



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Protect Ohio Values PAC, *et al.*) MUR 8009
)

STATEMENT OF REASONS OF VICE CHAIR ELLEN L. WEINTRAUB

The complaint in this matter alleged that a super PAC called Protect Ohio Values PAC (“POV PAC”) illegally coordinated with J.D. Vance for Senate, Inc. (“Vance for Senate”) through an obscure but technically public blog stashed in a little-noticed corner of the internet.¹ In its response to the allegations, POV PAC denied that it coordinated with the Vance campaign through the blog but also included documents describing a different scheme to provide in-kind contributions to the campaign through the use of a common vendor.² The Commission voted to dismiss all allegations. I dissented.³

When a respondent provides the Commission with evidence of its plans to coordinate, we ought to at least inquire whether they followed through on those plans.

The factual basis for the in-kind contribution scheme is straightforward and laid out explicitly in information provided to the Commission.⁴ In its response to the complaint, POV PAC attached a memorandum to “interested parties” in which POV PAC described its hiring of pollster Tony Fabrizio to conduct extensive polling about J.D. Vance and the Ohio Senate race as well as its hiring of “data science company DeepRoot to build a series of models and segments” using the information gleaned from the polling.⁵ According to POV PAC:

The [Vance] campaign is also hiring DeepRoot to provide data services. The campaign will therefore be able to access the modeled universes POV [PAC] has created, and POV [PAC] will be able to access voter contact data uploaded into the database by the campaign. This arrangement allows POV [PAC] to bring presidential level targeting sophistication to JD’s

¹ Compl. ¶ 1, MUR 8009 (Protect Ohio Values PAC, *et al.*).

² POV PAC Resp. (“Resp.”) at 6-8, MUR 8009 (Protect Ohio Values PAC, *et al.*).

³ Certification, MUR 8009 (Protect Ohio Values PAC, *et al.*).

⁴ Resp., Ex. C at 4-5.

⁵ *Id.*

campaign without expecting the campaign to shoulder the cost of audience construction.⁶

Paying for services provided to a campaign is a classic in-kind contribution.⁷ The Office of General Counsel (“OGC”) acknowledges as much in its report: “the described arrangement reflects conduct that would constitute the provision of in-kind contributions by POV PAC to the Vance Committee[.]”⁸

The record before the Commission clearly establishes that POV PAC hired DeepRoot and that POV PAC understood that Vance for Senate had also hired DeepRoot.⁹ According to a *Politico* article attached to POV PAC’s response, when POV PAC’s executive director was trying to track down who had accessed the PAC’s *Medium* account, “he reached out to his data team, Deep Root Analytics, for assistance in the search.”¹⁰ Moreover, POV PAC produced materials in its response that sport the Deep Root logo.¹¹ Neither POV PAC nor Vance for Senate reported disbursements to a vendor called “Deep Root,” but they both reported disbursements to Fabrizio, Lee, and Associates LLC — the entity POV PAC hired in connection with the polling about J.D. Vance.¹² According to POV PAC, DeepRoot was analyzing the polling data from Fabrizio.¹³ Deep Root may have been a subvendor of Fabrizio’s firm.¹⁴

⁶ *Id.*

⁷ See 11 C.F.R. § 100.52(d)(1) (defining in-kind contributions); 52 U.S.C. § 30116(a)(1)(A), (f) and 11 C.F.R. §§ 110.1(b)(1), 110.9 (prohibiting any person from making, and any candidate or committee from accepting, an in-kind contribution in excess of \$2,900 for the 2022 election cycle).

⁸ First Gen. Counsel’s Rpt. at 16-17, MUR 8009 (Protect Ohio Values, *et al.*). Rather than recommend an investigation, the report speculates: “Given that the scheme described . . . appears to reflect circumstances that would result in a violation of the Act, POV PAC, the Vance Committee, or both may have been advised not to engage in the proposed conduct.” *Id.* at 17. We have no evidence of any such advice. A targeted investigation could have either confirmed or disproved this assumption and determined whether any violation may have occurred.

⁹ Resp., Ex. C at 4-5.

¹⁰ Alex Isenstadt, *A Mole Hunt, a Secret Website and Peter Thiel’s Big Risk: How J.D. Vance Won His Primary*, POLITICO (May 3, 2022, 11:08 PM), <https://www.politico.com/news/2022/05/03/jd-vance-win-ohio-primary-00029881>.

¹¹ Compare Resp., Ex. C at 7-9 with Deep Root, <https://www.deeprootanalytics.com/> (last visited May 20, 2024).

¹² POV PAC disclosed \$909,450 in disbursements to Fabrizio, Lee, & Associates LLC, consisting of \$484,950 for “polling” and \$424,500 for “research/focus groups” and “research/polling.” Vance’s principal campaign committee also disbursed \$204,450 to Fabrizio, Lee, & Associates LLC for “research.” *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00770495&committee_id=C00783142&recipient_name=Fabrizio&two_year_transaction_period=2022 (last visited May 20, 2024) (reflecting all disbursements by POV PAC Vance for Senate Inc. to “Fabrizio” during the 2022 election cycle). The fact that POV PAC’s payments predated the candidate committee’s payments is in no way inconsistent with the proposed plan to have POV PAC pay for the work that would subsequently be provided to the campaign.

¹³ Resp., Ex. C at 4-5.

¹⁴ It would certainly not be the first time the Commission has seen payments to sub-vendors masked by routing them through other vendors. See, e.g., Statement of Reasons (“SOR”), Comm’rs Broussard and Weintraub, MUR 7784 (Make America Great Again PAC, *et al.*) (June 15, 2022).

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POV PAC's principal response is that an in-kind contribution cannot be based on information provided on a publicly available website. While POV's *Medium* account was technically publicly available, it only had 13 followers and its Twitter (now X) account had zero. Yet POV PAC claims that it used these accounts to reach its donors and supporters because using a private email list would have been "insufficient to reach the audience POV needed to reach."¹⁵

The Commission was presented with reliable information of a PAC's plans to provide an array of services to a Senate campaign at no cost to that campaign. Despite the posting of some information online, the information in the response warranted further inquiry.¹⁶ Figuring out whether the admitted plans to provide services directly to the campaign through a common vendor ever came to fruition could have been accomplished through a targeted investigation well within the ability and capacity of OGC.¹⁷ The Commission should have authorized that investigation, and I voted to do so.

Campaigns and unlimited outside spending groups have grown increasingly bold in using online venues to communicate valuable information in ways that allow the PACs to support the campaigns, making a mockery of contribution limits.¹⁸ Regulations crafted in an earlier era of the internet, before the advent of super PACs, have totally failed to keep up.

May 23, 2024

Date

Ellen L. Weintraub
 Vice Chair

¹⁵ Resp., Ex. H ¶ 3. In fact, the PAC was overwhelmingly funded by a single, \$15 million donor. *FEC Receipts: Filtered Results*, FEC.gov, <https://www.fec.gov/data/committee/C00770495/?cycle=2022&tab=raising#total-receipts> (last visited May 21, 2024) (all receipts by POV PAC during 2021-22 cycle).

¹⁶ Statement of Policy Regarding Commission Action in Matters at the Initial State in the Enforcement Process, 89 Fed. Reg. 19729, 19730 (Mar. 20, 2024) ("The Commission will find 'reason to believe' in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation.").

¹⁷ OGC is currently conducting a total of three investigations.

¹⁸ See SOR, Comm'r Weintraub at 4-5, MUR 7646 (1820 PAC, *et al.*); SOR, Comm'r Weintraub, MUR 6908 (NRCC, *et al.*).