

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

George Soros

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MUR 5642

SENSITIVE

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

I write this statement for two reasons. First, this will explain the rationale for my 2007 vote against authorizing an investigation with respect to the internet activity alleged in the complaint.¹ Second, I wish to make clear that while I did not support the General Counsel's entire analysis of the original complaint, I supported the recommendation to find probable cause to believe that the law had been violated with respect to the mailing list allegation and thus supported OGC's post-probable cause recommendation in this matter.

Internet Allegation

The complaint alleged that the respondent failed to timely report independent expenditures in connection with his internet activity. Respondent filed an independent expenditure report on November 4, 2004, disclosing independent expenditures of \$132,577.39 related to his website, made on November 2, 2004. The complaint alleged that this report should have been filed within 24 hours of the expenditure, under 11 CFR § 109.10(d), that is, on November 3 instead of November 4. There is no basis in the public record or in the complaint to support this speculative allegation.

Commission regulations in effect at the time of this complaint explicitly excluded "communications over the Internet" from the definition of a "public communication." 11 CFR § 100.26 (2004). (Under current Commission regulations, any costs associated with creating, maintaining, or hosting content for respondent's own website need not be reported. 11 CFR § 100.94(b). Only costs for advertising on other person's websites need be reported. 11 CFR § 100.26.) In response to the complaint, the respondent specifically explained that the costs disclosed on the November 2 report pertained to the costs of maintaining his own website. No text of any supposed advertisement was ever presented. Indeed, the only webpage submitted by the complainant is a printout of a page from the respondent's own website, GeorgeSoros.com.

¹ I previously wrote a statement in this matter with my former colleague, Commissioner Robert Lenhard, explaining our rationale in voting to narrow the scope of the investigation recommended by the Office of General Counsel. That Statement did not address the website or mailing list allegations discussed here. See Statement of Reasons of Chairman Robert Lenhard and Commissioner Ellen L. Weintraub, dated Jan. 2, 2008, available at <http://eqs.sdrdc.com/eqsdocs/29044223685.pdf>.

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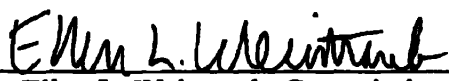
Thus, the report of an independent expenditure related to the website was arguably not required in the first place. There is nothing to indicate that it was inadequate; indeed, it may have been superfluous. In light of the Commission's adoption of rules that leave most on-line political advocacy unregulated, a position I strongly supported,² I accordingly voted against going forward with the proposed investigation into the respondent's internet activity.

The Mailing List

The Commission's probable cause finding is based on Respondent's failure to include the cost of a mailing list in the independent expenditure report he filed with the Commission during the 2004 election. The Federal Election Campaign Act and Commission regulations require that all costs related to an independent expenditure, including distribution costs, be reported. 2 U.S.C. § 434 (c); 11 CFR § 109.10. While Respondent partially disclosed the expenditure, he did not disclose the payment of \$272,000 for the acquisition of a mailing list to disseminate the independent expenditure. One cannot do a mailing without a mailing list. It seems obvious to me that the distribution list is part of the distribution cost.

Respondent's citation to Advisory Opinion 1979-80 (National Conservative Political Action Committee) ("NCPAC") is inapt. In NCPAC, the requestor was a federally registered political committee, and the Commission determined that the committee could treat the costs of renting a mailing list as an operating expense. For a political committee, such operating expenses would still be reported and available on the public record. Individuals, however, only have to report their independent expenditures, thus those reports must capture the full amount of those independent expenditures. The NCPAC opinion affected how a political committee could report the cost of the list, not whether to report it. As an individual, with different reporting obligations, the respondent here is not similarly situated to the requestor in NCPAC and thus could not rely on that opinion.

Additionally, in the nearly 30 years since NCPAC was decided, significant changes to the statute and regulations, most importantly to 11 CFR § 104.4(f), have essentially superseded that opinion. In our 2003 rulemaking on that regulation, the Commission made clear that the costs of an independent expenditure included both production and distribution costs. Thus, I voted in support of the General Counsel's recommendation that the costs of the mailing list should have been disclosed as part of the independent expenditure report.


Ellen L. Weintraub, Commissioner

3/10/09
Date

² See Statement of Commissioner Ellen L. Weintraub on Adoption of Final Rules Affecting Certain Internet Communications, Mar. 27, 2006, available at http://www.fec.gov/members/weintraub/nprm/statement20060327_b.pdf.