



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Heaney for Congress, *et al.* ) MUR 7006  
 )

**STATEMENT OF REASONS OF CHAIR ELLEN L. WEINTRAUB**

This matter is yet another example of my Republican colleagues declining to pursue an enforcement action against a candidate and his committee who used a super PAC to unlawfully raise soft-money. It's like déjà vu all over again.

Just two weeks ago, I released a statement highlighting the Commission's inaction on a similar matter where former Sen. David Vitter and his campaign committee used a super PAC, financed by the candidate, to rake in millions of dollars in soft money.

In both cases, the law is clear:

The law does not allow federal candidates or their proxies to raise or spend unregulated soft money. The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits federal candidates and officeholders from soliciting, receiving, directing, transferring, or spending funds in connection with a federal election unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. This prohibition extends to any entities that federal candidates and officeholders directly or indirectly establish, finance, maintain, or control. For example, a super PAC<sup>1</sup> that is financed by a federal candidate cannot solicit money from impermissible sources or in excess of the Act's monetary limits. The provision was enacted as part of BCRA to "plug the soft-money loophole."<sup>2</sup>

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<sup>1</sup> Super PACs are independent expenditure-only political committees that, after *Citizens United* and *SpeechNow.org*, may solicit and accept unlimited contributions for the purpose of making independent expenditures (e.g., political ads). These expenditures cannot be coordinated with a candidate, a candidate's committee, party committee or their agents. See *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

<sup>2</sup> Statement of Reasons of Chair Ellen L. Weintraub in the Matter of MUR 6798 (David Vitter for U.S. Senate, *et al.*), at 1-2, dated May 3, 2019 (citations omitted). See also 52 U.S.C. § 30125(e)(1)(A). The Commission considers a list of ten factors to determine whether a candidate or candidate's agent "directly or indirectly establishes, finances, maintains, or controls" an entity, including whether a candidate "provides funds or goods in a significant amount or an ongoing basis to the entity," and whether the candidate "has authority or ability to direct or participate in the governance

Our non-partisan Office of General Counsel recommended finding reason to believe that Heaney and Heaney for Congress (the “Heaney Committee”) coordinated communications with New York Jobs Counsel (“NYJC”), a super PAC that was financed through companies Heaney and his family controlled, to attack Heaney’s opponent, resulting in a violation of the soft money ban.<sup>3</sup> I agree. Unfortunately, my Republican colleagues blocked an investigation into this dubious conduct.<sup>4</sup>

Here’s how Heaney financed the super PAC: in June 2015, NYJC received the first of five contributions totaling \$60,000 from companies closely-connected to, owned by, or affiliated with Heaney.<sup>5</sup> For the first fifteen days of operation, NYJC was completely funded by these contributions. The Heaney contributions were essential seed money for NYJC, and they represented the sole source of funding for the expenditures NYJC made in its first month, including a variety of campaign activities. All of NYJC’s spending attacked Heaney’s primary opponent. Moreover, NYJC produced independent expenditures through common vendors<sup>6</sup> also used by the Heaney Committee,<sup>7</sup> spending \$93,214, again attacking Heaney’s opponent. Thus, the Office of General Counsel recommended finding reason to believe that NYJC and the Committee unlawfully coordinated.

This matter is another example of a concerted effort to undermine our Federal campaign finance rules. The facts as alleged in the Complaint were sufficient to authorize an investigation.<sup>8</sup> Without action by the Commission, candidates will continue to flout the rules, giving the lie to the pretense that super PACs like this are anything but a soft-money arm of the campaign.

May 17, 2019

Date



Ellen L. Weintraub

Chair

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of the entity,” or “had an active or significant role in the formation of the entity.” 11 C.F.R. § 300.2(c)(2); *see also* 11 C.F.R. § 300.61.

<sup>3</sup> First GCR at 2-3, 22, MUR 7006. As a result of recommending reason to believe on the soft money allegation, the Office of General Counsel also recommended finding reason to believe that Heaney and his committee failed to timely file his Statement of Candidacy and that the Committee failed to timely file its Statement of Organization.

<sup>4</sup> Commissioner Walther and I voted to approve the Office of General Counsel’s recommendations; Vice Chairman Petersen and Commissioner Hunter voted no. Certification at 1-2, MUR 7006 (Heaney for Congress, *et al.*) (Apr. 11, 2019).

<sup>5</sup> First GCR at 3-6, 22, MUR 7006. On June 17, NYJC received \$5,000 from Submarine Rock, LLC and \$5,000 from Smith Island, LLC, which are both owned by Heaney; on June 23, NYJC received \$10,000 from Heaney Energy Corp., which Heaney owns and is also its CEO and \$5,000 from Little Deep, LLC, which is an “affiliate” of Heaney Energy Corp. and Heaney is Little Deep’s president; and on June 25, NYJC received \$35,000 from Skaggs-Walsh, a family corporation headed by Heaney’s sister.

<sup>6</sup> First GCR at 15-19, 22, MUR 7006.

<sup>7</sup> First GCR at 11, 22, MUR 7006.

<sup>8</sup> *See* Statement of Policy Regarding Comm’n Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (stating that a reason to believe finding indicates “only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred”).