



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 ) MUR 6661  
 Robert E. Murray, *et al.* )  
 )  
 )

**STATEMENT OF REASONS  
OF VICE CHAIRMAN STEVEN T. WALTHER, COMMISSIONER ANN M. RAVEL,  
AND COMMISSIONER ELLEN L. WEINTRAUB**

This case of political coercion in the workplace reverberates beyond the realm of U.S. elections. It goes to the very core of the relationship between employer and employee. Every citizen should feel free to give — or not to give — to the candidates and political causes of their choice, inspired by their own convictions, and free from outside pressure or coercion. But despite the compelling available record in this matter, we were unable to garner the necessary four votes to open an investigation, which prevented the Commission from evaluating whether an employer violated this basic right. As a result, we were left with no other legal alternative but to close the file.

The complaint in this matter, filed by Citizens for Responsibility and Ethics in Washington (“CREW”) on October 9, 2012, involves allegations that Robert E. Murray, Murray Energy Corporation, and its separate segregated fund (“SSF”), Murray Energy Corporation Political Action Committee (“MECPAC”), engaged in coercive solicitation practices, used bonuses to reimburse employees’ political contributions, and made prohibited corporate contributions as a result. We voted to authorize an investigation because the Complaint and available documentation clearly demonstrate that there is reason to believe that the Respondents committed these serious violations of the Federal Election Campaign Act of 1971, as amended (the “Act”).<sup>1</sup>

<sup>1</sup> We voted to find reason to believe that Robert E. Murray and Murray Energy Corporation violated 52 U.S.C. § 30118(a) (prohibited corporate contributions) and 11 C.F.R. § 114.2(f), that Murray Energy Corporation PAC and Michael G. Ruble in his official capacity as treasurer violated 52 U.S.C. § 30118(b)(3)(A) (coercion of contributions) and 11 C.F.R. § 114.5(a)(1), and that Murray Energy Corporation violated 52 U.S.C. §§ 30122 (contributions in the name of another) and 30118 (prohibited corporate contributions). Certification in MUR 6661 (Robert E. Murray, *et al.*), dated April 14, 2016. Both the motion to find reason to believe as to all alleged violations and the subsequent motion to find reason to believe with respect to the coercion allegation and to take no action with respect to the reimbursed contributions allegation failed by a vote of 3-3. Chairman Petersen and Commissioners Goodman and Hunter blocked any investigation as to the alleged violations by dissenting on both motions. *Id.*

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Murray Energy is one of the largest privately held coal-mining companies in the United States; Robert E. Murray is its Chairman, President, and CEO and MECPAC is its SSF.<sup>2</sup>

In addition to MECPAC's solicitation of Murray Energy employees for contributions to the SSF, Robert Murray personally solicited employees for contributions to MECPAC, for contributions to his favored federal candidates, and to participate in fundraising events.<sup>3</sup> The Complaint forcefully alleges that since about 2007, Robert Murray, Murray Energy and MECPAC have coerced employees into making contributions by "threatening employees with financial reprisals, including the loss of their jobs, if they failed to contribute."<sup>4</sup>

#### *Employee Coercion Allegations*

The Complaint details concerning information about Respondents' solicitation practices, as reported in an October 4, 2012 article in *The New Republic*.<sup>5</sup> The article includes the statements of two anonymous sources who came forward separately, who allegedly worked in managerial positions at Murray Energy, and who asked not to be identified "for fear of retribution."<sup>6</sup> The first source described that employees were repeatedly targeted with solicitations, questioned if they declined to contribute, and reportedly stated, "There's a lot of coercion . . . I just wanted to work, but you feel the constant pressure, that, if you don't contribute, your job's at stake. You're compelled to do this whether you want to or not."<sup>7</sup> The second source reportedly stated, "They will give you a call if you're not giving . . . It's expected you give Mr. Murray what he asks for."<sup>8</sup>

According to both sources, Murray also solicited separately for his preferred federal candidates and sent letters to employees' homes "with great frequency" with suggested contribution amounts based on the employee's salary level.<sup>9</sup> The article and available

<sup>2</sup> Compl., Ex. A at 2 (Oct. 9, 2012). MECPAC received contributions of approximately \$892,000 and made disbursements of approximately \$1 million between 2008 and 2012. See FEC Form 3X, Report of Receipts & Disbursements (year-end reports filed June 1, 2009, April 14, 2010, January 14, 2011, and April 18, 2013).

<sup>3</sup> Murray Energy is not an unsophisticated actor. MECPAC and Murray Energy employees and their family members have contributed more than \$1.4 million to candidates for federal office since 2007, and during the 2012 election cycle, Murray Energy employees contributed approximately \$120,000 to presidential candidate Mitt Romney. Compl., Ex. A at 1-2.

<sup>4</sup> Compl. at 3-5.

<sup>5</sup> *Id.*, Ex. A. The article was attached to the Complaint.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 1-3.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> Compl., Ex. A at 3; see also Resp. Ex. 5, Ex. 7 (Apr. 3, 2013).

documentation<sup>10</sup> also reflect that Murray Energy tracked and maintained lists of employee participation in response to the solicitations.

The article (much of the accuracy of which is undisputed by the respondents) references several Murray Energy and MECPAC documents that show the pressure to contribute to MECPAC and certain federal candidates:

- A March 7, 2012 interoffice memorandum from Murray to managerial personnel stated, "What is so difficult about asking a well-paid salaried employee to give us three (3) hours of his/her time every two months? We have been insulted by every salaried employee who does not support our efforts. More importantly, we are going to lose what friends we have in Washington, D.C. at this very critical time, while mines are closing all around us . . . I do not recall ever seeing the attached list of employees [redacted] at one of our fundraisers."<sup>11</sup>
- An August 3, 2011 interoffice memorandum from Murray regarding an upcoming fundraiser stated, "I am asking you to rally all of your salaried employees and have them make their contribution to our event as soon as possible . . . We need both their contribution and their attendance . . . Please see that our salaried employees 'step up' [ ] for their own sakes and those of their employees."<sup>12</sup>
- A September 15, 2010 letter from Murray seeking MECPAC contributions stated, "The response to [the August 28] letter of appeal has been poor . . . If we do not win [this election], the coal industry will be eliminated and so will your job, if you want to remain in this industry. Please respond to our request."<sup>13</sup>

<sup>10</sup> After the initial Complaint and Response were received, Complainant submitted a Supplemental Complaint to the MUR filed on September 16, 2014. The Supplement added information from a wrongful termination complaint filed on September 4, 2014 in state court by former Murray Energy employee Jean F. Cochenour, alleging that a manager informed her and other employees that "failing to contribute as Mr. Murray requested could adversely affect their jobs." Cochenour Civil Complaint ¶¶ 12-22. Consistent with the information in the *New Republic* article, Cochenour alleges that she received frequent solicitations, that Murray tracked employee contributions, and that Murray Energy managers were told that they were expected to contribute one percent of their salary to MECPAC. *Id.* ¶¶ 8, 16, 17, 22.

<sup>11</sup> Resp., Ex. 9; *see also* Compl., Ex A at 2.

<sup>12</sup> Resp., Ex. 8; *see also* Compl., Ex A at 3.

<sup>13</sup> Compl., Ex. A at 3; *see also* Compl., Ex. B; Resp. Ex. 1;

*Giving in the Name of Another Allegations*

In addition to the allegations of coercion for contributions to MECPAC and federal candidates, the Complaint also alleges that Murray and Murray Energy reimbursed employee contributions to MECPAC with bonuses, resulting in prohibited corporate contributions.<sup>14</sup> Murray Energy employees were reportedly told that they were expected to contribute to MECPAC, typically one percent of their salary, at the time of their hiring.<sup>15</sup> The first source in the *New Republic* article explained, "In the interview . . . I was told that I would be expected to make political contributions — that [Murray just expected that . . . But I was told not to worry about it because my bonuses would more than make up what I would be asked to contribute."<sup>16</sup> Murray Energy lawyer Mike McKown allegedly commented that Murray "is enthusiastic about people giving contributions" and that bonus payments are based on "Mr. Murray's view of what the employee's contribution was to the company that month."<sup>17</sup>

These allegations implicate serious violations of the Act and Commission regulations. The Act contains numerous safeguards against coercion and Congress made clear that a goal of passing the Act was to ensure that a corporate employee's political activities were truly voluntary.<sup>18</sup> The Act prohibits corporations from making or facilitating the making of contributions to federal candidates and committees, including using means of "coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a [federal] candidate or political committee."<sup>19</sup>

The Act also prohibits a person from making a contribution in the name of another and Commission regulations prohibit an employer from paying an employee "for his or her [SSF]

<sup>14</sup> Compl. at 4-6.

<sup>15</sup> Compl., Ex. A at 3-4. The one percent suggested contribution also matches the allegation in the Cochenour Civil Complaint included in the Supplemental Complaint that managers are told during training that they "are expected to voluntarily contribute 1% of their salary to Mr. Murray's political action committee[.]" Cochenour Civil Compl. ¶ 17.

<sup>16</sup> Compl., Ex. A at 3-4.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> See, e.g., 122 Cong. Rec. H2614 (1976) (Statement of Rep. Thompson in connection to 1976 amendments to the 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 [for employment] but who disagree with the majority's political views." 117 Cong. Rec. 43379 (1971) (statement of Rep. Hansen in connection with initial passage of the Act).

<sup>19</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(f). Similarly, although corporations are permitted to solicit employees for contributions to their SSFs, the Act and Commission regulations seek to prevent coerced contributions through specific requirements regarding the content of SSF solicitations. 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(2)-(4). SSFs are likewise prohibited from "mak[ing] a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal." 52 U.S.C. § 3011(b)(3)(A); 11 C.F.R. § 114.5(a)(1).

contribution through a bonus, expense account, or other form of direct or indirect compensation.”<sup>20</sup>

It was obvious that the facts alleged in the Complaint and supported by the available record warranted further Commission inquiry. Respondents minimize the seriousness of the allegations, but do not deny the essential truth of the alleged communications. Instead they argue that although “[a] manager here or there may have been bothered, annoyed, frustrated, or philosophically or politically perturbed,” the conduct does not amount to coercion because Murray’s “colorful language” did not rise to the level of threats of detrimental job action, financial reprisal or force.<sup>21</sup> MECPAC’s treasurer, Michael Ruble, also submitted a declaration stating that care is taken to include the required language that contributions are voluntary in solicitations and that *he* is not aware of any employee that has suffered a reprisal for not contributing or of any reimbursement of contributions through bonuses.<sup>22</sup> These assertions are unconvincing given the record before us.

Respondents acknowledge that several Murray Energy solicitations did not contain the complete required anti-coercion disclaimers.<sup>23</sup> In addition, we have information that multiple employees reported feeling “compelled” or “coerced” by the language and frequency of the solicitations and CEO Robert Murray’s personal role in them. This pressure is itself enough to constitute coercion; one need not lose one’s job for one to have been coerced. The conduct here was pervasive and repetitive in nature. There is also evidence that Murray tracked employee participation and singled out those who did not contribute or attend fundraisers, stating that he viewed failure to participate as an “insult.”<sup>24</sup> To us, this language is not merely unpleasant or annoying, but strongly indicates that respondents engaged in a planned, persistent pattern of coercing employees to contribute to MECPAC and Murray’s preferred federal candidates. The seriousness of the allegations, combined with this ample and basically uncontroverted evidence, is more than sufficient to warrant a reason to believe finding, as a matter of law.

This Commission unanimously adopted on a bipartisan basis in 2007 the policy that “The Commission will find ‘reason to believe’ where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged

<sup>20</sup> 52 U.S.C. § 30122; 11 C.F.R. § 114.5(b)(1).

<sup>21</sup> Resp. at 13, 14.

<sup>22</sup> Declaration of Michael Ruble ¶¶ 2, 4, 6, 7 (Apr. 3, 2013). Respondents submitted only the declaration of MECPAC Treasurer Michael Ruble with their Response. Despite averring in his declaration that he oversaw the process of soliciting contributions for MECPAC, Ruble had only a “general familiarity with the practices of Mr. Robert E. Murray... and other company management personnel in raising funds for various candidates.” *Id.* ¶ 1. Murray actively solicited on behalf of the SSF as evidenced by solicitations that “start[] with a letter from Mr. Murray on personalized stationery...” and that include Murray’s signature. *Id.* ¶ 7. *See* Resp., Ex. 3, 5, 6, 7.

<sup>23</sup> *See* Resp., Ex. 1, 3.

<sup>24</sup> Resp., Ex. 8, 9; *see also* Compl., Ex A at 2, 3.

violation warrants either further investigation or immediate conciliation.”<sup>25</sup> This policy, which demonstrates the modest threshold for investigations, merely requires that the Commission find that there is reason to believe a violation *may* have occurred. In contrast, our colleagues have applied a more stringent standard for finding reason to believe than is legally required.<sup>26</sup>

We have written several times about our concerns regarding corporate coercion of employee contributions and participation — including another matter involving one of the *very same respondents*<sup>27</sup> — and, unfortunately, this case provides yet another instance.<sup>28</sup> Since the *Citizens United* decision,<sup>29</sup> corporations have been permitted to participate in federal politics to an unprecedented degree, but that does not mean that they can use their influence to coerce employees to contribute to causes or candidates favored by management, or that they can attempt to evade the continuing prohibition against corporations’ giving directly to candidates by reimbursing employees for contributions they have been coerced to make.

This case strikes at the heart of one of key values of the American workplace: that employees should be free to maintain their personal political beliefs and not be compelled to participate or contribute based on their employers’ interests. We voted to find reason to believe in this matter because we owe it to all employees to ensure that the workplace is free from political coercion. If the procedural acts which occurred here are scrutinized in any judicial proceeding in the future, it is our hope that the court will determine and clearly declare that, as a matter of law, there is reason to believe that a violation may have occurred as to each allegation

<sup>25</sup> *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). The Commission in 2009 and 2012 voted unanimously to provide the following explanation of a reason to believe finding: “The Act requires that the Commission find ‘reason to believe that a person has committed, or is about to commit, a violation’ of the Act as a precondition to opening an investigation into the alleged violation. 2 U.S.C. § 437g(a)(2) [now 52 U.S.C. § 30109(a)(2)]. A reason to believe finding is not a finding that the respondent violated the Act, but instead *simply means that the Commission believes a violation may have occurred.*” See *Guidebook for Complainants and Respondents on the FEC Enforcement Process* at 12 (emphasis added), available at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

<sup>26</sup> See, e.g., Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub in the Matters of MURs 6485 (W Spann LLC, et al.), 6487 & 6488 (F8, LLC, et al.), 6711 (Specialty Investments, Inc., et al.), and 6930 (SPM Holdings LLC, et al.), dated April 1, 2016; Supplemental Statement of Reasons of Commissioner Steven T. Walther in MUR 6396 (Crossroads Grassroots Policy Strategies), dated Dec. 30, 2014.

<sup>27</sup> MUR 6651 involved allegations that Murray Energy coerced its employees to attend a political rally for presidential candidate Mitt Romney in August 2012. We voted to find reason to believe Murray Energy violated the Act and to authorize an investigation but, just as in this matter, our motion failed by a vote of 3-3. Certification in MUR 6651 (Murray Energy Corporation, et al.), dated June 16, 2015, available at <http://eqs.fec.gov/eqsdocsMUR/15044374099.pdf>.

<sup>28</sup> See, e.g., 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>.

<sup>29</sup> 558 U.S. 310 (2010).

of wrongdoing. In the absence of such a finding, corporations will feel they may ride roughshod over the rights of their employees in the manner alleged here.

5/20/16  
Date

Steven T. Walther  
Steven T. Walther  
Vice Chairman

5/20/16  
Date

Ann M. Ravel  
Ann M. Ravel  
Commissioner

5/20/16  
Date

Ellen L. Weintraub  
Ellen L. Weintraub  
Commissioner

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