



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
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John James for Senate, Inc., *et al.*) MUR 7432
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)

STATEMENT OF REASONS OF CHAIR ELLEN L. WEINTRAUB

Outsider PAC, a federal independent expenditure-only political committee (or as more commonly known, a “super PAC”), spent \$857,875 during the 2018 election cycle in support of Michigan’s United States Senate candidate John James and against his opponent.¹ Complainant alleges that Outsider PAC funded an advertisement that republished a portion of an advertisement that John James for Senate, Inc., had disseminated four days earlier.² The Federal Election Commission’s non-partisan Office of General Counsel (OGC) recommended finding reason to believe that Outsider PAC made an in-kind contribution to the James Committee by republishing a portion of its advertisement by using an identical photo, one-third of the same footage, and similar captions.³ I agree.⁴

Republication has been a longstanding concern of mine, particularly as candidates and theoretically independent super PACs have exploited a variety of ingenious methods to circumvent the law. In 2012, Commissioners Bauerly, Walther, and I wrote a statement that dealt with similar issues. The law was as clear then as it is now.

Under the Act and Commission regulations, republication, “in whole or *in part*” of any campaign materials prepared by the candidate or his campaign is considered an in-kind contribution. [52 U.S.C. § 30116(a)(7)(B)(iii)] (emphasis added); *see also* 11 C.F.R. § 109.23(a). Republication of campaign materials is akin to paying the

¹ First Gen. Counsel’s Rpt. at 2, 4 [hereinafter First GCR].

² *Outsider PAC Campaign Ad U.S. Senate 2018 – Conservative Warrior*, YOUTUBE (July 14, 2018), <https://www.youtube.com/watch?v=ikbnLlswldI>; *Liberal Sandy Pensler Mocks President Trump Just Like a Democrat*, YOUTUBE (July 10, 2018), <https://www.youtube.com/watch?v=CMlyZVQv1tw>.

³ First GCR at 6.

⁴ Commissioner Walther and I voted to find reason to believe that a violation had occurred regarding republication and coordination. The coordination allegation was based on the respondents’ use of a common vendor. My colleagues then voted to dismiss the matter. Ultimately, we lacked the requisite four votes to take Commission action and closed the file. Certification, MUR 7432 (John James for Senate, Inc., *et al.*) (July 9, 2019).

campaign's media bills, which the Supreme Court has found is "virtually indistinguishable" from simply making a contribution. *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 624 (1996). Given the potential for corruption and the appearance of corruption that could result from unlimited contributions, Congress chose to treat republication, in whole or in part, as an in-kind contribution subject to the contribution limitations and prohibitions of the Act. *See* [52 U.S.C. §§ 30116, 30118].⁵

My Republican colleagues did then what they do now: read words out of the regulations and statutory provisions of the Act. All words in the statute matter. Justice Felix Frankfurter had sound advice for understanding the meaning of statutes: "(1) [r]ead the statute; (2) read the statute; (3) read the statute!"⁶ Unfortunately, my Republican colleagues continue to disregard this advice, disregard congressional intent, and read "in part" out of the Act and Commission regulations concerning republication of campaign material. Political actors will continue to flout the law as long as Republican commissioners continue to refuse to enforce it.

August 9, 2019

Date



Ellen L. Weintraub

Chair

⁵ Statement of Reasons of Comm'rs Weintraub, Bauerly, and Walther at 1-2 MUR 6357 (American Crossroads).

⁶ HENRY J. FRIENDLY, BENCHMARKS, 202 (1967).