

find reason to believe that the relevant individual violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making a contribution in the name of another and that the relevant LLC violated the Act by permitting its name to be used to make a contribution in the name of another. We voted to find reason to believe in each of these matters because the current law clearly prohibits contributors from using the names of LLCs to shield their identity from disclosure to the public.³

Although the facts of these cases differ slightly, the pattern is essentially the same. An individual decides to make a very large contribution to a super PAC; instead of simply making the contribution from his or her personal account, the individual uses his or her single-member or closely related LLC to make the contribution and discloses the name of the LLC as the source of the funds.

The facts of MUR 6485 (W Spann LLC, *et al.*) are particularly illustrative. Edward Conard, a longtime friend and former business partner of Mitt Romney, wanted to make a \$1 million contribution to Restore Our Future ("ROF"), the super PAC that supported Romney's 2012 presidential run.⁴ Conard claimed that making such a large contribution in his name could jeopardize the security of his family, and therefore sought advice on how to make the contribution without disclosing his identity.⁵ To achieve this purpose, Conard's counsel formed W Spann LLC ("W Spann") "for the sole purpose of making a donation to ROF" in March 2011.⁶ Conard authorized W Spann to make the \$1 million contribution in April 2011, and counsel dissolved W Spann on behalf of Conard in May 2011. When the contribution attracted significant media attention in August 2011, Conard issued a statement that he had founded W Spann and authorized the \$1 million contribution to ROF.⁷ Tellingly, Conard's response to the complaint in MUR 6485 admits that W Spann was "a vehicle for one man's one-time political donation."⁸

used to make a contribution in the name of another. Certification in MUR 6930 (Prakazrel "Pras" Michel, *et al.*), dated Feb. 23, 2016.

³ Certification in MURs 6487 and 6488 (F8 LLC, *et al.*), dated Feb. 23, 2016; Certification in MUR 6485 (W Spann LLC, *et al.*), dated Feb. 23, 2016; Certification in MUR 6711 (Specialty Investment Group, Inc., *et al.*), dated Feb. 23, 2016; Certification in MUR 6930 (Prakazrel "Pras" Michel, *et al.*), dated Feb. 23, 2016. These matters have been subject to inordinate delays. When MURs 6487, 6488, 6485, and 6701 finally came up for a vote on the merits twice in 2015, in each instance we voted in favor of finding reason to believe that 52 U.S.C. § 30122 was violated and our colleagues in each instance abstained.

⁴ First General Counsel's Report in MUR 6485 (W Spann LLC, *et al.*), dated Aug. 28, 2012, at 3.

⁵ *Id.*

⁶ *Id.* at 4-5.

⁷ *Id.* at 5.

⁸ Conard Resp. at 2.

This was not a difficult case, and neither were any of the others.⁹ Although the ability of individuals and corporations to make unlimited contributions to super PACs is a post-*Citizens United* and *SpeechNow*¹⁰ phenomenon, the longstanding prohibition against making contributions in the name of another remains unchanged and squarely applies to these cases. The Act prohibits a person from making a contribution¹¹ in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.¹² Commission regulations give several examples of activities that constitute giving in the name of another that informed our analysis of these cases:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of the money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of money or thing of value another person when in fact the contributor is the source.¹³

Just as the Commission's regulations look to the "source of the money" to identify the contributor, courts have determined that the "true source" of a contribution is the person who actually furnishes the funds used to make the contribution. Courts have uniformly rejected the

⁹ The other matters have similar facts. In MURs 6487 and 6488 (F8 LLC, *et al.*), Steven J. Lund and unknown respondents used the names of Eli Publishing, L.C. and F8 LLC — two dormant LLCs owned by Lund, his family members, and business associates — to make two \$1 million contributions to Restore Our Future on the same day. See First General Counsel's Report in MUR 6487 and 6488 (F8 LLC, *et al.*), dated June 6, 2012, at 10-12. Lund effectively admitted that he made the \$1 million contribution and reportedly used Eli Publishing as the vehicle as a matter of accounting convenience and because he did not want to be public about his involvement with the Romney campaign. *Id.* at 10-11.

In MUR 6711 (Specialty Investment Group, Inc., *et al.*), Richard Stephenson, a director of the super PAC FreedomWorks for America ("FWFA"), made twenty contributions totaling over \$12 million to FWFA using the names of Specialty Investment Group, Inc. ("SIG") and Kingston Pike Development, LLC ("KPD"). The available information demonstrated that Stephenson pledged to make \$10-12 million in contributions at an August 2012 FreedomWorks retreat, FreedomWorks executive Adam Brandon helped to arrange the contributions, and Stephenson dictated how the contributions would be spent. First General Counsel's Report, MUR 6711 (Specialty Investment Group, Inc., *et al.*), dated June 6, 2014, at 13-14: SIG and KPD were established with acknowledged "political purposes" and funded with "private capital" shortly before the 2012 election — days before their first contributions to FWFA — and dissolved less than a year later. *Id.* at 14, 16.

¹⁰ *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 553 (2010).

¹¹ Under the Act, a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A).

¹² 52 U.S.C. § 30122. For purposes of the Act and Commission regulations, the term "person" includes partnerships, corporations, and "any other organization or group of persons." *Id.* § 30101(11).

¹³ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

notion that “only the person who actually transmits funds . . . makes the contribution.”¹⁴ Rather, to determine the true source of a contribution, courts “consider the giver to be the source of the gift, not any intermediary who simply conveys the gift from the donor to the donee.”¹⁵ This is true both when the funds are advanced to another person or entity to make the contribution or promised as a reimbursement.¹⁶

Consistent with these interpretations, OGC found relevant in its analysis that Conard exercised direction and control over the funds used to make the contribution, that Conard admitted he created W Spann for the sole purpose of masking his identity, and that Conard quickly dissolved W Spann after it had fulfilled this purpose.¹⁷ In making its reason to believe recommendation, OGC determined that Conard “was the true source of the contribution to ROF” and his efforts to attribute the contribution to W Spann violated the Act’s prohibition against making a contribution in the name of another.¹⁸ We agreed.¹⁹ When we considered the relevant facts of all of these cases, there was no doubt to us that the individuals were the “true source” of the contributions and that the LLCs served only as intermediaries to convey the contributions. An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.

The Act’s prohibition against making a contribution in the name of another serves the fundamental purpose of protecting against evasion of contribution limits, when applicable, but it also ensures the complete and accurate public disclosure of the sources of campaign contributions.²⁰ When individuals and corporations can contribute in unlimited sums to super PACs that spend millions supporting federal candidates, that disclosure interest is even more

¹⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

¹⁵ *Id.* (citing *United States v. O’Donnell*, 608 F.3d 546, 550 (9th Cir. 2010)). In *O’Donnell*, the court noted that “when an intermediary exercises direction or control over a gift, the entire amount must be attributed to both the original source and the intermediary.” 608 F.3d at 550 n.2 (citing 11 C.F.R. § 110.6(d)). We agree with OGC’s analysis in MURs 6487, 6488, 6485, and 6711 that direction and control over the funds is a critical consideration in determining the “true source” of a contribution, as well as whether or not the source transmitted the money with the purpose that it be used to make or reimburse a contribution.

¹⁶ *O’Donnell*, 608 F.3d at 555. See also *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with the suggestion that they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

¹⁷ First General Counsel’s Report in MUR 6485, at 7-9 (Conard’s admission was also attached as an exhibit to his response to the complaint, in a statement entitled “Media Statement of Edward Conard”).

¹⁸ *Id.* at 9.

¹⁹ Certification in MUR 6485 (W Spann LLC, *et al.*), dated Feb. 23, 2016.

²⁰ *O’Donnell*, 608 F.3d at 553 (“[T]he congressional purpose behind [Section 30122] – to ensure the complete and accurate disclosure of the contributors who finance federal elections – is plain.”); *Mariani v. United States*, 212 F.3d 761, 755 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

vital. Citizens have the right to know who is funding these organizations and their messages, and to cast their votes armed with that knowledge. As the Supreme Court has recognized, "Public disclosure . . . promotes transparency and accountability in the electoral process to an extent other measures cannot."²¹ Congress certainly did not intend for donors to be able to conceal their identities by routing their personal contributions through corporate entities.²² We voted to find reason to believe in each one of these matters because the Act and Commission regulations prohibit contributors from using the names of LLCs to deprive the public of information to which it is entitled.

4/1/16

Date



Steven T. Walther
Vice Chairman

4-1-16

Date



Ann M. Ravel
Commissioner

4/1/16

Date



Ellen L. Weintraub
Commissioner

²¹ *Doe v. Reed*, 561 U.S. 186, 199 (2010); see also *Citizens United*, 558 U.S. at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.").

²² *O'Donnell*, 608 F.3d at 554 ("[I]t is implausible that Congress, in seeking to promote transparency would have understood the relevant contributor to be the intermediary who merely transmitted the campaign gift.").