



COMMISSIONER ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

At the time MUR 7889 (SIG SAUER) concluded, certain information was redacted from my Statement of Reasons because a related case was still pending. That matter, MUR 8011 (Daniel Defense), has now closed and been made public. I have therefore updated my Statement of Reasons in this matter, and I attach it hereto.

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the federal-contractor prohibition of the Federal Election Campaign Act (the “Act”), by making a \$100,000 contribution to Gun Owners Action Fund (“GOAF”), a super PAC. SIG SAUER is the fourth-largest manufacturer of firearms in the U.S. and has been paid \$178,913,000 by the U.S. government pursuant to 1,622 contracts for firearms and related products since 1989.⁴ The Commission found reason to believe that SIG SAUER made an unlawful contribution to GOAF.

That contribution came about after Marty and Cindy Daniel, co-owners of a different gun manufacturer, Daniel Defense, sent an email on behalf of GOAF on December 29, 2020 to SIG SAUER and other unknown recipients soliciting contributions to the super PAC.⁵

Ms. Daniel serves as Daniel Defense’s chief operating officer; Mr. Daniel serves as its chief executive officer. The company is a privately held limited liability company located in Georgia. Daniel Defense contracts with the U.S. Department of Defense and U.S. Department of Homeland Security and has been awarded 195 federal contracts as a vendor and subvendor since 2003 with a total value of \$24.7 million.⁶

In addition, Daniel Defense itself made an unlawful \$100,000 contribution to GOAF on January 6, 2021. The Republican commissioners blocked the Commission from moving forward with OGC’s recommendation to pursue this violation in this matter.

The Daniels sent the email solicitation on behalf of GOAF, which registered with the Commission on December 10, 2020 and was founded by Chris Cox, who worked for the National Rifle Association for 25 years and led its lobbying and political efforts until June 2019.⁷ During the 2020 election, GOAF was active in the Georgia Senate runoff elections, reporting \$1,951,302 in independent expenditures supporting and opposing candidates in the two Georgia runoffs. From December 11, 2021 to February 22, 2021, GOAF received a total of nine large contributions, from just six different sources, totaling \$2,212,765.⁸ Of the six contributors, two were the government contractors at issue here: SIG SAUER and Daniel Defense.

⁴ First Gen. Counsel’s Rpt. at 3, MUR 7889 (SIG SAUER, Inc., *et al.*) (Nov. 16, 2021). Among SIG SAUER’s more recent government contracts are a well-publicized \$580 million contract awarded in January 2017 to supply the U.S. Army with a new service pistol and a \$77 million contract awarded in November 2020 to supply the U.S Army with rifle scopes. *Id.*

⁵ SIG SAUER Resp., Attach. A. The email solicitation is written in the first-person plural in reference to the authors and GOAF, indicating that Marty and Cindy Daniel may have been working with or on behalf of GOAF when they sent the solicitation to SIG SAUER. *Id.* (using the pronouns “we,” “us,” and “our” throughout to refer to Marty Daniel, Cindy Daniel, and GOAF).

⁶ First Gen. Counsel’s Rpt. at 3. The email identified GOAF as a “SuperPAC created to support candidates and officials who will protect and promote the 2nd Amendment” and explained that its “mission is to help re-elect Senators David Perdue and Kelley Loeffler in the Georgia Senate Runoffs.” *Id.*

⁷ *Id.*

⁸ *Id.* at 6.

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In addition to the email solicitation the Daniels sent on GOAF's behalf, Daniel Defense stated that GOAF directly solicited Daniel Defense to make a contribution. The Commission did not move forward in this matter on the unlawful solicitation by GOAF or on the unlawful contribution by Daniel Defense.

In the First General Counsel's Report circulated to the Commission, OGC recommended finding reason to believe SIG SAUER made an unlawful contribution to GOAF.⁹ In that report, OGC also noted that it planned to notify Daniel Defense as an additional respondent for making a similar unlawful contribution.¹⁰ Daniel Defense's contribution was not alleged in the Complaint; OGC became aware of the potential federal contractor contribution in the normal course of analyzing the Complaint and the Response.

Following its review of this matter's documents and Commission filings, OGC in its Second General Counsel's Report recommended finding reason to believe Daniel Defense made an unlawful contribution to GOAF and that GOAF knowingly solicited unlawful contributions from federal contractors SIG SAUER and Daniel Defense. Accordingly, OGC recommended that the Commission authorize an investigation.¹¹

I agreed with OGC's recommendations on these violations of the law. The Republican commissioners did not. In their Statement of Reasons, the Republican commissioners first claim, incorrectly, that OGC had no evidence that GOAF knowingly solicited a federal contractor.¹² They then claim, incorrectly, that OGC engaged in an *ultra vires* – that is, unauthorized – investigation of Daniel Defense. That second claim constitutes an unwarranted and unfair impugning of the integrity of the Commission's professional legal staff.¹³

⁹ *Id.* at 8.

¹⁰ *Id.* at 13.

¹¹ Sec. Gen. Counsel's Rpt. at 16, MUR 7889 (SIG SAUER, Inc., *et al.*) (the narrow investigation would "seek to obtain facts to conclusively determine whether or not GOAF, through its principals, employees, or agents, knew that SIG and Daniel Defense were government contractors when it solicited the contributions, were aware of facts that would lead reasonable person to conclude that there was a substantial probability that they were government contractors, or were aware of facts that would lead a reasonable person to inquire whether they were government contractors.").

¹² Republican Statement at 3.

¹³ The Republican commissioners make one additional claim in a footnote in their Statement of Reasons that merits a response. Despite voting to find that SIG SAUER made an unlawful contribution, they note that while "SIG SAUER did not raise any constitutional objection to the statute's enforcement," they "continue to harbor doubts about the constitutionality of the federal-contractor prohibition as applied to IEOPC contributions." Stmt. of Reasons of Vice Chairman Sean J. Cooksey & Comm'rs Allen Dickerson & James E. "Trey" Trainor, III at 2 n.9, MUR 7889 (SIG SAUER, Inc., *et al.*) (Jan. 20, 2023) (*citing* Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 6 (Oct. 13, 2021), MUR 7180 (GEO Corrections Holdings, Inc.)).

This agency sits in the Executive Branch, the branch of government charged with faithful execution of the law. The Legislative Branch has enacted a law that a federal contractor may not make contributions to political committees. 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2. Super PACs are political committees. Thus, since at least 2011, following

ON WHETHER GOAF KNOWINGLY SOLICITED A FEDERAL CONTRACTOR

The Act prohibits federal government contractors from making political contributions and prohibits anyone from knowingly soliciting such a contribution.¹⁴ As my colleagues point out, the adverb – knowingly – is a component of the offense.¹⁵

But this word does not mean what they think it means. Throughout their discussion of the issue, they slip in another word when defining it – “actual”¹⁶ – that is simply not in the statute. This rewriting and constricting of the statute is unaccompanied by any supporting legal authority.

Moreover, it flies in the face of the Supreme Court’s decision in *Intel v. Sulyma* (2020).¹⁷ There are basically two types of knowledge under the law: stuff you do know, and stuff you really *should* know, that is, “actual knowledge” and “constructive knowledge,” respectively. In *Intel*, the Supreme Court gave a pithy explanation of what it means when a statute specifies “actual knowledge” and when it does not. Congress required “actual knowledge” in the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA, no action may be commenced against a fiduciary after “three years after the earliest date on which the plaintiff had *actual knowledge* of the breach or violation.”¹⁸

The *Intel* court defined “actual knowledge” strictly as “[d]irect and clear knowledge, as distinguished from constructive knowledge.”¹⁹ And, the Court held, “The qualifier ‘actual’ creates that distinction.”²⁰ It continued: “The addition of ‘actual’ in [ERISA] signals that the

the U.S. Supreme Court’s decision in *Citizens United v. FEC* and the D.C. Circuit decision in *SpeechNow.org v. FEC*, the Commission has consistently construed the government contractor prohibition to apply to contributions to super PACs. *See, e.g.*, MUR 6403 (Alaskans Standing Together) (Nov. 10, 2011). And the Judicial Branch hasn’t told us otherwise. Unless and until it does, we must apply the law as Congress wrote it.

¹⁴ 52 U.S.C. § 30119(a). (“It shall be unlawful for any person... (2) knowingly to solicit any such contribution [from a federal contractor].”)

¹⁵ *See* Republican Statement at 3.

¹⁶ *See id.* at 3 (“we could find reason to believe only if GOAF acted with *actual* knowledge of SIG SAUER’s contractor status”) (*emphasis added*); at 4 (“Under this standard, it is apparent from the record that OGC lacked any information – beyond speculation and conjecture – that any agent of GOAF had *actual* knowledge of SIG SAUER’s status as a federal contractor. At the outset, GOAF unequivocally denied that it had *actual* knowledge of any contributor’s federal-contractor status” and “Weighed against explicit denials, that is simply insufficient to support reason to believe that these parties solicited SIG SAUER while having *actual* knowledge of SIG SAUER’s federal contract”) (*emphasis added*).

¹⁷ *Intel v. Sulyma*, 140 S.Ct. 768, 772 (2020).

¹⁸ 29 U.S.C. § 1113(2) (*emphasis added*).

¹⁹ *Intel v. Sulyma*, 140 S.Ct. at 776, quoting Black’s Law Dictionary 1043 (11th ed. 2019).

²⁰ *Id.*

plaintiff's knowledge must be more than 'potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal.'"²¹

Here, in this matter, in the relevant section of the Federal Election Campaign Act, the word "actual" does not exist. And according to the Supreme Court, it is the actual use of the word "actual" that creates the limitation to "actual knowledge." Its absence signals that the law encompasses both actual and constructive knowledge.

OGC, in analyzing GOAF's knowledge of Daniel Defense's federal-contractor status, used a perfectly reasonable definition of "knowing" found in federal campaign-finance law that is fully in accordance with the Supreme Court's *Intel* decision. The definition is found in the regulation that prohibits any person from knowingly soliciting, accepting, or receiving a contribution or donation from a foreign national.²² As defined there, the term "knowingly" means a person must:

- (i) *Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national;*
- (ii) *Be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or*
- (iii) *Be aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.*²³

As it happens, Congress *did* write a qualifier multiple times into the Act when it wanted to require an enhanced knowledge threshold: the "knowing and willful" standard.²⁴ "Knowing and willful" violations of the Act – that is, the Respondent "acted voluntarily and was aware that his conduct was unlawful"²⁵ – subject violators to criminal penalties and increased civil penalties.

²¹ *Id.* And even when a statute *does* require actual knowledge, the *Intel* court held, "actual knowledge can be proved through 'inference from circumstantial evidence.'" 140 S.Ct. at 779, *citing Farmer v. Brennan*, 511 U.S. 825, 842, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

²² 11 C.F.R. § 110.20(g).

²³ 11 C.F.R. § 110.20(a).

²⁴ *See* 52 U.S.C. § 30109(a)(5)(B); § 30109(a)(5)(C); § 30109(a)(11); § 30109(a)(12)(B); § 30109(d)(1)(A); § 30109(d)(1)(B); § 30109(d)(1)(C); § 30109(d)(1)(D); § 30124(a)(2); § 30124(b)(2).

²⁵ This standard does not require knowledge of the specific statute or regulation that the respondent allegedly violated; it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful." *U.S. v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013), *quoting Bryan v. U.S.*, 524 U.S. 184, 195 (1998) (holding that the government needs to show only that the defendant acted with knowledge that conduct was unlawful, not knowledge of the specific statutory provision violated, to establish a willful violation). And even then,

There's good reason for Congress to have drawn these distinctions in the Act. A "knowing" standard that did not take into account what a person reasonably should have known could be defeated simply by a respondent denying to the Commission that they know something, regardless of how unreasonable or unlikely that purported lack of knowledge might be. Indeed, we see this playing out in this very matter, where the Republican commissioners ignored substantial evidence suggesting that GOAF may well have known that Daniel Defense was a federal contractor²⁶ and instead accepted its "explicit denials" – that is, an asserted denial from GOAF's counsel, unsupported by personal knowledge, affidavits, or any other evidence – as dispositive.²⁷ In the face of contrary, albeit circumstantial, evidence, an unsworn denial should not foreclose a targeted investigation.²⁸

ON WHETHER OGC'S ACTIONS WERE AUTHORIZED

The Act authorizes the Commission to find "reason to believe that a person has committed . . . a violation" of the Act "on the basis of information ascertained in the *normal course of carrying out its supervisory responsibilities*."²⁹ OGC informed the Commission in the First General Counsel's Report that the allegations against Daniel Defense arose "in the normal course of analyzing the Complaint."³⁰

such awareness may be shown through circumstantial evidence from which the respondent's unlawful intent may be reasonably inferred, including, for example, an "elaborate scheme for disguising" unlawful acts. *Cf. U.S. v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990), *quoting U.S. v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001; *id.* at 214-15. "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214, *quoting Ingram v. U.S.*, 360 U.S. 672, 679 (1959).

²⁶ See First Gen. Counsel's Rpt. at 9-13; Second Gen. Counsel's Rpt. at 12-18, MURs 7889 and 8011 (Gun Owners Action Fund, *et al.*) (Nov. 28, 2022). While actual knowledge is not the statutory standard, under either an actual or constructive knowledge standard, there was sufficient information before the Commission to support a reason to believe finding. The Commission's standard for a reason to believe finding in an enforcement matter is when "a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope." Federal Election Commission, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007).

²⁷ Republican Statement at 4.

²⁸ For an example of why the Commission should not always take even sworn declarations as dispositive, see First Gen. Counsel's Rpt., MUR 6718 (Ensign) (Jan. 18, 2013), *found at* <https://www.fec.gov/files/legal/murs/6718/13044332371.pdf>.

²⁹ 52 U.S.C. § 30109(a)(2) (*emphasis added*); see Guidebook for Complainants and Respondents on the FEC Enforcement Process, May 2012, *found at* http://www.fec.gov/em/respondent_guide.pdf; see also Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007). See also Stmt. of Reasons of Chair Ellen L. Weintraub & Comm'rs Cynthia L. Bauerly & Steven T. Walther at 1, MUR 6623 (Bennett).

³⁰ First Gen. Counsel's Rpt. at 13.

The Republican commissioners take issue with what OGC considers to be “the normal course”: “OGC did not limit itself to the allegations and the facts presented and instead, while preparing its First General Counsel’s Report, broadened the matter’s scope beyond the Complaint.”³¹ They put a dark spin on our lawyers’ perfectly reasonable due diligence: “OGC made the unilateral decision to engage in an investigation of GOAF’s other contributors, to check their federal-contractor status, and to name one as an additional Respondent in the matter. All of this was done without Commission authorization and outside of established Commission procedures.”³² The “established Commission procedures” upon which Republican commissioners base their accusations are found in Section II(C) of Commission Directive 6: “No non-routine reviews of reports or other documents shall be conducted by Commission staff members without specific prior approval of the Commission.”³³

This broadside omits key facts and context. There is no reasonable way to characterize OGC’s efforts as a “unilateral decision to engage in an investigation.” In the course of preparing its recommendations to the Commission, OGC routinely takes into account information received from Respondents and reviews publicly available information, particularly information that the Act requires the Commission to collect and make public.³⁴ The Response to the Complaint brought the Daniels to OGC’s attention by attaching their email that solicited the illegal contribution from SIG SAUER. It is unremarkable that OGC checked publicly available sources to find out who the Daniels were; it would have been a glaring omission from the First General Counsel’s Report had OGC *not* bothered to find out who they were.³⁵ Any reasonable attorney would have checked whether a firm with “Defense” in its name was, in fact, a federal defense contractor; Daniel Defense’s website confirms that indeed it is.³⁶ Daniel Defense in its response *itself* argued that GOAF should have known Daniel Defense was a government contractor, a fact that “can readily be ascertained through an elementary Google search” and “should be obvious from its very name.”³⁷ Finally, Daniel Defense’s contribution to GOAF is disclosed in *the Commission’s publicly available databases*. The activities undertaken by OGC in analyzing this matter were routine and consistent with established Commission practices for ensuring that when the Commission votes, it is on an informed basis.

³¹ Republican Statement at 2.

³² *Id.* at 5.

³³ See FEC Directive 6, Handling of Internally Generated Matters (April 21, 1978), *found at* https://www.fec.gov/resources/cms-content/documents/directive_06.pdf.

³⁴ See OGC Enforcement Manual (June 2013) at 10-11, *found at* https://www.fec.gov/resources/about-fec/commissioners/weintraub/ogc_docs/generalcounsel%27smemorandumdatedjune262013.pdf.

³⁵ First Gen. Counsel’s Rpt. at 4, n. 7; *see also* <https://www.linkedin.com/in/cindy-daniel-07439027/>.

³⁶ See *Daniel DNA*, <https://danieldefense.com/daniel-dna> (“But we also support the military and law enforcement communities that protect our freedoms with top-tier firearms and accessories designed to get the job done and them home safe.”)

³⁷ Daniel Defense Response at 1-2.

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Moreover, it simply is not standard practice for the Commission to “authorize” OGC to determine who the respondents in a matter are. OGC reads the Complaint, reads the Response, researches the facts and law relevant to the matter, and writes its report to the Commission. All along, OGC looks at what it knows to determine who the relevant Respondents are. This is “established Commission procedure.”³⁸

The Republican commissioners characterize OGC’s actions as *ultra vires*,³⁹ Latin for “beyond one’s legal power or authority”. Government attorneys, in particular the attorneys I have been privileged to serve with at the FEC, are acutely aware of the power governments wield; staying within their authority is a cornerstone of their role. An accusation of *ultra vires* action calls into question lawyers’ professionalism and ethics. And it is absolutely uncalled for here. OGC acted appropriately and professionally at each step of the way in this matter, and consistently with established Commission practice. I dissent in the strongest terms from any claim to the contrary.⁴⁰

Ultimately, while the Commission’s conciliation with SIG SAUER was appropriate based on the record and addresses the unlawful contribution, I agreed with OGC that we should have done more. I voted to find reason to believe Daniel Defense and GOAF violated the law and to authorize a narrow investigation.⁴¹ The facts and the law demanded that we pursue OGC’s recommendations in this matter, and the Commission should have done so.

March 10, 2023

Ellen L. Weintraub
 Commissioner

³⁸ In arguing that OGC’s actions were improper here, the Republican commissioners mischaracterize *Nader v. FEC*, 823 F. Supp. 2d 53, 67 (D.D.C. 2011) when they write that “Federal courts have observed that the Commission does not have legal authority to name whomever it likes as a respondent to a complaint—the statute does not provide that discretion.” Republican Statement at 6. The *Nader* court put a *floor*, not a *ceiling*, on the Commission’s discretion to name Respondents – *every* Respondent named in a complaint *must* be notified, *no* exceptions. But the court did not bar the Commission from adding Respondents as appropriate in the course of working a matter.

³⁹ *Id.* at 1, 3, 5, 7.

⁴⁰ Ironically, no one – not the respondents, and not even my colleagues – contests that Daniel Defense is a government contractor and made an illegal contribution. On *the very same day* they voted to block enforcement of OGC’s recommendations regarding Daniel Defense in this MUR, MUR 7889, the Republican commissioners voted with the rest of the Commission in MUR 8011 to find reason to believe that Daniel Defense did indeed make a prohibited government contractor contribution. And while it is gratifying that the Commission was finally able to address that violation, that result was not foreordained. Had the Commission not received a separate complaint, this obvious violation that was squarely in front of the Commission in this matter would have gone unredressed. Nothing in the Act requires us to put blinders on when making enforcement decisions.

⁴¹ Certification, MUR 7889 (SIG SAUER, Inc., *et al.*) (Dec. 19, 2022).