



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Democratic National Committee and)	MUR 7271
Virginia McGregor in her official)	
capacity as treasurer;)	
Alexandra Chalupa;)	
Chalupa & Associates, LLC)	
)	

STATEMENT OF REASONS OF COMMISSIONER ELLEN L. WEINTRAUB

This case began with a complaint alleging that the DNC, through a part-time contractor, Alexandra Chalupa, and her firm, Chalupa & Associates, LLC, solicited an illegal foreign national contribution in the form of opposition research funded by the government of Ukraine. This was a serious allegation that the Commission unanimously agreed required an investigation. But the claim did not hold up to scrutiny – it was based on Russian disinformation. Having investigated, the FEC’s Office of General Counsel (OGC) rightly concluded that this allegation was not substantiated and recommended that the Commission take no further action on it.¹

Ordinarily, a matter would have concluded after such a recommendation. Here, however, OGC subsequently recommended that the Commission find probable cause to believe that the law was violated, based on a new theory that was fully presented to the Commission for the first time in probable cause briefs. It is unusual for the Commission to see a new theory of liability for the first time at the same time it is presented to respondents. In this instance, a majority of the Commission disagreed with OGC and found there was no probable cause to believe that respondents had violated the law.²

* * *

The complaint in this matter principally relied upon a *Politico* article that itself was based on the statements of a former Ukrainian government employee, Andrii Telizhenko.³ After the

¹ See MUR 7271, Second General Counsel’s Report at 31 (Jan. 14, 2021).

² See Certification, MUR 7271 (Apr. 8, 2021).

³ See Kenneth Vogel and David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO (Jan. 11, 2017), found at <https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446>.

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Commission voted to initiate the investigation in this matter,⁴ however, new information came to light that completely undermined the credibility of the complaint.

Newspaper reports as early as March 2020 associated Telizhenko with Russian disinformation.⁵ By October 2020, it was reported that the State Department had revoked his visa.⁶ Most tellingly, on January 11, 2021, then-Treasury Secretary Steven Mnuchin announced sanctions against Telizhenko and a number of other individuals and entities for participating in a Russian disinformation campaign targeting the 2020 U.S. presidential election. They were all placed on the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) sanctions list “for having directly or indirectly engaged in, sponsored, concealed, or otherwise been complicit in foreign influence in a United States election” by being 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 and damage U.S.-Ukraine relations.⁷

The warning signs about this entire matter should have been flashing red by now. And indeed, OGC acknowledged all of the facts noted above in recommending that the Commission take no further action with respect to the original allegations. Inexplicably, however, OGC proceeded to recommend that the Commission find probable cause to believe that the foreign national political spending ban⁸ was nonetheless violated. This recommendation is built on a set of inferences drawn from a single email message, inferences I do not believe the text supports.

By way of background, Chalupa was retained by the DNC in 2015 as an independent contractor to “engage in outreach” to ethnic communities around the United States, and her company, Chalupa & Associates, was paid by the DNC to perform consulting services.⁹ Chalupa had a long history of personal activism in the Ukrainian-American community in the U.S. and working to advance democracy and human rights issues in Ukraine.¹⁰

⁴ See Certification, MUR 7271 (July 25, 2019).

⁵ See Kenneth Vogel and Nicholas Fandos, *Senate Panel Delays Subpoena Vote Over Concerns About Ukraine Witness*, N.Y. TIMES (Mar. 11, 2020), found at <https://www.nytimes.com/2020/03/11/us/politics/senate-subpoena-ron-johnson-ukraine.html>.

⁶ See Ellen Nakashima, *et al.*, *Trump Administration Revokes the Visa of a Ukrainian Political Fixer Tied to Giuliani*, WASH. POST (Oct. 5, 2020), found at https://www.washingtonpost.com/national-security/trump-administration-revokes-the-visa-of-a-ukrainian-political-fixer-tied-to-giuliani/2020/10/05/69709bd0-05a4-11eb-a2db-417cddf4816a_story.html.

⁷ U.S. Department of the Treasury, *Treasury Takes Further Action Against Russian-linked Actors* (Jan. 11, 2021), <https://home.treasury.gov/news/press-releases/sm1232>.

⁸ See 52 U.S.C. § 30121(a), 11 C.F.R. §110.20.

⁹ MUR 7271 (DNC, *et al.*), Factual & Legal Analysis at 2 (July 25, 2019).

¹⁰ MUR 7271, SGCR at 5; *see also* Chalupa Aff. at 1.

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In her email to Ukrainian embassy staff, Chalupa flagged an “Important Press Opportunity” and requested that her message be conveyed to the Ukrainian Ambassador to the United States and the Ukrainian President:

There is a very good chance that President Poroshenko may receive a question from the press during his visit about the recent New York Times article saying that Donald Trump hired Paul Manafort as an advisor to his campaign and whether President Poroshenko is concerned about this considering Trump is the likely Republican nominee and given Paul Manafort’s meddling in Ukraine over the past couple of decades. . . .

This is a huge opportunity to alleviate political pressure on Poroshenko’s administration by directing attention to Putin/Manafort. Making it well known that the same man who helped Yanukovich’s puppet government come to power and advised him throughout the Ukraine crisis is now advising a top candidate for U.S. President while also drawing attention to that fact that many are not aware of — that Manafort is back in Kyiv

It is important President Poroshenko is prepared to address this question should it come up. In a manner that exposes Paul Manafort for the problems he continues to cause Ukraine — past and present... If you are able to get this information to the Ambassador to pass along to President Poroshenko’s communications team, it is important. At the very least for them to be aware of the opportunity.¹¹

In support of its original “reason to believe” finding, the Commission unanimously adopted a Factual and Legal Analysis stating: “soliciting, accepting, or receiving information in connection with an election from a foreign national . . . could potentially result in the receipt of a prohibited in-kind contribution. Indeed, the Commission has recognized the ‘broad scope’ of the foreign national contribution prohibition and found that even where the value of a good or service ‘may be nominal or difficult to ascertain,’ such contributions are nevertheless banned.” If a foreign government “utilized its resources and expended ‘funds for opposition research on a candidate that [was] provided to a political committee’ at no charge . . . the alleged conduct falls squarely within the prohibitions of section 30121 of the Act.”¹²

Chalupa’s email does not meet the standard described above. The probable cause brief’s entire theory of liability rests on the supposition that this email solicited a “thing of value” from a foreign national.¹³ But the email contains no solicitation. Chalupa neither asks for nor receives any information. She alerts the embassy to the possibility that a question might be asked at a press conference (it wasn’t). Contrary to the suggestion in the probable cause briefs, however, nowhere in her email does Chalupa ask the embassy to research or prepare any written statement about Manafort. She does not ask that they expend any funds or conduct any investigation. To the

¹¹ Office of General Counsel’s Probable Cause Brief at 6-7 (citing e-mail from Chalupa to Shulyar (Mar. 30, 2016, 3:19 PM), Chalupa Dep. Ex. 7 at AC000307).

¹² MUR 7271 (DNC, *et al.*), Factual & Legal Analysis at 6-8 (July 25, 2019).

¹³ See Ellen Weintraub, *The Law of a ‘Thing of Value’* (Oct.18, 2019), found at <https://www.fec.gov/resources/cms-content/documents/2019-10-ELW-the-law-of-a-thing-of-value.pdf>.

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contrary, rather than asking them to supply information to her about Manafort, she provides information to them.

This case began with Russian disinformation and should have ended when it was uncovered.

Given all of these facts, I voted to find no probable cause to believe that the Respondents violated the Act and Commission regulations.¹⁴

June 15, 2021

Date



Ellen L. Weintraub
Ellen L. Weintraub
Commissioner

¹⁴ In so voting, I was joined by my Republican colleagues, who took the unusual path of issuing both a Statement of Reasons (to explain) and a Supplemental Statement of Reasons (to complain). They characterize some of my votes in this matter as outrageous! shocking! cruel! a cover up! But as they well know, my votes were nothing of the sort. I voted against releasing the file in this matter not because I disagreed with the outcome – reader, I voted *for* it – but because I believed the Second General Counsel’s Report spilled far too much ink reciting the now-entirely-discredited Telizhenko’s spurious allegations and false narratives. Over the past several years, I have fought hard against the disinformation poisoning our political system. Having seen how unfounded narratives can be stripped of context and achieve virality despite a total lack of proof, I did not want to risk the FEC itself becoming a vector for the spread of disinformation.