



MURs 7165 & 7196 (Jesse Benton)

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probable cause to believe that Benton knowingly and willfully violated the foreign national prohibition.<sup>4</sup>

We supported OGC's recommendations but we did not have the necessary four votes to pursue Benton further, and the matter was closed.<sup>5</sup> While we take due process concerns very seriously (which included delays in locating and contacting Benton and in providing Commission documents), we believe these concerns were sufficiently addressed and did not justify dropping him as a respondent. Benton was clearly the bad actor here.

As with many other cases that were delayed while the Commission lacked a quorum, OGC's initial recommendations languished for over a year because we were unable to take substantive action. Once the quorum was restored in December 2020, however, we proceeded briskly on this and many other important matters, and when the probable cause vote failed, there were still several weeks remaining within the statute of limitations. The Commission is placed in a bad light when it settles with one respondent in an enforcement matter but lets the key individual – whose conduct was at the heart of the allegations – off the hook. In weighing Benton's egregious violation against concerns related to the statute of limitations and delays in the enforcement process, this was an easy call.

Jesse Benton was not just a minor political player caught up in a political scheme orchestrated by others; he was a sophisticated consultant who was well acquainted with campaign finance laws. Between 2008 and 2014, he managed or worked on two of Ron Paul's presidential campaigns, and also on the Senate campaigns of Rand Paul and Mitch McConnell.<sup>6</sup> He was indicted in August 2015 for his involvement in a scheme to buy a key endorsement for Ron Paul on the eve of the 2012 Iowa caucuses, re-indicted in November 2015 after certain charges were dismissed, and then convicted in May of 2016.<sup>7</sup> He received a pardon for these crimes from former President Trump in December 2020.<sup>8</sup> Just last month he was indicted for illegally funneling \$25,000 from an unnamed Russian national to Trump's 2016 campaign in

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<sup>4</sup> OGC's Notice to the Commission Following the Submission of Probable Cause Briefs, Memorandum to the Commission dated Aug. 26, 2021.

<sup>5</sup> Certification, MURs 7165 and 7196 (Great America PAC, *et al.*) (Aug. 31, 2021). We voted to find probable cause to believe that Benton knowingly and willfully violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting a contribution from a foreign national. Commissioners Cooksey and Dickerson dissented and Commissioner Trainor was recused.

<sup>6</sup> Aaron Blake, *The brazen timeline of the GOP consultant accused of funneling Russian money to Trump's 2016 effort*, WASH. POST, Sept. 21, 2021, available at <https://www.washingtonpost.com/politics/2021/09/21/brazen-timeline-gop-consultant-accused-funneling-russian-money-trumps-2016-effort>; Tal Kopan, *Former Ron Paul aide, Trump super PAC chief convicted in campaign finance trial*, CNN (May 5, 2016, 4:01 P.M.), available at <https://www.cnn.com/2016/05/05/politics/jesse-benton-rand-ron-paul-aide-convicted-trump-super-pac/index.html>.

<sup>7</sup>*Id.*

<sup>8</sup> Statement from the Press Secretary Regarding Executive Grants of Clemency, WHITE HOUSE (Dec. 23, 2020), available at <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122320/> (pardoning Benton).

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September 2016.<sup>9</sup> All of these activities occurred *before* Benton solicited the \$2 million contribution at issue here.

To recap, the complaints in this matter based their allegations on an October 24, 2016, article appearing on *The Telegraph UK*'s website, which describes how two reporters posed as consultants for a fictitious foreign national donor.<sup>10</sup> The article included a video showing Benton meeting with the reporters and agreeing to assist them in routing the contribution from their purported foreign national client to GAP through two layers of conduits.<sup>11</sup>

The reporters first contacted GAP co-chair Eric Beach earlier in October 2016, purporting to represent a Chinese national.<sup>12</sup> Beach expressed interest but stated that he needed more information about the donor and had “concerns about his nationality,” and that he would “need to know the origins” of contributions to GAP.<sup>13</sup> Beach also suggested during this initial phone call that the donation could be directed to a 501(c)(4) organization through which the reporters’ foreign national client could make a contribution for a specific purpose. Beach then referred the reporters to Benton.<sup>14</sup> Benton sent an email introduction to the reporters and later met with them in person. At their meeting, which the reporters recorded, Benton offered to transmit the \$2 million contribution to GAP through his company, Titan, and two 501(c)(4) organizations, to conceal its origin.<sup>15</sup> The reporters recorded their discussions with Benton, and clips of those recordings are shown in the *Telegraph* video, which includes the following exchanges between Benton and the reporters:<sup>16</sup>

*Benton*: “I’ll actually probably send, I’ll send money from my company to both.”

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*Undercover reporter*: “So I’m just thinking also about logistics, how this would actually work. That is the 501(c)(4) that the money is going into — yeah?”

*Benton*: “Correct.”

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<sup>9</sup> Press Release, U.S. DEP’T OF JUSTICE, “Political Operatives Indicted for Alleged Scheme Involving Illegal Campaign Contribution to 2016 Presidential Campaign,” Sept. 20, 2021, *available at* <https://www.justice.gov/opa/pr/political-operatives-indicted>.

<sup>10</sup> Compl. ¶¶ 23-28, MUR 7165 (Oct. 27, 2016); Compl. at 5, MUR 7196 (Nov. 10, 2016). Investigative Team, *Exclusive Investigation: Donald Trump Faces Foreign Donor Fundraising Scandal*, THE TELEGRAPH (Oct. 24, 2016, 8:10 PM), <http://www.telegraph.co.uk/news/2016/10/24/exclusive-investigation-donald-trump-faces-foreign-donor-fundrai/> (“Investigative Team Article”). The video is no longer available on the *Telegraph* website, but a copy is available on YouTube. *See supra* fn. 1.

<sup>11</sup> *Id.*

<sup>12</sup> Compl. at 2-3, MUR 7165 (Oct. 27, 2016); Compl. at 2, MUR 7196 (Nov. 10, 2016).

<sup>13</sup> Investigative Team Article; *see* Nicholas Confessore, *Consultant with Ties to Donald Trump Linked to Offer to Hide Source of Donations*, N.Y. TIMES (Oct. 24, 2016), *available at* <https://www.nytimes.com/2016/10/25/us/politics/consultant-with-ties-to-donald-trump-linked-to-offer-to-hide-source-of-donations.html> (“NY Times Article”).

<sup>14</sup> NY Times Article.

<sup>15</sup> MUR 7165 Compl. at 3-4; MUR 7196 Compl. at 3; GC Brief at 3-4.

<sup>16</sup> *Telegraph* video.

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*Undercover reporter:* “Yeah. And that’s through your company, yeah?”

*Jesse Benton:* “That’s correct.”

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*Undercover reporter:* “How much do you think you can pass on to the super PAC because I think that’s what I am going to get asked.”

*Jesse Benton:* “All of it.”

*Undercover reporter:* “All of it?” [Benton nods his head]

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*Undercover reporter:* “Can I report back that it’s getting used for on-the-ground grassroots stuff or it’s getting used for TV, or could be a mixture?”

*Jesse Benton:* “It’s a mixture.”

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*Jesse Benton:* “It will definitely allow us to spend two million more dollars on digital and television advertising for Mr. Trump.”

*Undercover reporter:* “Right, and that’ll be spent by the super PAC?”

*Jesse Benton:* “Yes it will be.”

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*Jesse Benton:* “You shouldn’t put any of this on paper.”

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*Undercover reporter:* “It’s not like he’s asking for anything directly but he just wants to know that he won’t just be treated as ‘A N Other’ — what do you think?”

*Jesse Benton:* “It’ll do that, yeah.”

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*Jesse Benton:* “And we can have that whispered into Mr. Trump’s ear whenever your client feels it’s appropriate.”

Benton’s statements and proposal to funnel the contribution to GAP through two layers of conduits demonstrate that he knew or was aware of sufficient facts to reasonably conclude that the person being solicited to provide funds was a foreign national who could not legally make a contribution to GAP or appear on GAP’s disclosure reports. By proceeding to formulate and recommend a plan for the undercover reporters’ client to make a contribution to GAP, with a clear understanding that the client was represented to be a foreign national, Benton solicited a \$2 million contribution for GAP from someone he knew or reasonably believed to be a foreign national – a clear violation of section 30121(a)(2) of the Act.<sup>17</sup>

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<sup>17</sup> The Act and Commission regulations prohibit any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election. 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Section 30121(a)(2) prohibits any person from soliciting, accepting, or receiving any such contribution or donation from a foreign national. The Commission’s implementing regulation at 11 C.F.R. § 110.20(g) provides a narrowing construction – i.e., “no person shall *knowingly* solicit . . .” – and, as relevant here, “knowingly” is defined to include “actual knowledge” that the target of the solicitation is a foreign national, *see id.* § 110.20(a)(4). Commission regulations also provide that to “solicit” means to “ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” *Id.* § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)). The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence. 52 U.S.C. § 30121(b)(2).

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In conciliating with the Commission, GAP agreed that “[b]y proceeding to recommend a plan for the undercover reporters’ client to make a contribution . . . [after] having been informed that the source of the contribution would be a foreign national, Benton solicited a \$2 million contribution from someone he knew or reasonably believed to be a foreign national.”<sup>18</sup> GAP acknowledged that Benton took measures to conceal the scheme – particularly his advice to the reporters that “[y]ou shouldn’t put any of this on paper.” In settling these matters, GAP agreed not to further contest the Commission’s finding that it violated the Act “*through Benton’s actions* on its behalf . . . by knowingly soliciting a contribution from a foreign national.”<sup>19</sup>

Prior to this case, the Commission had never applied the Act’s foreign national prohibitions to the solicitation of a fictitious foreign contributor. In support of its reason-to-believe findings, the Commission determined – based on the plain meaning of section 30121(a)(2), the legislative history animating the longstanding prohibition on foreign national interference in U.S. elections, the Act’s parallel restriction on soliciting soft money, and the interpretation of federal bribery and anti-corruption statutes – that section 30121 prohibits all “knowing” solicitations of foreign nationals.<sup>20</sup> That remains true whether the person making the solicitation has “actual knowledge” that the person being solicited is a foreign national, or is aware of facts that would lead a reasonable person to conclude that there is a reasonable probability that the person being solicited is a foreign national (including, *e.g.*, because the person making the solicitation is *told* the person being solicited is a foreign national), even if that conclusion is ultimately incorrect.<sup>21</sup>

The Commission missed a valuable opportunity to hold a knowing and willful violator accountable for his actions, to deter efforts to evade the Act’s foreign national prohibition, and to advance the Act’s clear goal of eliminating foreign influence in U.S. elections, including foreign national contributions solicited by domestic actors. In fact, the Commission has observed and relied on the substantial and growing concern regarding foreign influence in the processes of American democratic self-governance in shaping its enforcement priorities,<sup>22</sup> and the Commission has informed Congress that it continues to enforce the foreign national provision and prioritize cases involving allegations of foreign influence.<sup>23</sup> We are disappointed that the

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<sup>18</sup> GAP Agreement at ¶ IV.12

<sup>19</sup> *Id.* ¶ V.1 (emphasis added); GC Brief at 5.

<sup>20</sup> See Commission Factual and Legal Analysis at 4-10, MURs 7165 and 7196 (Jesse Benton).

<sup>21</sup> *Id.*; GC Brief at 8.

<sup>22</sup> See, *e.g.*, Minutes of Open Meeting of Federal Election Commission at 13 (Sept. 16, 2016) (directing this Office to prioritize cases “involving allegations of foreign influence”); Responses to Questions from the Committee on House Administration, Fed. Election Comm’n at 41-42 (May 1, 2019); see also *Explanatory Statement to Consolidated Appropriations Act, 2018*, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018) (“Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels.”); GC Brief at 19.

<sup>23</sup> See Letter to House Committee on Appropriations and Senate Committee on Appropriations, Fed. Election Comm’n at 1, 17-18 (Sept. 18, 2018) (reporting on Commission’s role “in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future” as required by

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Commission invested sufficient resources to procure a preliminary knowing and willful finding against Benton and to achieve a successful conciliation with GAP – on whose behalf Benton solicited the contribution – only to fail to pursue any further enforcement action against him. As frustrating as this is, it in no way vitiates the Commission’s earlier conclusion in approving the GAP conciliation agreement, that both GAP and Benton violated the law.

Benton promised to provide a purported Chinese national access to a future president in return for a \$2 million contribution. Benton’s conduct was dishonorable, unpatriotic, and clearly illegal.

October 7, 2021

Date



Shana M. Broussard

Chair

October 7, 2021

Date



Steven T. Walther

Commissioner

October 7, 2021

Date



Ellen L. Weintraub

Commissioner