



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

American Future Fund)

) MUR 6402
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**STATEMENT OF REASONS
OF VICE CHAIR ANN M. RAVEL AND COMMISSIONER ELLEN L. WEINTRAUB**

Americans are dismayed by the fact that dark money is pouring into their elections. They would be even more dismayed if they knew why: because the Federal Election Commission continually deadlocks on whether to investigate dark money groups despite a clear mandate from Congress and the courts.

This case is only the most recent example. In 2010, American Future Fund (AFF) spent over \$8 million on television advertisements that supported or opposed federal candidates.¹ The Commission received a complaint alleging that AFF was violating the law by failing to register with the Commission and file reports disclosing its donors and political spending.² More than four years later, we voted to investigate, but failed to find the fourth vote necessary to proceed.³ So, the Commission deadlocked yet again.

The dissenting Commissioners maintain that AFF is not a political committee and therefore is not subject to the same transparency required of candidates, political parties, and other groups that back federal candidates. As we've said before, their argument – that it would be unconstitutional to require political actors to disclose their donors and political spending – is unsupported and amounts to a failure of the Commission to enforce existing law.⁴

¹ First General Counsel's Report in MUR 6402 (American Future Fund), dated Jan. 1, 2013, at 21 ("FGCR").

² Complaint in MUR 6402 (American Future Fund), dated Oct. 20, 2010.

³ See Certification in MUR 6402 (American Future Fund), dated Nov. 18, 2014. Two of our colleagues dissented; the Chairman recused himself and did not vote.

⁴ See, e.g., Statement of Reasons of Vice Chair Ravel, Commissioner Walther, and Commissioner Weintraub in MUR 6396 (Crossroads Grassroots Political Strategies), dated Jan. 10, 2014, available at <http://eqs.fec.gov/eqsdocsMUR/14044350964.pdf>; Statement of Reasons of Vice Chair Ravel, Commissioner

The courts – not the Commission – are responsible for determining the extent of constitutional rights. And the courts have repeatedly spoken on this issue. At least two federal Circuit courts and two federal District courts have found that the FEC’s policy requiring disclosure is fully constitutional⁵ – because disclosure is fundamental to the proper functioning of democratic government.⁶ And the Supreme Court has repeatedly pointed to the importance of disclosure as a means to promote transparency and accountability in our electoral process. For example, Justice Scalia, who is often critical of campaign finance regulations, has stated that not only is disclosure constitutional, it “fosters civic courage, without which democracy is doomed.”⁷

The law requires any group that qualifies as a “political committee” to register with the Commission and provide periodic reports of its contributors and its spending. The crux of the test is this: for groups that have received or made more than \$1,000 in contributions or expenditures,⁸ the question is simply whether their “major purpose” is to influence federal elections.⁹ The Commission’s policy describes some of the types of activity that count towards major purpose, for example “direct mail attacking *or* expressly advocating the defeat of a Presidential candidate,” “television advertising opposing a Federal candidate,” spending on “candidate research” and “polling,” and “other spending . . . for public communications mentioning Federal candidates.”¹⁰

There is no question that AFF spent \$8.71 million – *at least* 41% its 2010 budget — on television advertisements that supported or opposed federal candidates, often in close proximity

Walther, and Commissioner Weintraub in MURs 6538 (Americans for Job Security) & 6589 (American Action Network), dated July 30, 2014, *available at* <http://eqs.fec.gov/eqsdocsMUR/14044362039.pdf>.

⁵ *Free Speech v. FEC*, 720 F.3d 788, 798 (10th Cir. 2013), *cert. denied*, 134 S.Ct. 2288 (May 19, 2014); *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d. 544, 556 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 841 (2013); *Shays v. FEC*, 511 F. Supp. 2d 19, 29-31 (D.D.C. 2007); *see also Koerber v. FEC*, 583 F.Supp.2d 740, 746-48 (E.D.N.C. 2008) (denying a motion for a preliminary injunction against the enforcement of the 2007 E&J because the constitutional challenge was unlikely to succeed on the merits).

⁶ *See, e.g., Free Speech v. FEC*, 720 F.3d at 798 (“The FEC disclaimer requirements at issue are necessary to provide the electorate with information and to insure that the voters are fully informed about the person or group who is speaking.”); *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d. at 549 (*citing Buckley v. Valeo*, 424 U.S. 1, 68 (1976)) (“[T]he Supreme Court has noted that ‘disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist.’”).

⁷ *Doe v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J. concurring).

⁸ 2 U.S.C. § 431(4)(A).

⁹ *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

¹⁰ *See Political Committee Status*, 72 Fed. Reg. 5595, 5605 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“2007 E&J”), *available at* <http://sers.fec.gov/fosers/showpdf.htm?docid=34789>.

to the election.¹¹ However, the total amount spent on “major purpose” activities may be considerably higher. For example, we know that AFF ran three additional television advertisements that supported or opposed federal candidates – but AFF provided no information about the costs of these advertisements.¹² AFF also spent an unknown amount on mailers and other materials discussing various candidates.¹³ Lastly, although it seems fairly certain that some of AFF’s overhead or administrative expenses supported all of these activities, we have no information about those expenses.¹⁴ The bottom line is that an investigation would have helped to fill in some of these gaps.

But there will not be an investigation. The FEC has now failed to investigate allegations concerning of the highest-spending groups involved in the 2010 election cycle.¹⁵ In each of these cases, we have supported an investigation,¹⁶ but to no avail. This pattern of deadlocks has ensured that record amounts of money continue to be spent on our elections while hidden from public view.¹⁷

As the Supreme Court has said, “[p]ublic disclosure... promotes transparency and accountability in the electoral process to an extent other measures cannot.”¹⁸ We will continue to fight for better disclosure and more accountability in our political process. In the meantime, we hope that members of the public who care about democracy will help us hold *the FEC* accountable for failing to take action on dark money. Please submit comments, including a request to testify at:

<http://sers.fec.gov/forces/addcomments.htm?pid=93617>.

¹¹ FGCR at 25. We can’t be confident that we have an accurate figure for AFF’s total spending, because AFF appears to have misattributed some activities to AFF that were in fact “[p]aid for by the American Future Fund Political Action,” AFF’s sister organization. See FGCR at 23, n. 6-10. Therefore, the \$8.71 million spent on these advertisements, by itself, is likely to have been more than 41% of AFF’s total spending.

¹² FGCR at 17.

¹³ FGCR at 5-6. Depending on the content of these communications, they might also count towards AFF’s political activity.

¹⁴ FGCR at 6.

¹⁵ Those four groups are: American Action Network, Crossroads Grassroots Political Strategies, American Future Fund, and Americans for Job Security. See Center for Responsive Politics, *Political Nonprofits: Top Election Spenders*, OPENSECRETS.ORG, http://www.opensecrets.org/outsidespending/nonprof_elec.php?cycle=2010.

¹⁶ See supra note 4.

¹⁷ Robert Maguire, *Latest Candidate Must-Have: Your Very Own Dark Money Group*, OPENSECRETS BLOG (Nov. 10, 2014), <http://www.opensecrets.org/news/2014/11/latest-candidate-must-have-your-very-own-dark-money-group/> (“The 2014 midterms were the darkest election yet for congressional races. Reported spending by ‘dark money’ groups — 501(c) organizations that don’t disclose their donors to the public — jumped from \$135 million in 2010 to nearly \$170 million in 2014, despite only a modest increase in the overall cost of the election.”)

¹⁸ *Doe v. Reed*, 561 U.S. 186, 199 (2010).

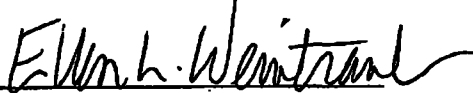
MUR 6402 (American Future Fund)
Statement of Vice Chair Ravel and Commissioner Weintraub

The deadline is January 15, 2015 and the Commission will hold a hearing on February 11, 2015.
Make your voice heard on these issues so vital to the future of our democracy.

12/18/14
Date


Ann M. Ravel
Vice Chair

12/18/14
Date


Ellen L. Weintraub
Commissioner

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