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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	:	
	:	MUR 8146
ECN Capital Corp., *et al.*	:	
	:	

STATEMENT OF REASONS OF VICE CHAIRMAN JAMES E. "TREY" TRAINOR, III AND COMMISSIONER ALLEN J. DICKERSON

In this Matter, the Office of General Counsel ("OGC") recommended that the Commission dismiss certain allegations concerning purportedly unlawful foreign national contributions. Upon review, the Commission unanimously adopted that recommendation and dismissed the complaint.[1] We did not, however, approve the Factual and Legal Analysis drafted by the Office of General Counsel.

We agree with OGC's analysis except on one point. Because that point is especially important, we write separately to explain our disagreement.

The Federal Election Campaign Act ("FECA" or "Act") bars foreign nationals from making (or even promising to make) political contributions.[2] As applied to corporate entities, a "foreign national" is defined by reference to the term foreign principal" at 22 U.S.C. § 611(b). That definition, in turn, reaches any "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."[3] The statute explains that "a person outside the United States" who "is *not* an individual and *is* organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place

[1] Certification at 2, MUR 8146 (ECN Capital Corp.), Jan. 14, 2025; Statement of Reasons of Comm'rs Broussard, Trainor, Dickerson, and Lindenbaum, MUR 8146 (ECN Capital Corp.), Feb. 14, 2025.

[2] 52 U.S.C. § 30121(a)(1)(A) ("It shall be unlawful for a foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election") (punctuation altered for clarity, internal subsection headings omitted).

[3] 22 U.S.C. § 611(b)(3).

of business within the United States" is not a foreign principal, and thus not a foreign national under FECA.[4] In sum, corporations formed under foreign law are foreign nationals, but corporations formed pursuant to *American* law are U.S. persons.

OGC sought to expand this definition by adding another requirement for lawful corporate contributions, one that is mentioned nowhere in our statute or regulations. Relying principally on prior advisory opinions, it contended that "[a] domestic subsidiary or affiliate of a foreign national corporation is permitted to make contributions or donations (when corporate contributions or donations are otherwise permitted) if the funds are generated solely by their domestic operations…"[5]

This misstates the law in two ways.

First, there is no statutory or regulatory support for this requirement. In the absence of legal authority, OGC instead sought to use prior advisory opinions to create a new rule applicable in the enforcement context. This cannot be done. As has been explained many times, advisory opinions are "shields, not swords."[6] The Act explicitly forbids the creation of new rules of law by means of advisory opinions,[7] and we cannot fill any perceived "gap in our regulatory scheme… using our enforcement process."[8]

Second, the rule is contrary to the plain text of the Act and our regulations for the reasons given by the controlling commissioners in MUR 7491.[9] FECA's reach is cabined in this context to "a partnership, association, corporation, organization, or

---

[4] 22 U.S.C. § 611(b)(2) (emphasis supplied). The Commission's implementing regulation, 11 C.F.R. § 110.20(a)(3)(i-ii), simply states that "[f]oreign national means…[a] foreign principal, as defined in 22 U.S.C. § 611(b); or...[a]n individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence."

[5] FGCR at 13.

[6] Statement of Reasons of Chairman Dickerson and Comm'rs Cooksey and Trainor at 4, MUR 7491 (Am. Ethane Co., LLC), Oct. 27, 2022 ("American Ethane Statement"); *see, e.g.,* Statement of Reasons of Chairman Petersen and Comm'rs Hunter and McGahn, MUR 5625 (Aristotle Int'l, Inc.) at 2 n.3, May 10, 2010 ("Of course, it is well-established that advisory opinions cannot be used as a sword, but instead merely a shield from burdensome Commission enforcement action").

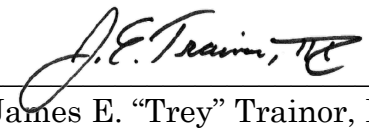
[7] 2 U.S.C. § 30108(b) ("Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of Title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 30111(d) of this title").

[8] Statement of Reasons of Vice Chair Dickerson at 11, MURs 7165/7196 (Jesse Benton), Oct. 12, 2021.

[9] American Ethane Statement at 7-8.

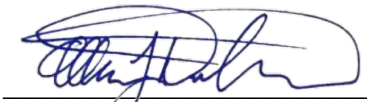
other combination of persons organized under the laws of or having its principal place of business in a foreign country."[10] So long as a domestic corporation is "a going concern and not a mere pass-through entity,"[11] there is no legal requirement that its otherwise-lawful contributions must come from funds "generated solely by [its] domestic operations."[12]

The above clarification aside, we adopt OGC's analysis and support its recommendation in this Matter.



James E. "Trey" Trainor, III
Vice Chairman

April 18, 2025
Date



Allen J. Dickerson
Commissioner

April 18, 2025
Date

[10] 22 U.S.C. § 611(b); 52 U.S.C. § 30121(b)(2); 11 C.F.R. § 110.20(a)(3)(i-ii).

[11] American Ethane Statement at 8 (edited for clarity).

[12] F&LA at 12.