



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Rifle Association, *et al.*) MUR 7314
)

STATEMENT OF CHAIR CAROLINE C. HUNTER

Boiled down to its essence, the complaint in this matter claimed that Russian sleeper agents used the National Rifle Association (“NRA”) to help Donald Trump win the 2016 presidential election. Such an explosive claim should only have been made — let alone filed with the federal government — if there were credible evidence to back it up. That is not what happened here. Instead, the complaint capitalized on fears of foreign influence in U.S. elections to conjure inferences of illegal conduct, and relied on statements from anonymous sources in a single article written by reporters whose dependability in this area is in doubt.

I agreed with the recommendation of the Commission’s Office of General Counsel (“OGC”) to dismiss the complaint. But my colleague, Commissioner Weintraub, strongly disagreed; she has argued that the only acceptable Commission response would have been to launch an immediate investigation. Given the law’s protections against partisan prosecutions, her approach is not just wrong, it is dangerous. This statement explains why.

* * *

Concerns about foreign interference in U.S. elections have been with us since our nation’s founding. As John Adams famously wrote to Thomas Jefferson, “You are apprehensive of foreign Interference, Intrigue, Influence. So am I.—But, as often as Elections happen, the danger of foreign Influence recurs.”¹

The Federal Election Campaign Act (the “Act”) prohibits foreign nationals from making contributions and donations in connection with U.S. elections.² I take seriously my responsibility to enforce this prohibition, and I have voted to investigate and punish violations of the foreign national ban when such action was justified by the facts.³ But — and this is an

¹ Letter from John Adams to Thomas Jefferson (Dec. 6, 1787), <https://founders.archives.gov/documents/Jefferson/01-12-02-0405>.

² 52 U.S.C. § 30121; *see also* 11 C.F.R. § 110.20.

³ *See, e.g.*, MUR 7122 (American Pacific International Capital) (conciliating violations of foreign national ban), MUR 6184 (Skyway Concession Company, LLC) (same), MUR 6093 (Transurban) (same).

important “but” — I do *not* believe that Commissioners’ concerns about foreign influence should shut down our ability to think critically, or that mere claims of foreign interference, by themselves, should trigger knee-jerk Commission investigations of Americans’ political activities.

The complaint in this matter did not offer a shred of credible evidence in support of its claim that Russian nationals Alexander Torshin and Maria Butina illegally “funneled” money to the NRA to help Donald Trump win in 2016 and participated in the NRA’s decision-making process.⁴ As OGC stated, “the only piece of information directly alleging that there was a conspiracy to funnel foreign money to the NRA” in the record — a single McClatchy news service article — is “vague,” “does not provide specific information,” and “describes the [alleged funneling] scheme in the broadest possible terms.”⁵ Indeed, the article itself conceded that it “could not be learned” whether the FBI had any evidence of wrongdoing.⁶ The other information in the complaint “does little to corroborate or provide a sufficient factual basis to infer the alleged prohibited [funneling] occurred.”⁷ “[A]t best,” OGC found, “[it] suggests that Torshin and Butina had ‘opportunities’ to violate the foreign national prohibition.”⁸ In sum, OGC concluded that “the Complaint and current record do not provide a sufficient factual basis to infer that the alleged violations occurred.”⁹

In contrast to the unsubstantiated allegation, the NRA’s denials were specific, detailed, and based on facts.¹⁰ They included the results of the NRA’s internal reviews of its financial activities, and sworn affidavits from the NRA’s executive director and treasurer, among others. Given the absence of information supporting the allegation and the detailed information against it, OGC correctly concluded that “there is not an adequate basis to conclude that Respondents

⁴ MUR 7314 (NRA, *et al.*), Complaint; *see also id.*, Supplemental Complaint.

⁵ *Id.*, First Gen. Counsel’s Rpt. at 3, 17 (“FGCR”).

⁶ *Id.* at 11 (citing Peter Stone & Greg Gordon, *FBI Investigating Whether Russian Money Went to NRA to Help Trump*, MCCLATCHY, Jan. 18, 2018). The McClatchy article was written by the same reporters who recently doubled down on the now-discredited story that Donald Trump’s then-attorney, Michael Cohen, met secretly with Russian officials in Prague to help Trump win in 2016. *See* Peter Stone & Greg Gordon, *Sources: Mueller has evidence Cohen was in Prague in 2016, confirming part of dossier*, MCCLATCHY, Apr. 13, 2018; Peter Stone & Greg Gordon, *Cell signal puts Cohen outside Prague around time of purported Russian meeting*, MCCLATCHY, Dec. 27, 2018.

⁷ FGCR at 17.

⁸ *Id.* at 18 (citation omitted).

⁹ *Id.* Although OGC found that “the activities at issue may have resulted in potential violations of statutes outside the Commission’s jurisdiction, the available information does *not* support a finding of reason to believe with respect to the alleged violations of federal campaign finance law.” *Id.* at 3 (emphasis added).

¹⁰ *See* MUR 7314 (NRA, *et al.*) NRA Resp. (March 19, 2018), NRA Resp. (April 13, 2018), NRA Resp. (July 27, 2018).

violated the foreign national prohibition, as alleged,”¹¹ and recommended that the Commission dismiss the complaint.

I agreed with OGC’s recommendation because it was based on the facts, law, and Commission precedent.¹² My colleague, on the other hand, did not. She voted to find reason to believe the Act was violated. When her view did not prevail, she issued a statement blaming Republican Commissioners for “blocking” the Commission from investigating the NRA.¹³

The reasons that my colleague has given for her vote have little, if anything, to do with the evidence or the law. First, she focuses on the nature of the allegation, by itself, as justifying a Commission investigation. She argues that the allegation is “too serious to ignore,” “too serious to take the Respondents’ denials at face value,” “one of the most blockbuster campaign finance allegations in recent memory,” concerns “a matter of . . . national importance,” and potentially implicates “an extraordinarily significant violation of the Act.”¹⁴ Separately, she has reiterated the “blockbuster” nature of the allegation and said that “we should have looked into it *merely because* it was so important and we need to put it to rest one way or the other.”¹⁵

But the Act does not permit this Commission to investigate the political activities of Americans (or American advocacy groups) “merely because” an allegation is important, serious, blockbuster, sensational, going viral, or trending on Twitter. To the contrary, the Commission may open investigations only when there is *reason* to believe a violation occurred — that is, when credible evidence supports the allegation.¹⁶ “[T]he FEC is entitled, and indeed required, to make subjective evaluation of claims.’ . . . [and] is expected to weigh the evidence before it and make credibility determinations in reaching its ultimate decision” on whether to find reason to believe.¹⁷

¹¹ FGCR at 20.

¹² *See id.* at 19 (citing prior MURs).

¹³ *Id.*, Statement of Reasons of Chair Ellen L. Weintraub (“Weintraub SOR”).

¹⁴ *Id.* at 1, 4, 5.

¹⁵ Chicago Tonight, Interview with FEC Chair Ellen Weintraub at 7:31 (Aug. 27, 2019), <https://www.pbs.org/video/full-interview-fec-chair-ellen-weintraub-amh1yx/> (emphasis added).

¹⁶ *See* MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, *et al.*), Statement of Reasons of Commissioner David M. Mason, Commissioner Karl J. Sandstrom, Commissioner Bradley A. Smith, and Commissioner Scott E. Thomas at 3 (“[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.”).

¹⁷ *Buchanan v. FEC*, 112 F. Supp. 2d 58, 72 (D.D.C. 2000) (quoting *Orloski v. FEC*, 795 F.2d 156, 168 (D.C. Cir. 1986)); *see also* *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“mere ‘official curiosity’ will not suffice as the basis for [Commission] investigations”).

Further, launching an investigation “merely because” a particular allegation is a “blockbuster” would encourage increasingly spectacular but unfounded allegations: The more spectacular the claim, the smaller the factual basis would need to be. At the same time, it would negate the Act’s requirement that respondents be given an opportunity to respond to allegations before the Commission finds reason to believe. Under my colleague’s rationale, if a complaint alleges something sufficiently sensational, there’s *nothing* a respondent could say to avoid a reason-to-believe finding and investigation.

Undeterred by the lack of credible record evidence supporting the complaint, my colleague next argues, “[i]f the FBI is investigating a matter that is the subject of an FEC complaint, then that should be considered *prima facie* evidence” of a violation.¹⁸ Because the McClatchy article claimed — based on anonymous sources — that the FBI was investigating whether Torshin had illegally funneled money through the NRA, she asserts that “[t]he complaint’s use of this article alone justified” finding reason to believe.¹⁹ “But had we known for sure whether the FBI was investigating this matter,” she claims, “the Commission’s RTB decision could have been a slam dunk.”²⁰

My colleague’s statements reflect nothing more than wishful thinking on her part. At the risk of stating the obvious, the Commission and the FBI are different agencies, operating under different statutes, policies, precedents, and standards. For example, the Act prohibits the Commission from launching investigations in complaint-generated matters unless: (1) The complaint is in writing, signed, notarized, and sworn by the person filing it under penalty of perjury;²¹ (2) The accused has been notified in writing about the complaint and afforded an opportunity to respond;²² and (3) A bipartisan vote of at least four Commissioners finds reason to believe.²³ I am not aware of any such constraints on the FBI.

¹⁸ Weintraub SOR at 2-3.

¹⁹ *Id.* at 3; *see also id.* at 4 (“I considered McClatchy’s credible and unrefuted reporting that such an [FBI] investigation existed to be enough to find RTB and authorize our own investigation.”).

²⁰ *Id.* at 4.

²¹ 52 U.S.C. § 30109(a)(1); *see also id.* (“[t]he Commission may not conduct any investigation or take any other action under this section solely on the basis of a[n] [anonymous] complaint”).

²² *Id.*

²³ 52 U.S.C. § 30106(c); *FEC v. DSCC*, 454 U.S. 27, 37 (1981) (noting that Commission is “inherently bipartisan” as one reason why “Congress wisely provided that the Commission’s dismissal of a complaint should be reversed only if ‘contrary to law’”); *see also FEC v. NRA Political Victory Fund*, 6 F.3d 821, 825 (D.C. Cir. 1993) (identifying “the sensitive political nature of [the Commission’s] work” as reason why “an equal number of members from each party was contemplated,” and quoting H.R.Rep. No. 917, 94th Cong., 2d Sess. 3 (1976) (“It is therefore essential in this sensitive area [of campaign regulation] that the system of administrative and enforcement enacted into law does not provide room for partisan misuse”)).

The Act’s procedural safeguards for respondents in enforcement matters are solidly rooted in the Commission’s unique mandate. The Commission is “[u]nique among federal administrative agencies, having as its sole purpose the regulation of core constitutionally protected activity — the behavior of individuals and groups only insofar as they act, speak and associate for political purposes.”²⁴ Thus, the Commission cannot predicate an expansive investigative authority on standards that apply to agencies whose sole purpose is not “regulat[ing] activities involving political expression” and whose actions could be guided by ideological or partisan considerations.²⁵ For the Commission to investigate based only on what the FBI is or might be doing — as my colleague has advocated — we would have to abrogate our responsibilities under the Act to make decisions based on the evidence before us. I would encourage my colleague, instead, to follow her own advice in another matter: “(1) Read the statute; (2) read the statute; (3) read the statute!”²⁶

My colleague’s remaining arguments here are even less persuasive. By plugging the words “alexander,” “torshin,” “nra,” “fbi,” and “investigation” into a Google search, she claims to have found that “[t]housands of articles have been written on the FBI’s interest in Torshin’s and Russia’s dealings with the NRA.”²⁷ Assuming for the sake of argument that her claim is correct, she nonetheless fails to identify any articles with evidence of the statutory violations alleged here.²⁸

My colleague also argues that Maria Butina’s 2018 guilty plea to one count of conspiracy to access the NRA and other conservative groups as an unregistered foreign agent “bolsters the credibility” of the complaint’s allegations.²⁹ In this, she is just flat-out wrong. As OGC correctly noted, “[n]either the plea documents nor the criminal complaint mention any potential

²⁴ *Van Hollen v. FEC*, 811 F.3d 486, 499 (D.C. Cir. 2016); *see also McCutcheon v. FEC*, 572 U.S. 185, 191 (2014) (Commission investigations implicate activities that are “basic in our democracy,” involving materials “of a delicate nature represent[ing] the very heart of the organism which the [F]irst [A]mendment was intended to nurture and protect”).

²⁵ *FEC v. Florida for Kennedy Comm.*, 681 F.2d 1281, 1284 (11th Cir. 1982); *see also FEC v. Machinists Non-Partisan Political League*, 655 F.2d at 387 (distinguishing Commission from administrative agencies “vested with broad duties to gather and compile information and to conduct periodic investigations concerning business practices” because “the FEC has no such roving statutory functions”).

²⁶ MUR 7432 (John James for Senate, Inc., *et al.*), Statement of Reasons of Chair Ellen L. Weintraub at 2 (quoting Justice Felix Frankfurter).

²⁷ Weintraub SOR at 3.

²⁸ *Id.* at 3, n.15. This is hardly a scientific exercise. Plugging in the words “Clinton,” “foundation,” “Saudi” “campaign,” and “money,” for example, results in 2.78 million hits. To the extent that my colleague’s Google search found articles touching on the conduct alleged here, a cursory review indicates that they simply relied on the same McClatchy article as the complaint. A single piece of reporting does not become more credible or persuasive merely because it has been picked up and recycled by other media outlets or has gone viral.

²⁹ *Id.* at 3; *see also* Statement of Offense, *U.S. v. Maria Butina*, 18-cr-218 (D.D.C. Dec. 8, 2018).

violations of federal campaign finance law or otherwise refer to a scheme to funnel donations.”³⁰ Nor does the FBI’s affidavit describing its investigation of Butina.³¹ And, although the Special Counsel investigating interference in the 2016 election interviewed Butina, he did not indict her, or Torshin, or anyone at the NRA.³²

Finally, the questionable genesis of the Russian funneling claim is reminiscent of a child’s game of telephone, which only confirms the wisdom of OGC’s dismissal recommendation. In testimony before the House Judiciary Committee, former Associate Deputy Attorney General Bruce Ohr said that he had heard about the claim from Fusion GPS’s co-founder Glenn Simpson, who had heard about it from former NRA attorney Cleta Mitchell, and that Ohr had then passed the information on to the FBI.³³ But Simpson, for his part, did not say *anything* about Russian money being funneled through the NRA in more than 16 hours of congressional testimony, even though Simpson did address the NRA, Butina, and Torshin by

³⁰ FGCR at 11. OGC also concluded that the public criminal filings did not indicate that Butina had participated in the NRA’s decision-making process with respect to its election-related activities. *Id.* at 21.

³¹ Affidavit in Support of an Application for a Criminal Complaint, In the Matter of an Application for Criminal Complaint for Mariia Butina, Also Known as Maria Butina (July 2018), <https://www.justice.gov/usao-dc/pr/russian-national-charged-conspiracy-act-agent-russian-federal-within-united-states>.

³² This is potentially significant because if, as McClatchy has also reported, the Special Counsel’s “main focus” was on the NRA’s funding sources, the fact that his office brought no indictments against these respondents further undermines the complaint’s funneling claim. See Peter Stone and Greg Gordon, *Russia investigators likely got access to NRA’s tax filings, secret donors*, MCCLATCHY (July 2, 2018).

³³ Ohr testified, in part, as follows:

MR. OHR: I think it was Glenn Simpson mentioned to me was that Cleta Mitchell became aware of money moving through the NRA or something like that from Russia. And I don’t remember the exact circumstances. And that she was upset about it, but the election was over. I seem to remember that from my notes.

MR. MEADOWS: So in your conversations with Mr. Simpson did you verify the veracity of that allegation?

MR. OHR: I was just taking the information. I wasn’t — you know, so I don’t remember asking followup questions on that.

MR. MEADOWS: And he said he knew that how?

MR. OHR: I don’t —

MR. MEADOWS: How did he find out about Cleta Mitchell?

MR. OHR: I don’t think he said.

Bruce Ohr, Transcript of Testimony to U.S. House of Representatives Committee on the Judiciary at 128 (Aug. 28, 2018); see also *id.* at 22 (“when I provided [the Fusion GPS information] to the FBI, I tried to be clear that this is source information. I don’t know how reliable it is. You’re going to have to check it out and be aware. These guys were hired by somebody relating to – who’s related to the Clinton campaign, and be aware. . . . I wanted them to be aware of any possible bias”).

name.³⁴ Further, former NRA attorney Cleta Mitchell — whom Ohr had named as the source of Simpson’s funneling claim — has repeatedly and vehemently denied it, including in an affidavit executed under oath and provided to the Commission, and in a letter to the Senate Select Committee on Intelligence.³⁵

* * *

Investigating the political activities of American advocacy groups threatens to chill the free exercise of their First Amendment rights of political speech and association. Thus, the Commission should take such action only when there is a demonstrable factual basis for it. Even my colleague has acknowledged that “facts matter,” and serious allegations of wrongdoing demand evidence.³⁶ Here, OGC determined the facts did not indicate or even suggest activity that is illegal under the Act. I agree.

³⁴ Simpson said “it appears the Russians” had “infiltrated” the NRA, admitted spending “a lot of time investigating” Torshin, and thought Butina was “suspicious.” Glenn Simpson, Transcript of Testimony to U.S. House of Representatives Permanent Select Committee on Intelligence at 142-43 (Nov. 14, 2017).

³⁵ *See, e.g.*, MUR 7314 (NRA, *et al.*), NRA Resp., Ex. A (Affidavit of Cleta Mitchell) (July 27, 2018) (“I told [McClatchy] reporter Peter Stone that this entire reference to Russia and the NRA is a lie . . . I told him it was preposterous. Then [McClatchy] run[s] a story saying the OPPOSITE?”); Letter From Cleta Mitchell to Senate Select Committee on Intelligence (May 8, 2018) (“Whatever stories Glenn Simpson, Dan Jones, and other operatives associated with Fusion GPS, have told your staff about me, they are lying” and describing McClatchy’s reporting as “false”).

³⁶ Letter from Ellen L. Weintraub to President Donald J. Trump (Aug. 16, 2019) (demanding Trump “provide evidence [he] may have . . . to substantiate [his] claims.”); *see also* Letter from Ellen L. Weintraub to President Donald J. Trump (Mar. 22, 2017) (stressing importance of “facts, not unsupported statements”).