



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of )  
 ) MURs 7165 & 7196  
Great America PAC and Dan Backer )  
in his official capacity as treasurer; )  
Eric Beach; Jesse Benton )  
 )

**STATEMENT OF REASONS OF  
COMMISSIONER SEAN J. COOKSEY**

The Complaints in these matters allege that Great America PAC and Dan Backer in his official capacity as treasurer (“GAP”), along with GAP’s co-chair Eric Beach and one-time strategist Jesse Benton, illegally solicited a fictitious Chinese businessman for a contribution. The sole basis for the allegation—about which the complainants have no personal knowledge—is a brief, secretly recorded, and extensively edited video published by the British newspaper *The Telegraph*. The video purports to show exchanges between two unnamed foreign journalists posing as agents of the supposed foreign contributor and GAP representatives Benton and Beach.

I opposed finding reason to believe any violation occurred in this matter—just as I opposed proceeding with every subsequent stage of the investigation—because of the egregious factual and legal deficiencies in the case. First, even if the evidence were credible, the Commission’s solicitation charge fails as a matter of law because it lacks a necessary element of the offense. Second, I believe that both our statute and the reason-to-believe standard require more evidence than was presented in this case, where the Commission launched an investigation of American citizens based entirely on a selectively edited, anonymous video from a foreign entity. The Commission should have dismissed this matter at the outset.

**I. Background**

On October 24, 2016, the British newspaper *The Telegraph* published an anonymous article and video claiming to show the results of an undercover investigation.<sup>1</sup> *The Telegraph* stated that two reporters posing as agents of a nonexistent Chinese national approached representatives of Great America PAC—a hybrid political committee that supported Donald J. Trump in the 2016

<sup>1</sup> Investigative Team, *Exclusive Investigation: Donald Trump Faces Foreign Donor Fundraising Scandal*, THE TELEGRAPH (Oct. 24, 2016), available at <http://www.telegraph.co.uk/news/2016/10/24/exclusive-investigation-donaldtrump-faces-foreign-donor-fundrai> (last visited Sept. 21, 2021).

presidential election—and offered to make a \$2 million contribution. The reporters initially contacted GAP co-chair Eric Beach with the offer, who then referred them to former GAP strategist and outside consultant Jesse Benton.<sup>2</sup> The journalists secretly recorded their meetings and published an edited compilation video.

*The Telegraph*'s roughly three-and-a-half-minute video of these encounters consists of two elements: (1) subtitled text overlaying various B-roll footage of then-candidate Donald Trump and the 2016 presidential campaign, and (2) brief snippets of exchanges between the undercover journalists and Beach or Benton.<sup>3</sup> As to the first element, the entirety of the text displayed throughout *The Telegraph*'s video is as follows:

Secret filming has revealed that pro-Trump fundraisers agreed to accept an illegal donation. Undercover reporters posing as representatives of a fake Chinese tycoon offered \$2m to a super PAC raising money to support the Trump campaign. Super PAC co-chair Eric Beach introduced reporters to his friend Jesse Benton. In May Benton was convicted of falsifying documents on another campaign. Foreign nationals are banned from financing US election campaigns. Super PAC “consultant” Jesse Benton was filmed offering to mask the origin of the money—an illegal practice. Mr. Benton also revealed what the illegal donation money would likely be spent on. He also agreed the Chinese businessman would be “remembered” by Donald Trump. After the meeting, the reporters were invited to a Great America PAC event held in Las Vegas. The event was a “watch party” for the final television debate between Trump and Clinton. After arriving at the venue the reporters caught up with super PAC co-chair Eric Beach. Mr. Beach reiterated that the donation would give them “credit” with Trump.<sup>4</sup>

As for the surreptitious recordings of Beach and Benton, the edited clips show the following exchanges (provided in the order used in the video, with asterisks marking video cuts):

**Reporter 1:** How much do you think you can pass on to the super PAC because I think that’s what I am going to get asked.

**Jesse Benton:** All of it.

**Reporter 1:** All of it?

**Reporter 2:** Okay, fine.

\* \* \*

**Eric Beach:** You can get credit, but don’t overdo it with the influence. That’s the key.

\* \* \*

---

<sup>2</sup> *Id.*

<sup>3</sup> *The Telegraph*'s video is no longer included with its article. See First General Counsel’s Report at 4 n.16 (May 24, 2018), MURs 7165 and 7196 (Great America PAC, *et al.*). A copy of the video, however, is currently available on YouTube. See *Telegraph Trump Illegal International donation*, YouTube (Oct. 28, 2016), available at <https://www.youtube.com/watch?v=AxB3D7EnQKk> (last visited Sept. 21, 2021) (“*Telegraph Video*”).

<sup>4</sup> *Telegraph Video*, available at <https://www.youtube.com/watch?v=AxB3D7EnQKk> (last visited Sept. 21, 2021).

**Jesse Benton:** I'll actually probably send—I'll send money from my company to both.

**Reporter 2:** Yes, oh right, okay.

\* \* \*

**Reporter 1:** So I'm just thinking also about logistics, how this would actually work. That is the 501(c)(4) that the money is going to go into, yeah?

**Jesse Benton:** Correct.

**Reporter 1:** Yeah. And that's through your company, yeah?

**Jesse Benton:** That's correct.

\* \* \*

**Reporter 1:** How much do you think you can pass on to the super PAC because I think that's what I am going to get asked.

**Jesse Benton:** All of it.

**Reporter 1:** All of it?

**Reporter 2:** Okay, fine.<sup>5</sup>

\* \* \*

**Reporter 1:** Can I report back that it's going to be used for on-the-ground grassroots stuff, or it's getting used for TV, or could be a mixture?

**Jesse Benton:** It's a mixture.

\* \* \*

**Jesse Benton:** It will definitely allow us to spend two million more dollars on digital and television advertising for Mr. Trump.

**Reporter 1:** Right, and that'll be spent by the super PAC.

**Jesse Benton:** Yes, it will be.

**Reporter 1:** Okay, fine.

\*\*\*

**Jesse Benton:** You shouldn't put any of this on paper.

**Reporter 1:** No, no.

\* \* \*

**Reporter 1:** It's not like he is asking for anything directly, but he just wants to know that he won't just be treated as "A N Other"—what do you think?

**Jesse Benton:** It'll do that, yeah.

\* \* \*

**Jesse Benton:** And we can have that whispered into Mr. Trump's ear whenever your client feels it's appropriate.

\* \* \*

**Eric Beach:** [Trump is] going to win the election. So again, I'm not going to twist your arm or anything. I just think that there's no way that this group and you guys have been participating indirectly or directly won't be remembered.

\* \* \*

**Eric Beach:** I would just manage expectations, say "You're going to get credit, but your non-disclosed is not disclosed, not just for your benefit, but for everyone's benefit."

**Reporter 1:** Yeah.

---

<sup>5</sup> This is a second use of the same exchange.

**Eric Beach:** I mean, so, it's true, it's not illegal, what we're—the whole construction, but it's, you know—like I would never let you guys give to the PAC to give to the (c)(4), because that is illegal.<sup>6</sup>

The video never reveals the identity of either reporter, nor does it provide any larger context to the conversations or information about the exact time, dates, or locations of the meetings.

Following *The Telegraph's* report, two Complaints were filed based on the video and accompanying article.<sup>7</sup> The Commission first considered the allegations in February 2021. Based solely on the video (not the accompanying article) as evidence, the Commission voted 4-1 to find reason to believe GAP and Jesse Benton knowingly and willfully violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting a contribution from a foreign national.<sup>8</sup> It further voted to authorize compulsory process.<sup>9</sup>

After its reason-to-believe finding, GAP opted to conciliate with the Commission in order to settle the claims and avoid the costs of defense and litigation. Without admitting to the underlying violation, it agreed not to contest the Commission's findings and to pay a civil penalty of \$25,000.<sup>10</sup> Meanwhile, the Commission began to investigate Benton and authorized subpoenas. Unlike GAP, Benton contested the Commission's charge, and the Office of General Counsel's investigation failed to produce any additional evidence of Benton's violation before recommending that the Commission proceed to a finding of probable cause.<sup>11</sup> On August 31, 2021, with mere weeks remaining on the statute of limitations against Benton, the Commission failed to find probable cause against Benton by the necessary four affirmative votes and closed the file.<sup>12</sup>

## II. The Commission's Solicitation Theory Was Legally Deficient

I opposed the Commission's reason-to-believe finding foremost because the underlying legal theory of solicitation lacks a central element of the offense and therefore fails as a matter of law. Namely, the Commission charged the Respondents with knowing solicitation of a foreign national without establishing that any Respondent actually solicited, asked for, or requested the contribution. Indeed, the evidence shows the opposite—the contribution was freely offered by the undercover reporters. Therefore, even if one accepts the allegations presented in the Complaint,

<sup>6</sup> *Telegraph Video*, available at <https://www.youtube.com/watch?v=AxB3D7EnQKk> (last visited Sept. 21, 2021).

<sup>7</sup> Complaint (Oct. 27, 2016), MUR 7165 (Great America PAC, *et al.*); Complaint (Nov. 10, 2016), MUR 7196 (Great America PAC, *et al.*).

<sup>8</sup> Certification (Feb. 25, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*); Factual & Legal Analysis for Respondent GAP at 13 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*) (“[T]he Commission finds reason to believe that GAP knowingly and willfully violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting a contribution from a foreign national.”).

<sup>9</sup> Certification (Feb. 25, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

<sup>10</sup> Conciliation Agreement with Great America PAC and Dan Backer in his official capacity as treasurer (June 28, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

<sup>11</sup> General Counsel's Brief (Aug. 10, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

<sup>12</sup> Certification (Aug. 31, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

without this necessary *actus reus* element of a request, there was no solicitation and, as a result, no violation.

### A. *The Law*

The Federal Election Campaign Act of 1971, as amended (“the Act”), provides that “[i]t shall be unlawful for ... a person to solicit ... a contribution or donation ... from a foreign national.”<sup>13</sup> Commission regulations interpret this prohibition more narrowly by adding a *mens rea* element: “No person shall *knowingly* solicit, accept, or receive from a foreign national any contribution or donation.”<sup>14</sup> Thus, to make a prohibited solicitation of a foreign national under the Act requires four elements: (1) a solicitation (2) of a contribution (3) from a foreign national (4) with knowledge of those relevant facts.

In other regulations, the Commission has further defined what constitutes a solicitation: “to solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”<sup>15</sup> The same regulation goes on to state that “[a] solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.”<sup>16</sup> The Commission’s understanding of solicitation is further informed by background principles of criminal law for the same offense.<sup>17</sup>

Solicitation is a kind of inchoate offense, meaning it is the request itself that is prohibited; it is not necessary for the solicited act to actually occur or to be factually possible in order to constitute a violation.<sup>18</sup> A public officeholder who demands a bribe from an undercover policeman commits a criminal solicitation, notwithstanding that the bribe never came and never would. But by the same token, it is black letter law that a solicitation offense requires a request, ask, demand, or suggestion that the prohibited conduct be undertaken—just as the Commission’s regulations acknowledge.<sup>19</sup> That is the central *actus reus* element of the offense.

---

<sup>13</sup> 52 U.S.C. § 30121(a)(2).

<sup>14</sup> 11 C.F.R. § 110.20(g) (emphasis added).

<sup>15</sup> 11 C.F.R. § 300.2(m).

<sup>16</sup> 11 C.F.R. § 300.2(m).

<sup>17</sup> See Factual & Legal Analysis for Respondent GAP at 8 & n.23 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

<sup>18</sup> See *State v. Weber*, 918 P.2d 609, 623 (Kan. 1996) (“The crime [of solicitation] is complete when the person communicates the solicitation to another with the requisite *mens rea*. No act in furtherance of the target needs to be performed by either person.”).

<sup>19</sup> Compare Model Penal Code § 5.02(1) (American Law Institute 1985) (“A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he *commands, encourages or requests* another person to engage in specific conduct that would constitute such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission.”) (emphasis added), with 11 C.F.R. § 300.2(m) (“[T]o solicit means to *ask, request, or recommend*, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”) (emphasis added). See also *Weber*, 918 P.2d at 623 (“The *actus reus* of the solicitation occurs under Kansas law if a person by words or actions invites, requests, commands, or encourages a second person to commit a crime.”).

This necessary conduct to commit solicitation—a demand or request—distinguishes it from other inchoate offenses. The offense of attempt, for example, requires criminal intent and a substantial step, beyond mere preparation, in furtherance of the intended violation.<sup>20</sup> Conspiracy does not require any request or demand, but only an agreement between two or more individuals to engage in illegal conduct and an overt act in furtherance of that agreement.<sup>21</sup> The differences between solicitation and these other offenses are important because solicitation is the only inchoate offense authorized under the Act.<sup>22</sup> Outside of the specific prohibitions against solicitation, the Commission has no statutory authority to enforce against attempts or conspiracies to violate the Act, just as it cannot enforce against the aiding and abetting of such violations.<sup>23</sup>

### *B. Benton Made No Solicitation*

Based on these legal principles, the Commission’s solicitation theory is deficient because the evidence demonstrates—indeed, the Commission’s Factual and Legal acknowledges—that neither Benton nor Beach requested a contribution. Rather, the Commission found the contribution was freely offered by the undercover journalists, and Benton and Beach simply discussed the overture. Like alleging arson without a fire, or manslaughter without a killing, the Commission’s solicitation charge fails as a matter of law without the necessary element of a request or demand.

As courts across the country have concluded, the mere receipt or response to a solicitation does not constitute an act of solicitation itself. State courts have routinely dismissed solicitation charges where the defendant was the party approached and solicited, whether by an undercover officer, an informant, or otherwise. For example, in *State v. Anderson*,<sup>24</sup> the Supreme Court of Iowa held unanimously that a defendant was innocent of the charge of solicitation of a felony where an undercover officer approached him and offered to pay for the defendant’s legal services with illegal narcotics, to which the defendant agreed.<sup>25</sup> As the court reasoned, “Because Anderson was solicited to accept the delivery of a controlled substance, Anderson, as the solicitee, cannot also be the solicitor.”<sup>26</sup> Many other courts have held the same and dismissed solicitation convictions where a third-party approached the defendant and asked him or her to engage in illegal conduct.<sup>27</sup> In another case, a federal court similarly reasoned that a defendant did not commit a

<sup>20</sup> See, e.g., *Weston v. State*, 451 P.3d 758, 763 (Wyo. 2019).

<sup>21</sup> See, e.g., *People v. Caban*, 833 N.E. 2d 213, 217 (N.Y. 2005) (holding that acceptance of a solicitation to commit murder constituted a conspiracy).

<sup>22</sup> See, e.g., 52 U.S.C. §§ 30121(a)(2), 30125(a)(1), 30125(e)(1)(A).

<sup>23</sup> *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115–16 (D. Utah 2018) (holding that the Commission exceeded its statutory authority in promulgating a regulation imposing secondary liability for aiding and abetting contributions in the name of another).

<sup>24</sup> 618 N.W.2d 369 (Iowa 2000).

<sup>25</sup> *Id.* at 373–74.

<sup>26</sup> *Id.* at 373.

<sup>27</sup> See, e.g., *Shannon v. United States*, 311 A.2d 501, 505 (D.C. 1973) (holding that the defendant’s agreement to an undercover officer’s request for a sexual act was not a solicitation by the defendant); *State v. Trump*, 381 So. 2d 452, 454 (La. 1980) (holding that where undercover officers initiated the encounter and at the outset solicited the defendant for prostitution, the defendant’s eventual quoting of a price did not constitute a solicitation by the

solicitation offense when she discussed how a crime might be committed and gauged others' interest, but did not ask that they commit the crime.<sup>28</sup> The consistent holding of all these courts is that no solicitation charge can be sustained without the defendant having made a request.

The central error of the Commission's Factual and Legal Analysis is to confuse this legal difference between making and receiving a solicitation. It is most apparent in the Commission's illogical reasoning about the relevant conduct:

The available information indicates that GAP, through its agent Benton, made a "solicitation" under the Act. *The Telegraph* video indicates that after undercover journalists posing as representatives of a Chinese national contacted Beach offering to contribute \$2 million to GAP, Beach referred them to Benton, who was recorded meeting with the reporters to provide them with a specific "method of making a contribution" so that it could not be traced back to their client.<sup>29</sup>

This simply does not follow. As the Factual and Legal Analysis states, *Benton made no request or demand*—it was the reporters who made the offer. None of Benton's recorded statements asks for a contribution.

The Commission repeats the error when it says, "Benton's recorded statements, which provide a detailed plan for the reporters' client to make a contribution to GAP without public disclosure of their client's identity, indicate that he, as an agent of GAP, 'ask[ed], request[ed], or recommend[ed], explicitly or implicitly,' that the reporter's client make a contribution to GAP."<sup>30</sup> This is wrong again. Lacking any evidence for this necessary *actus reus* element, the Factual and Legal Analysis attempts to transform Benton's alleged agreement or planning to accept the contribution into a solicitation.<sup>31</sup>

But offering advice or discussing hypothetical plans for how a contribution might be transmitted or used is not the same as requesting one—just as discussing how someone might commit a kidnapping or how much illegal narcotics would cost is not the same as soliciting those

---

defendant); *People v. Salazar*, 362 N.W. 2d 913, 918 (Mich. App. 1985) (holding that a defendant who merely responded to an informant's solicitations did not urge or persuade the informant to commit murder); *State v. Swann*, 753 N.E. 2d 984, 985–86 (Ohio App. 2001) (dismissing a charge of soliciting prostitution where the defendant was the one approached by an undercover officer because "in a soliciting case, the crime is the asking").

<sup>28</sup> See *Ismail v. Cnty. of Orange*, 2013 WL 3936057, at \*8 (C.D. Cal. July 29, 2013) ("Here, plaintiff's conduct was limited to discussing how a kidnapping would take place and determining whether Young and Schuster were willing to commit the kidnapping. ... Without words or conduct that amount to an offer, invitation, or request, the *actus reus* of solicitation under California law is not satisfied.").

<sup>29</sup> Factual & Legal Analysis for Respondent GAP at 12 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*) (emphasis added); Factual & Legal Analysis for Respondent Jesse Benton at 11–12 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

<sup>30</sup> Factual & Legal Analysis for Respondent GAP at 13 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*) (alterations in original); Factual & Legal Analysis for Respondent Jesse Benton at 12 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

<sup>31</sup> See Factual & Legal Analysis for Respondent Jesse Benton at 12–13 (March 2, 2021), MURs 7165 and 7196 (Great America PAC, *et al.*).

things.<sup>32</sup> The Commission recognized that distinction recently when it found no probable cause to believe that an email passing along information to a foreign government was a solicitation, because the message did not ask for anything.<sup>33</sup> Consequently, the entire solicitation theory under which the Commission proceeded was legally deficient and should have been rejected at the outset. Without a request or demand, there is no solicitation offense.

### III. The Evidence for Reason to Believe Was Unreliable and Insufficient

Even if the Commission had a viable legal theory under which to pursue these matters, it still should have dismissed these Complaints based on the insufficient, unreliable evidence presented. Anonymous accounts repeated by a third party violate the statutory requirements for complaints to the Commission. And the use of secretly recorded, extensively edited video undermines the evidentiary standard for finding reason to believe a violation occurred.

#### A. *The Law*

The Act requires that complaints filed with the Commission shall be “signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18.”<sup>34</sup> This ensures the most basic level of reliability—that a complainant put his or her name on information submitted and affirm that it is true. With this protection, Congress intended that a complainant who submits a false statement to the Commission can be held accountable, and that innocent individuals and political committees would be protected from anonymous, politically motivated accusations intended to subject them to costly and intrusive federal investigations. In fact, the Act specifically provides that the “Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.”<sup>35</sup>

The Act further specifies that the Commission may not undertake any investigation unless the Commission “determines, by an affirmative vote of four of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act.”<sup>36</sup> The reason-to-believe standard is “higher than the Federal Rules of Civil Procedure standard regarding the sufficiency of a complaint, which allows discovery on virtually every complaint that identifies any potential legal or equitable claim.”<sup>37</sup> Rather, the Commission will find reason to believe “only if a complaint sets forth sufficient separate facts, which, if proven true, would constitute a violation of

<sup>32</sup> See *Ismail*, 2013 WL 3936057, at \*8.

<sup>33</sup> See Statement of Reasons of Commissioner Weintraub at 1–2 (June 12, 2021), MUR 7271 (DNC, *et al.*) (concluding that the email at issue “contains no solicitation” because “rather than asking them to supply information to her about Manafort, [the Respondent] provides information to them”); Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 8 (June 10, 2021), MUR 7271 (DNC, *et al.*) (“[T]he text of the email does not clearly indicate a request or solicitation for Poroshenko to take a certain action.”).

<sup>34</sup> 52 U.S.C. § 30109(a)(1).

<sup>35</sup> 52 U.S.C. § 30109(a)(1); *see also* 11 C.F.R. § 111.4(b)–(d).

<sup>36</sup> 52 U.S.C. § 30109(a)(2).

<sup>37</sup> Statement of Reasons of Vice Chairman Petersen and Commissioners Hunter and McGahn at 4 n.12 (July 8, 2009), MURs 5977 and 6005 (American Leadership Project).

the FECA.”<sup>38</sup> As a result, before finding reason to believe, the Commission must scrutinize both the law and the credibility of the facts alleged.<sup>39</sup>

### *B. The Evidence Does Not Establish Reason to Believe*

Under the legal rules for complaints and our evidentiary standards, the Commission erred when it credulously accepted an anonymous, extensively edited, and foreign-produced video as sufficient evidence to investigate American citizens. The evidence before the Commission did not satisfy the reason-to-believe standard, and this case sets a dangerous precedent for authorizing investigations with minimal evidence and few protections for respondents.

First, the plain language of the Act prohibits the Commission from considering complaints from anonymous sources. Without doubt, had the journalists involved in this investigation submitted their video and report to the Commission as an unsigned complaint, it would be immediately dismissed as failing to meet the requirements of § 30109(a)(1). It is therefore entirely perverse that the Commission would allow a third party—one with no personal knowledge of the facts—to take that same report, sign his or her name to the final page, and submit it as a valid complaint.<sup>40</sup> In considering such a complaint and finding reason to believe in this matter, the Commission blesses a circumvention of the Act’s requirements. Moreover, it denies Respondents the due process protection of being able to meaningfully respond to the allegations and to confront their accusers.<sup>41</sup>

In addition to the legal barrier to proceeding based on anonymous accusations, the Commission must know complainants’ identity and the details of alleged conduct in order to assess their credibility. “The Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find [reason to believe] and thereby commence an investigation.”<sup>42</sup> Here, there are strong reasons to doubt the reliability of the video evidence upon which the Commission based its reason-to-believe finding. For example, no information is provided concerning the circumstances, places, or times of the meetings. The heavy use of video editing to provide only the briefest statements or exchanges also suggests that those producing the video took pains to excise the context or caveats of conversations. And the use of the video as part of a larger, sensationalized news story raises doubts about whether the video clips provide an accurate depiction of what transpired. *The New York Times* summarized the issues with

---

<sup>38</sup> Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 1 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.).

<sup>39</sup> Statement of Reasons of Vice Chair Hunter and Commissioners McGahn and Petersen at 5 (June 14, 2011), MUR 6296 (Kenneth R. Buck).

<sup>40</sup> Statement of Reasons of Vice Chair McGahn and Commissioner Hunter at 11 n.33 (July 25, 2013), MUR 6540 (Rick Santorum for President, *et al.*) (“[I]f anonymous complaints are prohibited by the Act, it is illogical to permit the underlying basis for a complaint to be an anonymous source in a newspaper article.”).

<sup>41</sup> *Cf. Greene v. McElroy*, 360 U.S. 474, 508 (1959) (“[I]n the absence of explicit authorization from either the President or Congress, the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination.”).

<sup>42</sup> Statement of Reasons of Vice Chair Petersen and Commissioners Hunter and McGahn at 6 n.12 (June 1, 2009), MUR 6056 (Protect Colorado Jobs, Inc.).

the video’s reliability best: “[T]he video does not show how the reporters identified themselves and reflects only snippets of the reporters’ conversations with Mr. Benton, making it difficult to verify exactly what Mr. Benton had offered or whether any laws were broken.”<sup>43</sup>

The Commission should be especially skeptical of anonymous accusations originating from entities outside the United States. Foreign nationals, including foreign media, are less likely to be familiar with the nuances of American campaign-finance law.<sup>44</sup> Moreover, the fact that the entity with relevant evidence resides overseas makes attempts to investigate and verify information more difficult. Worse still, foreign entities and media outlets may be more likely to become instruments of disinformation or misuse by foreign governments or other entities, making the Commission an unwitting accomplice in investigating complaints based on false allegations.<sup>45</sup>

Considering these features of *The Telegraph*’s video—the anonymous sources, the extensive editing, and the foreign provenance—the Commission failed to assess this Complaint with an appropriate level of skepticism.<sup>46</sup> Under these circumstances, even if the Commission had a viable legal theory, this evidence is insufficient to justify a reason-to-believe finding and to subject American citizens to an invasive and expensive investigation.

\* \* \*

As a result of a defective legal theory based on insufficient evidence, one Respondent has conciliated for an offense that did not occur, while another was put through an unjustified investigation. These are the real harms caused by a government agency prosecuting private citizens without just cause. With the full force of the federal government against the often limited resources of targeted individuals and political committees, it is unsurprising that many choose to settle claimed violations rather than dispute unfounded allegations. This matter stands as a stark reminder of the importance of Commissioners holding this agency within its legal bounds and maintaining a rigorous standard for finding reason to believe.

  
 \_\_\_\_\_  
 Sean J. Cooksey  
 Commissioner

October 5, 2021  
 \_\_\_\_\_  
 Date

<sup>43</sup> Nicholas Confessore, *Consultant with Ties to Donald Trump Linked to Offer to Hide Source of Donations*, N.Y. TIMES, Oct. 24, 2016, available at <https://www.nytimes.com/2016/10/25/us/politics/consultant-with-ties-to-donald-trump-linked-to-offer-to-hide-source-of-donations.html> (last visited Sept. 21, 2021).

<sup>44</sup> See Statement of Reasons of Vice Chair McGahn and Commissioner Hunter at 11 n.33 (July 25, 2013), MUR 6540 (Rick Santorum for President, *et al.*) (“[N]ews articles standing alone are insufficiently reliable to support a reason to believe finding. This is not surprising, given the unreliability of modern media on issues of campaign finance.”).

<sup>45</sup> See Statement of Reasons of Commissioner Weintraub at 1–2 (June 12, 2021), MUR 7271 (DNC, *et al.*) (noting that the Commission found reason to believe based on a news article, the source of which was “part of a Russian intelligence disinformation operation that ‘leveraged U.S. media, U.S.-based social media platforms, and influential U.S. persons to spread misleading and unsubstantiated allegations’ against Americans to impact the 2020 U.S. election”).

<sup>46</sup> *FEC v. Machinists Non-Partisan League*, 655 F.2d 380, 388 (D.C. Cir. 1981).