

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

INV-17-04

Alleged Violation of Ethical Standards by Commissioner Ellen Weintraub

December 21, 2017

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I. Executive Summary

On February 15, 2017, the Federal Election Commission's (FEC) Office of Inspector General (OIG) was contacted by Scott McDaniels. McDaniels alleged FEC Commissioner Ellen Weintraub may have violated ethics regulations by using FEC official letterhead to issue a letter to President Donald Trump regarding his claims of voter fraud. The potential violation was brought to the complainant's attention after reading an article in the Washington Free Bacon about Commissioner Weintraub's letter to the President. McDaniels confirmed the OIG could use his name in the investigation.

The OIG investigation revealed that on February 10, 2017, Commissioner Weintraub issued a statement on FEC letterhead stating:

As a Commissioner on the [FEC], I am acutely aware that our democracy rests on the faith of the American People in the in the integrity of their elections. . . . I therefore call upon President Trump to immediately share his evidence with the public and with the appropriate law-enforcement authorities so that his allegations may be investigated promptly and thoroughly.

The following days, Weintraub appeared on several news outlets (CNN & NPR) discussing her request.

On February 22, 2017, Commissioner Weintraub's office delivered to the OIG's office a second statement dated February 21, 2017, from Commissioner Weintraub. The statement was on FEC letterhead and requested President Donald Trump issue information to the public regarding the voter fraud that he alleged occurred during the November 2017 elections. The statement also mentioned the allegations are of great concern to Commissioner Weintraub, and the issue presented falls within the jurisdiction of the FEC since no expenses related to the allegations have been accounted for on any campaign financial filings.

On February 24, 2017, the OIG received a letter from the Cause of Action Institute (Cause of Action) dated February 21, 2017, requesting the OIG open an investigation regarding Commissioner Weintraub's actions. Cause of Action alleged Commissioner Weintraub violated ethics violation 5 C.F.R. Part 2635. Cause of Action alleged that as a FEC Commissioner, Commissioner Weintraub has authority only over campaign finance and not over voting or election fraud. Therefore, her request on FEC letterhead was a violation of 5 C.F.R. Part 2635.

On February 28, 2017, the OIG opened an investigation to determine if Commissioner Weintraub violated any federal ethic rules or FEC policies. The OIG reviewed ethics regulations found in 5 C.F.R. Part 2635, FEC regulation 11 C.F.R. Part 7, and FEC policies and procedures.

The OIG interviewed Commission Chair Steven Walther, Deputy Ethics Counsel Larry Calvert, and Commissioner Weintraub.

A review of FEC policies or procedures resulted in finding no policies or procedures that directly addressed Commissioner Weintraub's conduct. According to Calvert, he consulted with Commissioner Weintraub regarding her actions and advised her there were no regulations or FEC policies that prohibited her actions. The OIG also interviewed Chair Walther, who stated Commissioner Weintraub did not consult with the full Commission before writing the memo. Chair Walther stated there were no policies that prohibit a Commissioner from using the FEC letterhead to express private opinions. Chair Walther did state that normally FEC does not request information usually information is sent to the Commission. Walther stated the Commissioners had not discussed the issue during a session or privately with Commissioner Weintraub and there were no plans to do so.

When the OIG interviewed Commissioner Weintraub, she stated she did not believe this matter would become a big deal. She stated she was addressing President Trump's claim that individuals were bused to another state to vote fraudulently. According to Commissioner Weintraub, the memo was not addressed to the White House and did not request the information be sent to FEC, but instead requested that information be provided to the public. She stated she felt that she had to make a statement because the President's claims undermined voting independence. According to Commissioner Weintraub, she had the authority to write the memo both as a citizen and as a Commissioner, which is why she clarified her positions with the second memo. According to Weintraub, if individuals were bused from other areas to vote, then campaign funds were used, and that would be an issue for the FEC.

The OIG reviewed the FEC regulations and 5 C.F.R. Part 2635, which outlines the principals of ethical standards that apply to all officers and employees of the executive branch. 5 C.F.R. § 2635.106 states "any violation of C.F.R. Part 2635 standards may be cause of appropriate action, it is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases." The OIG conducted interviews, reviewed statements made by Commissioner Weintraub and President Donald Trump, transcripts from interviews conducted by and social media posts by Commissioner Weintraub, and previous conduct by current and former Commissioners.

5 C.F.R. Part 2635 prohibits misuse of public office for private gain (5 C.F.R § 2635.702), government property (5 C.F.R. § 2635.704), and time (5 C.F.R. § 2635.705). The OIG found no evidence that Commissioner Weintraub obtained a private gain from issuing her statement. The OIG found that: Commissioners have been given the latitude to speak and make statements on all aspects of elections, and not just campaign finance issues; the allegations by President Trump if true, would have involved possible campaign finance issues under the FEC's jurisdiction; and there is no current rule prohibiting a Commissioner from using FEC letterhead to publish a

public statement. As a result, the OIG found no evidence of Commissioner Weintraub or her staff misusing time in violation of 5. C.F.R. § 2635.705. The OIG acknowledges, pursuant to 5 C.F.R. Part 2635, the FEC Commission still has authority to determine whether any action is warranted in response to Commissioner Weintraub's actions.

II. Background

On February 10 and 21, 2017, Commissioner Ellen Weintraub issued a statement requesting President Trump provide evidence to his claims that individuals were bused to another state to vote fraudulently. On February 15, 2017, the FEC OIG was contacted by Scott McDaniels. McDaniels alleged Commissioner Weintraub potentially violated ethics regulations by using FEC official letterhead to issue a letter to President Trump regarding his claims of voter fraud. The potential violation was brought to the complainant's attention after reading an article in the Washington Free Bacon about Commissioner Weintraub's letter to the President. McDaniels waived confidentiality and confirmed the OIG could use his name in the investigation.

On February 24, 2017, the OIG received a letter from the Cause of Action Institute dated February 21, 2017, requesting that the OIG open an investigation regarding Commissioner Weintraub's actions. Cause of Action alleged Commissioner Weintraub violated ethics regulations. Cause of Action alleged that as a Commissioner, Commissioner Weintraub has authority only over campaign finance and not over voting or election fraud. Therefore, her request on FEC letterhead was a violation of 5 C.F.R. Part 2635.

On February 28, 2017, the OIG opened an investigation regarding Commissioner Weintraub actions to determine if there was any evidence that Commissioner Weintraub's actions violated any ethical standard of conduct pursuant to 5 C.F.R Part 2635 or FEC policies.

A. Relevant Statutes and Policies

Office of Government Ethics Regulation 5 C.F.R. Part 2635
Federal Election Regulation 11 C.F.R. Part 7

B. Scope of Investigation

The investigation was limited to determining whether or not there is evidence to support that allegation, that Commissioner Weintraub violated ethics regulations when she requested President Donald Trump provide information to the public regarding his allegations of voter fraud.

III. Investigation Findings

The Office of Government Ethics regulation 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, applies to this matter. FEC Standard of Conduct regulation 11 C.F.R. §7.1 provides that members and employees of the Commission are subject to 5 C.F.R. Part 2635. The OIG review of applicable ethics rules revealed that as an employee of the Federal government, Commissioner Weintraub has the responsibility to place loyalty to the Constitution, laws and ethical principles above private gain and ensure every citizen can have complete confidence in the integrity of the Federal government, 5 C.F.R. § 2635 .101(a). The regulation further states that agencies can have supplemental guidelines, and it is the responsibility of the employee's agency to provide appropriate disciplinary action. 5 C.F.R. §§ 2635.105 and 2635.106(b).

Commissioner Weintraub's role is to enforce Federal campaign finance laws that regulate contributions and expenditures made to influence Federal elections. There are no standards listed in either 5 C.F.R. Part 2635 or 11 C.F.R. Part 7 that provide guidance as to statements under circumstances found in this matter. However, 5 C.F.R. § 2635 101(b)(14) states Federal employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that they are violating the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

The applicable action for violation of 5 C.F.R. Part 2635 by a Commissioner is not documented in FEC ethics regulations. 11 C.F.R. § 7.5 of the FEC ethics regulation only states that violation by employees may be cause for appropriate corrective, disciplinary, or adverse action in addition to any penalty prescribed by law. Thus, the OIG refers to the C.F.R. Part 2635 which is applicable to Commissioners and employees of the agency. C.F.R. § 2635.106 states that any violation of C.F.R. Part 2635 standards may be cause of appropriate action...it is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. The OIG investigated whether there was evidence that Commissioner Weintraub misused her position by issuing the memos to the President on February 10, 2017 and February 21, 2017. The OIG reviewed the applicable federal ethical standards for misuse of government position outlined in 5 C.F.R. Part 2635. Specifically, misuse of public office for private gain (5 C.F.R § 2635.702), misuse of government property (5 C.F.R. § 2635.704), and misuse of time (5 C.F.R. § 2635.705).

a. Use of public office for private gain (5 C.F.R. § 2635.702)

5 C.F.R. § 2635.702 states that an employee shall not use his public office for his private gain, for the endorsement of any product, service or enterprise or for the private gain of friends,

relatives or persons whom the employee is affiliated in a nongovernmental capacity. Private gain would include employment or monetary gain for the Commissioner, her staff, relatives or others afflicted with her.

The February 10 and February 21, 2017, statements drafted by Commissioner Weintraub asked the President to provide the evidence to the public, not to the FEC or to her office.

Commissioner Weintraub issued the same request when she appeared on the CNN and NPR networks. According to Commissioner Weintraub, she did not issue the statement to have the President respond directly to her but issue the evidence to the public. The OIG found no evidence that Commissioner Weintraub nor her staff received any private gain other than notoriety or additional Twitter followers from her request. The OIG asked Commissioner Weintraub and Tom Moore, her Executive Assistant, if they or their relatives had received any benefits from her appearing on either CNN or NPR, or writing the statements to President Trump. The Commissioner was not paid to appear on any of the networks. The OIG found no evidence that Commissioner Weintraub, her staff, or their relatives received any private gain from her request.

b. Use of government property (5 C.F.R. § 2635.704) and time by an employee or subordinate for authorized purposes (5 C.F.R. § 2635.705 (a)).

5 C.F.R. § 2635.704 states that employees have the duty to protect and conserve Government property, and shall not use such property or allow it to be used for other than authorized purposes. Government property term used in the regulation includes government supplies. Pursuant to 5 C.F.R. § 2635.705(a), an employee shall use official time in an honest effort to perform official duties. In addition, an employee shall not encourage, direct, coerce, or request a subordinate to use of official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

The Commission's duties include overseeing the public disclosure of funds raised and spent to influence Federal elections, restrictions on contributions and expenditures made to influence Federal elections, and the public financing of Presidential campaigns. The OIG conducted interviews and obtained information to determine if there was a nexus between Commissioner Weintraub's statements and her duties as a FEC Commissioner, and if the use of FEC letterhead to draft her memo and letter to the President was allowable.

Commissioners or employees seeking advice and guidance on matters covered by 11 C.F.R. Part 7 or 5 C.F.R. Part 2635 may consult with the FEC's Designated Agency Ethics Official (DAEO). 11 C.F.R. Part 7 states that the FEC General Counsel or designee is the FEC DAEO. Interviews conducted by the OIG revealed that Commissioner Weintraub contacted the General Counsel's office regarding her statement. The OIG interviewed FEC alternate DAEO Larry Calvert.

Calvert advised the OIG that Commissioner Weintraub had contacted him regarding after issuing the first statement, but could not remember the exact date, and stated the meeting was in person. Calvert advised there were no notes taken.

Calvert stated he advised Weintraub that there were no ethics regulations or FEC policies that prohibited her from issuing her statement. According to Calvert, it is the Commission's responsibility to issue guidelines for the Commissioners, and there are none regarding use of FEC letterhead. The OIG asked Calvert if Commissioner Weintraub's use of FEC letterhead, considering the circumstances in this matter, was in violation of any ethics rules. Calvert reiterated that it would be up to the Commissioners to draft such a rule regarding permissible activities. Calvert gave the example of the Commissioners traveling to foreign countries to observe elections. He stated that there were no regulations or policy regarding foreign travel, however, the Commission had voted on the matter and approved foreign travel for Commissioners.

The OIG also interviewed FEC Chair Steven Walther on April 14, 2017. As Chair, Commissioner Walther is the head of the Commission during calendar year 2017 and was Vice Chair during calendar year 2016. He stated that there is no rule regarding the use of FEC letterhead. According to the Chair, Commissioners do use letterhead to respond to matters outside their day to day duties as Commissioners, such as when they are asked to attend conferences or speaking engagements. However, FEC Commissioners do not normally request information, including from the President. The Chair stated that Commissioner Weintraub did not consult with him or the full Commission prior to issuing the memo, and he found about the memo and letter when they were issued. The Chair informed the OIG that the remaining Commissioners had not discussed the issue with Commissioner Weintraub. The OIG was informed the issue was not on any of the upcoming session agendas. The Chair stated voting violations are a Department of Justice issue. The Chair stated that if there was voter fraud, it's not clear that the FEC would look into the matter, but there could be an issue regarding the funds used to rent the buses.

On October 25, 2017, the OIG interviewed Commissioner Weintraub. She stated she had the right, in her role as Commissioner, to draft the statement to the President. Commissioner Weintraub stated she never thought her statement would be such a big deal. It was drafted by her assistant, Tom Moore, and it was just a response to President Trump's allegation. She stated she would never comment on a candidate's statement or allegation, but he was the President so she felt she could make a statement. Commissioner Weintraub advised, due to her past work experience which include being an ethics lawyer, she is very careful when she make statements. Commissioner Weintraub stated that she feels as a Commissioner, she has the right to speak on any matters that question the validity of the election process and our democracy.

Commissioner Weintraub advised that she did not speak out to acquire personal gain. She spoke out because there she believes in the democratic process and will not stand by and let someone diminish the reputation of the democracy. She felt that President Trump's statement undermined the voting process. She feels it is well within her authority to speak on all voting matters to reassure the public that the voting process is not tainted. Commissioner Weintraub stated she believes she has this authority, regardless of it, she has the power to adjudicate the matter. Commissioner Weintraub stated that she is not limited to the Federal Election Campaign Act regarding her ability to speak on different matters. She speaks as a Commissioner on women's issues and voting rights in general and finds the controversy and the notion she cannot ask for evidence absurd. Commissioner Weintraub proclaimed, this is not an Election Assistance Commission (EAC) or Department of Justice issue because they do not run elections. According to Commissioner Weintraub, the FEC has more authority and rule making power than the EAC. Commissioner Weintraub advised, because of the FEC reputation, she and other Commissioners have been asked to observe foreign elections and speak on democracy.

Also, Commissioner Weintraub claimed that her statements were public statements not letters to the President directly. Commissioner Weintraub reiterated that she did not ask for the President to send the documents to her, but asked him to share them with the public. Thus, she was not asking the documents to be sent to the FEC for review. Weintraub stated she is sure the President, and his lawyers, did not think she was asking for the information on behalf of the Commission thus they would have responded. Commissioner Weintraub referred to the fact the statements clearly stated in bold letters this is a statement from Commissioner Weintraub. Weintraub went on to say the fact that the White House did not respond to the request is evident they did not view it as a request from the Commission.

When asked what authority she the Commission has over the matter, Commissioner Weintraub responded that if the statement by the President was true, then the money used to bus individuals to another state would be a campaign finance issue. Therefore, FEC would have authority to look into the issue. Commissioner Weintraub stated her authority to look into the issue is not the point, because as a Commissioner and public figure, she had the authority to speak on the matter.

As a government employee, Commissioner Weintraub is tasked with ensuring the public the integrity of the government and as a FEC Commissioner she is to ensure campaign finance laws are administered. The OIG investigation disclosed that Commissioners have been allowed to express their opinions and make statements in the past to reporters and at conferences, and author articles on a variety of election topics (voting trends, women's rights, foreign elections and political agendas), without being disciplined or found to violate 5 C.F.R. Part 2635 standards.

The OIG found FEC Commissioners' public statements have been both verbal and written, and usually not on FEC letterhead. For example, Commissioner Lee Goodman and Former Commissioner Ann Ravel have both made appearances at public forums, talk shows, and wrote

op-ed pieces discussing election law in general, and they voiced Democratic and Republican views during their tenure as FEC Commissioners.¹ The OIG investigation also revealed Commissioner Weintraub and Chair Steven Walther have both visited other counties to observe elections and speak on democracy.

In this instance, evidence revealed there was a nexus between Commissioner Weintraub's statement and her FEC duties. If President Trump's scenario of bused individuals is correct, then the funds used to bus the individuals could be a possible violation of campaign finance laws, thus an issue under the purview of the FEC. In his interview, the Chair stated that if the allegations were true, the FEC may look into the matter. The OIG reviewed current and past opinions issued by the FEC to determine if the Commission had issued opinions regarding use of campaign finance and for other than normal campaign expenses. The OIG found that as recently as this year, the Commission has issued opinions regarding the use of campaign funds, as evidenced by FEC opinions AO-2017-07 (issued July 10, 2017) and AO-2016-25 (issued January 25, 2017).

In addition, the OIG investigation disclosed that Commissioner Weintraub's use of FEC letterhead was not in violation of 5 C.F.R. § 2635.704 (misuse of government property). The statements issued by Commission Weintraub cited in bold letters at the top of each document that the statements were from Commissioner Weintraub and not the full Commission. Calvert and the Commission Chair Walther both verified that there are no current FEC policies or regulations that prohibit use of the FEC letterhead for personal statement. As such, the OIG found no evidence that Commissioner Weintraub violated 5 C.F.R. § 2635.704 (use of government property or of 5 C.F.R. § 2635.705 (a) (misuse of time).

Lee Goodman appearance at Georgetown University (Election law in the United States and the conservative case for it) 10/18/17 and, Ann Ravel Op-ed piece for Us News & Work Report "Debate for Democracy) 9/16/2016.

Conclusion

The OIG found no evidence that Commissioner Weintraub violated ethical standards outlined in 5 C.F.R Part 2635 or 11 C.F.R. Part 7. It is noted per 5 C.F.R Part 2635, the Commissioners, collectively as the agency head, still have authority to determine if any action is warranted.