



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Berman for Congress, et al.

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) MUR 6570
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**STATEMENT OF REASONS
OF CHAIR ELLEN L. WEINTRAUB AND
COMMISSIONER CYNTHIA L. BAUERLY**

On November 28, 2012, the Commission deadlocked on a vote to dismiss allegations of coordination between an independent expenditure-only committee ("IEOPC," commonly referred to as a "super PAC") that supported California Congressman Howard L. Berman and Berman's principal campaign committee ("the Berman Committee").¹ We could not support dismissal because we believe a limited investigation was warranted. As the sole authority charged with civil enforcement of the Federal Election Campaign Act (the "Act"), the Commission is obligated to ensure that the limits of the Act, including prohibitions on excessive contributions that can result from coordinated spending, are maintained. The facts before us present a sufficient basis to open a limited investigation in order to determine whether or not coordination occurred.²

In this case, the complaint alleges that the super PAC, the Committee to Elect an Effective Valley Congressman ("CEEVC"), coordinated with the Berman Committee when it hired a company owned by political consultant Jerry Seedborg to create slate mail cards in support of Berman's 2012 reelection campaign.³ The complaint specifically states that Seedborg has a professional relationship with Congressman Berman and his

¹ Then-Chair Hunter and Commissioners McGahn and Petersen supported the motion to dismiss. We, along with Commissioner Walther, dissented. See Certification in MUR 6570, dated November 29, 2012.

² "Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. See Guidebook for Complainants and Respondents on the FEC Enforcement Process, May 2012, available at http://www.fec.gov/em/respondent_guide.pdf. In fact, "reason to believe" determinations indicate only that the Commission has found sufficient legal justification to open an investigation to determine whether there is probable cause to believe that a violation of the Act has occurred. See 72 F.R. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007).

³ See Complaint at 1-2.

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committee that dates back 30 years, and that Berman paid Seedborg to “develop campaign strategy.”⁴

Counsel representing Seedborg and the Berman Committee each deny coordination, but neither specifically addresses the 30 year relationship alleged in the complaint.⁵ According to counsel, the Berman Committee hired Seedborg and his company, Seedborg Campaigns, Inc. as consultants in November 2011.⁶ The contract ended in early March 2012.⁷ CEEVC hired Seedborg’s slate mail company, “Voter Guide Slate Cards,” in that same month.⁸ Furthermore, Seedborg’s counsel characterizes Seedborg’s work with the campaign in a manner that leaves open the question about his specific role with the Berman Committee, stating that, “Mr. Seedborg mostly handled day-to-day administrative matters, such as finding a campaign office.”⁹ While Seedborg may have “mostly” handled administrative matters, we are left wondering what constituted the rest of his responsibilities for the campaign and what types of duties are defined as “day-to-day administrative matters.” None of the respondents provide sworn affidavits or any first-hand accounts of Seedborg’s role or any of the facts in this case. Without this information, the Commission was left to evaluate allegations of coordination based on letters from counsel without any specific information about the role Seedborg played.

More factual development is required here. The question of whether the slate cards were independent expenditures¹⁰ or whether they were made in coordination with the Berman Committee could have been answered with a few brief questions of Jerry Seedborg. While some cases require detailed fact finding, the Commission need not, and should not, conduct an extensive investigation in matters where a few, pointed questions would suffice. However, we should not shy away from asking those questions. In this case, an investigation would have required only that we ask those questions necessary to determine what Seedborg did for the Berman Committee, what information he had access to while working for the Berman Committee, and what information he shared with the super PAC, if any. Such an investigation is particularly warranted in light of the United States District Court for the District of Columbia’s admonition to the Commission against relying on conclusory denials in lieu of relevant facts.¹¹ When the Commission is presented with such conclusory denials in the face of a particular factual allegation, the bar for choosing to take no further action is especially high. For these reasons we could

⁴ See Complaint at 1.

⁵ See Seedborg Response at 2 and Berman Committee Response at 2.

⁶ See Berman Committee Response at 2.

⁷ See *id.*

⁸ See CEEVC Response at 2-3.

⁹ Seedborg Response at 2.

¹⁰ For the slate card project to qualify as an independent expenditure under the Act, the cards must not have been paid for “in concert or cooperation with or at the request or suggestion” of a candidate, a candidate’s authorized political committee, or the candidate’s agents or a political party committee or its agents. See 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. If the expenditure was not made independent of a candidate, the Commission could find coordination under the Act, depending, in part, on the conduct at issue. 11 C.F.R. §109.21.

¹¹ See *La Botz v. FEC*, ___ F.Supp.2d ___, 2012 WL 3834865, *8 (D.D.C. Sept. 5, 2012).

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Statement of Reasons of Chair Weintraub and Commissioner Bauerly

not support the Office of the General Counsel's recommendation to dismiss this matter,
without first conducting a targeted investigation.

1/8/13
Date

Ellen L. Weintraub
Ellen L. Weintraub
Chair

1/07/2013
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Commissioner

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