



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
IGX, LLC; Andrew Duncan; Conservative) MURs 7013 & 7015
Solutions PAC and Nancy H. Watkins in)
her official capacity as treasurer)
)

STATEMENT OF REASONS OF VICE CHAIR ELLEN L. WEINTRAUB

All commissioners agree that it is illegal for a person to intentionally funnel a contribution through an LLC to evade the reporting requirements of the Federal Election Campaign Act (“FECA”).¹ In this matter, the Associated Press reported that the respondent admitted doing just that — investor Andrew Duncan reportedly stated that he used his LLC to “mask” his half-million-dollar contribution to a super PAC.² Yet the Commission will take no steps to enforce the law here. Why? Because my Republican colleagues have perfected the art of needlessly delaying our consideration of matters and then using their own delays to justify not pursuing further blatant violations of the law.

For nearly a half century, FECA has prohibited people from making political contributions in the names of others, even when the “other” is a corporation or corporate LLC.³ So during the 2012 election cycle, the Commission should have acted decisively to enforce this prohibition when we started to receive complaints indicating that individuals were brazenly using LLCs to conceal

¹ Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 2, 12 in the Matters of MURs 6485 (W Spann LLC, *et al.*), 6487 & 6488 (F8, LLC, *et al.*), 6711 (Specialty Investments Group, Inc., *et al.*), and 6930 (SPM Holdings LLC, *et al.*), dated April 1, 2016 (“Petersen-Hunter-Goodman Statement”); Statement of Reasons of Vice Chairman Steven T. Walther, Commissioner Ann M. Ravel, and Commissioner Ellen L. Weintraub at 3-4 in the Matters of MURs 6485 (W Spann LLC, *et al.*), 6487 & 6488 (F8, LLC, *et al.*), 6711 (Specialty Investments Group, Inc., *et al.*), and 6930 (SPM Holdings LLC, *et al.*), dated April 1, 2016 (“Walther-Ravel-Weintraub Statement”).

² First General Counsel’s Report at 3 & n.9 (Oct. 11, 2016), MURs 7013 & 7015 (IGX, LLC, *et al.*).

³ 52 U.S.C. §§ 30122 (“No person shall make a contribution in the name of another *person*[.]” (emphasis added)), 30101(11) (defining “person” to include “an individual, partnership, committee, association, *corporation*, labor organization, or *any other organization or group of persons*[.]” (emphasis added)); see *United States v. O’Donnell*, 608 F.3d 546, 548 (9th Cir. 2010) (“Congress first enacted § [30122] as part of the Federal Election Campaign Act of 1971[.]”); Walther-Ravel-Weintraub Statement at 3.

their six- and seven-figure contributions to super PACs.⁴ But instead, my Republican colleagues blocked the Commission from even considering those complaints for almost four years.⁵

In February 2016, they finally allowed a substantive vote to go forward, but then voted not to pursue the apparent violations those complaints revealed. Their excuse? Even though the FECA is clear on the issue, my colleagues claimed in an April 2016 statement (providing a playbook for future respondents) that it would have been “unfair” to expect the respondents to have known that you can’t use a corporate LLC as a conduit absent additional Commission guidance.⁶ But not to worry, these commissioners assured us; now that they had purportedly clarified what the law already required, they promised to start applying that law in “future matters.”⁷

As I pointed out then, the irony in my colleagues’ view is that their own foot-dragging was the *cause* of any alleged lack of post-*Citizens United* guidance from this agency.⁸ Now that four-year obstruction is coming to the rescue of respondents from the 2016 election cycle. The complaint before us states that in October 2015, respondent Duncan used an LLC he had recently created, called IGX, to contribute \$500,000 to a super PAC that supported Marco Rubio.⁹ Yet IGX and not Duncan was reported as the contributor.¹⁰

Why is there reason to believe that Duncan and not IGX was the true source of that money? Duncan admitted it. He admitted it to the Associated Press no less. In February 2016, the Associated Press reported that Duncan said in emails that he had “used IGX to mask the donation because he was worried about reprisals” in light of his funding of human-rights efforts in China.¹¹ In response to the complaint, Duncan resorted to the fake-news defense, now claiming that he never said those things to the Associated Press.¹² But Duncan provided no proof, not even a sworn denial.

Instead, predictably, Duncan cited the Republican commissioners’ April 2016 statement and argued that it would violate due process to hold him and IGX accountable since at the time of his October 2015 contribution, he was not yet on notice that it’s illegal to funnel contributions through

⁴ Walther-Ravel-Weintraub Statement at 1-2.

⁵ Statement of Commissioners Ann M. Ravel and Ellen L. Weintraub at 1-2 in the Matters of MURs 6487 & 6488 (F8, LLC, *et al.*), 6485 (W Spann LLC, *et al.*), 6711 (Specialty Investments Group, Inc., *et al.*), and 6930 (Prakazrel “Pras” Michel, *et al.*), dated April 13, 2016 (“Ravel-Weintraub Statement”).

⁶ Petersen-Hunter-Goodman Statement at 8.

⁷ *Id.* at 2, 12.

⁸ Ravel-Weintraub Statement at 1.

⁹ First General Counsel’s Report in MURs 7013 & 7015 at 2-3.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3 & n.9; see Jack Gillum, *Big bucks, shadowy companies: Election mystery money returns*, ASSOC. PRESS (Feb. 3, 2016), <https://apnews.com/3143e929c77641438e8163d1d19c2> (“The largest, obfuscated super PAC donation was \$500,000, which came from an unknown ‘IGX LLC’ to the Rubio-aligned Conservative Solutions.”).

¹² Duncan Resp. at 2.

an LLC.¹³ But of course, the ban on contributions in the name of another has been a bedrock principle of campaign finance disclosure law since 1972. And the alleged lack of notice of which Duncan complains is the Republican commissioners' own doing. Had they not unnecessarily delayed deciding the 2012 election-cycle matters until 2016, their ostensible guidance would have been public in plenty of time to put Duncan and IGX on notice in 2015 that the law actually means what it says.

When this matter came before the Commission in October 2016,¹⁴ my colleagues held it up for another year and four months.¹⁵ Once the matter finally came to a vote, I moved to find reason to believe that Duncan and IGX violated the FECA.¹⁶ That motion failed, 2-2.¹⁷ This despite the fact that Duncan did *exactly* what my colleagues said two years ago would violate the law: his "contribution [was] intentionally funneled through a . . . corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements[.]"¹⁸ The Commission should have at least investigated his change of story.

It has been seven years since the 2012 cycle LLC complaints started filing in, three years since Duncan funneled his half-million-dollar contribution through IGX, two years since my Republican colleagues' empty promise to apply FECA to contributors who use LLCs as conduits to evade disclosure in "future matters." Given their never-ending delay-and-dismiss routine, there is scant reason to believe that this promised future will ever come.

5/23/18
Date


Ellen L. Weintraub
Vice Chair

¹³ Duncan Resp. at 3-4.

¹⁴ First General Counsel's Report in MURs 7013 & 7015 at 14.

¹⁵ I tried to force a vote during that time, only to have two of my colleagues abstain on the motions. Certification in MURs 7013 & 7015 (IGX, LLC, *et al.*) dated Dec. 12, 2017. This latest round of delay ended only after one of the complainants in this matter sued the Commission in March 2018 for failing to timely act. *See CREW, et al. v. FEC*, No. 18-cv-0493 (D.D.C. filed Mar. 1, 2018), https://transition.fec.gov/law/litigation/crew_180493.shtml; Certification in MURs 7013 & 7015 (IGX, LLC, *et al.*) dated April 10, 2018.

¹⁶ Certification in MURs 7013 & 7015 (IGX, LLC, *et al.*) dated April 10, 2018. With my vote, I disagreed with the Office of General Counsel's recommendation to find no reason to believe that Duncan and IGX had violated the conduit-contribution ban. *See* First General Counsel's Report in MURs 7013 & 7015 at 13. In my view, that recommendation gave Duncan too much credit for his half-hearted attempt during an interview with the *Tampa Bay Times* to retract his previous admission to the Associated Press. *See id.* at 9. By the time of the *Tampa Bay Times* story, two Commission complaints had already been filed against Duncan. *See id.* at 1, 4 n.17. And while Duncan claimed in that story that "[i]n no way was I trying to mask this contribution," *id.* at 9 n.36, he did not actually deny being the true source of the \$500,000 IGX gave to Conservative Solutions.

¹⁷ Certification in MURs 7013 & 7015 (IGX, LLC, *et al.*) dated April 10, 2018.

¹⁸ Petersen-Hunter-Goodman Statement at 2.