



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
	)	MUR 7491
American Ethane Co., LLC, <i>et al.</i>	)	
	)	

**SUPPLEMENTARY STATEMENT OF REASONS OF  
COMMISSIONER ELLEN L. WEINTRAUB**

In this matter, the Commission’s Republicans have disregarded decades of Commission precedent – not to mention the Act<sup>1</sup> – regarding the federal ban on foreign nationals spending in U.S. elections. Even where corporate funds are allowed, U.S. corporations are still prohibited from using *foreign funds* to make U.S. political contributions. Under longstanding Commission precedent, the money must be “home-grown,” that is, solely generated by the corporation’s U.S. operations.

But my colleagues are so eager to grease the skids for corporate spending in U.S. elections that they don’t seem to care where the money comes from – in this case, from (I kid you not) *Russian oligarchs*. This is, in a word, alarming.

Commissioner Shana M. Broussard and I wrote about the facts and law at issue in this matter.<sup>2</sup> The facts are pretty egregious. A U.S. corporation overwhelmingly owned by Russian oligarchs and with nothing except their funds in the bank spent tens of thousands of dollars to influence federal and state elections in the U.S. Even though the investigation by our nonpartisan Office of General Counsel (“OGC”) provided solid evidence that the respondents had made prohibited foreign national contributions, our Republican colleagues refused to pursue those allegations.

Our statement was written before our Republican colleagues explained themselves publicly.<sup>3</sup> Their statement of reasons disregards Commission precedent, governing law, legal logic, and the interests of the United States. It demands a direct response.

My Republican colleagues disagreed with OGC’s conclusions as to prohibited foreign national contributions in this matter and voted against supporting them. But their analysis has serious

<sup>1</sup> Federal Election Campaign Act, as amended (“FECA” or the “Act”), 5 U.S.C. § 30101, *et seq.*

<sup>2</sup> Statement of Reasons of Commissioners Shana M. Broussard and Ellen L. Weintraub, MUR 7491 (American Ethane Co., LLC, *et al.* (“American Ethane”)) (“Broussard & Weintraub SOR”) (Oct. 27, 2022).

<sup>3</sup> Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, MUR 7491 (American Ethane) (“Republican SOR”) (Oct. 27, 2022).

problems. What were, for example, OGC’s conclusions on foreign control of the funds, according to the Republican commissioners? “After a thorough investigation, OGC concluded that (1) ‘the available information does not suggest that American Ethane intended to inject foreign funds into American elections[.]’”<sup>4</sup>

Well, no. In its Second General Counsel’s Report, OGC actually concluded: “Although the available information does not suggest that American Ethane intended to inject foreign funds into American elections, *American Ethane has done just that*. Therefore, American Ethane and Houghtaling made \$66,200 in prohibited foreign national contributions, and we recommend that the Commission authorize pre-probable cause conciliation.”<sup>5</sup>

My Republican colleagues’ misrepresentation is disturbing for at least two reasons. First, in eliding both ends of OGC’s sentence, it suggests strongly that OGC concluded the opposite of what it did. It is a misleading rendering of the good work of the Commission’s attorneys.

Second, this inaccurate description applies the wrong legal standard. Whether American Ethane *intended* to inject foreign funds into American elections goes to whether American Ethane could be held *criminally* liable for a knowing and willful violation of the Act.<sup>6</sup> But the Act contains no intent element for civil liability. Whether a respondent intended to violate the Act is irrelevant to the Commission’s determination on simple civil liability.

When my colleagues go to explain the substance of why they refused to move forward with the foreign national allegation in this matter, they unleash another misrepresentation: “We disagreed with OGC’s conclusions because they were based upon an expansive, and in our view impermissible, reading of prior Commission advisory opinions.”<sup>7</sup>

But several pages later, the real situation emerges: “In recommending that we enforce against Respondents here, OGC relied upon several of those advisory opinions, *as well as the Commission’s 1994 decision in MUR 2892 (Royal Hawaiian Country Club, et al.)*, which in turn relied upon a similar set of advisory opinions.”<sup>8</sup>

So, the Republicans are disagreeing with OGC’s conclusions that were based on prior Commission advisory opinions and also *a binding Commission decision in an enforcement matter*.

My Republican colleagues clearly find MUR 2892 to be inconvenient. They attempt to pass it off as an error our lawyers made.<sup>9</sup> But OGC didn’t have the final word in that matter, the

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<sup>4</sup> Republican SOR at 6.

<sup>5</sup> Second General Counsel’s Report, MUR 7491 (American Ethane) (Feb. 11, 2021), at 18-19 (*emphasis added*).

<sup>6</sup> See 52 U.S.C. § 30109(a)(5).

<sup>7</sup> Republican SOR at 1.

<sup>8</sup> *Id.* at 6 (*emphasis added*).

<sup>9</sup> Republican SOR at 7, n. 36, *citing* First General Counsel’s Report, MUR 2892 (Royal Hawaiian Country Club, *et al.*) at 8 (“OGC made a similar error in MUR 2892. There, it applied advisory opinions regarding wholly-owned domestic subsidiaries of foreign national parent companies to a number of Hawai’i corporations because it

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Commission did. The Commission voted to pursue foreign national violations against U.S. corporations that made contributions but had no domestic sources of funds.<sup>10</sup> And when the Commission spoke in that matter, it did so with the weight of precedent.

In this matter, my Republican colleagues dismiss OGC's recommendation to pursue the foreign national violation as "a simple category error. OGC mistook foreign investment for foreign parentage."<sup>11</sup> But this is not a matter of an American company seeking investment from the international capital markets. It is far simpler than that. OGC found that foreign nationals owned 88% of the company when it contributed the funds that had *100% come from those foreign owners*.<sup>12</sup> The Commission itself also found this to be the fact.<sup>13</sup>

It is absurd to argue that the law is clear on the restrictions on foreign corporations that own U.S. corporations,<sup>14</sup> but that absolutely no law exists on *individual foreign nationals* who own U.S. corporations.

And, as Commissioner Broussard and I wrote previously in this matter, "It cannot be seriously argued that U.S. companies that are owned by foreign individuals are subject to fewer restrictions on the use of foreign money in U.S. elections than companies whose foreign owners

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considered 'domestic corporations majority-owned by foreign national individuals,' there a company where '4 of the 5 owners are foreign nationals,' to be a "parallel situation.").

<sup>10</sup> *See, e.g.*, MUR 2892 (Royal Hawaiian Country Club, *et al.*), Factual and legal analysis regarding Mokuleia Land Company, Royal Hawaiian Country Club, and Y.Y. Valley Corp., at 9-10 (applying Commission precedent to domestic corporation with individual foreign-national owners) ("This matter involves contributions by corporations that are alleged to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including corporations, who are foreign nationals. Furthermore, in its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national indirectly when it could not do so directly.") *found in* "Case Documents, part 3," at 28, [https://www.fec.gov/files/legal/murs/2892\\_C.pdf](https://www.fec.gov/files/legal/murs/2892_C.pdf).

<sup>11</sup> Republican SOR at 7.

<sup>12</sup> First General Counsel's Report, MUR 7491 (American Ethane) (June 13, 2019) at 3 ("At the time of the contributions in question, according to American Ethane's Lobbying Disclosure Act reports, three Russian nationals owned 88% of the company.").

<sup>13</sup> *See* Factual and Legal Analysis, MUR 7491 (American Ethane) at 2 (same fact found as in First General Counsel's Report, *supra* note 12). This Factual and Legal Analysis, approved unanimously by the Commission, also serves as binding precedent in this matter. *See* Certification, MUR 7491 (American Ethane) (July 23, 2019) (Commissioners Hunter, Petersen, Walther, and Weintraub voting to approve the Factual and Legal Analysis).

<sup>14</sup> *See* MUR 6093 (Transurban) (Jan. 29, 2009) (U.S. subsidiary violated Act's foreign national provisions by making contributions when it had no domestic revenue); Conciliation Agreement, MUR 6093 (Transurban), at 2 ("Where a domestic subsidiary has generated no revenue from U.S. operations... its contributions to state and local committees cannot be considered separate from the funding it receives from the foreign parent company.").

have taken the legal steps necessary to insulate themselves from liability through incorporation.”<sup>15</sup>


Foreign individuals and foreign corporations are both equally foreign nationals under the Act,<sup>16</sup> and the plain language of our governing statute is equally clear as to both: “It shall be unlawful for (1) a foreign national, directly or indirectly, to make (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election[.]”<sup>17</sup>

This provision explains why, when considering whether contributions by U.S. corporations constitute prohibited foreign national contributions, the Commission has consistently required that (1) the contributions be made with funds that are “home-grown,” that is, solely generated by the corporation’s domestic operations, and that (2) no foreign national be involved with the decision to make the contributions.<sup>18</sup>

My Republican colleagues conclude that “OGC’s position in this case is not the law[.]” On the contrary, OGC’s position in this matter – that the lack of home-grown revenues prohibited American Ethane from spending in U.S. elections – has been the *Commission’s* position for almost three decades, based on decisions adopted by majority votes, and it very much remains the law.

Three commissioners simply do not have the authority to brush off Commission precedent as “past errors.”<sup>19</sup> It takes at least four votes to set (or overturn) precedent around here,<sup>20</sup> and when the Commission ignores its precedent, it violates the law.<sup>21</sup>

Oct. 28, 2022

  
 Ellen L. Weintraub  
 Commissioner

<sup>15</sup> Broussard & Weintraub SOR at 2, note 4.

<sup>16</sup> 22 U.S.C. § 611(b)(2) *via* 52 U.S.C. § 30121(b)(1) (defining as foreign principals and, thus, foreign nationals, entities incorporated outside the United States); 52 U.S.C. § 30121(b)(2) (defining as foreign nationals individuals who are not U.S. citizens nor green-card holders).

<sup>17</sup> 52 U.S.C. § 30121(a).

<sup>18</sup> *See* Broussard & Weintraub SOR at 1.

<sup>19</sup> Republican SOR at 7.

<sup>20</sup> *Common Cause v. FEC*, 842 F.2d 436, 449, n. 32 (D.C. Cir. 1988) (“Of course, such a statement of reasons would not be binding legal precedent or authority for future cases. The statute clearly requires that for any official Commission decision there must be at least a 4-2 majority vote. To ignore this requirement would be to undermine the carefully balanced bipartisan structure which Congress has erected.”).

<sup>21</sup> *DCCC v. FEC*, 831 F.2d 1131 (D.C. Cir. 1987) (when Commission slights its own precedent and accords similar cases dissimilar treatment, it is acting contrary to law).