

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Lizbeth Benacquisto)
Lizbeth Benacquisto for Senate and)
Gary S. Splain in his official capacity) MUR 6784
as treasurer)
Lizbeth Benacquisto for Congress and)
Nancy H. Watkins in her official capacity)
as treasurer)

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

Our colleagues' vote in this matter both mystifies and concerns us because it lacks an adequate explanation and potentially contradicts the law and the facts. It unfairly suggests that the Respondents' activities were illegal and could thus discourage other, well-qualified individuals from running in federal elections out of misplaced fears about potential liability under federal law. For this reason, we write separately.

This matter arose from a Complaint alleging that Lizbeth Benacquisto, Lizbeth Benacquisto for Senate and Gary S. Splain in his official capacity as treasurer (the "State Committee"), and Lizbeth Benacquisto for Congress and Nancy H. Watkins in her official capacity as treasurer (the "Federal Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), through an impermissible transfer of funds and assets from the State Committee to Benacquisto's federal campaign. The Complaint further alleged that the Federal Committee violated the Act by failing to file a timely statement of organization.

The Office of the General Counsel ("OGC") recommended that the Commission find no reason to believe that a violation of law occurred for all allegations. Consistent with these recommendations, we voted to find no reason to believe a violation occurred, and the matter was closed. Our colleagues disagreed with almost all of OGC's recommendations, however, and voted against our motion to find no reason to believe, with one exception described below.¹

I. BACKGROUND

Lizbeth Benacquisto is a Florida state Senator, representing District 30, and first elected in 2010. In 2014, she was a declared candidate for re-election to the state Senate. From January 6 to February 2, 2014, her State Committee aired television and radio advertisements promoting her accomplishments as a state Senator. On February 3, 2014, Benacquisto announced that she would also run for a recently-vacated seat in the 19th congressional district of Florida in an April

¹ See *infra* p. 2 n.3.

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22, 2014 special primary election, following the January 27, 2014 resignation of Representative Trey Radel. Also on February 3, Benacquisto launched a federal campaign website, lizbethforcongress.com, and filed a statement of candidacy and a statement of organization forming the Federal Committee.

The Complaint in this matter alleged that the State Committee's television and radio advertisements in January and February 2014 were intended to bolster Benacquisto's "name-identification" in the congressional district in anticipation of her running for Radel's seat.² The Complaint alleged that Benacquisto and the Federal Committee violated the Act by using State Committee funds for goods and services — including the advertisements; website registration, design and management; and social media (Facebook) — to benefit her federal campaign. The Complaint further alleged that the spending of State Committee funds to benefit Benacquisto's federal campaign triggered Benacquisto's candidate status at least a month before she registered as a candidate on February 3, 2014, and thus the Federal Committee violated the Act by failing to file a timely statement of organization.

In a joint Response, the Respondents denied the allegations that Benacquisto and the Federal Committee received a prohibited transfer of funds or assets from the State Committee, asserting that: (1) the advertisements cited in the Complaint qualified for the state candidate exemption under Commission regulations and ran before Benacquisto became a federal candidate, and (2) the Federal Committee paid fair market value for the State Committee assets that it used and properly reported these expenditures.³ The Respondents also asserted that the State Committee's spending did not trigger candidate status and that the Federal Committee timely filed its statement of organization based on the dates that Benacquisto filed her statement of candidacy and met the \$5,000 threshold for becoming a candidate.

II. ANALYSIS

The nub of the Complaint against the Respondents is that the State Committee's advertisements were used to benefit a federal campaign that did not yet exist for an election that had not yet been called to fill a House seat that was not yet vacant.⁴ To conclude that the Act prohibited Benacquisto from using her State Committee funds under these circumstances, based

² MUR 6784 (Lizbeth Benacquisto *et al.*) Compl. at 2, 5 (Feb. 19, 2014).

³ Our colleagues apparently believe that conclusory allegations in a complaint shift the burden of proof to the respondent. Fortunately, the Respondents were able to provide copies of invoices and disclosure reports to show that a third-party vendor — not the State Committee — owned the rights to the images appearing in both State Committee and Federal Committee advertisements, and that the Federal Committee paid the third party for the right to use the images. MUR 6784 (Lizbeth Benacquisto) Factual & Legal Analysis at 5-6 (Apr. 28, 2014) (citing Resp. at Attachs. D-E). Thus, our colleagues voted to find no reason to believe that a violation occurred on this one point only. They voted against our motion to find no reason to believe for every other alleged violation. See MUR 6784 (Lizbeth Benacquisto) Second Amended Cert. (Mar. 31, 2016), <http://eqs.fec.gov/eqsdocsMUR/16044393010.pdf>.

⁴ Trey Radel was still in office for almost the entire time that the advertisements aired. The advertisements aired from January 6 to February 2, 2014, and Radel did not resign until January 27, 2014.

solely on the Kreskin-like possibility that she might have been thinking of eventually becoming a federal candidate if and when Radel's seat became vacant, would be legally and logically absurd.

But even if Benacquisto had already decided to become a federal candidate and had already met the \$5,000 threshold to be a federal candidate — which the Respondents denied — the State Committee's advertisements would have been legal under the Act. The Act expressly provides that a person who is both a federal candidate and a state candidate may solicit, receive, or spend nonfederal funds in connection with his or her state election, so long as the activity is permitted under state law and refers only to the state candidate or to another candidate for the same state office.⁵ This provision is an exception to the Act's general prohibition on the use of nonfederal funds by federal candidates.⁶

Because Benacquisto was a candidate for state office when the State Committee's television and radio advertisements aired, and the advertisements referred to her only as a state officeholder and candidate, did not refer to any other candidate, and were permitted under state law, OGC concluded that Benacquisto qualified for the state candidate exemption. Accordingly, OGC recommended that the Commission find no reason to believe that the Respondents violated 52 U.S.C. § 30125(e)(1) in connection with the advertisements. We concurred in that conclusion and voted to adopt OGC's recommendation.

We still do not know why our colleagues rejected OGC's recommendation. To date, they have failed to provide any explanation. We can only infer that they voted in accordance with what they wish the law to be, rather than what the law is. If, on the other hand, our colleagues believe that the Respondents violated the Act, then Benacquisto, her committees, and every other state officeholder contemplating a possible federal campaign deserve to know why.

The fundamental question that we have for our colleagues is: Since the Act would have allowed Benacquisto to run the state campaign ads *after* becoming a federal candidate, how could the Act prohibit her from running the ads *before* becoming a federal candidate?

⁵ 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63.

⁶ Specifically, the Act prohibits federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act, 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61, or in connection with any election other than an election for federal office unless the funds are subject to the limitations and prohibitions of the Act, 52 U.S.C. § 30125(e)(1)(B); *see also* 11 C.F.R. § 300.62.

III. CONCLUSION


The complexity of the Act and Commission regulations risk overwhelming citizens contemplating participation in politics. Concerns about inadvertently violating the law, with the attendant potential for civil penalties, negative publicity, and even imprisonment, could discourage qualified individuals from running in federal elections.⁷ In the instances where, as here, the Act expressly permits respondents to engage in the conduct complained of, the law and public interest are best served by Commissioners who properly apply the law.

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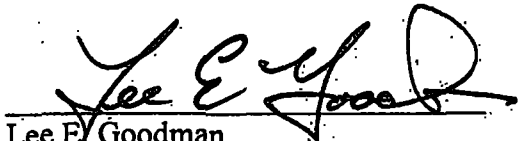
⁷ See H.R. Rep. No. 93-1239 at 120-21 (expressing concern that proposed legislation would “perhaps even driv[e] many people right out of politics”).


Matthew S. Petersen
Chairman

10/4/16
Date


Caroline C. Hunter
Commissioner

10/4/16
Date


Lee E. Goodman
Commissioner

Oct. 3, 2016
Date

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