FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
William A. Bennett	)	MUR 6623 (formerly RR 11L-27)
	)	

STATEMENT OF REASONS
OF CHAIR ELLEN L. WEINTRAUB AND
COMMISSIONERS CYNTHIA L. BAUERLY AND STEVEN T. WALTHER

In this matter, the Commission found reason to believe that William A. Bennett[1] violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations by making contributions of $6,900 in the names of three other individuals in excess of the Act's limits.[2] We write to explain, based on the available information before us, why we supported the Office of General Counsel's recommendation not only to find that there was a violation, but to find reason to believe that the violation was knowing and willful.[3]

The Act authorizes the Commission to find "reason to believe that a person has committed, or is about to commit, a violation" of the Act "on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities."[4] The

[1] William A. Bennett is also known as Aaron Bennett.

[2] The Commission voted 5-1 in favor of finding reason to believe that the respondent violated 2 U.S.C. § 441a(a)(1)(A) and 441f and to enter into conciliation with Bennett prior to a finding of probable cause to believe. Amended Certification in RR 11L-27, dated August 7, 2012. Commissioners Bauerly, Hunter, McGahn, Petersen, and Weintraub voted affirmatively for the recommendation, and Commissioner Walther dissented. Bennett recently signed a conciliation agreement and agreed to pay a penalty to settle the violation. *See* Conciliation Agreement in MUR 6623, dated January 27, 2013.

[3] The Commission voted 3-3 and therefore did not have the four votes necessary to find reason to believe that the violation was knowing and willful. Commissioners Bauerly, Walther, and Weintraub voted affirmatively for the recommendation, and Commissioners Hunter, McGahn, and Petersen dissented. Amended Certification in RR 11L-27, dated August 7, 2012.

[4] 2 U.S.C. § 437g(a)(2); *see* Guidebook for Complainants and Respondents on the FEC Enforcement Process, May 2012, *available at* http://www.fec.gov/em/respondent_guide.pdf; *see also* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007).

knowing and willful standard requires that "acts were committed with full knowledge of all of the relevant facts and a recognition that the action is prohibited by law...."[5] In the relevant criminal context, the information available does not need to show that the defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and circumstances" from which the jury could "reasonably infer [the defendant] knew her conduct was unauthorized and illegal."[6] This same standard is applicable in our civil enforcement context.

Here, Bennett, by his own admission, instructed three individuals to make $2,300 contributions[7] to a Federal candidate and told them he would reimburse them. According to one of the reimbursed individuals – an employee working for Bennett – Bennett stated "that he was at the maximum individual contribution [limit]" and that "he would reimburse each [individual] for the contribution."[8] Such payments violate 2 U.S.C. § 441a(a)(1)(A), which limits the amount that any person can contribute to a Federal candidate in a single election, and 2 U.S.C. § 441f, which prohibits any person from making a contribution in the name of another.[9] Based on these statements and the fact that Bennett was an experienced donor, there is reason to believe that Bennett knew that he was subject to a contribution limit and that he made an intentional attempt to evade that limit by making a contribution in another person's name.[10]

Taken together, the facts are more than sufficient for the Commission to have found reason to believe that Bennett both knowingly and willfully made excessive contributions and knowingly and willfully made contributions in the names of other individuals.[11] For these reasons, we voted to find reason to believe that knowing and willful violations took place.

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[5] 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir. 1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act").

[6] *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).

[7] During the 2008 election cycle, the Act limited the amount a person could give to $2,300 per election to a federal candidate or candidate's authorized committee. 2 U.S.C. § 441a(a)(1)(A).

[8] First General Counsel's Report ("FGCR") at 4 *quoting* Ott Response.

[9] Requiring contributions to be made in the contributor's own name, rather than in the name of another, promotes full disclosure of the actual source of political contributions. *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind § 441(f) – to ensure the complete and accurate disclosure of the contributors who finance federal elections – is plain."); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to section 441(f) in light of compelling governmental interest in disclosure).

[10] FGCR at 7, fn. 2.

[11] A reason to believe finding of knowing and willful violations, if made, would have authorized the Commission to pursue a higher penalty. Generally, the Act provides that a conciliation agreement entered into by the Commission may require that the respondent pay a civil penalty "which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved." 2 U.S.C. §

2/4/13
Date

Ellen L. Weintraub
Chair

2/1/2013
Date

Cynthia L. Bauerly
Commissioner

2/1/13
Date

Steven T. Walther
Commissioner

437g(a)(5)(A). In 2009, the statutory penalty was adjusted for inflation to $7,500. *See* 11 C.F.R. § 111.24(a)(1) (2009). If, however, a respondent knowingly and willfully violates 2 U.S.C. § 441f, the Act provides for a civil penalty "which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation." 2 U.S.C. § 437g(a)(5)(B). The statutory penalty of $50,000 was adjusted for inflation to $60,000 in 2009. 11 C.F.R. § 111.24(a)(2)(ii).