



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Restore Our Future

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MUR 6535

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

The Federal Election Commission has the authority and the obligation to hold those who break the law accountable. Even though the Commission unanimously found that the super PAC Restore our Future (“ROF”) made an impermissible in-kind contribution to Romney for President¹ in an estimated amount of \$4.3 million,² the Commission did not meet its obligation to hold the violator accountable.³ Despite the fact that this was one of the most egregious and blatant examples of republication the Commission has ever seen, the ultimate “penalty” paid by ROF for violating the Act amounted to a penny on the dollar.

ROF does not dispute that it ran a television advertisement in 2012 that had been created by the Romney campaign in 2008.⁴ The Act and Commission regulations are clear: republishing

¹ See Certification in MUR 6535 (Restore Our Future, Inc.), dated July 16, 2015 (“July 16th Certification”). All six commissioners voted to find reason to believe that Restore Our Future, Inc. and Charles R. Spies in his official capacity as treasurer violated 52 U.S.C. §§ 30116(a) and 30104(b).

² News reports suggest that, from May 3 to 16, 2012, ROF may have spent \$4.3 million or more to air an advertisement called “Saved.” See, e.g., Domenico Montanaro, *Pro-Romney PAC Tries To Fix Romney’s Image Problem*, MSNBC.COM (May 2, 2012) (quoting ROF press release stating that it “launched a \$4.3 million TV ad campaign that targets nine states...The group is currently running the ad ‘Saved’...”), <http://firstread.nbcnews.com/news/2012/05/02/11506218-pro-romney-super-pac-tries-to-fix-romneys-image-problem>; Leigh Ann Campbell, *Pro-Romney Group Plans To Spend \$4.3 Million in Key States*, CBS NEWS (May 2, 2012), <http://www.cbsnews.com/news/pro-romney-group-plans-to-spend-43-million-in-key-states/>.

³ See July 16th Certification.

⁴ See Response at 3, 5.

material created by a campaign is an in-kind contribution to that campaign.⁵ And super PACs are prohibited from contributing to campaigns.

Instead of denying that it recycled the ad, ROF argued that republishing Romney's 2008 advertisement in 2012 was not a contribution to the campaign committee because it featured the 2008 Presidential candidate Mitt Romney. According to ROF, the 2008 Presidential candidate Mitt Romney is a legally distinct person from the 2012 Presidential candidate Mitt Romney,⁶ a theory as novel as it is bizarre. Under ROF's theory, the 2012 campaign committee could not have benefited from republication of an advertisement starring the 2008 Mitt Romney because that particular Mitt Romney was not a Presidential candidate in 2012.⁷ The Commission ultimately disagreed.⁸

Our colleagues were willing to take the virtually unavoidable first step in voting that there was reason to believe the obvious violation occurred. But they refused to allow the Office of General Counsel to open an investigation to better determine the exact amount of the in-kind contribution (the cost of the advertisements), and they refused to impose any meaningful sanction.⁹

To add insult to injury, the Republican commissioners conditioned their vote to go forward with even this low penalty on the addition of language to the Commission's Factual and Legal Analysis opining that Respondent's unprecedented interpretation of the law "was not unreasonable."¹⁰ Sometimes a case of first impression arises not because the law is ambiguous but, to the contrary, because no one had ever imagined the conduct at issue could possibly be legal. The Commission should not be in the business of trying to excuse or provide cover for those who blatantly violate the law. For that reason, while we agreed with our colleagues there was a violation, we could not agree to the Factual and Legal Analysis that was adopted by the Commission.¹¹

⁵ 52 U.S.C. § 30116(a)(7)(B)(iii); 11 C.F.R. § 109.23(a).

⁶ See Response at 3, 4.

⁷ The votes in this case were an interesting twist on a similarly bizarre existential theory put forth by our Republican colleagues in response to our petition to open a rulemaking in the wake of *Citizens United v. FEC*, 588 U.S. 310 (2010). Our colleagues then stated that because we are commissioners, we are not "persons" under the Act and therefore cannot petition the Commission. The laws of reason have been suspended at the FEC, where corporations are people, commissioners are not, and now Mitt Romney gets to be two *different* people.

⁸ See Certification in MUR 6535 (Restore Our Future, Inc.), dated Nov. 12, 2015. Vice Chairman Petersen and Commissioners Goodman, Hunter and Walther voted in favor of the conciliation agreement. We voted against it.

⁹ See July 16th Certification.

¹⁰ See Factual and Legal Analysis in MUR 6535 (Restore Our Future, Inc.) at 7.

¹¹ See July 16th Certification.

MUR 6535 (Restore Our Future)
Statement of Reasons of Chair Ravel and Commissioner Weintraub

We voted for a penalty commensurate with a violation of this magnitude.¹² None of the Republican commissioners would support this. We then proposed to lower the penalty to a lesser, but still significant, amount. This proposal again failed to get four votes. We tried twice more, each time dropping the penalty amount, until we felt that to go any lower would fail to meaningfully address the magnitude of an illegal \$4.3 million in-kind contribution. But none of the Republican commissioners would agree to penalize ROF more than a tiny fraction of the cost of the advertisements. As a result, the Commission ultimately settled for a mere \$50,000 penalty – approximately 1.1% of the amount in violation. We could not support this final decision; the amount was simply inadequate for such a high-dollar, clear-cut violation.

In comparison to the relatively low fines the Commission has been able to agree on lately, a \$50,000 fine may look substantial. But in today's world of highly funded super PACs, a \$50,000 fine on a \$4.3 million violation can simply be written off as the cost of doing business. Decisions such as this reinforce the view that the FEC is unwilling to enforce our nation's campaign finance laws in any meaningful way. People rightfully expect that those who break the law will be held accountable. Without appropriate and proportionate sanctions, little will deter future violations.

12/17/15
Date


Ann M. Ravel
Chair

12/17/15
Date


Ellen L. Weintraub
Commissioner

¹² *Id.*