FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
SIG SAUER, Inc., *et al.*	)	MUR 7889
	)	

SUPPLEMENTAL STATEMENT OF REASONS OF COMMISSIONER ALLEN J. DICKERSON

As explained in the controlling statement of reasons dated January 20, 2023, I joined the Commission's unanimous decision to find reason to believe ("RTB") that SIG SAUER, Inc., a federal contractor, made a prohibited contribution to a political committee.[1] I also joined two of my colleagues in rejecting the Office of General Counsel's ("OGC") other recommendations, including its suggestion that the Commission find reason to believe Daniel Defense, Inc., committed the same violation.[2]

I write separately to address three points raised by Commissioner Ellen L. Weintraub in her dissenting statement of reasons dated February 3, 2023.[3]

First, Commissioner Weintraub takes me and two of my colleagues to task for our asserted failure "to enforce the law against another federal contractor gun manufacturer for making an unlawful contribution," referring to the allegation against Daniel Defense.[4] But, in a related matter, the Commission did just that. It found, again unanimously, that Daniel Defense committed the same violation as SIG

[1] Statement of Reasons of Vice Chairman Cooksey and Comm'rs Dickerson and Trainor at 1, MUR 7889 (SIG SAUER, Inc.), Jan. 20, 2023.

[2] *Id.*

[3] Statement of Reasons of Comm'r Weintraub, MUR 7889 (SIG SAUER, Inc.), Feb. 3, 2023.

[4] *Id.* at 1.

SAUER and conciliated that violation on the same terms, including an identical civil penalty.[5]

Commissioner Weintraub concedes that the law was, in fact, vindicated as regards Daniel Defense.[6] But because that concession is buried in a footnote on the last page of her statement, a footnote that was redacted at the time of publication consistent with our statutory confidentiality rules, it could easily be overlooked by any but the most attentive reader. Now that MUR 8011 is concluded, it is important to highlight the Commission's equal treatment of SIG SAUER and Daniel Defense.

Second, my colleague takes issue with the controlling statement's position that OGC acted *ultra vires* when it added Daniel Defense to this MUR based upon its pre-RTB research. She characterizes that legal conclusion as an "uncalled for" impugning of OGC attorneys' "professionalism and ethics."[7]

Respectfully, that is nonsense. Any attorney who has appeared before a court, and any judge whose opinions have been reviewed on appeal, knows full well that whether a particular course of action was "*ultra vires*" or "arbitrary and capricious" or an "abuse of discretion" is a legal conclusion that need not, and generally does not, reflect in any way upon one's personal character. I am confident that the professionals advising us are aware of this basic fact.

Third, Commissioner Weintraub advances various arguments for her view that constructive, rather than actual, knowledge is sufficient for a knowing violation of the federal solicitation rules. Her statement points to no Commission precedent on this point, which involves a complex and contested question that may ultimately require the judgment of the courts.

Instead, her argument is premised, in large part, on a single case: *Intel Corporation Investment Policy Committee v. Sulyma.*[8] That reliance runs into three problems. First, and most fundamentally, her statement purports to defend OGC's legal analysis, but *Intel* was never raised by OGC – or, indeed, anyone else. It is axiomatic that an argument that has not been raised has not been addressed. Second, *Intel* is rather far afield. It says nothing about the knowledge requirement for a defendant under FECA or any other statute; it contemplates the requirements for a plaintiff to establish standing to sue a former employer under the Employee

[5] Cert. at 1, MUR 8011 (Daniel Defense, LLC), Feb. 1, 2023.

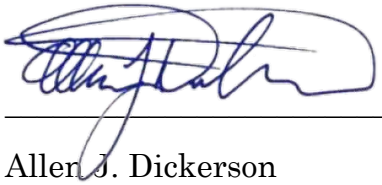
[6] Statement of Reasons of Comm'r Weintraub at 8, n.39, MUR 7889 (SIG SAUER, Inc.), Feb. 3, 2023.

[7] *Id.*

[8] 589 U.S. __; 140 S.Ct. 768 (2020) ("*Intel*").

Retirement Income Security Act, not the government's burden of proof in an enforcement action.[9] And finally, as she acknowledges in several footnotes, while the available judicial authority discussing FECA does not reach the question presented here, it does address the related "knowing and willful" standard.[10] There, actual knowledge must be proven, but may be proved using circumstantial evidence. That is precisely the approach taken by the controlling statement of reasons in this Matter.

Good faith disagreements concerning the complex campaign finance laws we enforce are expected. I respect Commissioner Weintraub's expertise, but her statement in this Matter threatens further confusion. Accordingly, I include these additional thoughts to publicly explain why our votes differed.



March 10, 2023

Allen J. Dickerson
Commissioner

Date

[9] *Id*. at 773.

[10] *E.g.* Statement of Reasons of Comm'r Weintraub at 5-6, n.25, MUR 7889 (SIG SAUER, Inc.), Feb. 3, 2023.