



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

George Soros

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MUR 5642

**Statement of Reasons of
Chairman Robert D. Lenhard
Commissioner Ellen L. Weintraub**

Consider these hypotheticals.

Suppose a Vietnam vet from Kansas took a bus to Washington, DC in 2004 to protest the war. He walked around the Mall chanting: "End the war in Iraq. Defeat George Bush." If his bus ticket, meal, and hotel costs exceeded \$250, was he required to report to the Federal Election Commission (FEC)?

What if 316 people from Hartland, Wisconsin chartered buses to Washington, DC to advocate the defeat of a Federal candidate. Although they slept four to a room, with the hotel cost and bus charter, each spent more than \$250. Did they all violate Federal law if they did not report their expenses to the FEC?

Imagine seventy-two parents of young people serving in the Armed Forces travelled to Fort Bragg to attend a rally in support of the President. They chanted, "Protect our Troops; Re-Elect the President." Sixty-two of them spent more than \$250 getting to the rally. Did they violate Federal law if they failed to report their costs to the FEC?

Say dozens of people from New York City headed to another state to protest the anti-Semitic remarks of a candidate for Senate and to advocate his defeat in the upcoming election. If they spent more than \$250, were they required to notify the FEC of their activities?

Suppose a political science professor authored a book that evaluates U.S. Presidencies – past and present. The professor scored each presidency and, based on that score, determined whether that president should have been re-elected. Based on her scoring system, she concluded that the current president should not be re-elected in

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November. This is the only line regarding a current election in the entire 685 page \$75 book. The professor gave the book away to five colleagues to persuade them of her model. Was she required to file an independent expenditure notice with the FEC?

What if two women from the Los Angeles area go to Sacramento for the day to advocate the defeat of a state assembly member who is running for Congress? One flies coach, the other first class. Must the latter file with the FEC, although the former (having spent less than \$250) does not?

Imagine Elaine flies to Boston for her brother's wedding. While there, she advises her brother to vote for a certain Federal candidate. Since she incurred more than \$250 in travel and hotel expenses and engaged in express advocacy, should she have to file an expenditure notice with the FEC?

A well-known author of books published in numerous languages went on a 12-city speaking tour. At an event hosted by the World Affairs Council, which people paid to attend, he gave away copies of his latest book (which contains exactly four sentences constituting express advocacy) and in the course of his talk, expressed his belief that the President should not be re-elected. Must he report his meal, hotel, and incidental expenses to the FEC?

This last example is real, and a complaint was filed. The author is George Soros, and this scenario came before the FEC in this matter. The Office of General Counsel recommended that the Commission find reason to believe a violation occurred based on express advocacy in his speeches and in his book, which he gave away on the tour. Under this approach, approved by three of our colleagues, the veteran, the 316 people from Hartland, the parents of our troops, the New Yorkers, the professor, the Californians, and Elaine all would have been in violation of Federal law. Whether they were held accountable would be subject to the discretion of any four FEC commissioners.

Each of the above examples would have resulted in violations of the Federal Election Campaign Act if the Commission had passed the motion to find reason to believe that George Soros violated 2 U.S.C. § 434(c) and 11 CFR § 109.10 by failing to report independent expenditures. We voted against that motion, which failed by a vote of 3-3.

A plain reading of the General Counsel's report (GC Report) supported by our colleagues attempted to establish an independent expenditure test as follows:

1. Was any express advocacy statement made?
2. Were any costs facilitating the statement in excess of \$250?

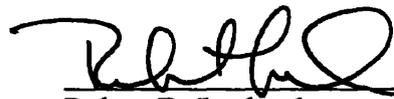
Under this proposed test, if the answers are both yes, there is a reporting obligation and failure to do so is a violation of the Federal Election Campaign Act. But this analysis is too simplistic, as the hypotheticals outlined above show.

As a general matter, individuals should not be able to assume the costs of candidates. See MUR 5020 (Gormley for Senate Primary Election Fund, *et al.*). See also AO 1998-16 (Restoring the American Dream). In the Gormley matter, the Commission determined that no matter how much an individual spent for himself and a friend to fly to a candidate fundraiser, it would not have to be reported because they were not assuming the costs of the committee, even if they advocated the candidate's election at the fundraiser. But, under the logic advanced by our colleagues in the instant matter, if Jane Doe had travelled to the same fundraiser to protest the candidate and call for his defeat, she would have to report her activities. As the Commission held in the Gormley matter, an individual's personal travel and lodging expenses are just that – they are personal, not campaign expenditures, even if the individual expresses political opinions once he or she arrives at the destination. One need not report such expenses to the Government, whether one travels by Greyhound bus or Lear jet.

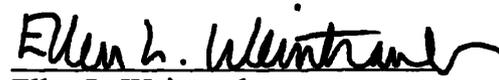
Mr. Soros argued through counsel that the costs associated with the speeches were not independent expenditures because a speech is not a "public communication" within 11 C.F.R. § 100.26. He argued that only public communications need to be reported as independent expenditures. OGC points out that nothing in the definition of "independent expenditure," which predates the concept of public communication, suggests that it is limited to public communications. GC Report at 10. That is correct. Not only was the concept of public communications non-existent, but more importantly, no one seriously contemplated that such a limitation was necessary.

We concur with our colleagues that the framers of the Constitution would find it difficult to believe that a speaker would need to report to the government how much he spent on oats to feed his horse en route to the town square.¹ But we disagree that this is the result required by the law passed by Congress. While our colleagues may frame the issue as one of originalism,² we think the issue is one of *common sense*. Hence, we voted against finding reason to believe that a violation occurred.

12/31/07
Date


Robert D. Lenhard
Chairman

1/2/08
Date


Ellen L. Weintraub
Commissioner

¹See Statement of Commissioners David M. Mason and Hans A. von Spakovsky in MUR 5642 (Soros) at 6.

²See *id.* at 7.

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