FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Taddeo for Congress, *et al.*	)	MUR 8044
	)	

STATEMENT OF REASONS OF COMMISSIONER SHANA M. BROUSSARD AND VICE CHAIR ELLEN L. WEINTRAUB

Annettee Taddeo's federal committee announced her congressional campaign by airing a significant portion of the same video footage that her state committee had paid to produce and air to announce her gubernatorial campaign less than eight months earlier. The Complaint in this matter alleged that the federal committee, without paying fair market value, used 90 seconds of video footage from the 121-second gubernatorial campaign ad that the candidate's state committee paid $34,768 to shoot and produce. The Commission failed to approve the Office of General Counsel's ("OGC") recommendations to find reason to believe that the federal committee received, and the state committee made, an impermissible transfer of state committee assets.[1] The Commission also voted against approving OGC's recommendation to find reason to believe that the federal committee failed to report the in-kind contribution or timely disclose a disbursement.[2] We voted to approve OGC's recommendations.[3]

The candidate, Annette Taddeo, previously served in the Florida state senate and ran for the Democratic nomination in the 2022 Florida gubernatorial election from October 2021 until June 6, 2022 when she withdrew to enter the race for Florida's 27th Congressional District to the U.S. House of Representatives.[4] The state committee released the original ad, "Fighting Spirit," on October 20, 2021 to announce Taddeo's candidacy for governor.[5] On June 6, 2022, Taddeo withdrew from the gubernatorial race and announced her Congressional candidacy with the ad, "Ready to Flip FL-27."[6]

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[1] *See* Certification ¶ 1.a-b (Dec. 12, 2023), MUR 8044 (Taddeo for Congress, *et al.*) (failing to find reason to believe that Taddeo for Congress and Shelby Green in her official capacity as treasurer and Annette Taddeo received, and Annette Taddeo for Governor made, an impermissible transfer of a state committee's asset in violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d)).

[2] *See id.* ¶ 1.c (failing to find reason to believe that Taddeo for Congress and Shelby Green in her official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to disclose an in- kind contribution or timely disclose a disbursement).

[3] *See id.* ¶ 1.

[4] *See* First Gen. Counsel's Rpt. ("FGCR") at 2-3 (Nov. 17, 2023).

[5] *See id.* at 2.

[6] *See id.*

The first 70 seconds of "Ready to Flip" mirrored the state committee's ad, "Fighting Spirit," and used an additional 20 seconds of other footage and content from the original ad.[7]

The state committee paid media vendor, AL Media, to shoot and produce the ad for the governor's race.[8] The federal committee acknowledged use of the video footage from that ad.[9] However, the federal committee neither reported an in-kind contribution from, nor a disbursement to, the state committee or AL Media until August 12, 2022, over two months after airing "Ready to Flip," and coincidentally on the same date the Complaint was filed with the Commission.[10] Eventually, the federal committee disclosed a $3,000 disbursement to the state committee for "Video Production Footage."[11] Despite acknowledging that it used video footage from the state committee's advertisement, the federal committee asserted that the amount represented fair market value "'for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used.'"[12]

Under the Act, a "contribution" is "any gift, subscription, loan, advance, or deposit of money or *anything of value* made by any person for the purpose of influencing any election for Federal office."[13] (Emphasis added.) The regulations state that "anything of value" includes "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge,"[14] and defines "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution,"[15] or the charge for services "at a commercially reasonable rate prevailing at the time the services were rendered."[16]

Further, 52 U.S.C. § 30125(e)(1)(A) states that a candidate, officeholder, their agent, or "an entity directly or indirectly established, financed, maintained or controlled" by a candidate or officeholder shall not "solicit, receive, direct, transfer, or spend funds" for any Federal election activity "unless the funds are subject to the limitations, prohibitions, and reporting requirements" of the Act.[17] Finally, Commission regulations prohibit a candidate's nonfederal committee from transferring funds or assets to the candidate's principal campaign committee or other authorized federal committee absent payment of fair market value.[18]

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[7] *See id.*

[8] *See id.* at 4.

[9] *See id.* at 5 (citing Joint Resp. at 1).

[10] *See id.* at 4.

[11] *See id.* (citing Taddeo for Congress, Amended Pre-Primary Report at 101 (Aug. 12, 2022)).

[12] *See id.* at 5 (citing Joint Resp. at 1-2).

[13] 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C. § 30118(b)(2) (stating that a contribution includes "any direct or indirect payment, . . . gift of money, or any services, or anything of value").

[14] 11 C.F.R. § 100.52(d)(1).

[15] *Id.* § 100.52(d)(2).

[16] *Id.*

[17] *See also* 11 C.F.R. § 300.61.

[18] *See* 11 C.F.R. § 110.3(d); *see also* Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) (exempting transfers made in exchange for fair market value).

At issue is whether the federal committee's disclosed payment of $3,000 for the use of 90 seconds of the state committee's 121-second advertisement, for which the state committee paid $34,768, represents a payment of fair market value. The Commission has previously found reason to believe where questions remained about the pro rata calculation of the fair market value for a federal committee's use of state committee assets.[19] Most recently, in MURs 7628 and 7636 (WeBuildTheWall, Inc.), the Commission determined that WeBuildTheWall, Inc. ("WBTW"), a 501(c)(4) organization, made a prohibited in-kind contribution when it rented its email list to an authorized committee under a rental agreement for $2,000.[20] Subsequently, the list was used to send 295,000 emails using the WBTW logo and in support of federal candidate, who previously held state office and was WBTW's general counsel at the time he ran for Senate.[21]

WBTW maintained, without support, that the market rate for its email list was 1/10 of a cent per email (with the limitation of one email solicitation per month for six months), while the authorized committee's response cited 2/3 of a cent per email (with no limitations indicated).[22] Meanwhile, OGC noted that publicly available information indicated that a mailing list during the 2020 election cycle, the rate from one company for renting an email list of 1,000 supporters was at least five times higher than WBTW's rate.[23]

Like the Respondents in MURs 7628 and7636, Taddeo for Congress failed to establish that its payment represented fair market value for the video footage and OGC's recommendation to investigate the circumstances surrounding the transaction was appropriate. First, the federal committee made its $3,000 payment almost two months after running the ad to announce Taddeo's candidacy for the House of Representatives. Second, similar to the non-profit in the MURs 7628 and 7636, the state committee did not provide sufficient information to support the method of valuation for the video footage. Respondents rely on a declaration from Patrick Kennedy, the media vendor's Chief Financial Officer ("CFO"), who opined that the pro-rated value of the video footage was $3,000.[24] But the declaration does not explain AL Media's methodology for the valuation, nor does it specify the CFO's role in that process. Further, while the purported licensing agreement claimed the federal committee's use of video footage was minimal, the federal committee used two-thirds of an ad that ran for two minutes and twenty-one seconds. Finally, the public record reflects a sale of ownership of the video footage rather than a license for its use.[25] Indeed, the factors here make an even stronger argument for

[19] *See* FGCR at 12 n.42 (citing MUR 6257 (John Callahan, *et al.*), MURs 7628, 7636, 7992 (Kris Kobach, *et al.*)).

[20] *See* Certification ¶ 2 (Apr. 28, 2022), MURs 7628, 7636, and Pre-MUR 628 (Kobach for Senate, *et al.*).

[21] *See* Factual and Legal Analysis at 3, MUR 7628 & 7636 (WeBuildTheWall, Inc.).

[22] *See id.* at 5.

[23] *See id.* at 6. The Commission ultimately entered into conciliation agreements with WBTW for making a corporate contribution by renting an email list below market value to the authorized committee, and with the authorized committee for knowingly accepting the contribution and failing to report that contribution. *See* Certification ¶ 2 (May 31, 2022), MURs 7628, 7636, and Pre-MUR 628 (Kobach for Senate, *et al.*); Certification ¶ 1 (Nov. 17, 2022), MURs 7628, 7636, and Pre-MUR 628 (Kobach for Senate, *et al.*).

[24] *See* FGCR at 5-6, MUR 8044 (citing Joint Resp. at 1-2, Ex. B (Patrick Kennedy Decl.) (Sept. 28, 2022) (stating "that the $3,000 the Federal Committee paid for a "small portion of [the] original [State Committee] shoot footage . . . should be considered fair market value for the pro-rated value of the original footage.")).

[25] *See id.* at 14 (noting "the conspicuous absence of the word "license" from any contemporaneous record preceding the Joint Response."); *see also id.* at 15 n.50 (stating "[t]he memo line of the check from the Federal Committee to the State Committee lists 'Production Costs — Sale to Taddeo for Congress.'"). In MUR 7938 (Greitens for US Senate, *et al.*), the Commission found no reason to believe where a federal committee's license for use of a website created by a state

the Commission to find reason to believe to investigate whether a violation occurred than in MURs 7628 and 7636. Unfortunately, the Commission could not find four votes to resolve this issue.

While there is no disagreement with our colleagues on the applicable law, our differences lie in our respective evaluations of the information before the Commission. Respectfully, our colleagues who voted against finding reason to believe explain first, that information in the record – including the federal committee's disclosures for disbursements for "Video Production Footage," "Cost for Video Production," and "Production Costs – Sale to Taddeo for Congress" – is "consistent with purchase of a *license*" (emphasis added) rather than a sale. But the federal committee, in a better position to describe their *own* transaction, has explicitly indicated on the memo line of *its* disbursement check that the transaction was a sale.[26]

This lack of clarity further supports an investigation to determine if the transfer involved a sale or license, as well as the market rate (*i.e.*, the usual and normal rate for obtaining video footage in that market) that the state committee used to establish that the "pro rata" share of the video footage was $3,000. Some of our colleagues insist that such video footage is "valueless" since the "market" for this video footage consists only of "*these two committees*."[27] This view overlooks that outside groups, including party committees and other non-connected political committees, also engage in congressional campaigns. Our colleagues view the $34,768 the state committee spent as a "sunk cost" and any money paid to the state committee by the federal committee as a windfall.[28] This creates a gaping loophole in the law and would permit a state committee to deem any of their assets so unique that a market with only one seller and only one buyer exists – a bilateral monopoly.[29] However, in a true bilateral monopoly goods still have value and both the buyer and the seller act to maximize their respective profits, which yields the appropriate market price. Here, however, with the same candidate on both sides of the transaction, both the buyer and the seller have an incentive not to maximize profits, which yields a distorted price.[30] This is the opposite of an arms-length transaction. And this is the whole point. In this transaction, the seller and buyer are not acting as market actors trying to maximize profit. This view allows any federal candidate who had previously run for a non-federal office to transfer a wide variety of communicative materials from a state committee to a federal committee at heavily discounted prices. The price that the state committee actually paid for the footage is one pretty good indication of the "usual and normal charge," and it substantially exceeded what the federal committee paid.[31]

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committee was documented by a contemporaneous licensing agreement – a copy of which was provided to the Commission. *See* Statement of Reasons of Comm'rs Lindenbaum, Cooksey, Dickerson & Trainor at 5-6, MUR 7938 (Greitens for US Senate, *et al.*). In contrast, Respondents did not provide a copy of the licensing agreement in this matter.

[26] *See* Statement of Reasons of Chairman Cooksey and Comm'rs Dickerson and Trainor at 6, MUR 8044 (Taddeo for Congress, *et al.*), Jan. 17, 2024; s*ee also* Annette Taddeo & Taddeo for Congress Resp. Exh. A (reflecting, "Production Costs – *Sale* to Taddeo for Congress") (emphasis added).

[27] *Id.* At 6-7.

[28] *Id.*

[29] "Bilateral monopoly." Merriam-Webster.com, Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/bilateral%20monopoly, (last visited Jan. 24, 2024).

[30] *See* Factual and Legal Analysis at 7, MUR 7628 & 7636 (WeBuildTheWall, Inc.) (noting that the presence of the same parties on both sides of the transaction raised further questions about the transaction's commercial reasonableness).

[31] *See* 11 C.F.R. § 100.52(d)(2).

While we are disappointed by the failure to find the necessary votes to satisfy the low burden of reason to believe,[32] and to allow OGC to conduct a limited investigation, this decision follows a similar matter in which the Commission also failed to adopt OGC's reason to believe recommendation despite a lack of support that a federal committee paid fair market value for a state committee's asset. In MUR 7938 (Greitens for US Senate, *et al.*), the Commission considered whether a state committee's website updates, and its subsequent transfer to the federal committee without compensation, ran afoul of the prohibitions against the transfer of funds from state to federal campaigns. The Respondents contended that Greitens owned the website personally and licensed its use to the state committee and, subsequently, the federal committee, though it provided no information to support the candidate's ownership.[33] Further, the federal committee reported the transfer as an in-kind contribution whose value of $18,000 closely resembled the state committee's payment to a web developer to improve the website for $19,000 shortly before transferring it to the federal committee.[34] We also voted to approve OGC's recommendation to find reason to believe and investigate the valuation issue.[35]

Coupled together, the decisions in MUR 7938 and the instant matter suggests that the Commission is straying from its previous application of one of the provisions meant to prevent the flow of soft money into federal elections. We struggle to find the consistency in the Commission's recent decisions and urge its return to an earlier understanding of the prohibitions against the transfer of funds from state to federal campaigns.

January 24, 2024
Date

Shana M. Broussard
Commissioner

January 24, 2024
Date

Ellen L. Weintraub
Vice Chair

[32] Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007), https://www.fec.gov/resources/cms-content/documents/notice_2007-6.pdf.

[33] *See* FGCR at 11, MUR 7938 (Greitens for US Senate, *et al.*).

[34] *See id.* at 24.

[35] *See* Certification ¶ 1 (July 13, 2023), MUR 7938 (Greitens for US Senate, *et al.*).