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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 8044
Taddeo for Congress, *et al.*	)	
	)	

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

The Complaint in this Matter alleged that Annette Taddeo's 2022 U.S. House of Representatives principal campaign committee, Taddeo for Congress and Shelby Green in her official capacity as treasurer (the "Federal Committee"), accepted a prohibited contribution from Taddeo's 2022 gubernatorial campaign, Annette Taddeo for Governor (the "State Committee"),when it used video footage in an advertisement that was previously used by the state committee.[1] The Complaint further alleged that the Federal Committee never reported any disbursement to, nor contributions from, the State Committee on its reports filed with the Commission.[2]

The Office of General Counsel ("OGC") recommended that the Commission find reason-to-believe that Taddeo and the Federal Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by receiving an impermissible transfer of a state committee's asset; that the State Committee violated 11 C.F.R. § 110.3(d) by making an impermissible transfer of an asset to a federal committee; and that Taddeo and the Federal Committee violated 52 U.S.C. § 30104(b) by failing to disclose an in-kind contribution or timely disclose a disbursement.[3] OGC also asked the Commission to "authorize compulsory process to determine the full extent of any potential violations of the Act."[4] However, we concluded that there was insufficient evidence to find

[1] *See* Compl. at 5-6 (Aug. 2, 2022).

[2] *Id*. at 6.

[3] First Gen. Counsel's Rpt. ("FGCR") at 2 (Nov. 17, 2023).

[4] *Id*.

reason-to-believe that a prohibited contribution violation occurred and voted to dismiss all allegations against both committees.[5]

I. BACKGROUND

Annette Taddeo is a former Florida state senator and was a candidate for the Democratic nomination in the 2022 Florida gubernatorial election until she withdrew and entered the race to represent Florida's 27th Congressional District in June 2022.[6] The State Committee was Taddeo's state political committee for her 2022 gubernatorial campaign and the Federal Committee was Taddeo's principal campaign committee for her 2022 U.S. House of Representatives campaign.[7]

In October 2021, the State Committee announced Taddeo's campaign for Florida Governor by releasing an advertisement entitled "Fighting Spirit," which according to Taddeo and the Federal Committee cost the State Committee $34,768.[8] Eight months later, when Taddeo withdrew from the Florida gubernatorial election, the Federal Committee announced Taddeo was running for the U.S. House of Representatives for Florida's 27th Congressional District by releasing a campaign advertisement called "Ready to Flip FL-27."[9]

The first minute and ten seconds of both advertisements are identical and the remaining one minute of "Ready to Flip FL-27" contains other footage and content from "Fighting Spirit."[10] According to AL Media, the vendor responsible for producing both advertisements, the Federal Committee's advertisement used approximately 90 seconds of the video footage created for the State Committee, plus "a few additional clips and sound bites."[11]

Despite using the State Committee's video footage in its own advertisement, the Federal Committee did not report an in-kind contribution from or a disbursement to either the State Committee or AL Media on its first disclosure report filed with the

[5] Certification (Dec. 13, 2023), MUR 8044 (Taddeo for Congress, *et al.*).

[6] FGCR at 2.

[7] *Id.* at 2-3.

[8] *Id.* at 3-4.

[9] *Id.* at 3.

[10] *Id.*

[11] *Id.*

Commission.[12] Similarly, the State Committee did not report any receipts from the Federal Committee during that timeframe.[13] However, nearly two months after the release of its advertisement, the Federal Committee ultimately reported a disbursement of $3,000 to the State Committee for "Video Production Footage" in its 12-Day Pre-Primary Report.[14]

In response to the Complaint in this Matter, Taddeo and the Federal Committee asserted that the Federal Committee "paid fair market value for that footage" because it paid $3,000 to the State Committee "for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used."[15] To support this claim, Taddeo and the Federal Committee included a sworn declaration from the Chief Financial Officer of AL Media who attested that the $3,000 should be considered fair market value for the pro-rated value of the original footage.[16] Taddeo and the Federal Committee argued that this sworn declaration proves that the transfer of the video footage was therefore permissible because the Federal Committee paid the fair market value or usual and normal charge for the use of that asset.[17]

II. APPLICABLE LAW

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."[18] "[A]nything 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."[19] "[U]sual and normal charge" is defined as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution," or the charge

[12] *Id*. at 4.

[13] *Id*.

[14] *Id*.

[15] Annette Taddeo & Taddeo for Congress Resp. at 1-2.

[16] *Id.*, Ex. B (Patrick Kennedy Decl. (Sept. 28, 2022)).

[17] *Id*. at 2-3.

[18] 52 U.S.C. § 30101(8)(A)(i).

[19] 11 C.F.R. § 100.52(d)(1).

for services "at a commercially reasonable rate prevailing at the time the services were rendered."[20] If a committee pays fair market value for a good or service, then the transaction is not considered a contribution;[21] however, "[i]f goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee."[22]

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."[23]

The Commission's regulations explicitly prohibit "[t]ransfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election."[24] The Commission has explained that this prohibition on all transfers from a candidate's state or local committee to the candidate's federal committee is intended to prevent a federal committee's indirect use of nonfederal funds.[25] The transfer of a nonfederal committee's assets to the campaign committee of a candidate for federal office is permissible, however, where the federal committee pays the fair market value or the "usual and normal charge" for the use of such assets.[26]

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[20] *Id.* § 100.52(d)(2).

[21] *See id*. § 100.52(d)(1).

[22] *Id*.

[23] 52 U.S.C § 30125(e)(1)(A).

[24] 11 C.F.R. § 110.3(d).

[25] *See* Explanation and Justification, Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-75 (Jan. 8, 1993), https://www.govinfo.gov/content/pkg/FR-1993-01-08/pdf/FR-1993-01-08.pdf (explaining that the Commission was adopting total prohibition in this circumstance because of the practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer).

[26] Transfer of Funds E&J, 58 Fed. Reg. at 3475 ("[T]he rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value.").

III. LEGAL ANALYSIS

OGC recommended that the Commission find reason-to-believe that Taddeo and the Federal Committee violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by receiving an impermissible transfer of a state committee's asset; that the State Committee violated 11 C.F.R. § 110.3(d) by making an impermissible transfer of an asset to a federal committee; and that Taddeo and the Federal Committee violated 52 U.S.C. § 30104(b) by failing to disclose an in-kind contribution or timely disclose a disbursement for the following reasons:[27]

> The Federal Committee did not pay for the video footage used in 'Ready to Flip FL-27' until nearly two months after it aired the completed ad; when the Federal Committee did pay for the footage, the Federal Committee paid less than a tenth of what the State Committee paid to produce the footage. The Federal Committee valued the footage itself, without obtaining timely input from a third party. The Federal Committee has not provided substantive support for its valuation of the footage, only an unsupported assertion from a media vendor made long after the transfer of the asset. Respondents' assertions that the substantial difference between what the two committees paid is due to the short duration of the footage and the Federal Committee's purchase of a mere license rather than full ownership are belied by the central and dominant nature of the 90-second footage at issue in 'Ready to Flip FL-27' and the fact that contemporaneous documentation reflect the purchase of footage, not a license.[28]

We disagreed with OGC's recommendations and reasoning for several reasons.

First, OGC acknowledges that "the decision of whether to purchase a limited license or full ownership of footage would seem to be essential to determining the valuation of the asset transferred."[29] Respondents "assert[ed] that the Federal Committee purchased only a license to use the footage,"[30] but OGC encouraged us to disregard those statements and instead assume that the Federal Committee underpaid, in part, because it actually purchased full ownership.[31] There is no direct

[27] FGCR at 2.

[28] *Id*. at 17.

[29] *See id*. at 12-17.

[30] *Id*. at 12.

[31] *Id*. at 17.

support for this conclusion, but OGC points to the "absence of the word 'license' from any contemporaneous record preceding the Joint Response," as well as purported discrepancies in the contemporaneous record that "seem[ed] to show an intent to purchase the actual footage."[32] OGC's proposed discrepancies – which were exclusively listed in a footnote to its Report – include the Federal Committee's description of the $3,000 disbursement as being for "Video Production Footage," the State Committee's description of the receipt as being for "Cost for Video Production," and the check's memo line description as being for "Production Costs — Sale to Taddeo for Congress."[33] For us, these shorthand descriptions are consistent with purchase of a license, and so they do not create a conflict with the Response's explicit claim that a license was, in fact, purchased. More importantly, they do not contradict the sworn statement of AL Media's Chief Financial Officer, discussed below, expressly stating that the Federal Committee purchased a license. Accordingly, there is no basis for concluding that the Federal Committee purchased full ownership of video footage, or that it therefore paid less than the fair market value for the use of such footage.

Second, OGC rejects the Federal Committee's *pro rata* valuation of the licensed footage but fails to articulate a basis for determining what amount the Federal Committee *should* have paid. Rather, it simply concluded that because 90 seconds of video footage in "Ready to Flip FL-27" is nearly identical to the video footage in "Fighting Spirit," the fair market value of the video footage used in the Federal Committee's advertisement "should at least be closer to the $34,768 the State Committee paid for its initial production than the $3,000 that the Federal Committee paid for its eventual use or purchasing a license to use the footage."[34] But how much closer? And what concrete effect should the "essential" fact of purchasing a license, rather than the underlying asset, have on that calculation?

By contrast, Respondents submitted a sworn declaration from Patrick Kennedy, AL Media's Chief Financial Officer. As mentioned, Paragraph 4 of the sworn declaration states that the Federal Committee bought "a license to use" original footage and "paid only for the video footage seen in the campaign announcement videos and no other archived footage from the production shoot."[35]

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[32] *Id*. at 14-15.

[33] *Id*. at 15 n.50.

[34] *Id*. at 14.

[35] Joint Resp., Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022)).

Further, Paragraph 5 explains that the license for this "small portion" of the original footage was valued on a "pro-rata" basis, and that the resulting $3,000 was paid "to the gubernatorial campaign, the proper owner of the footage" for the right to use it "in the congressional announcement video."[36]

OGC brushes all this aside, but its assertion that the declaration does not "articulate or otherwise explain the basis for valuation" is, at best, ungenerous.[37] To the contrary, Mr. Kennedy's declaration gives the relevant facts: the Federal Committee bought a license to use a small portion of existing footage, which was valued on a *pro rata* basis. OGC also suggests that the declaration has "limited value" because it does not "articulat[e] what role, if any, [Mr. Kennedy] had in the footage's valuation."[38] But it is not clear why that should matter. Our rules require the payment of market value. There is no requirement that Respondents obtain (and pay for) an independent appraisal.

In any event, even if OGC were prepared to credit Respondents' factual assertions, it disagrees with the basis of valuation. In its view, "the reasoning that the 90 seconds of footage used is only a 'small portion' of the total footage shot and is thus worth only one-tenth of the total production cost carries little weight when those 90 seconds appear to be the only footage to come out of the production that is of any value to either committee."[39]

This is a puzzling statement. The Federal Committee is only required, by law, to pay the market value of the license it obtained. Again, it is not entirely clear what alternative approach to valuation OGC would prefer. But it simply isn't true that the value of a license necessarily bears some fixed relationship to the original cost of producing the material. The costs of producing original "archived footage"[40] is a sunk cost paid by the State Committee – there is no, or trivial, additional cost to licensing already-edited video. From the State Committee's standpoint, it already obtained the value of its footage when it released Taddeo's gubernatorial announcement video. The appearance of a buyer willing to license that content is a windfall.

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[36] Joint Resp., Ex. B ¶ 5 (Patrick Kennedy Decl. (Sept. 28, 2022)).

[37] It is also unrebutted. *See* Statement of Reasons of Chairman Dickerson and Comm'r Trainor at 3, MUR 7535 (Leah for Senate, *et al.*), Mar. 28, 2022 ("'At the [reason-to-believe] stage,' when speculation that is 'not premised on whistleblower testimony or any other sworn statement from someone with direct, personal knowledge' is 'pitched against a contradictory sworn statement from someone with personal knowledge of the matter at hand, we must credit the sworn statement.'").

[38] *Id.* at 11.

[39] *Id.*

[40] Joint Resp., Ex. B ¶ 4 (Patrick Kennedy Decl. (Sept. 28, 2022)).

Moreover, OGC failed to acknowledge that those 90 seconds of footage are *only* likely to be of any value to *these two* committees. In other words, the "market" contains exactly two participants and the license for which the State Committee obtained $3,000 is valueless except to the Federal Committee. Under these circumstances, there is little reason to question the reasonableness of a *pro rata* price, especially as no other concrete approach has been suggested.

Accordingly, we could not agree that there was reason-to-believe the Federal Committee paid less than fair market value for the footage used in its announcement video.

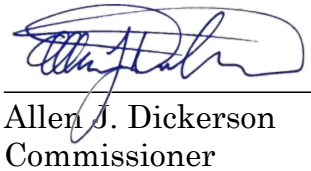
We agreed, however, that there is reason-to-believe the Federal Committee violated 52 U.S.C. § 30104(b) by failing to disclose an in-kind contribution from or timely disclose the disbursement to the State Committee.[41] But having concluded that the Federal Committee's report was accurate, albeit untimely, pursuit of that relatively minor violation did not merit the use of Commission resources. Accordingly, in view of the small amount in violation and the Committee's efforts to correct the public record, we voted to dismiss that allegation in the exercise of prosecutorial discretion.[42]

IV. CONCLUSION

For the foregoing reasons, we voted to dismiss all allegations raised in this matter.

Sean J. Cooksey
Chairman

January 17, 2024
Date

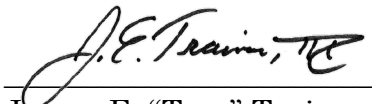


Allen J. Dickerson
Commissioner

January 17, 2024
Date

[41] FGCR at 19.

[42] *Heckler v. Chaney*, 470 U.S. 821 (1985).



January 17, 2024

James E. "Trey" Trainor, III
Commissioner

Date