FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
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David Vitter for U.S. Senate, *et al.*	)	MUR 6798
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STATEMENT OF REASONS OF CHAIR ELLEN L. WEINTRAUB

March marked seventeen years since the passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). One the law's chief sponsors, the late Sen. John McCain, years ago warned against chasing soft money—that is, funds not subject to federal campaign-finance limits. On the eve of BCRA's anniversary, my Republican colleagues stifled an enforcement action against former U.S. Sen. David Vitter, and others, who appear to have illegally chased millions of dollars in soft money that was raised by a pro-Vitter super PAC.[1]

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.[2] This prohibition extends to any entities that federal candidates and officeholders directly or indirectly establish, finance, maintain, or control.[3] For example, a super PAC[4] that is financed by a federal candidate cannot solicit money from impermissible sources

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[1] Commissioners Hunter and Petersen voted against finding reason to believe that Vitter, his Senate campaign committee, and an unauthorized political committee violated federal campaign finance law, against the recommendation of the Office of the General Counsel. Certification at 1, MUR 6798 (David Vitter for U.S. Senate, *et al.*); First Gen. Counsel's Rpt. at 23, MUR 6798.

[2] 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

[3] 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 of the entity," or "had an active or significant role in the formation of the entity." 11 C.F.R. § 300.2(c)(2).

[4] Super PACs are independent expenditure-only political committees ("IEOPCs") that, after *Citizens United* and *SpeechNow.org*, may solicit and accept unlimited contributions for the purpose of making independent expenditures (e.g., political ads), so long as the expenditures are not 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.

or in excess of the Act's monetary limits. The provision was enacted as part of BCRA to "plug the soft-money loophole."[5]

Vitter and David Vitter for U.S. Senate (the "Vitter Committee") appear to have unplugged the hole and let the money pour in. A super PAC called The Fund for Louisiana's Future (the "Fund") was established in January 2013 as a "vehicle for supporters for Sen. Vitter and his conservative leadership" and to support Vitter in both Senate and gubernatorial elections.[6] From 2013 to 2014, the Fund raised $ 3.9 million.[7] Several aspects of the relationship between Vitter, the Vitter Committee, and the Fund raise serious questions about the Fund's independence:

- The Vitter Committee provided the Fund with a total of $950,000 on an ongoing basis over approximately a year and a half. In 2014, the Vitter Committee's contributions represented 37% of all the money the Fund raised that year.[8]

- The Fund conceded that it was formed to support Vitter. There is no indication that the Fund spent any of its millions of dollars to directly help elect any other candidate.[9]

- Vitter personally helped raise money for the Fund. He attended a fundraiser hosted by the Fund as a "special guest," which used his name and photograph in the invitation.[10]

- Vitter's "photograph and statements are prominently and exclusively featured on the [Fund's] website, including on its donation page."[11]

- The Fund and the Vitter Committee used the same fundraising consultants, an overlap of personnel that may be evidence that Vitter or the Vitter Committee directly or indirectly controlled the Fund.[12]

The same facts suggest that Vitter or his agent approved the use of his photograph for the Fund's fundraiser and website, which is evidence that Vitter impermissibly solicited non-federal funds.[13] At the initial reason-to-believe stage, these facts warrant an investigation to determine whether Vitter,

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5 *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

6 First GCR at 4, 7 n.28, MUR 6798.

7 2013-2014 Receipts for The Fund for Louisiana's Future (C00541037), FEC.GOV, https://www.fec.gov/data/committee/C00541037/?tab=raising&cycle=2014 (last visited Apr. 29, 2019).

8 First GCR at 8-9, 9 n.36 (citing AO 2006-04 (Tancredo) at 4-5)) (noting that in this context, funding 25% of an organization's receipts may be significant).

9 *Id.* at 10, 10 n.42

10 *Id.* at 10-11.

11 *Id.* at 11.

12 *Id.*

13 *Id.* at 12-19.

the Vitter Committee, and the Fund violated the soft-money ban.[14] Therefore, we should have adopted the recommendations of the Office of the General Counsel and investigated the Respondents.[15] But we failed to do so here. Once again, my Republican colleagues are misapplying the standard for approving investigations. If a complaint credibly alleges that a violation may have occurred, then it is appropriate to investigate the matter to determine the actuality and scope of the violation.[16]

I know of no other law enforcement agency tasked with investigating allegations of wrongdoing that refuses to *begin* an investigation because it does not have enough evidence. That is the point of launching an investigation. It is entirely unreasonable to expect complaints to arrive accompanied by ironclad evidence and facts fully developed, or responses to consist of meekly muttered *mea culpas*. For alleged violations of the soft-money ban, the Commission will often face some uncertainty about the nature of the dealings between candidates and super PACs.

But when we are presented with evidence of *potential* wrongdoing and sufficient legal justification—as with Vitter and the other Respondents—the Commission is obligated to investigate. A failure to do so is a dereliction of duty. Here, we have once again failed to honor Sen. McCain's legacy and combat the corrupting influence of soft money in American politics.

Ellen L. Weintraub

May 3, 2019

Ellen L. Weintraub
Chair

[14] *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").

[15] First GCR at 23, MUR 6798.

[16] 72 Fed. Reg. at 12,545.