



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
 Americans for Sensible Solutions PAC) MUR 7140
 and David Garrett)

**STATEMENT OF REASONS OF
VICE CHAIR ALLEN DICKERSON AND COMMISSIONERS SEAN J. COOKSEY
AND JAMES E. "TREY" TRAINOR, III**

This Matter concerns an unsophisticated individual who registered a political committee with the Commission, raised just over \$400, and spent at least some portion of those funds for his personal use. Believing that a fraud had likely been committed, the Office of General Counsel recommended that we find reason to believe that both the committee and David Garrett personally violated 52 U.S.C. § 30124(b)(1). That provision makes it unlawful to “fraudulently misrepresent” oneself as “acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations.”¹

There is disagreement as to whether Mr. Garrett’s alleged actions implicate this statute.² But we need not reach that question. Due to the low amount raised, the respondents’ lack of sophistication, the passage of time since the alleged activity, and Mr. Garrett’s doubtful ability to pay [REDACTED], we determined that this Matter presents a substantial mismatch between the public interest in enforcement and the wise use of agency resources. Accordingly, on February 9, 2021, we voted to dismiss in accordance with our discretion under *Heckler v. Chaney*.³

¹ 52 U.S.C. § 30124(b)(1).

² Vice Chair Dickerson and Commissioner Trainor also contend that 52 U.S.C. § 30124(b) does not reach the conduct that respondents allegedly committed. Statement of Reasons of Vice Chair Allen Dickerson and Commissioner James E. “Trey” Trainor III, MUR 7140 (Americans for Sensible Solutions PAC, *et al.*).

³ 470 U.S. 821, 831 (1985) (“This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s discretion.”).

I. Background

In 2015, David Garrett saw an episode of *The Daily Show* describing a teenager who created a political committee with a humorous name.⁴ Inspired, Mr. Garrett filed paperwork with the Commission registering Americans for Sensible Solutions PAC, with himself as treasurer, on May 3, 2016.

It would be an understatement to describe Mr. Garrett as an unsophisticated political actor.⁵ Mr. Garrett did not take his responsibilities as treasurer and administrator of his political committee seriously,⁶ which is perhaps unsurprising given the puerile acronym he purposefully chose for the committee.⁷ In a later interview with our Office of General Counsel, at which Mr. Garrett appeared without the benefit of counsel, he admitted that he never bothered to read our voluminous regulations or guidance regarding running a political committee.

Mr. Garrett created a social media presence for his committee urging viewers to support both then-candidate Donald Trump and swing district Republican Congressional candidates, with the goal of encouraging those Congressional candidates to disavow any loyalty to the Trump campaign. For example, his Twitter and Facebook pages called for “unity” between the two federal candidates. He also raised money in social media posts and sold campaign paraphernalia. For example, Mr. Garrett opened a Zazzle⁸ store which sold “unity” items, sales from which constituted nearly half⁹ of the just over \$400 that his committee raised.¹⁰ These pages included a prominent picture of each Congressional candidate.

⁴ A satirical news program on Comedy Central, which nevertheless has been a surprisingly significant source of information for many. Jeffrey Gottfried, Katerina Eva Matsa and Michael Barthel, *As John Stewart steps down, 5 facts about The Daily Show*, FactTank, Pew Research Ctr, Aug. 6, 2015 (“12% of online Americans cited *The Daily Show* as a place they got their news... Almost half (45%) of consistent liberals say they trust *The Daily Show*”).

⁵ For example, Mr. Garrett is of the belief that Richard Nixon, not Lyndon Johnson, won the 1964 presidential election.

⁶ The committee only filed a single campaign finance report, the 2016 July Quarterly Report, which showed no receipts, disbursements, or contributions.

⁷ Mr. Garrett likely would have a First Amendment defense for his solicitations, if not the act of conversion of the funds, given the substantial protections the Supreme Court has recognized for parody and juvenile conduct. *See, e.g., Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

⁸ Zazzle is an online store that creates merchandise for individual sale. Users upload images and select what items they would like to sell with those images printed on them.

⁹ \$176.47.

¹⁰ The remainder came from four contributions, likely given in response to a Twitter or Facebook post from the PAC that urged a donation of “\$64 to the [congressional candidate] Trump Unity 2016 Campaign.” Americans for Sensible Solutions PAC solicited this dollar amount as a reflection of the year that Mr. Garrett erroneously believed President Nixon was first elected or because of the 64th line of the U.S. Constitution. Mr. Garrett could not remember which “joke” he was trying to make.

These efforts carried disclaimers, though not those required by our regulations.¹¹ For instance, the Facebook and Twitter pages explicitly stated that they were “unofficial.” The Zazzle pages also carried a disclaimer, which stated:

“This website is managed by the Americans for Sensible Solutions Political Action Committee along with The Republican Organization for Legislative Loyalty, and intended to encourage unity between these two tremendous candidates and highlight the overwhelming similarity between their respective agendas and policy positions. *By law, the Americans for Sensible Solutions P.A.C. may not collaborate, collude or coordinate with either the campaigns of either [Candidate Name] or Donald Trump. Please support a unified Republican Party in the November Elections by donating to our Political Action Committee or purchasing Unity items below.*”¹²

The acronym for “The Republican Organization for Legislative Loyalty” spells “TROLL.”¹³

One of the PAC’s social media posts promoting its Trump/Huizenga unity “program” caught the attention of Rep. Bill Huizenga’s¹⁴ campaign and on September 22, 2016, the Office of General Counsel received a one-page complaint on campaign letterhead from Rep. Huizenga’s campaign manager, James Barry. Mr. Barry complained that the respondent committee “is using the likeness of U.S. Representative Bill Huizenga without his permission to mislead Americans and sell merchandise.”

On May 10, 2017, the Office of General Counsel recommended that the Commission find reason to believe that the PAC and Mr. Garrett, in his official capacity as treasurer, violated the fraudulent misrepresentation statute as well as 52 U.S.C. § 30104(a) and (b).¹⁵ On February 8, 2018, in a 5-0 vote, the Commission did so, and on May 22, 2018, in a 4-0 vote, the Commission approved an accompanying factual and legal analysis.

Commission staff continued investigating, including an on-the-record call with Mr. Garrett. Ultimately, OGC recommended that the Commission find reason to believe Mr. Garrett personally violated the Act [REDACTED].

¹¹ 52 U.S.C. § 30120.

¹² Italics supplied.

¹³ Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, Vol. I at 18, n.28 (Mar. 2019) (“The term ‘troll’ refers to internet users... who post inflammatory or otherwise disruptive content on social media or other websites”).

¹⁴ Rep. Huizenga is a Republican representing Michigan’s second congressional district.

¹⁵ For failure to file campaign finance reports.

II. Analysis

Mr. Garrett hardly raised a large sum of money—barely over \$400. In practice, although he chose to register his PAC with the Commission, he never raised enough money to trigger the \$1,000 threshold for political committee status. Mr. Garrett also cannot be described as a successful political strategist. He never undertook any training in how to operate a political committee, nor did he review our regulations on the subject. Had he done so, in fact, he might have avoided landing himself in this situation in the first place. But while we should not reward *strategic* ignorance, it appears that Mr. Garrett was straightforwardly ignorant of the law.

Moreover, Mr. Garrett's folly took place nearly half a decade ago, and there are more pressing matters from the 2016 election cycle on our pending docket that merit the Commission's attention before they are implicated by the statute of limitations. In a world of scarce resources, running down Mr. Garrett is not our most pressing use of them.

Finally, there is no indication that Mr. Garrett would be capable of paying the massive fine

[REDACTED], sought against an unsophisticated and *pro se* respondent.

Taken together, these facts indicate that the Office of General Counsel's recommendations are wildly disproportionate. We do not believe it is appropriate to apply the full force of the law against Mr. Garrett in these circumstances.¹⁶ The Federal Election Commission should not take such aggressive action against what appears to be no more than a bad joke followed by a five-year-old case of misdemeanor conversion. That offense is serious, but better left to local authorities and state criminal law.

Accordingly, given the limited resources available to the Commission, as well as the substantial enforcement backlog that accumulated during the agency's last period of inquoracy, we decline to pursue this Matter further.

III. Conclusion

In an exercise of our prosecutorial discretion, the Commission declined to accept the Office of General Counsel's recommendation to go further in this Matter, and instead dismissed MUR 7140 and closed the file.



Allen Dickerson
Vice Chair

April 2, 2021

Date

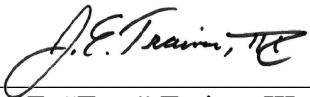
¹⁶ Particularly when there are serious doubts as to whether Mr. Garrett's conduct fits within the narrow ambit of the governing statute. *See Statement of Reasons of Vice Chair Allen Dickerson and Commissioner James E. "Trey" Trainor III, MUR 7140 (Americans for Sensible Solutions PAC, et al.).*



Sean J. Cooksey
Commissioner

April 2, 2021

Date



James E. "Trey" Trainor III
Commissioner

April 2, 2021

Date