



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7696
TEXANS FOR SENATOR JOHN)
CORNBYN, *et al.*)

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

In this misleadingly-named Matter Under Review ("MUR"), Dannenbaum Engineering Corporation ("DEC") and its then-chief executive, James Dannenbaum, used DEC's corporate funds to illegally make contributions in the names of others. Mr. Dannenbaum was criminally convicted for this conduct and DEC entered into a deferred prosecution agreement requiring it to undertake a variety of remedial measures and pay a \$1,600,000 penalty.

By contrast, all agree that Senator John Cornyn's campaign committee is innocent. Despite being a named respondent here for allegedly accepting illegal contributions, it only failed to disgorge those contributions at the specific request of the U.S. Department of Justice ("DOJ"), which sought to preserve the integrity of its criminal investigation.

As we explain below, because the Commission's interests in pursuing this Matter further have already been vindicated by the federal criminal proceedings brought by DOJ, we voted to dismiss as an exercise of our prosecutorial discretion.¹

I. FACTUAL BACKGROUND

At some point around March 2015, DEC, through Dannenbaum and others, "began to solicit DEC employees and their family members to make contributions to various federal political committees with the understanding that DEC would reimburse or advance the funds for the contributions."² "Over the approximately two-

¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

² First Gen'l Counsel's Report at 4-5.

year period, DEC reimbursed \$323,300 to 31 individuals for 95 conduit contributions to 24 separate political committees.”³ The recipient committees, including Texans for Senator John Cornyn, “were not told that the contributions would be reimbursed by DEC.”⁴

Initiating and executing this scheme was illegal. The Federal Election Campaign Act of 1971 (“the Act” or “FECA”), as amended, prohibits contributions to candidates from corporate treasury funds,⁵ as well as claiming someone made a contribution that another person actually made.⁶ DEC is also a federal contractor, which means that its role in these actions violated the Act’s prohibition on federal contractor contributions.⁷

Mr. Dannenbaum was criminally charged for his role in this conspiracy. He “pled guilty to knowingly and willfully violating the Act. Dannenbaum was also forced to resign from his family-founded company and was sentenced to probation for one year and fined \$100,000 in connection with his violations of the Act.”⁸

For its part, DEC cooperated with the DOJ investigation and entered into a Deferred Prosecution Agreement (“DPA”).⁹ “The DPA states that DEC’s remedial measures—including Dannenbaum’s removal from office, the Board’s restructuring, terminating questionable relationships with third parties, educating employees about political contributions, hiring compliance personnel, and ceasing to reimburse political contributions—were important in DOJ’s decision to enter into a DPA.”¹⁰

³ *Id.* at 5.

⁴ *Id.*

⁵ 52 U.S.C. § 30118(a); *cf. Fed. Election Comm’n v. Beaumont*, 539 U.S. 146 (2003) (upholding direct corporate contribution ban to candidate committees).

⁶ 52 U.S.C. § 30122.

⁷ 52 U.S.C. § 30119(a); *cf. Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*) (upholding federal contractor contribution ban).

⁸ First Gen’l Counsel’s Report at 16.

⁹ A Deferred Prosecution Agreement (“DPA”) suspends a prosecution in exchange for ameliorative and retributive acts by the defendant, such as admissions of wrongdoing, compliance with administrative reporting requirements, and paying a fine. If the defendant violates the DPA, the prosecution will be brought, but if it complies in full, the government will dismiss its case with prejudice after the DPA’s term expires. Here, DOJ deferred prosecution for three years.

¹⁰ First Gen’l Counsel’s Report at 7-8.

The DPA requires DEC to correct its tax returns, to file annual compliance reports, and to fully cooperate with other law enforcement and regulatory agencies.¹¹ In addition, it requires DEC to pay a penalty of \$1,600,000. Failure to comply with the DPA's terms, including failure to pay the seven-figure fine, gives DOJ license to prosecute, and at trial, DEC would be bound by its stipulations concerning the criminal conspiracy.¹²

II. LEGAL ANALYSIS

OGC determined “that the criminal process has sufficiently addressed [Mr. Dannenbaum’s] FECA violations,”¹³ and that there was no need for the Commission to civilly enforce against him. We agree.¹⁴

But OGC did not make the same recommendation as to DEC, arguing that the “[t]he DPA does not address DEC’s clear violation of the federal contractor contribution prohibition, nor does DEC specifically acknowledge violating the Act’s corporate contribution violation provision.”¹⁵ This is true, so far as it goes.

But while the DPA does not rely on those statutes when it describes DEC’s illegal activities, it also does not leave out any conduct that could plausibly fall within them. The U.S. Attorney’s failure to list every conceivable part of the Act that DEC’s conduct violated does not mean that the Commission’s interests have not been vindicated. After all, on top of the significant remedial actions that DEC must undertake, the DOJ secured a fine of over a million and a half dollars—more than five times the amount in controversy, and far more than would have been secured using our civil enforcement powers.

It has been the Commission’s longstanding practice to decline to pursue cases where there has already been adequate enforcement by other arms of the federal government.¹⁶ Here, DOJ secured a civil penalty far greater than anything we could have recouped. The interests of the United States have been vindicated.

¹¹ *Id.* at 8.

¹² Attachment A (“Statement of Facts”), *United States v. Dannenbaum Engineering Corp.*, No. 19-795 (S.D. Tex. Nov. 22, 2019).

¹³ First Gen’l Counsel’s Report at 15.

¹⁴ OGC recommended that the Commission dismiss with admonishment as to Mr. Dannenbaum and three identifiable conduits involved in the scheme. The Commission approved this recommendation unanimously.

¹⁵ First Gen’l Counsel’s Report at 12.

¹⁶ *See* Statement of Reasons of Chairman Danny L. McDonald, Vice Chairman David M. Mason, and Comm’rs Karl J. Sandstrom, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold, Pre-MUR 385

Moreover, we addressed this Matter shortly after the Commission's quorum was reconstituted and, as has been widely noted, we face a significant backlog of enforcement cases.¹⁷ In this position, our agency's limited enforcement resources are better directed toward other investigations where the interests of the United States have been entrusted to us alone and where our sister agencies have not already addressed identical conduct.

CONCLUSION

For the foregoing reasons, we voted to dismiss the complaints as a matter of prosecutorial discretion under *Heckler v. Chaney*.¹⁸



Allen Dickerson
Vice Chair

May 18, 2021

Date



Sean J. Cooksey
Commissioner

May 18, 2021

Date



James E. "Trey" Trainor III
Commissioner

May 18, 2021

Date

(Phillip R. Davis) (May 7, 2001) ("Because the violations at issue have been addressed by the Justice Department in a criminal prosecution and a further expenditure of resources is not warranted relative to other matters pending before the Commission, we exercised our prosecutorial discretion by not taking further action").

¹⁷ See Statement of Commissioner Ellen L. Weintraub on the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), *available at* <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf>.

¹⁸ 470 U.S. at 831.