



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Common Good Virginia and Lillie Louise)	MUR 7943
Lucas as treasurer)	
Val Demings for U.S. Senate and Lauren)	
Decot Lee as treasurer)	
Val Demings)	

**STATEMENT OF REASONS OF CHAIR DARA LINDENBAUM, VICE CHAIRMAN
SEAN J. COOKSEY, AND COMMISSIONERS ALLEN J. DICKERSON AND JAMES E.
“TREY” TRAINOR, III**

The Complaint in this matter alleged that the Virginia political committee Common Good Virginia and Lillie Louise Lucas in her official capacity as treasurer (“Common Good”) solicited funds for Val Demings, a candidate for U.S. Senate for Florida in 2022, resulting in Common Good making, and Val Demings for U.S. Senate and Lauren Decot Lee in her official capacity as treasurer (the “Committee”) accepting, prohibited and excessive in-kind contributions.¹ Respondents argued that the solicitations did not constitute in-kind contributions from Common Good to Demings because they did not satisfy the content prong of the Commission’s coordination regulations and that, even if they did, Demings provided valuable consideration to Common Good by way of providing her name and likeness in the email solicitations.²

The Office of General Counsel (“OGC”) recommended that the Commission find no reason to believe that the emails themselves constituted excessive contributions because they were not coordinated communications as defined by Commission regulations.³ However, OGC recommended that the Commission find reason to believe that Common Good made, and the Committee accepted, excessive in-kind contributions in the amount of the use of Common Good’s mailing list.⁴ OGC also recommended that the Commission dismiss as a matter of prosecutorial discretion the allegation that Respondents violated the soft money provisions of the Act by soliciting funds in excess of contribution limits, but in so doing, OGC first determined

¹ Compl. at 2 (Nov. 10, 2021). The Complaint also alleged that the emails solicited soft money in violation of 52 U.S.C. § 30125(e)(1)(A).

² Common Good Resp. at 3-4 (Jan. 3, 2022); Demings and Committee Resp. 2-4 (Jan. 3, 2022). The Responses are nearly identical.

³ First Gen. Counsel’s Rpt. (“FGCR”) at 17-18 (Mar. 8, 2023).

⁴ *Id.* at 22. OGC recommended an investigation to determine the exact amount in violation.

that the solicitations constituted a soft money violation.⁵ We disagreed and voted to find no reason to believe that Respondents violated the Act or Commission regulations.⁶ This Statement explains the reasons for our votes.

Demings was the U.S. Representative for Florida’s 10th Congressional District from 2017-2023 and the Democratic candidate for U.S. Senate for Florida in the 2022 election cycle.⁷ Val Demings for U.S. Senate is her principal campaign committee. Common Good is a political committee registered with the Virginia State Board of Elections and formed by former Virginia governor Terry McAuliffe.⁸

The Complaint attaches three fundraising email solicitations that contain a message from Demings in the body of the email, but were sent by Common Good.⁹ The bottom of each email contains the phrase “Paid for by Common Good Virginia” and links to an ActBlue donation processing webpage that states “Your contributions will be split evenly between Val Demings and Common Good VA.”¹⁰ The ActBlue webpage contains a list of contribution rules, which state in relevant part “Common Good Virginia is only asking for donations of up to \$2,900 per election from individuals and for donations of up to \$5,000 per election from federal political committees. Common Good Virginia is not asking for donations in excess of these amounts.”¹¹ The Responses do not deny these facts; rather, they argue that even if the facts are true, the allegations still fail to allege a violation as a matter of law.¹²

The Federal Election Campaign Act of 1971, as amended (the “Act”), defines the term “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election to Federal office.”¹³ The phrase “anything of value” includes “all in-kind contributions,” defined as the “provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”¹⁴ “The Commission has long recognized that a political committee’s mailing lists are assets that have value and that are frequently sold, rented, or

⁵ *Id.* at 15.

⁶ Certification at 1-2 (June 23, 2023).

⁷ FGCR at 3.

⁸ *Id.*

⁹ Common Good Resp. at 2. One of the three emails attached to the Complaint displays the sender as info@mccauliffeoffice.org, while the sender’s email address is not visible in the other two emails. Compl. Exs. A-C; FGCR at 4.

¹⁰ Compl., Exs. A-D.

¹¹ *Id.*, Ex. D.

¹² Common Good Resp. at 1; Demings and Committee Resp. 1.

¹³ 52 U.S.C. § 30101(8)(A).

¹⁴ 11 C.F.R. § 100.52(d)(1).

exchanged in a market.”¹⁵ The Act and Commission regulations prohibit candidates, individuals holding Federal office, agents of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding Federal office from “solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of th[e] Act.”¹⁶

Although neither the Complaint nor the Responses addressed Common Good’s mailing list,¹⁷ OGC determined that the email solicitations must have been sent using Common Good’s mailing list.¹⁸ Because the Committee did not report any disbursements to Common Good for the use of that list, OGC reasoned that Common Good made, and the Committee accepted, an unreported excessive in-kind contribution and recommended an investigation to determine the amount in violation.¹⁹

Apart from our reservations as to whether Respondents had adequate notice of the mailing list issue,²⁰ we disagreed with OGC’s legal analysis. The emails themselves do not have any value under the Act or Commission regulations.²¹ In discussing the implementation of the 2006 regulations on internet communications, the Commission stated that “there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients, and there is nothing in the record that suggests a payment is normally required to do so.”²² While the Commission has found that a mailing list is a valuable asset, nothing in the record suggests that Common Good transferred its mailing list to the Committee.²³ Instead,

¹⁵ Advisory Op. 2014-06 (Ryan) at 8 (permitting candidate to rent his authorized committee’s mailing list to promote the candidate’s book).

¹⁶ 52 U.S.C § 30125(e)(1).

¹⁷ The Complaint argued that the “value of the fundraising solicitations is an in-kind contribution from Common Good ... to Representative Demings.” Compl. at 2. The Responses note that “The Complaint does not assert that [Common Good] incurred any costs or made any payments in connection with the dissemination of these fundraising emails.” Demings and Committee Resp. at 2; Common Good Resp. at 2.

¹⁸ FGCR at 18-23.

¹⁹ *Id.* at 21-22.

²⁰ In MUR 7347 (Conor Lamb), a matter OGC cites in the FGCR, the Complaint similarly alleged that a federal candidate solicited soft money when a multicandidate committee sent a fundraising email with the federal candidate’s name and likeness, and the Complaint similarly made no mention of mailing lists. *See generally* Compl., MUR 7347 (Conor Lamb); *see also* Factual and Legal Analysis at 3-5, MUR 7347 (Conor Lamb). But in that matter, OGC did not go beyond the Complaint’s allegations to make any recommendations regarding issues relating to the mailing list, as OGC does here. *See generally* FGCR, MUR 7347 (Conor Lamb).

²¹ Internet Communications, 71 Fed. Reg. 18589, 18594-95 (Apr. 12, 2006) (“Internet Communications E&J”); Factual and Legal Analysis (“F&LA”) at 10, MURs 7838, *et al.* (Expensify).

²² Internet Communications E&J at 18594-95.

²³ OGC notes that the Committee made several disbursements for mailing list acquisition and rental to other parties. FGCR at 20 n.84.

Common Good sent the emails and Demings supplied her name and likeness in the messages for those emails.

The distinction between sending an email using a list and the actual transfer of a list is not academic. Since the Committee did not have access to the mailing list, the Committee could not cultivate those contacts for subsequent donations, get-out-the-vote campaigns, solicit their help as volunteers, or ask for their vote at the ballot box, unless one of those contacts donated to the Committee via the ActBlue webpage. Further, assuming *arguendo* that the Committee received a small value from Common Good, the Committee provided Common Good a similarly small value by allowing Common Good to use Demings’s name recognition and reputation in an effort to bolster the effectiveness of the solicitations. Under these circumstances, we do not believe that Demings’s participation in the email solicitation constituted an in-kind contribution from Common Good to the Committee, and even if there was a small value, we would find that Common Good received adequate consideration from the Committee by way of Demings’s participation in the solicitation.

In addition, OGC recommended that the Commission dismiss for prosecutorial discretion the allegation that Respondents violated the soft money provisions of the Act by soliciting funds in excess of contribution limits.²⁴ But, OGC first determined that the solicitations violated the soft money provisions of the Act. The FGCR noted that Common Good’s “October 23, 2021 email requests that recipients contribute ‘whatever amount you can’ accompanied with a request to donate an ‘other’ amount.”²⁵ By focusing on the statements in the email and giving little credit to the contribution rules on the ActBlue webpage, OGC concluded that Respondents solicited funds in excess of the Act’s contribution limits.²⁶

We disagreed and voted to find no reason to believe that Respondents violated the soft money provisions of the Act.²⁷ Donations could only be made through the ActBlue webpage, which explicitly stated that Common Good was “only asking for donations of up to \$2,900 per election from individuals and for donations of up to \$5,000 per election from federal political committees.”²⁸ Although OGC relies on MUR 7347 (Conor Lamb) to support a recommendation to dismiss for prosecutorial discretion, that matter supports a no reason to believe finding. Similar to here, in MUR 7347, a multicandidate committee sent an email with the name and likeness of a federal candidate and solicited non-federal funds by asking for “whatever you can afford.”²⁹ However, contrary to this matter, in MUR 7347, the website did not have a contribution rule concerning the applicable contribution limit. This distinction was critical to the analysis in MUR 7347: “Based on the combination of a solicitation to give ‘whatever you can afford’ and a fill-in blank amount [on the donation page] with no information referencing [the]

²⁴ *Id.* at 15.

²⁵ *Id.* at 13.

²⁶ *Id.* at 15.

²⁷ Certification at 1 (June 22, 2023).

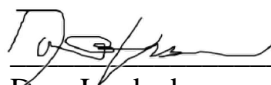
²⁸ Compl. at Ex. D.

²⁹ F&LA at 2, MUR 7347 (Conor Lamb).


\$2,700 contribution limit, Lamb effectively solicited contributions in excess of that limit.”³⁰
Under the reasoning of MUR 7347, Common Good’s contribution rule regarding the applicable contribution limits was sufficient to comply with the Act’s prohibition on soliciting soft money in excess of the Act’s contribution limits.

For these reasons, we voted to find no reason to believe that respondents violated the Act or Commission regulations.


7/27/23
Date


Dara Lindenbaum
Chair

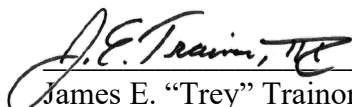
7/27/23
Date


Sean J. Cooksey
Vice Chairman

7/27/23
Date


Allen J. Dickerson
Commissioner

7/27/23
Date


James E. “Trey” Trainor, III
Commissioner

³⁰ *Id.* at 5 (emphasis and brackets supplied).