



**FEDERAL ELECTION COMMISSION**  
Washington, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Citizens for Waters and David Gould in his official	)	
capacity as treasurer	)	MUR 7522
Maxine Waters	)	
Families & Teachers for Antonio Villaraigosa for	)	
Governor 2018	)	

**STATEMENT OF REASONS OF  
CHAIR SHANA M. BROUSSARD, COMMISSIONER ELLEN L. WEINTRAUB,  
AND COMMISSIONER STEVEN T. WALTHER**

This matter concerns allegations that Families & Teachers for Antonio Villaraigosa for Governor 2018 (“Families & Teachers”), a state independent-expenditure committee, made, and Representative Maxine Waters and Citizens for Waters (“Waters Committee”) accepted, an excessive contribution in the form of a \$25,000 payment for the proportionate cost for Villaraigosa’s name to appear on the Waters Committee’s “slate mailer.” On November 9, 2021, the Commission dismissed the allegations pursuant to *Heckler v. Chaney*.<sup>1</sup> Although we agreed with our colleagues that dismissal was appropriate in this matter, we wish to make it clear that the Act does prohibit a federal candidate and his or her political committee from using non-federal funds to pay for a public communication, such as the mailer in question, that supports or opposed a clearly identified federal candidate.

The Waters Committee is the principal campaign committee of Representative Maxine Waters of the 43rd Congressional District in California. Families & Teachers was a state political committee registered in California that disclosed the receipt of corporate donations and individual donations in excess of the federal contribution limits.<sup>2</sup>

<sup>1</sup> 470 U.S. 821 (1985); Certification, MUR 7522 (Citizens for Waters, *et al.*) (Nov. 9, 2021).

<sup>2</sup> According to the California Secretary of State’s Office, Families & Teachers “terminated” as of September 27, 2018, and it filed its last disclosure report on October 5, 2018. *See* <https://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1404354>. Individuals and corporations in California are subject to the same contribution limits for state candidates, which in 2018, were \$29,200 to gubernatorial candidates,

In connection with the June 5, 2018, primary election in California, the Waters Committee produced and distributed a “mailer” listing federal and nonfederal candidates Waters supported, including Villaraigosa, a candidate for Governor.<sup>3</sup> The Waters Committee reported receiving \$25,000 from Families & Teachers on May 25, 2018, for “slate mailer payment,” which the Waters Committee described in its response as a reimbursement of the mailer costs attributable to Villaraigosa.<sup>4</sup> On December 6, 2018, the Waters Committee disbursed \$13,000 to Families & Teachers as a partial refund.<sup>5</sup>

In the First General Counsel’s Report, the Office of General Counsel (“OGC”) stated that it does not appear “that the Commission has considered whether a state [independent expenditure-only political committee] can pay the cost for a state candidate to appear in a mailer like the [Waters] Committee’s.”<sup>6</sup> In light of that lack of precedent on this issue and the amount involved, OGC recommended that the Commission exercise its prosecutorial discretion and dismiss the matter. While we agree that dismissal was appropriate in this matter, we believe that the Act clearly prohibited the Waters Committee from accepting non-federal funds from Families & Teachers to pay for the mailer.

The Act prohibits a federal candidate or officeholder or an entity established, financed, maintained, or controlled by a federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending 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 the Act.”<sup>7</sup> “Federal election activity” includes “a public communication that refers to a clearly identified candidate for Federal office (regardless

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\$7,300 to other state-wide candidates, and \$4,400 to state legislative candidates. *See* Calif. Gov. Code § 85300 et seq.; <http://www.fppc.ca.gov>.

<sup>3</sup> *See* Compl. at 3 (Oct. 22, 2018); Committee and Maxine Waters Resp. (“Committee Resp.”) at 1 (Dec. 8, 2018); Families and Teachers Resp. at 1 (Dec. 12, 2018). The Complaint and Responses described the mailer as a “slate mailer.” Under the Act, the costs incurred to prepare, display, mail or otherwise distribute printed slate cards, sample ballots, or other printed listings of three or more candidates for public office are exempt from the definitions of “contribution” and “expenditure.” 52 U.S.C. § 30101(8)(B)(v), (9)(B)(iv). As explained in the First General Counsel’s Report, it is unclear whether the term “slate card” applies to the mailer in this matter. First Gen. Counsel’s Rep. at note 3, MUR 7522 (Citizens for Waters, *et al.*). Accordingly, we refer to it as a “mailer” throughout this Statement of Reasons.

<sup>4</sup> *See* Citizens for Waters 2018 July Quarterly Report (July 13, 2018) at 76 (attach. to Compl. at Ex. A); Committee Resp. at 1-2. The Complaint cites a \$1 million contribution to Families and Teachers from Michael Bloomberg shortly before Families & Teachers disbursed \$25,000 to the Committee. Compl. at 3, Ex. D.

<sup>5</sup> *See* Citizens for Waters 2018 Year- End Report (Jan. 15, 2019) at 8. The Committee made this payment to Families & Teachers after the Complaint was filed in this matter.

<sup>6</sup> First Gen. Counsel’s Rep. at 5, MUR 7522.

<sup>7</sup> 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office.”<sup>8</sup>

A mailer that includes both federal and nonfederal candidates and promotes or supports those candidates, such as the mailer produced by the Waters Committee, constitutes federal election activity. As such, Waters, a federal officeholder and the Waters Committee, her principal campaign committee, were prohibited from receiving or spending funds for the mailer, unless the funds were subject to the limitations, prohibitions, and reporting requirements of the Act. Families & Teachers, as a state political committee, had received individual contributions that were above the federal contribution limits and corporate contributions; in addition, the funds were not subject to the reporting requirements of the Act. Thus, the Waters Committee’s receipt of funds from Families & Teachers to pay for a portion of the mailer violated 52 U.S.C. § 30125(e)(1)(A).

The Respondents asserted that Families & Teachers’ reimbursement to the Waters Committee complied with Advisory Opinion 2004-37 (Citizens for Waters). The Respondents’ reliance on that advisory opinion is misplaced because that opinion was specifically limited to reimbursements by federal candidates to appear in the proposed brochure, and thus, the activity identified in the Complaint is not indistinguishable in all material respects from the activity in that advisory opinion.<sup>9</sup> Importantly, for the purposes of analyzing this matter under 52 U.S.C. § 30125(e)(1)(A), federal candidate committees are limited to raising and spending funds subject to the Act’s amount limitations, source prohibitions, and reporting requirements. By contrast, as a California political committee, Families & Teachers could legally accept contributions in excess of the Act’s amount limitations and from sources prohibited under the Act.

However, as OGC noted, it does not appear that the Commission has considered whether a federal candidate or his or her authorized committee may accept nonfederal funds from a state nonconnected committee to pay for the costs of a state candidate to appear in a mailer like the Waters Committee’s. Under these specific circumstances, we voted to exercise prosecutorial discretion and dismiss the allegation that Families & Teachers’ payment of the share of the mailer attributable to Villaraigosa was impermissible.<sup>10</sup>

Further, it appears that Families & Teachers made, and the Waters Committee accepted, an excessive contribution. During the 2018 election cycle, contributions to a candidate or the candidate’s authorized committee were limited to \$2,700 per election.<sup>11</sup> The Act forbids all federal candidates and political committees from knowingly accepting any contributions in

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<sup>8</sup> 52 U.S.C. § 30101(20)(A)(iii).

<sup>9</sup> *See* 52 U.S.C. § 30108(c)(1)(B).

<sup>10</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>11</sup> *See* 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

excess of the statutory limit.<sup>12</sup> When a committee receives an excessive contribution, the committee must, within 60 days of the contribution's receipt, either refund the excessive portion of the contribution or obtain a redesignation or reattribution from the contributor.<sup>13</sup> Even if Families & Teachers' payment of the costs of the mailer attributable to Villaraigosa was not prohibited under 52 U.S.C. § 30125(e)(1)(A), the available information indicates that the attributable cost was only \$12,000. Thus, any portion of the payment in excess of the attributable cost would be a contribution to the Waters Committee.<sup>14</sup>

Although Families & Teachers made the \$25,000 payment to the Waters Committee on May 25, 2018 and the mailer was distributed on June 5, 2018, the Waters Committee did not refund Families & Teachers for the excessive \$13,000 until December 6, 2018, which was beyond the 60-day regulatory timeframe. Accordingly, it appears that the Waters Committee failed to timely refund an excessive and prohibited contribution from Families & Teachers. However, given the somewhat modest amount in violation, we voted to exercise prosecutorial discretion and dismiss the allegation that Families & Teachers made, and Maxine Waters and Citizens for Waters received, an excessive contribution.

December 21, 2021  
Date



Shana M. Broussard  
Chair

December 21, 2021  
Date



Ellen L. Weintraub  
Commissioner

December 21, 2021  
Date



Steven T. Walther  
Commissioner

<sup>12</sup> See 52 U.S.C. § 30116(f).

<sup>13</sup> See 11 C.F.R § 103.3(b)(1).

<sup>14</sup> See Advisory Op. 2004-37 (Citizens for Waters) at 4 (concluding that to the extent that a reimbursement by an authorized committee exceeds the costs attributed to that candidate, such excess reimbursement would constitute a contribution to the recipient committee); see also 11 C.F.R. § 106.1(a) (providing for attribution of expenditures and disbursements on behalf of one or more clearly identified candidates, including nonfederal candidates).