



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Derrick Van Orden)

Van Orden for Congress and Mary Clancy)
in her official capacity as treasurer)

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STATEMENT OF REASONS OF COMMISSIONERS
SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB

The Complaint alleged that Derrick Van Orden and his principal campaign committee, Van Orden for Congress and Mary Clancy in her official capacity as treasurer (the “Committee”) converted contributions to personal use when Van Orden used committee funds, two months after losing the 2020 General Election and three months prior to announcing his 2022 candidacy, to travel to Washington, D.C. at the time of the so-called “Save America Rally” and the subsequent attack on the U.S. Capitol on January 6, 2022.¹ The Committee spent a total of \$4,022.72 on travel expenses for Van Orden, Jared Carter, and Mary Krueger, (possibly former campaign staffers).² In light of the small amount in violation, we voted to exercise prosecutorial discretion and dismiss the matter.³ The fact that the amount of money at issue is quite low, however, does not vitiate the seriousness of the allegations in this matter. This dismissal should not be construed as a finding that travel as a private citizen to attempt to disrupt the lawful transfer of power, whether through active involvement or passive attendance, is a permissible use of campaign funds.

Van Orden had been a candidate for the Third Congressional District of Wisconsin but was defeated in the 2020 general election. In January 2021, Van Orden traveled to Washington, D.C. Following the events of January 6th, Van Orden wrote an editorial, in which he claimed that he had traveled to Washington, D.C. “for meetings and to stand for the integrity of our electoral system as a citizen and at the behest of my neighbors here in Western Wisconsin.”⁴ Van Orden claims that he did not participate in the *march* to the Capitol that followed the “Save America Rally;” instead,

¹ Complaint at 2-3.

² First General Counsel’s Report at 3.

³ Certification ¶1 (July 26, 2022).

⁴ Complaint at 3. (quoting Derrick Van Orden, *We Need Abraham Lincoln Now More Than Ever*, LA CROSSE TRIB. (Jan. 13, 2021), https://lacrossetribune.com/news/local/derrick-van-orden-we-need-abraham-lincoln-now-more-than-ever/article_f29c4153-a584-54df-9d07-b6092ab38d57.html (“Van Orden Op-Ed”).

he “decided *to walk* down the mall to the Capitol and wait for the people to march there.”⁵ (emphasis added). Van Orden emphasized in his editorial and in his Response that he remained “on the periphery of the event.”⁶ At the time of his travels, he was not seeking any political office and he would not file a Statement of Candidacy to run for Wisconsin’s Third Congressional District in the 2022 election until April 8, 2021.⁷

Van Orden contends in his Response that he traveled to Washington, D.C. on January 3rd “for a series of political meetings,”⁸ which took place on January 5th and were with “Members of the U.S. House Republican caucus.”⁹ Van Orden argues that the January 5th meetings were the purpose of his trip, and although he had not filed a statement of candidacy, that the meetings were due to the “ongoing nature” of his campaign, thus justifying the trip. Van Orden’s claims concerning meetings were unsupported by sworn declarations, supporting documentation, or any specific details. However, because the amount in violation was so low, we did not reach the merits of his claims and dismissed the matter.

Nevertheless, and perhaps most troublingly, Respondents contend that even if Van Orden’s sole purpose had been to participate in the “Save America Rally,” the expenditures would have been permissible, and that the rally was “*akin to any other Party event or committee fundraiser for which campaign funds may freely be used.*”¹⁰ There is so much that is wrong with that statement. Putting aside that the use of campaign funds to support the passive attendance at an ordinary rally by individuals who were neither candidates nor officeholders would itself be a questionable use of campaign funds,¹¹ this was no ordinary rally.

Activities to disrupt the certification of a presidential election are in no way akin to a party event or fundraiser. The actions of those who breached the Capitol, assaulted Capitol police, and committed various forms of violence, trespass, and assault were illegal. And as the Act makes clear, a contribution may only be used for a lawful purpose.¹²

The Respondent states that he did not enter the Capitol on January 6th and, given the amount in violation, we voted to dismiss this matter in an exercise of the Commission’s prosecutorial discretion.¹³ The events that followed the rally at issue in this matter, however, raised particularly

⁵ *Id.*

⁶ Resp. at 1-2 (Oct. 5, 2021); *see also* Van Orden Op-Ed.

⁷ Derrick Van Orden, Amended Statement of Candidacy (Apr. 8, 2021).

⁸ It is not clear whether he traveled on January 3rd or whether he purchased a plane ticket on January 3rd *Compare* Resp. at 1-2 *with* Van Orden for Congress, 2021 April Quarterly Report at 5-7 (Apr. 15, 2021).

⁹ Resp. at 1-2.

¹⁰ Resp. at 3 (emphasis added).

¹¹ Prior instances where the Commission has considered attendance at political events have involved not only the examination of whether the events were “inherently political,” like presidential conventions, but also the circumstances unique to the event, such as whether the attendee was a sitting official, and whether participation was directly related to campaign or officeholder duties. Advisory Opinion 1996-20 (Lucas); Advisory Opinion 1995-47 (Underwood). In fact, the Commission has previously distinguished mere attendance at an event from more active forms of participation like speaking at the event or performing other campaign functions. Advisory Opinion 1993-06 at 4-5 (Panetta).

¹² *See* 52 U.S.C. § 30114(a)(6), (b).

¹³ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

serious and troubling concerns. Although it is our hope that the events of January 6th are never to be repeated — and this really should not need to be said — we wish to make clear that funding activities that seek to overturn by violence the results of a lawful election is not a permissible use of campaign funds.

9/1/2022

Date



Shana M. Broussard
Commissioner

9/1/2022

Date



Ellen L. Weintraub
Commissioner