



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Citizens for Waters, *et al.*) MUR 7522
)

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

In this matter, we voted to approve the Office of General Counsel's recommendations to dismiss the allegations that Maxine Waters, Citizens for Waters, and David Gould in his official capacity as treasurer violated 52 U.S.C. § 30116(f), and that Families & Teachers for Antonio Villaraigosa for Governor 2018 violated 52 U.S.C. § 30116(a)(1)(A).

For the purposes of 52 U.S.C. § 30109(a)(8), we attach our proposed Factual and Legal Analysis in this matter.

A handwritten signature in blue ink, appearing to read "Allen Dickerson".

Allen Dickerson
Vice Chair

December 3, 2021

Date

A handwritten signature in black ink, appearing to read "Sean J. Cooksey".

Sean J. Cooksey
Commissioner

December 3, 2021

Date

A handwritten signature in black ink, appearing to read "J.E. Trainor, III".

James E. "Trey" Trainor, III
Commissioner

December 3, 2021

Date

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Citizens for Waters and David Gould
in his official capacity as treasurer
Maxine Waters
Families & Teachers for Antonio Villaraigosa
for Governor 2018

MUR 7522

I. INTRODUCTION

The Complaint alleges that Families & Teachers for Antonio Villaraigosa for Governor 2018 (“Families & Teachers”), a state independent-expenditure committee, made, and Representative Maxine Waters and Citizens for Waters (“Committee”) accepted, an excessive contribution in the form of a \$25,000 payment for the proportionate cost for Villaraigosa’s name to appear on the Committee’s “slate mailer.” For the reasons set forth below, the Commission dismisses the allegations pursuant to *Heckler v. Chaney*.¹

II. FACTUAL BACKGROUND

The Committee is the principal campaign committee of Representative Maxine Waters of the 43rd Congressional District in California. Families & Teachers was a state independent-expenditure committee registered in California that disclosed the receipt of corporate donations and individual donations in excess of the federal contribution limits.²

¹ 470 U.S. 821 (1985).

² According to the California Secretary of State’s Office, Families & Teachers “terminated” as of September 27, 2018, and it filed its last disclosure report on October 5, 2018. See <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1404354>. Individuals and corporations in California are subject to the same contribution limits for state candidates, which in 2018, were \$29,200 to gubernatorial candidates, \$7,300 to other state-wide candidates, and \$4,400 to state legislative candidates. See Calif. Gov. Code § 85300 et seq.; <http://www.fppc.ca.gov>.

In connection with the June 5, 2018, primary election in California, the Committee produced and distributed a “slate mailer” listing federal and nonfederal candidates Waters supported, including Villaraigosa, a candidate for Governor.³ The Committee reported receiving \$25,000 from Families & Teachers on May 25, 2018, for “slate mailer payment,” which the Committee describes in its response as a reimbursement of the mailer costs attributable to Villaraigosa.⁴ On December 6, 2018, the Committee disbursed \$13,000 to Families & Teachers as a partial refund.⁵

Complainant alleges that the Committee and Waters accepted an excessive contribution from Families & Teachers when the Committee accepted the \$25,000 payment.⁶ Complainant bases the allegation on the Committee’s purported failure to comply with Advisory Opinion 2004-37 (Citizens for Waters), concerning a “brochure” that the Committee proposed to produce and distribute expressly advocating the election of clearly identified federal and nonfederal candidates in the 2004 general election.⁷ The advisory opinion request, however, was expressly

³ See Compl. at 3; Committee and Maxine Waters Resp. (“Committee Resp.”) at 1 (Dec. 8, 2018); Families and Teachers Resp. at 1 (Dec. 12, 2018). The Commission notes that the Complaint and responses describe the mailer as a “slate mailer.” Under the Act, the costs incurred to prepare, display, mail or otherwise distribute printed slate cards, sample ballots, or other printed listings of three or more candidates for public office are exempt from the definitions of “contribution” and “expenditure.” 52 U.S.C. § 30101(8)(B)(v), (9)(B)(iv). Though neither the Complaint nor the Responses attach the mailer at issue, as noted in an Advisory Opinion prepared for the Waters Committee in 2004, previous mailers prepared by the Waters Committee featured “certain candidates . . . more prominently than others,” and included “brief commentary by Representative Waters about the candidates listed,” making the mailer “not simply a sample ballot.” Advisory Op. 2004-37 (Waters) at 1 n.1. See also Advisory Op. 2008-06 (Virginia Democrats) at 3 (finding that “additional biographical information, descriptions of candidates’ positions on the issues, or statements of party philosophy, do not qualify under the slate card exemption”). Thus, the term “slate mailer” does not appear to apply to the mailer in this matter.

⁴ See Citizens for Waters 2018 July Quarterly Report (July 13, 2018) at 76 (attach. to Compl. at Ex. A); Committee Resp. at 1-2. The Complaint cites a \$1 million contribution to Families and Teachers from Michael Bloomberg shortly before Families & Teachers disbursed \$25,000 to the Committee. Compl. at 3, Ex. D.

⁵ See Citizens for Waters 2018 Year- End Report (Jan. 15, 2019) at 8. The Committee made this payment to Families & Teachers after the Complaint was filed in this matter.

⁶ Compl. at 3.

⁷ *Id.* at 2.

limited to “the arrangements with, and payments by, any Federal candidates who will be included in the proposed brochure,” and explicitly excluded the application of the Act and Commission regulations to arrangements with and payments by non-federal candidates or their committees.⁸ The Commission concluded the Committee’s brochure would not constitute support of, or be an in-kind contribution to, the federal candidates listed in the brochure, provided the candidates made reimbursements for attributable costs of the brochure in a timely manner.⁹ Further, the Commission concluded that reimbursements by federal candidates for their attributable portion of the costs would not constitute support of, or be contributions to, the Committee.¹⁰

The Complaint alleges that the \$25,000 payment is not a valid reimbursement to the Committee under AO 2004-37 because the payment came from Families & Teachers, not Villaraigosa or his committee.¹¹ Respondents assert that Families & Teachers’ reimbursement to the Committee complied with AO 2004-37, and that the advisory opinion does not require the candidate make the reimbursement, only that the reimbursement be made in an amount equal to the proportionate share of the costs attributable to the candidate.¹²

III. LEGAL ANALYSIS

⁸ AO 2004-37 at 3.

⁹ *Id.* at 2.

¹⁰ *Id.* The advisory opinion also states that to the extent any reimbursement by a candidate’s authorized committee exceeds the costs attributed to that candidate, such excess reimbursement would constitute a contribution and would be subject to the Act’s applicable contribution limits. *Id.* at 4. The Committee states that it issued partial refunds to Families & Teachers and other committees for the portion of their initial payments that exceeded their proportionate share of the costs. Committee Resp. at 3, n.1. As noted, the Committee refunded \$13,000 to Families & Teachers.

¹¹ Compl. at 3.

¹² Families & Teachers Resp. at 2, 3; Committee Resp. at 3.

During the 2018 election cycle, persons were limited to making a contribution to a candidate or his or her authorized committee that did not exceed \$2,700 per election.¹³ No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 52 U.S.C. § 30116.¹⁴ A Commission advisory opinion may be relied upon by any person involved in any specific transaction which is indistinguishable in all material aspects from the transaction or activity with respect to which such advisory opinion was rendered.¹⁵

AO 2004-37 was specifically limited to reimbursements by federal candidates to appear in Waters's brochure, and thus, the activity identified in the Complaint is arguably not indistinguishable in all material respects from the activity in that advisory opinion.¹⁶ By the same token, the Complainant's suggestion that this activity necessarily violates the Act's contribution limits because the activity differs from the AO 2004-37 activity is not persuasive.

In a recent matter, MUR 7448, the Commission found that the California Democratic Party's ("CDP's") payment of \$35,000 to the Committee for the cost of U.S. Senate candidate Kamala Harris's appearance in the Committee's October 2016 mailer was not an excessive contribution to Harris's committee, Kamala Harris for Senate. Because CDP's \$35,000 payment was permissible under the CDP's coordinated party expenditure authority, and because it promptly reimbursed the Committee for the cost of Harris's appearance in the mailer, the

¹³ See 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

¹⁴ See 52 U.S.C. § 30116(f).

¹⁵ 52 U.S.C. § 30108(c)(1)(B).

¹⁶ See AO 2004-37 at 3; 52 U.S.C. § 30108(c)(1)(B). Cf. MUR 7101 (Senate Majority PAC, et al.) (contributions described in the Complaint fall within the Act's protection for persons entitled to rely on an advisory opinion).

Commission found no reason to believe the Committee and CDP made, and Kamala Harris for Senate accepted, an excessive contribution.¹⁷ It does not appear, however, that the Commission has considered whether a state IEOPC can pay the cost for a state candidate to appear in a mailer like the Committee's. Nonetheless, it appears that the net amount paid, subtracting the \$13,000 refund, to include Villaraigosa's name in the mailer was \$12,000, a somewhat modest amount. Under these specific circumstances, the Commission exercises its prosecutorial discretion and dismisses the allegations in this matter.¹⁸

¹⁷ MUR 7448 Certification (July 23, 2019) and Factual and Legal Analysis at 4.

¹⁸ *See Heckler v. Chaney*, 470 U.S. 821 (1985).