



FEDERAL ELECTION COMMISSION
Washington, DC 20463

**STATEMENT OF COMMISSIONER DARA LINDENBAUM
CONCERNING THE DEFENSE AUTHORIZATION IN
CREW v. FEC, Civ. No. 22-35 (CRC) (D.D.C.)**

I believe that the Federal Election Commission (“Commission”), when sued, has a duty to defend itself in court. To that end, during my tenure as Commissioner, I have always voted to authorize the Office of General Counsel (“OGC”) to defend the Commission. This matter was no different.

When Plaintiff initially filed the Complaint, prior to my time as Commissioner, the Commission failed to authorize OGC to defend the agency by a vote of 3-3,¹ and the Clerk entered default.² The Plaintiff subsequently filed a motion to compel the Commission to produce the administrative record and respond to requests for production.³ After some procedural wrangling, the Court set a deadline of November 13, 2023 for the Commission to respond to the Plaintiff’s motion. The Commission unanimously voted to authorize OGC to respond to the Plaintiff’s motion and complete any administrative record requirements.⁴

Concurrently, a commissioner circulated a motion to grant OGC full authority to defend the case, despite the Clerk having already entered default and there being no issue to defend other than the Plaintiff’s motion to compel. Because the Commission already unanimously voted to authorize OGC to appear and defend the motion to compel, I voted against a second grant of defense authority beyond those steps.⁵ Given the unfavorable procedural posture arising from the prior Commission’s failure to defend the agency in the first place, and that a remand is all but inevitable because the Statement of Reasons in the underlying Matter Under Review was not issued contemporaneously as required by recent D.C. Circuit precedent,⁶ I did not believe it wise to devote our scarce resources to litigating collateral issues in this matter. Nevertheless, if additional issues arise, and OGC believes it requires additional defense authority, I will certainly revisit the issue at that time.

To be clear, I continue to vote according to my deeply held belief that the Commission has a duty to defend itself in court. I therefore voted to authorize OGC to respond to the

¹ Certification at 1 (Feb. 15, 2022).

² Clerk’s Entry of Default, Dkt. No. 5 (Mar. 29, 2022).

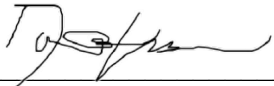
³ Plaintiff’s Motion to Compel, Dkt. No. 6 (June 8, 2022).

⁴ Certification at 1 (Nov. 9, 2023).

⁵ Certification at 1 (Jan. 9, 2024).

⁶ *See End Citizens United PAC v. Fed. Election Comm’n*, 69 F.4th 916, 921 (D.C. Cir. 2023).

Plaintiff's motion and complete any administrative record requirements, and my vote on the second motion in no way signals a change of heart.



Dara Lindenbaum
Commissioner

1/11/2024

Date