



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

11-11-11

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In the Matter of)	MUR 6651
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Murray Energy Corporation, <i>et al.</i>)	
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**STATEMENT OF REASONS
OF CHAIR ANN M. RAVEL AND COMMISSIONER ELLEN L. WEINTRAUB**

On August 14, 2012, then-presidential candidate Mitt Romney held a rally on the premises of Century Mine, in Beallsville, Ohio. About 2,200 people attended the rally, primarily mine workers, their families, and management employees of Murray Energy, the corporate parent of the company that runs Century Mine.¹ Shortly after the event, evidence emerged that mine workers may have been in attendance unwillingly, forced by their employer to attend the event. Several workers stated that attendance at the rally was required, and that their employer kept a list and tracked attendance. Moreover, they stated that the mine was closed for the event, forcing them to go without pay. We voted to authorize an investigation because the facts alleged suggested that Murray Energy coerced its employees to attend the political rally in violation of the Federal Election Campaign Act of 1971, as amended (“the Act”).² Our motion, however, did not receive the four votes required to proceed.³

Ever since *Citizens United*, we have been concerned that corporations could be emboldened to coerce employees into participating in political activities. This type of coercion is a real danger to our democracy – it puts citizens’ right to express their political beliefs at the mercy of their employers.

¹ See First General Counsel's Report in MUR 6651 (Murray Energy) (“FGCR”) at 3.

² Along with Commissioner Steven T. Walther, we voted to find reason to believe that Murray Energy Corporation and Romney for President, Inc. and Darrell Crate in his official capacity as treasurer violated 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b). Certification in MUR 6651 (Murray Energy), dated June 16, 2015.

³ *Id.* Vice Chairman Petersen and Commissioners Hunter and Goodman dissented. The motion therefore failed by a vote of 3-3. See 52 U.S.C. § 30106(c) (formerly 2 U.S.C. § 437c(c)) (requiring “the affirmative vote of 4 members of the Commission” in order to conduct investigations).

On the day of the rally, the midnight shift was cancelled, the day shift was shortened and rescheduled, and the employees assigned to those shifts lost compensation entirely.⁴ Any hourly workers in attendance were “off the clock.”⁵ Although Murray Energy’s spokesperson stated that workers involved in making the arrangements and carrying out logistics for the event “gladly volunteered to help once word got out that a Romney event was in the works,”⁶ it appears that not everyone was so glad to volunteer. After the event had taken place, several employees contacted a local radio talk show host, who summarized their complaints on air:

“[W]hat I gathered was employees feel they were forced to go. They had to take the day off without pay. That they took a roll call, and they had a list of who was there and who wasn’t and felt they wouldn’t have a job if they did not attend.”⁷

The host also read from emails he had received, including one that said, “Yes, we are in fact told that the Romney event was mandatory and would be without pay Yes, letters have gone around with lists of employees who did not attend or donate to political events.”⁸

Murray Energy’s Chief Financial Officer responded to these allegations in an interview during the same radio segment. However, his statements seemed to partially corroborate the allegations, stating that managers *did* tell employees that attendance at the event was mandatory, adding that there was no punishment of employees that did not attend.⁹ Another manager, the Century Mine Vice President of Operations and General Manager/Superintendent, stated in response to the complaint that he did “verbally extend invitations” to his employees in the days leading up to the event, but that his possible use of the word “mandatory” may have been misunderstood: “[I]t would have been in the context of conveying that opposing the Obama Administration policies was mandatory if the coal industry is to survive.”¹⁰ He also confirmed that he told employees that the company would keep a list of who attended the event, though he stated that the purpose of the list was to plan transportation and other services, not to track which employees did not attend.¹¹

Coercing employees into attending a political rally under threat of retaliation is an egregious abuse of the corporation’s expanded right to participate in federal politics and a

⁴ FGCR at 5.

⁵ *Id.*

⁶ Murray Energy Resp., Ex. 2 ¶ 8.

⁷ FGCR at 3; *The Bloombaddy Experience* (News Radio 1170 WWVA broadcast Aug. 27, 2012), available at <http://www.newsradio1170.com/media/play/highlands-hot-topic-22385072/> (last visited July 22, 2015).

⁸ FGCR at 3.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5.

violation of the Act. Under *Citizens United*,¹² corporations can make their views heard by running independent political ads, not by coercing their employees to parrot the corporation's political views. As has been noted in a prior statement,¹³ the Act contains numerous safeguards against coercion,¹⁴ including a prohibition on the use of "coercion, such as the threat of a detrimental job action," to induce "any individual to make a contribution...."¹⁵ Congress made clear that one of its objectives in passing the Act was to ensure that any corporate employee's or union member's political activities are truly voluntary.¹⁶ Furthermore, the Act prohibits corporations from making contributions to candidates or their committees,¹⁷ including by organizing a rally and requiring employees to attend. From the information we have before us today, that appears to be precisely what happened.

We voted to find reason to believe that Murray Energy violated the Act in this case because the available evidence warrants conducting an investigation.¹⁸ The allegations in this complaint are serious and we owe it to the public – and most importantly the workers of Century Mine – to fully evaluate, with the benefit of all ascertainable facts, whether Murray Energy compelled attendance at the Romney rally.

The Supreme Court has determined that corporations are entitled, under the First Amendment, to run independent political advertisements. That does not entitle corporations to

¹² 558 U.S. 310 (2010).

¹³ Statement of Vice Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther in MUR 6344 (United Public Workers), dated August 7, 2012, available at <http://eqs.fec.gov/eqsdocsMUR/12044314776.pdf>.

¹⁴ See, e.g., 52 U.S.C. §§ 30118(a), 30118(b)(3) (formerly 2 U.S.C. §§ 441b(a), 441b(b)(3)); 11 C.F.R. §§ 114.2(f)(2)(iv), 114.5(a)(2)-(4).

¹⁵ 11 C.F.R. § 114.2(f)(2)(iv); see also Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, Final Rule, 60 Fed. Reg. 64259, 64265 (Dec. 14, 1995) (corporate or labor union "employees who are unwilling to [contribute or fundraise in support of a political campaign] as part of their job have a right to refuse to do so"); MUR 5664 (International Union of Painters and Allied Traders) (finding RTB that union violated then-section 441b(a) by coercing employees to participate in rallies supporting John Kerry for President); MUR 5268 (Kentucky State District Council of Carpenters) (union violated then-section 441b(a) by coercing employees to perform work for various campaigns).

¹⁶ See, e.g., 122 Cong. Rec. H2614 (1976) (Statement of Representative Thompson in connection to 1976 amendments to Act); 122 Cong. Rec. S3700 (1976) (Statement of Sen. Bumpers in connection to same). Congress was highly concerned with maintaining "a balance between the organizational rights [of corporations and labor unions] and the rights of those who wish to retain their shareholding interest or membership status [or employment] but who disagree with the majority's political views." 117 Cong. Rec. 43379 (1971) (statement of Representative Hansen in connection to initial passage of the Act).

¹⁷ 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b).

¹⁸ "The Commission will find 'reason to believe' in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation." *Explanation and Justification, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545 (Mar. 16, 2007).

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usurp their employees' freedom of political choice.¹⁹ The Commission ought to have stood up for the employees of Century Mine, and all employees, who should not be forced to support their employers' political views.

7/23/15
Date


Ann M. Ravel
Chair

7/23/15
Date


Ellen L. Weintraub
Commissioner

¹⁹ To the extent that there is any doubt about the reach of the Act's anti-coercion provisions, we urge our colleagues to join us in a rulemaking to strengthen the Commission's regulations. See Draft Notice of Availability and Petitions for Rulemaking on Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United), dated July 9, 2015, available online at <http://sers.fec.gov/fosers/> (asking for comment on a proposal to "[c]larify that corporations and labor organizations are prohibited from coercing their employees and members into providing financial or other support for the corporation's or labor organization's independent political activities").

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