



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7683
Our Revolution;)
Bernard Sanders)
)

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

The Complaint in this matter alleged that Our Revolution, a 501(c)(4) organization, was established by Senator Bernard "Bernie" Sanders, a federal officeholder, and that Our Revolution solicited, received, and spent funds outside of the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ The Respondents deny the allegations, asserting that while Our Revolution was "inspired" by Senator Sanders, he did not establish it, and Our Revolution therefore was not subject to the Act's soft money-restrictions.² In a thorough First General Counsel's Report, the Office of the General Counsel ("OGC") concluded:

Based on the available information, it appears that the creation of Our Revolution was influenced by Sanders, that Sanders had some involvement in Our Revolution's initial launch activities, and that several people who worked for Sanders's political campaigns either went on to work for Our Revolution or left Our Revolution to work for Sanders, but the available factual record does not indicate that Sanders [established, financed, maintained, or controlled] Our Revolution within the meaning of the Act and Commission regulations.³

In light of this conclusion, OGC recommended that the Commission dismiss the allegations against Senator Sanders and Our Revolution.⁴

¹ Complaint (Jan. 22, 2020), MUR 7683 (Our Revolution).

² Response of Senator Bernard Sanders (Mar. 19, 2020), MUR 7683 (Our Revolution); Response of Our Revolution (Mar. 16, 2020), MUR 7863 (Our Revolution).

³ First General Counsel's Report at 1–2 (July 8, 2021), MUR 7683 (Our Revolution).

⁴ *Id.*

We agreed with OGC’s analysis and supporting inferences, which are consistent with the positions we have taken in several previous matters. We write separately to highlight certain aspects of OGC’s reasoning and to emphasize that nothing about this matter or its Respondents is *sui generis*. The standards OGC applied to Senator Sanders and Our Revolution should apply to every other respondent.

Mistaken Filings

One piece of evidence central to the allegation that Senator Sanders established Our Revolution was Our Revolution’s organizational documents. Our Revolution filed Articles of Incorporation that included Senator Sanders’ wife, his campaign counsel, and a consultant to Senator Sanders’ 2016 presidential campaign as members of Our Revolution’s Board of Directors.⁵ Our Revolution subsequently amended its filings *nunc pro tunc* to correct the composition of its Board of Directors and remove these individuals.⁶ OGC credited the Our Revolution’s assertion that its initial filing was incorrect and was not evidence of Sanders’ control of the organization.

Yet this conclusion is at odds with OGC’s approach in MUR 7501 (Bill Nelson for U.S. Senate). There, the Commission also had initial reports that the respondents said were filed in error. In that matter, OGC said:

Although [the Democratic Executive Committee of Florida (“DECF”)] and the Committee argue that the disbursements in question were made for the purpose of DECF salaries and personnel costs, and that the attributions to Nelson’s campaign were simply administrative reporting errors resulting from a miscommunication, DECF offers no specific information about the nature of the miscommunication. It is unclear as to why staff, without some information regarding the activities performed by DECF staff, or without direction from DECF officials, would attribute the salaries to Nelson and the Nelson Committee.⁷

OGC went on to state that “[t]he record in this matter is not clear” and recommend that the Commission find reason to believe and launch an investigation.⁸ We disagreed and wrote separately that “the Commission does not have a set of facts before it that supports the Complaint’s allegations. It merely has speculation that the Florida Democratic Party’s initial memo entries were more accurate (and unintentionally revealing) than their amended reports.”⁹ We concluded that

⁵ *See id.* at 4.

⁶ Response of Our Revolution at Exhibit C (Our Revolution, Articles of Amendment of Domestic Nonprofit Corporation (Sept. 6, 2016)), MUR 7683 (Our Revolution).

⁷ First General Counsel’s Report at 7, MUR 7501 (Bill Nelson for U.S. Senate).

⁸ *Id.* at 8.

⁹ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III at 2 (June 28, 2021), MUR 7501 (Bill Nelson for U.S. Senate).

“speculation is insufficient to support a reason to believe finding, let alone the costly and invasive investigation recommended by the Commission’s Office of General Counsel.”¹⁰

We are encouraged to see that OGC’s analysis and recommendations here are consistent with the position of the controlling group of Commissioners in MUR 7501 (Bill Nelson for U.S. Senate). Speculation is insufficient to support a reason-to-believe finding, and the Commission should not automatically assume that a mistaken filing is really an unconscious admission of guilt.

Candidate Spouses and Other Campaign Employees as Agents of the Candidate

A second important part of OGC’s analysis was its treatment of the relationship between Senator Sanders and individuals associated with Our Revolution. As noted above, the original Articles of Incorporation for Our Revolution included on its Board of Directors Senator Sanders’ wife, his campaign counsel (who also represented both Senator Sanders personally and Our Revolution in this matter), and a paid campaign consultant. In addition, at least four out of Our Revolution’s ten initial employees were former Sanders campaign staffers.¹¹ Further, three out of eleven members on the revised Board of Directors were previously associated with Sanders, including his former Senate chief of staff.¹² OGC concluded, however, that these relationships create only a “circumstantial” relationship between Senator Sanders and Our Revolution that is insufficient to support a reason-to-believe finding.¹³

We agree. Circumstantial relationships alone do not support a reason-to-believe finding: the involvement of a candidate or officeholder’s spouse, a candidate or campaign’s counsel, or former campaign or official staff is insufficient to attribute activity to the candidate.

Press Releases and Reports

We further believe that OGC applied an appropriate level of skepticism toward the press releases and reports put forth to establish Sanders’ control over Our Revolution. Here, “Our Revolution’s website and four press releases from Our Revolution’s five years of operations state that Our Revolution was ‘founded’ by Sanders.”¹⁴ In addition, at least one press report referred to Our Revolution as “a new organization formed by [Sanders].”¹⁵ But OGC notes:

Beyond these statements, there is no other information corroborating the notion that Sanders himself took an active or significant role in the group’s establishment. None of the news articles which purport to state that Sanders “founded” Our

¹⁰ *Id.* at 2–3

¹¹ *See* First General Counsel’s Report at 5–6 (July 8, 2021), MUR 7683 (Our Revolution).

¹² *Id.*

¹³ *Id.* at 15.

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 6 (quoting Jonathan Karl & Benjamin Siegel, *Bernie Sanders’ New Political Group Raises Campaign Finance Questions*, ABC News (Aug. 19, 2016), available at <https://abcnews.go.com/Politics/bernie-sanders-political-group-raises-campaign-finance-questions/story?id=41520854>).

Revolution contain a direct quote from Sanders or contain any descriptions of his activities.¹⁶

In light of these facts, and the Respondents' corresponding denials, OGC concludes: "[T]he current record does not indicate that Sanders played an active or significant role in the actual process by which the group was created," therefore, "there does not appear to be sufficient indicia that Sanders established Our Revolution under the meaning of the Act and Commission regulations."¹⁷ We agree with that assessment.

At the same time, this analysis stands in contrast to OGC's approach in MURs 7370 and 7496 (New Republican PAC). There, OGC noted, "Scott continued to be identified as the Chair of New Republican in the press at least as late as March 2018. We are aware of no information suggesting that New Republican attempted to correct the press's identification of Scott as its Chair after December 2017."¹⁸ This contention was later cited in OGC's legal analysis to support a reason-to-believe recommendation.¹⁹

We disagreed with OGC's recommendations in MURs 7370 and 7496 (New Republican PAC).²⁰ Rather than shifting the burden to the respondents to prove their innocence and affirmatively correct erroneous press reports, Senator Scott should have been judged by the standard applied to Senator Sanders, which critically examined press reports for corroborating information and direct quotes from the candidate. We appreciate OGC's shift from credulously accepting press reports as true to critically evaluating them for both corroborating evidence and direct candidate involvement.

Other Evidentiary Issues

In addition to the points above, we also wish to highlight the following inferences from OGC's analysis:

- Serving as the "keynote" speaker at a launch event supporting an organization "inspired" by a candidate's campaign is insufficient to infer that the candidate established the organization;²¹

¹⁶ *Id.* at 16.

¹⁷ *Id.* at 17.

¹⁸ First General Counsel's Report at 9 (Dec. 20, 2020), MURs 7370 and 7496 (New Republican PAC) (citation omitted).

¹⁹ *Id.* at 20 ("Further, Respondents do not explain why the Committee spokesperson told a reporter that Scott stepped down as Chair of New Republican in February 2018.").

²⁰ *See* Statement of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III (July 21, 2021), MURs 7340/7496 (New Republican PAC).

²¹ *See* First General Counsel's Report at 4–5 (July 8, 2021), MUR 7683 (Our Revolution).

- “[E]ven if it were assumed that Sanders was responsible for naming Our Revolution, this itself is not sufficient to show that Sanders ‘established’ the organization;”²²
- “Our Revolution was inspired by Sanders’s campaign, and thus it is not surprising that individuals who worked for the campaign would go on to work for Our Revolution;”²³ and
- A candidate sending a fundraising email on behalf of an independent organization does not mean that the candidate established, financed, maintained, or controlled the organization.²⁴

Clarifying the Reason-to-Believe Standard

Finally, we note the implications this matter has for the reason-to-believe standard. In its First General Counsel’s Report, OGC determined not only that each of these pieces of evidence, standing alone, did not satisfy the reason-to-believe standard, but also that all of this evidence taken together was insufficient to support a finding of reason to believe that Senator Sanders established, financed, maintained, or controlled Our Revolution.

We have long argued that, particularly where First Amendment rights are concerned, the burden is on the government to support a reason-to-believe finding with more than innuendo and mere speculation. We are pleased to see that OGC has taken a similar approach in setting the bar for a reason-to-believe finding somewhere above the facts and circumstances present in this matter. Consistent with the principle that like cases should be treated alike, we fully expect this Sanders standard to apply in the future to similar matters and evidentiary questions.



Sean J. Cooksey
Commissioner

September 21, 2021

Date



James E. “Trey” Trainor, III
Commissioner

September 21, 2021

Date

²² *Id.* at 17.

²³ *Id.* at 20.

²⁴ *Id.* at 7.