FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of	)	
	)	
W Spann LLC, et al.	)	MUR 6485
F8 LLC, et al.	)	MURs 6487 & 6488
Specialty Investments Group, Inc., *et al.*	)	MUR 6711
SPM Holdings LLC, *et al.*	)	MUR 6930

SUPPLEMENTAL STATEMENT OF CHAIRMAN MATTHEW S. PETERSEN AND COMMISSIONERS CAROLINE C. HUNTER AND LEE E. GOODMAN

We previously set forth our rationale for dismissing these matters in our Statement of Reasons dated April 1, 2016. Since that time, our colleagues, Commissioners Weintraub and Ravel, have issued a statement criticizing our treatment of these matters.[1] We write briefly to respond to their criticisms.

First, our colleagues chastise us for "vot[ing] against opening an investigation or engaging in conciliation" in these matters[2] and criticize our decision not to punish these respondents while using these cases as a platform to provide the public notice of a governing interpretation going forward.[3] But they admit even they preferred—indeed invited—using these matters to establish how 52 U.S.C. § 30122 would be applied in the future without penalizing these respondents.[4] That is precisely what we did. We used the present matters to announce a governing interpretation to put the public on notice of the conduct that constitutes a violation of the Act, while dismissing these cases of first impression.

Second, our colleagues contend that we should have made formal reason to believe findings while simultaneously dismissing the matters without imposing civil penalties.[5] But the

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1 Matters Under Review 6485 (W Spann LLC), 6487 & 6488 (F8 LLC), 6711 (Specialty Investments Group, Inc.), 6930 (SPM Holdings LLC), Statement of Reasons of Commissioners Ellen Weintraub and Ann Ravel (Apr. 13, 2016) ("Weintraub and Ravel LLC Statement").

2 *Id.* at 1.

3 *Id.* at 2 ("Our colleagues assert that they cannot possibly hold these respondents accountable, but promise to do so 'in certain circumstances' in the future.").

4 *Id.* ("[W]e even offered to forego all penalties in the hope of persuading [the Republican Commissioners] to at least acknowledge these clear violations of the law.").

5 *Id.*

Commission abandoned that procedure years ago.[6] We followed the Commission-approved procedure and longstanding practice in our resolution of these matters.

Third, our colleagues charge us with delaying these matters under the "pretext" of waiting for the Office of General Counsel ("OGC") to finalize its analysis in MUR 6930 (SPM Holdings LLC). Significantly, in MUR 6930, OGC arrived at the dispositive legal analysis for matters involving contributions by closely held LLCs, which ultimately persuaded us of the appropriate legal analysis in these matters. Unlike the other pending LLC cases, OGC analyzed the contributions by SPM Holdings LLC—an entity closely held and controlled by Pras Michel—and concluded they were wholly lawful and, in the process, established a line between lawful and unlawful LLC contributions. With the benefit of time for reflection, deliberation, and consideration of a broader set of circumstances, OGC refined its approach to these matters and even amended aspects of its legal analysis in MUR 6485 (W Spann LLC).[7] Thus, it is not true that waiting for OGC's report in MUR 6930 was mere "pretext."

Fourth, it is clear from our colleagues' statement that the real disagreement is not procedural, but substantive. Our colleagues simply disagree with OGC's interpretation in the SPM Holdings LLC matter and our Statement of Reasons. They criticize this purpose-driven interpretation as a "*post hoc* subjective intent standard," a "fabricated standard" that "simply has no basis in law," and a standard that is "virtually impossible to prove."[8] However, we find it difficult to distinguish the purpose-driven analysis articulated by OGC and explained in our Statement of Reasons from that described in our colleagues' own Statement of Reasons. They identified the problem in "these matters" as "contributors who *concealed their identities . . . to make large contributions*" and described "the current law" as "clearly prohibit[ing] contributors from using the names of LLCs *to shield their identity from disclosure* to the public."[9] That sounds like a purpose-driven analysis.

But aside from being inconsistent, our colleagues wholly fail to acknowledge that a purpose requirement is dictated by the plain text of the Act, court decisions, forty years of Commission practice, and common sense. Congress defined a "contribution" as "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."[10] Three months ago, the federal appeals

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6 *See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12,545 (Mar. 16, 2007) ("The Commission has previously used the finding 'reason to believe, but take no further action' in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons . . . . the Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.").

7 Supplement to the First General Counsel's Report at 1 (Feb. 23, 2016), MUR 6485 (W Spann).

8 Weintraub and Ravel LLC Statement at 2.

9 Matters Under Review 6485 (W Spann LLC), 6487 & 6488 (F8 LLC), 6711 (Specialty Investments Group, Inc.), 6930 (SPM Holdings LLC), Statement of Reasons of Vice Chairman Steven Walther and Commissioners Ellen Weintraub and Ann Ravel at 1-2 (Apr. 1, 2016).

10 52 U.S.C. § 30101(8)(A).

court in Washington, D.C. observed that the Act rests upon a "purpose-laden definition of 'contribution.'"[11] Accordingly, the Commission and federal courts have consistently interpreted 52 U.S.C. § 30122, which prohibits making a contribution in the name of another, to require a specific purpose of funding a campaign contribution in another person's name.[12]

For example, if Corporation A provides Individual B a $3,000 bonus for the purpose of rewarding good work, and Individual B uses that income to contribute to Candidate C, there is no violation of section 30122. But if Corporation A provides Individual B a $3,000 bonus for the purpose of reimbursing Individual B's contribution to Candidate C, a violation of section 30122 can be found, and indeed it has.[13] In both scenarios, the *purpose* of the transfer has always been the dispositive fact.

In the above-captioned matters, we reconciled this approach with scenarios where a corporation is not the true source of a contribution but rather the conduit through which it flows to a Super PAC. The difficulty with a blithe application of the former approach is that, since practically its establishment, the Commission has held that any contribution made from a corporate entity's account is *per se* a contribution by that entity, rather than anyone associated with that entity. In our statement, we explained that the Commission's historically rigid treatment of contributions from corporate accounts must be modified to account for the new legal landscape under *Citizens United*.[14]

That Commissioners Weintraub and Ravel purport to disagree with this interpretation only reaffirms the prudence of insisting upon clear notice. Our colleagues cannot be both *for* a new interpretation that breaks from 40 years of law and *against* fair notice of that new, changed interpretation. Or maybe they can, if their true objective is not to regulate rationally and reasonably but rather to regulate so as to countermand the Supreme Court's ruling in *Citizens*

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[11] *Van Hollen v. FEC*, No. 15-5016, slip op. at 11 (D.C. Cir. Jan. 21, 2016) ("[T]he FEC's purpose requirement is consistent with the purpose-laden definition of 'contribution' set forth in FECA's very own definitional section.").

[12] *See, e.g., U.S. v. O'Donnell*, 608 F.3d 546 (9th Cir. 2010) ("false name and straw donor schemes both facilitate attempts by an individual (or campaign) to thwart disclosure requirements and contribution limits"); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)); *U.S. v. Danielcyzyk*, 788 F. Supp. 2d 472, 483 (E.D.Va. 2011) (illustrating the requirements of a violation of section 30122 (formerly 441f) and distinguishing it from the defendant's hypothetical by noting that funds would have to be given by one person to another "*to conceal the amount and the source of his contribution*" (italics in original)); *see also McConnell v. FEC*, 540 U.S. 93 (2003) (the government argued that a conduit contribution involving parents contributing through their minor children would be "donations . . . *to circumvent contribution limits* applicable to the parents," to which the Court responded that such activity was deterred by the prohibition at what is now section 30122) (italics added)) (dicta).

[13] *U.S. v. Danielcyzyk*, 788 F. Supp. 2d 472 (E.D. Va. 2011).

[14] *See* Matters Under Review 6485 (W Spann LLC), 6487 & 6488 (F8 LLC), 6711 (Specialty Investments Group, Inc.), 6930 (SPM Holdings LLC), Statement of Reasons of Chairman Matthew Petersen and Commissioners Caroline Hunter and Lee Goodman at 9-14 (Apr. 1, 2016).

United,[15] or to accomplish the same result by chilling the exercise of free speech rights by corporate entities with an intentionally vague standard.[16] Indeed, our colleagues' approach would render the constitutional rights of closely held corporations to engage in independent political speech functionally meaningless.

Matthew S. Petersen
Chairman

April 18, 2016
Date

Caroline C. Hunter
Commissioner

April 18, 2016
Date

Lee E. Goodman
Commissioner

April 18, 2016
Date

[15] *See* Ellen L. Weintraub, *Taking on Citizens United*, N.Y. Times (Mar. 30, 2016) (proposing to "blunt the impact of the decision that gave corporations the right").

[16] *See* Matters Under Review 6485 (W Spann, LLC), 6487 & 6488 (F8, LLC), 6711 (Specialty Investments Group, Inc.), 6930 (SPM Holdings LLC), Statement of Reasons of Chairman Matthew Petersen and Commissioners Caroline Hunter and Lee Goodman at 8-9, nn. 48, 50.