadership PAC, or a political party committee.

(7) Persons Described

A person described in this paragraph is any person, who, at the time a contribution is forwarded to a committee as described in paragraph (8)(A)(i) or is received by a committee as described in paragraph (8)(A)(ii), is—

(A) a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995 [2 U.S.C. 1603(a)];

(B) an individual who is listed on a current registration filed under section 4(b)(6) of such Act [2 U.S.C. 1603(b)(6)] or a current report under section 5(b)(2)(C) of such Act [2 U.S.C. 1604(b)(2)(C)]; or

(C) a political committee established or controlled by such a registrant or individual.

(8) Definitions

For purposes of this subsection, the following definitions apply:

(A) Bundled contribution

The term "bundled contribution" means, with respect to a committee described in paragraph (6) and a person described in paragraph (7), a contribution (subject to the applicable threshold) which is—

(i) forwarded from the contributor or contributors to the committee by the person; or

(ii) received by the committee from a contributor or contributors, but credited by the committee or candidate involved (or, in the case of a leadership PAC, by the individual referred to in subparagraph (B) involved) to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person.

(B) Leadership PAC

The term "leadership PAC" means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.