



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of )

Commission on Hope, Growth & )  
Opportunity )

MUR 6391 & MUR 6471 )  
)  
)

**STATEMENT OF REASONS  
OF CHAIR ANN M. RAVEL AND COMMISSIONER ELLEN L. WEINTRAUB**

The Commission on Hope, Growth & Opportunity (CHGO) spent millions of dollars to influence the 2010 federal elections. Yet CHGO failed to disclose a single dollar of that spending or a single donor to the public. This organization so blatantly disregarded disclosure requirements that the Commission unanimously found reason to believe that CHGO violated the Act's disclosure provision and authorized a rare investigation into CHGO's spending on its advertisements that clearly opposed federal candidates or explicitly advocated against their election.<sup>1</sup> Through this investigation, the Office of General Counsel (OGC) determined that at least 85 percent of the money CHGO spent in 2010—about \$4.77 million—was spent on these advertisements.<sup>2</sup> However, despite this overwhelming evidence, our colleagues could not be persuaded to conclude that this organization was a political committee, required to register with the Commission and report its contributors and spending.<sup>3</sup>

The Commission's failure to enforce the law against groups, like CHGO, that are political committees deprives the public of information that would allow them to evaluate political speakers and their messages.<sup>4</sup> The law requires a political committee to register and file regular disclosure reports with the Commission.<sup>5</sup> Instead of reporting only the amounts spent on individual communications, such as independent expenditures and electioneering

<sup>1</sup> See Certification in MUR 6391 & 6471 (Commission on Hope, Growth & Opportunity), dated September 16, 2014 ("First General Counsel's Report Certification").

<sup>2</sup> Third General Counsel's Report in MURs 6391 & 6471 (Commission on Hope, Growth & Opportunity), dated September 24, 2015 ("Third General Counsel's Report"), at 18.

<sup>3</sup> See Certification in MUR 6391 & 6471 (Commission on Hope, Growth & Opportunity), dated October 1, 2015 ("Third General Counsel's Report Certification"). The Commission deadlocked 3-3.

<sup>4</sup> See *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

<sup>5</sup> See 52 U.S.C. §§ 30102-104.

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communications, political committees are required to disclose *all* of their receipts and disbursements and *all* relevant contributor information.<sup>6</sup>

This is not a difficult case. It was evident at every stage of the Commission's proceedings that CHGO, a dark money group, was a political committee. In fact, we voted to approve OGC's initial recommendation to find reason to believe that CHGO was a political committee over a year ago because the information available then clearly showed that CHGO spent the vast majority of its money on advertisements that clearly supported or opposed federal candidates.<sup>7</sup> Our colleagues were not similarly convinced, so we agreed to investigate CHGO's disclosure violations and took no action at the time with respect to its political committee status.<sup>8</sup>

When OGC came back to the Commission with even more information about CHGO's objectives and spending, this only reinforced our previous determination that CHGO was undoubtedly a political committee. For example, we now know how CHGO explained its goals to potential supporters and donors. According to its internal documents, CHGO sought to make "a measurable impact on the election outcome in selectively identified Senate races."<sup>9</sup> A consultant writing to a potential donor described CHGO as "an organization which focuses on running independent expenditure campaigns in key districts to support the election of Republican candidates."<sup>10</sup>

CHGO stated in both its Articles of Incorporation and in response to the FEC's investigation that its organizational purpose was to educate the public on economic policy.<sup>11</sup> But this story simply does not hold up if you look at the ads that CHGO ran, keeping in mind that running advertisements was close to the sole focus of the organization.

For example, the script for one version of an ad aired in Colorado's third congressional district provides:

"John Salazar says he's an independent voice. But he voted for the Pelosi agenda an astounding 97% of the time. Salazar squandered billions on a bogus stimulus bill as unemployment skyrocketed. And Salazar led the charge with Pelosi for Obamacare, further crippling rural Colorado's economy. As a local business owner, Scott Tipton believes Coloradans know best how to create jobs and grow our economy. Help Scott

<sup>6</sup> Compare 52 U.S.C. § 30104(b), with 52 U.S.C. § 30104(c) and (f).

<sup>7</sup> First General Counsel's Report Certification. When the First General Counsel's Report circulated to the Commission in December 2013, we approved OGC's recommendations, six months before the matter was placed on an agenda for consideration and nearly nine months before the Commission finally authorized an investigation.

<sup>8</sup> First General Counsel's Report Certification.

<sup>9</sup> Second General Counsel's Report in MURs 6391 & 6471 (Commission on Hope, Growth and Opportunity), dated July 28, 2015 ("Second General Counsel's Report"), at 12.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 11.

Tipton make America work again.”<sup>12</sup>

Many of CHGO’s ads contained language that can only be reasonably interpreted as a call to vote for or against a particular candidate. And *all* of the ads supported or opposed particular candidates in the upcoming election. In fact, almost all of CHGO’s spending was related to the production and dissemination of these ads.

Despite this information, uncovered in the initial investigation, our colleagues still did not agree that CHGO was a political committee and strongly suggested that OGC gather more evidence about the itemization of CHGO’s 2010 media spending. As directed, OGC uncovered even more information about CHGO’s spending, including at least \$2.9 million on independent expenditures and at least \$1.1 million on electioneering communications. Yet despite this additional information about CHGO’s overwhelmingly political spending, three Commissioners again found the evidence to be insufficient to show that CHGO violated the law, and the Commission ultimately deadlocked 3-3.<sup>13</sup>

The principal legal issue here is whether CHGO has the “major purpose” of influencing the election of federal candidates—the critical piece of the political committee status test.<sup>14</sup> If it seems like a no-brainer, that’s because it is. A group, like CHGO, that (1) has documents stating that its goal is to influence elections; and (2) spends the overwhelming majority of its funds running ads supporting some candidates and opposing others, *is a political committee*.

Three of our colleagues have gone to great lengths to avoid enforcing the law against dark money groups like CHGO. As we’ve mentioned in prior statements,<sup>15</sup> they have made a

<sup>12</sup> See First General Counsel’s Report in MURs 6391 & 6471 (Commission on Hope, Growth & Opportunity), dated December 26, 2013, at 10.

<sup>13</sup> Third General Counsel’s Report Certification.

<sup>14</sup> Any organization or “group of persons” that satisfies the test for political committee status must register and file periodic reports with the Commission, disclosing its contributors and spending. The first part of the test, set forth in the Act, requires that the entity make more than \$1,000 in political expenditures or receive more than \$1,000 in contributions during a calendar year. 52 U.S.C. § 30101(4)(A). The second part of the test, added by the Court in its *Buckley v. Valeo* decision, requires that the organization have as its “major purpose . . . the nomination or election of a candidate.” 424 U.S. 1, 79 (1976) (*per curiam*).

In 2007, the Commission approved, by a bipartisan vote, a detailed Supplemental Explanation and Justification providing guidance to the public regarding the “major purpose” requirement of the political committee status test. See Political Committee Status, 72 Fed. Reg. 5595, 5596-7 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“2007 E&J”), available at <http://sers.fec.gov/fosers/showpdf.htm?docid=34789>. The 2007 E&J includes a list of examples of activities that indicate that an entity meets the “major purpose” test, such as: “direct mail attacking or expressly advocating the defeat of a Presidential candidate,” “television advertising opposing a Federal candidate,” and “other spending . . . for public communications mentioning Federal candidates.” *Id.* at 5605.

<sup>15</sup> See Statement of Reasons of Vice Chair Ravel, Commissioner Walther, and Commissioner Weintraub in MURs 6538 (American for Job Security) and 6589 (American Action Network), dated July 30, 2014, available at <http://eqs.fec.gov/eqsdocsMUR/14044362039.pdf>; Statement of Reasons of Vice Chair Ravel, Commissioner Walther, and Commissioner Weintraub in MUR 6396 (Crossroads Grassroots Political Strategies), dated Jan. 10, 2014, available at <http://eqs.fec.gov/eqsdocsMUR/14044350964.pdf>.

series of unfounded arguments for why groups like CHGO don't meet the "major purpose" test. Our colleagues will not count any advertisement towards major purpose unless that advertisement expressly advocates for a candidate—even advertisements that attack a candidate's record and praise the opponent's, in the candidate's jurisdiction, right before the election. Unless an advertisement has "magic words" (e.g., "vote for Smith"), our colleagues will generally not consider it to be express advocacy, regardless of the content.<sup>16</sup> And even if an organization does run those "Vote for Smith" ads, they will not find the organization to have met the major purpose test unless over 50% of the organization's total spending was for those ads—even if the bulk of the organization's other spending is on office space, salaries, and administrative costs solely to enable staff members to work on ads.

In other words, under our colleagues' analysis, it's entirely possible for a group to devote *all* of its resources to supporting or opposing federal candidates, but still not be a political committee, as long as they keep up some minimal façade asserting that they are an issue-oriented group.

In this case, even if evaluated under our colleagues' own theory, CHGO spent 61 percent of the over \$4.8 million total it spent over its organizational lifetime on express advocacy communications.<sup>17</sup> While we disagree strongly with this limited framework for determining political committee status, this fact *alone* should have been sufficient to conclude that CHGO violated the law.

The same types of manipulations abound when it comes to evaluating evidence. Our colleagues accept, at face value, blanket assertions that groups are concerned about "issues." And they obviously have not drawn any negative inferences from the fact that CHGO was not only uncooperative with our Office of General Counsel, but kept almost no records despite being told to do so at the beginning of these proceedings,<sup>18</sup> and made almost no attempt to comply with campaign finance rules. It apparently bears little significance that CHGO leaders decided to close up shop "most quickly" because of the pending Commission matter, leaving our lawyers and investigators to piece together records from television stations and previously undisclosed subvendors to determine CHGO's media spending.<sup>19</sup>

<sup>16</sup> The Supreme Court has recognized that the so-called "magic words" test derived from *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976), is "functionally meaningless." *McConnell v. FEC*, 540 U.S. 93, 193 (2003).

<sup>17</sup> See Third General Counsel's Report at 19.

<sup>18</sup> See Letter from Jeff S. Jordan, Supervisory Attorney of Complaints Examination & Legal Administration, Office of General Counsel to William B. Canfield of Commission on Hope, Growth & Opportunity, MUR 6391 (Oct. 15, 2010); Letter from Jeff S. Jordan, Supervisory Attorney of Complaints Examination & Legal Administration, Office of General Counsel to William B. Canfield of Commission on Hope to William B. Canfield of Commission on Hope Growth & Opportunity, Growth & Opportunity, MUR 6471 (May 26, 2011) (notifying respondent of "a legal obligation to preserve all documents, records and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter"). See also Letter from Lee E. Goodman, Chair to William B. Canfield of Commission on Hope, Growth & Opportunity, MUR 6391 & 6471 (Sept. 30, 2014) (notifying respondent of the obligation to preserve all documents, records and materials after the Commission found reason to believe CHGO violated the Act).

<sup>19</sup> Second General Counsel's Report at 7, n. 20. An April 6, 2012 e-mail between CHGO leaders suggested that CHGO be terminated "most quickly," because "[t]here is an outstanding matter at the Federal Elections [sic]

MURs 6391 & 6471 (Commission on Hope, Growth & Opportunity)  
Statement of Chair Ravel and Commissioner Weintraub

We have a responsibility to Congress, the courts, and, most importantly, the American people, to enforce the laws as they exist, not as we would like them to be. The Commission is falling far short of that responsibility. The law in this case clearly requires the Commission to conclude that CHGO is a political committee and therefore must disclose its contributors and spending. The failure to enforce the law against a group that so clearly flouted *all* disclosure requirements is unreasonable and inexcusable.

11/5/15  
Date

  
Ann M. Ravel  
Chair

11/5/15  
Date

  
Ellen L. Weintraub  
Commissioner

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Commission and my sense is that we ought to shut it down to make things less complicated moving forward.”  
Response of James D. Warring to Order to Submit Answers to Questions and Subpoena to Produce Documents  
(June 29, 2015) at FEC-481; Response of Susi Cedillo to Order to Submit Answers to Questions and Subpoena to  
Produce Documents (July 6, 2015) at FEC-21.