COMMISSIONER ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 6589R
American Action Network	)	
	)	

STATEMENT OF REASONS OF COMMISSIONER ELLEN L. WEINTRAUB

More than a billion dollars of dark money has flooded into our elections since *Citizens United*.[1] This matter is one in a long line of cases where the Commission has failed to ensure the transparency about money in politics that Congress has required, that the Supreme Court has upheld, and that the American people deserve.[2] The Commission's repeated failure to pursue investigations into dark-money groups like American Action Network is sadly well known.

I have written extensively about the merits of this matter over the years. I incorporate by reference the analysis and discussion made in my previous statements on all points:

• Statement of Reasons of Vice Chair Ann M. Ravel and Commissioners Steven T. Walther and Ellen L. Weintraub, MURs 6538 and 6589 (AJS & AAN) (July 30, 2014)[3];

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[1] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010). *See* Michael Beckel, Dark money spending since *Citizens United* set to eclipse $1 billion, ISSUE ONE (Sep. 10, 2020), *found at* https://issueone.org/articles/dark-money-spending-since-citizens-united-set-to-eclipse-1-billion/; Anna Massoglia and Karl Evers-Hillstrom, 'Dark money' topped $1 billion in 2020, largely boosting Democrats, OPEN SECRETS (Mar. 17, 2021) *found at* https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/.

[2] *See, e.g.*, MURs 7672, 7674, and 7732 (Iowa Values, *et al.*) (OGC recommended finding reason to believe respondent violated the Act by not registering and reporting as a political committee, but an insufficient number of Commissioners voted to support OGC's recommendations; *see* FGCR dated Sept. 25, 2020 and Cert. dated Feb. 11, 2021); MUR 7860 (Jobs and Progress Fund, Inc., *et al.*) (same; *see* FGCR dated Aug. 27, 2021 and Cert. dated Nov. 2, 2021); MUR 7513 (Community Issues Project) (same; *see* FGCR dated Sept. 18, 2019 and Cert. dated Sept. 12, 2021); MUR 7479 (Keeping America in Republican Control PAC, *et al.*) (same; *see* FGCR dated Apr. 26, 2019 and Cert. dated Apr. 5, 2021); MUR 7181 (Independent Women's Voice) (same; *see* FGCR dated Jan. 21, 2020 and Cert. dated Mar. 1, 2021); MUR 6596 (Crossroads Grassroots Policy Strategies) (same; *see* FGCR dated Mar. 7, 2014 and Certs. dated Nov. 2, 2015, Nov. 18, 2015, Dec. 18, 2015, and Mar. 27, 2019); MUR 6872 (New Models) (same; *see* FGCR dated May 21, 2015 and Cert. dated Nov. 15, 2017); MURs 6391 and 6471 (Commission on Hope, Growth and Opportunity) (same; *see* FGCR dated Dec. 26, 2013 and Cert. dated Sept. 18, 2014); MUR 6402 (American Future Fund) (same; *see* FGCR dated Jan. 17, 2013 and Cert. dated Nov. 20, 2014); MUR 6538 (Americans for Job Security) (same; *see* FGCR dated May 2, 2013 and Cert. dated June 26, 2014).

[3] Statement of Reasons of Vice Chair Ann M. Ravel and Commissioners Steven T. Walther and Ellen L. Weintraub, MURs 6538 and 6589 (Americans for Job Security and American Action Network) (July 30, 2014), *found at* http://eqs.fec.gov/eqsdocsMUR/14044362039.pdf.

• Statement of Reasons of Commissioners Ann M. Ravel and Ellen L. Weintraub, MUR 6589R (AAN) (Dec. 5, 2016)[4];

• Statement of Vice Chair Ellen L. Weintraub Regarding *CREW v. FEC & American Action Network* (April 19, 2018).[5]

This case also raises broader issues. The D.C. Circuit's jurisprudence regarding the dismissal of Commission enforcement complaints has seriously damaged this agency's ability to enforce the law. The Circuit's legal fictions conflate important and distinct Commission votes, leading to a marked departure from what Congress intended in the Federal Election Campaign Act, as amended ("FECA" or the "Act").[6] Interestingly, the legal fictions in this particular matter amount to *science* fiction – time travel in particular.

This matter demonstrates clearly why the D.C. Circuit's deference to so-called "controlling commissioners" is woefully misplaced. We have a dismissal in this matter not because I abstained on a reason-to-believe vote in 2018. We have a dismissal in this matter because five of my colleagues voted to dismiss this matter on Aug. 29, 2022.[7] If the D.C. Circuit wants to know why the Commission dismissed this (or *any*) matter – which is the question before a court *every time* a complainant files a dismissal lawsuit against the Commission pursuant to 52 U.S.C. § 30109(a)(8) – it might want to ask the commissioners who, you know, voted to dismiss the matter.[8]

Since the 1980s, the D.C. Circuit has focused on the Commission's split reason-to-believe ("RTB"[9]) votes (which are nothing but failed motions) and de-emphasized the successful vote at a later point in time that actually dismisses an enforcement matter. This matter is, also, then, an object lesson in how dismissal votes and their timing play a consequential and independent role in how the Commission's enforcement matters play out.

Enforcement matters generally follow this sequence of events: 1. Commissioners vote on whether to pursue the matter; 2. If that vote fails, commissioners vote on whether to dismiss the matter; and 3. If that vote succeeds, commissioners who voted No in Step 1 write statements explaining their vote.

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[4] Statement of Reasons of Commissioners Ann M. Ravel and Ellen L. Weintraub, MUR 6589R (AAN) (Dec. 5, 2016), *found at* http://eqs.fec.gov/eqsdocsMUR/16044403699.pdf.

[5] Statement of Vice Chair Ellen L. Weintraub Regarding *CREW v. FEC & American Action Network* (April 19, 2018) ("2018 Weintraub AAN Statement"), *found at* https://www.fec.gov/resources/cms-content/documents/2018-04-19-ELW-statement.pdf.

[6] 5 U.S.C. § 30101, *et seq.*

[7] In FEC parlance, the final action the Commission takes in an enforcement matter is to "close the file." That is the act that dismisses the matter, authorizing public release of the files and triggering the complainant's right to sue "within 60 days after the date of the dismissal." 52 U.S.C. § 30109(a)(8)(B).

[8] None of the five commissioners who voted to dismiss this matter ever voted on the merits of the complaint.

[9] The trigger for Commission action in an enforcement matter is a finding, based on information received in a complaint or in the course of its supervisory responsibilities, that the Commission has "reason to believe that a person has committed, or is about to commit, a violation" of the Act ("reason to believe" or "RTB," in FEC shorthand). 52 U.S.C. § 30109(a)(2).

In the first round of this matter, for example, the Commission split 3-3 on June 24, 2014 on whether to pursue the complaint and then immediately dismissed the matter by unanimously voting to close the file. On July 30, 2014 – just over a month later – the commissioners who voted against pursuing the complaint published a statement explaining their vote.[10]

Here's the time-travel element: When the commissioners published their statement on July 30, D.C. Circuit precedent *retroactively applied their reasoning to the June 24 vote to not pursue the complaint.* The Commission's reasoning on June 24, in other words, was what those commissioners wrote five weeks later, on July 30.

Although the time lag is longer, the same principle applies here. I am writing in September 2022 to explain my May 10, 2018 vote that prevented the Commission from pursuing RTB in this matter. As soon as this statement is published, the rationale it contains will travel back in time more than four years to explain why, in May 2018, the RTB vote failed. And if the complainant wishes to sue the Commission within 60 days after its August 29, 2022 vote to dismiss the matter, the rationale contained in this statement will be evaluated by the court to determine whether the dismissal is contrary to law.[11]

But this matter has far more going on. The gory details of the procedural history of this matter are laid out in Appendix A.[12] Here are the highlights:

CREW filed an FEC enforcement complaint against the American Action Network ("AAN") in June 2012, alleging that AAN should have registered with the Commission as a political committee.[13] In June 2014, the Commission split on whether to move forward with the complaint

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[10] *See* MUR 6589 (American Action Network ("AAN")), *found at* https://www.fec.gov/data/legal/matter-under-review/6589/; Certification, MUR 6589R (June 24, 2014) (Commissioners Ravel, Walther, and Weintraub voting Yes and Commissioners Goodman, Hunter, Petersen voting No), *found at* https://www.fec.gov/files/legal/murs/6589/14044361924.pdf; Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen, MUR 6589 (AAN) (July 30, 2014) ("2014 Republican SOR"), *found at* http://eqs.fec.gov/eqsdocsMUR/14044362004.pdf.

[11] 52 U.S.C. § 30109(a)(8)(B). The D.C. Circuit currently requires courts to defer to the statement of reasons written by the commissioner or commissioners whose votes at the reason-to-believe stage prevent a complaint from moving forward against the advice of the Commission's attorneys. *See, e.g., Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) ("If three or more Commissioners vote against moving forward, this controlling group must provide a statement of reasons for that decision"). I have argued strongly that the Circuit's precedent stems from a fundamental misreading of how the Commission actually handles its enforcement matters, but for the moment, this is the law. The Circuit is currently considering whether to review the panel decision in *Citizens for Responsibility & Ethics in Wash. v. FEC*, 993 F.3d 880 (D.C. Cir. 2021) *("New Models* panel decision"). *See* Ellen L. Weintraub, *Statement On the Opportunities Before the D.C. Circuit in the* New Models *Case To Re-Examine* En Banc *Its Precedents Regarding 'Deadlock Deference'* (March 2, 2022) ("Weintraub *New Models* Statement"), *found at* https://www.fec.gov/documents/3674/2022-03-02-ELW-New-Models-En_Banc.pdf. Petition for Rehearing *En Banc, CREW v. FEC ("New Models en banc* petition"), No. 19-5161 (D.C. Cir.), *found at* https://www.fec.gov/resources/cms-content/documents/crew_195161_pet_rhrg.pdf.

[12] Two decisions also play an important role in this timeline: *CREW v. FEC*, 892 F.3d 434 (D.C. Cir. 2018) *("CHGO"), found at* https://www.cadc.uscourts.gov/internet/opinions.nsf/A0A7C6C35F1863B3852582AD0054B275/$file/17-5049- 1736010.pdf; *pet. for reh'g en banc denied*, 923 F.3d 1141 (D.C. Cir. 2019); and *New Models* panel decision, *supra* note 11. Key dates from those cases are included in the Appendix.

[13] *See* Appendix A for details and references regarding these dates.

and voted to dismiss it. The naysaying commissioners published a statement explaining their votes.[14] CREW sued the Commission and won in Sept. 2016. The Commission again split on whether to move forward and again dismissed the complaint. The naysaying commissioners published another statement explaining their votes.[15] CREW sued again and won in March 2018.

The Commission did not conform to the court's declaration that the second dismissal was contrary to law, so under the Act, on April 19, 2018, CREW became authorized to sue AAN directly to remedy the violation alleged in its original FEC complaint. It filed that suit four days later. Even though the court's deadline for the Commission had expired and the third-party lawsuit was already in court, the Commission held three RTB votes and one dismissal vote on May 10, 2018. All RTB motions failed, the final one when I withheld my Yes vote and abstained; the dismissal motion failed when I voted against it.[16]

The May 10 votes – disclosed today for the first time by the Commission's publishing of the public file in this matter now that the complaint has been dismissed – transformed the posture of this matter. It is instructive to examine exactly where everything stood on May 10, 2018. On that day, two proceedings had concluded entirely, and two proceedings were ongoing:

- **Entirely Concluded: *CREW v. FEC ("CREW I"),* No. 14-1419 (D.D.C.)**
  The complaint in *CREW I* was filed Aug. 20, 2014. CREW won that case on Sept. 19, 2016 when the district court declared the 2014 Republican SOR to be contrary to law, writing, that its theory of the case "blinks reality."[17] At that moment, the district court's decision that the Commission's dismissal was contrary to law was consistent with applicable circuit precedent.

  Following the Act's provisions, the district court then remanded the matter back to the Commission for it to act in accordance with the court's declaration within 30 days.[18] On Oct. 8, 2016, the Commission held further RTB votes[19] and dismissed the matter again.[20] The Oct. 8 dismissal vote was the last action the Commission took related to this lawsuit.

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[14] 2014 Republican SOR, *supra* note 10.

[15] 2016 Republican SOR, *supra* note 10.

[16] Certification, MUR 6589R (May 10, 2018).

[17] Opinion, *CREW v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016) (finding the initial dismissal of CREW's complaint against AAN "contrary to law" and remanding matter to the Commission), *found at* https://www.fec.gov/resources/legal-resources/litigation/crew141419_dc_opinion2.pdf.

[18] 52 U.S.C. § 30109(a)(8)(C).

[19] Certification, MUR 6589R (Oct. 8, 2016) (Commissioners Ravel, Walther, and Weintraub voting Yes and Commissioners Goodman, Hunter, Petersen voting No). The Commission's 30 days ran out on Oct. 19, 2016; any successful votes between Oct. 8 and Oct. 19 could have served as the Commission's final word on the matter.

[20] *Id.* (Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting Yes and Commissioner Ravel voting No).

On Oct. 19, 2016, when the 30-day period expired, *CREW I,* No. 14-1419 (D.D.C.) was finished: All the requirements of 52 U.S.C. § 30109(a)(8) governing such lawsuits had been fulfilled.[21]

- **Entirely Concluded: *CREW v. FEC ("CREW II"),* No. 16-2255 (D.D.C.)**
  CREW filed suit again on Nov. 14, 2016. It won that case on March 20, 2018, when the district court declared the 2016 Republican SOR to be contrary to law and remanded the matter to the Commission to conform with this declaration within 30 days. At that moment, the district court's decision that the Commission's dismissal was contrary to law was consistent with applicable circuit precedent. Thirty days passed and the Commission took no action on the matter.

  On April 19, 2018, when the 30-day period expired, *CREW II,* No. 16-2255 (D.D.C.) was finished: All the requirements of 52 U.S.C. § 30109(a)(8) governing such lawsuits had been fulfilled.

- **Quite Open: *CREW v. AAN* (*"CREW III"* or the "third-party suit"), No. 18-945 (D.D.C.)**
  On April 23, 2018, pursuant to 52 U.S.C. § 30109(a)(8)(C), CREW filed its third-party suit against AAN,[22] noting that it had gained jurisdiction to do so on April 19, 2018,[23] when *CREW II* was finished. On May 10, 2018, the third-party suit was proceeding, just as the Act contemplated, having been authorized by a district court with jurisdiction over the matter.

- **Quite Open: MUR 6589R, the underlying enforcement matter**
  The Court's March 20, 2018 remand to the Commission re-opened this matter. The Commission's May 10, 2018 RTB votes became the working disposition of this complaint. The May 10 votes are disclosed for the first time by the Commission's release, today, of the enforcement file in this matter, pursuant to the August 29, 2022 dismissal.[24]

On April 9, 2021, a D.C. Circuit panel decided the *New Models* appeal.[25] This ill-advised opinion rendered any Commission dismissal invulnerable to judicial review if the commissioners

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[21] On April 26, 2017, the district court denied CREW's motion asking it to (a) order the FEC to show cause why it should not be held to have violated the court's order and (b) authorize a third-party suit under the Act. The court denied the motion, holding that the Commission's Oct. 8 dismissal vote had served as conformance to the court's declaration. *See* Opinion and Order Denying Motion for Order to Show Cause, *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, No. 14-1419 (D.D.C.) *(CREW I)* at 6, *found at* https://ecf.dcd.uscourts.gov/doc1/04516007951 [fee site] (holding that Commission had complied with the court's order because "the Court directed the FEC to reconsider its decision without excluding from its major purpose consideration all non-express advocacy. The FEC did just that." (internal references and quotes removed)). *See also* 52 U.S.C. § 30109(a)(8)(C).

[22] *CREW v. AAN,* No. 18-945 (D.D.C.) *(CREW III).*

[23] 52 U.S.C. § 30109(a)(8)(C).

[24] Certification, MUR 6589R (Aug. 29, 2022).

[25] *New Models* panel decision, *supra* note 11.

explaining themselves cited "prosecutorial discretion" as the reason they had voted to not pursue the complaint.

AAN, the defendant in the third-party suit, took note of this development. The district court denied AAN's motion to dismiss the third-party suit on *New Models* grounds on Sept. 23, 2019.[26] It did so taking the 2016 Republican SOR as the Commission's then-current reasoning.[27] But on March 2, 2022, the district court reversed itself and held that the intervening 2021 *New Models* panel decision precluded the district court's earlier review of the Commission's reasoning. Because of *that,* the district court held, it should not have held the 2014 Republican SOR to be contrary to law. It held that the 2016 Republican SOR presently before the court either:

> (a) should not have existed at all because the *New Models* panel decision precluded review of the 2014 Republican SOR's invocation of prosecutorial discretion and "the Court lacked the power to issue the remand order that resulted in the second statement," or
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> (b) could not be reviewed because the 2016 Republican SOR incorporated by reference the 2014 Republican SOR's invocation of prosecutorial discretion, thus rendering itself unreviewable.[28]

And so the district court dismissed CREW's third-party suit against AAN.[29]

But the court did not know that on the day the *New Models* panel decision hit the streets on April 9, 2021, the 2014 and 2016 Republican SORs had been dead letters for almost two years,[30] as the Commission had superseded its 2014 and 2016 RTB votes on May 10, 2018, when it held three further RTB votes and a dismissal vote on the matter. And the commissioners who had held the pen for the first two statements of reasons no longer held that pen: Whatever status my colleagues' previous votes may have earned them as "declining-to-go-ahead commissioners" was entirely undone that day because all three of them voted in *favor* of that day's RTB motions.[31]

The D.C. Circuit's rule for civil litigation is that "a retroactive decision can affect only suits pending in the courts or not yet brought, but cannot be raised by previously unsuccessful litigants."[32] Neither *CREW I* nor *CREW II* were pending when the *New Models* panel decision was

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[26] *CREW v. AAN*, 410 F. Supp. 3d 1 (D.D.C. 2019) *(CREW III)*.

[27] *Id.* at 10.

[28] Memorandum Opinion and Order, *CREW v. AAN* (No. 18-945) (March 2, 2022) *(CREW III)*, at 16 note 7. ("But as AAN points out, if the passing reference to prosecutorial discretion in the initial statement made the first dismissal unreviewable under *New Models*, then the Court lacked the power to issue the remand order that resulted in the second statement. The result would have been a dismissal of CREW's case, and the Commissioners never would have issued a second statement. In any event, the second Statement of Reasons 'incorporate[d] by reference' the first one 'on all points except for aspects deemed contrary to law' by this Court," citing 2016 Republican Statement at 2).

[29] *Id.* at 17.

[30] The district court's dismissal of the third-party suit in March 2022 took only the *New Models* decision into account, but it is worth noting that the 2014 and 2016 Republican statements of reasons had been dead letters for more than a month even when the panel decision in *CHGO* was released on June 15, 2018.

[31] Certification, MUR 6589R (May 10, 2018).

[32] *Zweibon v. Mitchell*, 606 F.2d 1172, 1177 (D.C. Cir. 1979). The Supreme Court has held that when it "applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full

published. The Commission had lost both cases, and the remainder of 52 U.S.C. § 30109(a)(8)'s terms governing such lawsuits had been fulfilled. The Commission – and AAN as intervenor – were the "previously unsuccessful litigants" barred by the Circuit rule from raising a decision retroactively.

Under the D.C. Circuit's rule on retroactivity, then, the *New Models* decision can only be applied to the two matters that were open at the time the decision landed: MUR 6589R, the underlying enforcement matter, and *CREW v. AAN*, No. 18-0945 (D.D.C.), the third-party suit.

MUR 6589R was dismissed by the Commission in August 2022. The *New Models* decision *could* apply to a dismissal lawsuit filed by the complainant pursuant to 52 U.S.C. § 30109(a)(8) if the controlling statement of reasons cites prosecutorial discretion as the reason the matter had not been pursued. (Spoiler alert: That's *this* statement. It will *not* cite prosecutorial discretion.)[33]

Now, remember the time travel mentioned at the outset of this statement? It comes into play here. When the motions to find RTB in this matter failed on May 10, 2018, and then the motions to dismiss this matter succeeded August 29, 2022, D.C. Circuit jurisprudence required that May 10, 2018, outcome to have an explanation. Pursuant to binding D.C. Circuit precedent, this September 2022 statement today retroactively becomes the rationale for the Commission's May 10, 2018, RTB votes.

With all that in mind, the *New Models* decision is irrelevant to the third-party suit. The third-party suit is not litigating whether the Commission's dismissal of the complaint in this matter was contrary to law. That ship has sailed. The third-party suit is litigating the merits of the original administrative complaint.[34] CREW gained jurisdiction to file the third-party suit because the Commission did not conform to the court's declaration that the second dismissal was contrary to law within 30 days.

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retroactive effect *in all cases still open on direct review* and as to all events, regardless of whether such events predate or postdate our announcement of the rule." *Harper v. Virginia Dep't of Tax'n*, 509 U.S. 86, 97, (1993) *(emphasis added).*

[33] Note that the Commission has considered this file to be open ever since March 20, 2018, when the district court declared the Commission's dismissal of the matter to be contrary to law and remanded it back to us. Opinion, *CREW v. FEC*, 299 F. Supp. 3d 83 (D.D.C. 2018) *(CREW II)* (finding the second dismissal of CREW's complaint contrary to law, and again remanding to the Commission), *found at* https://www.fec.gov/resources/legal-resources/litigation/crew_162255_dc_opinion.pdf.

A court reviewing the Commission's August 2022 dismissal of this matter should note that when the Commission conducted its vote, it was well aware of the district court's March 2022 decision reconsidering that March 2018 declaration, the decision that dismissed the *CREW v. AAN* third-party lawsuit. None of the six commissioners who voted on the matter raised any objection that the Commission was somehow acting unnecessarily or improperly. Though I voted against dismissing the matter on that day, I accepted the view of our Office of General Counsel that the file was open and that a close the file dismissal vote was in order.

[34] Complaint, *CREW v. AAN*, 18-945 (D.D.C.) *(CREW III)*, at ¶1 ("This is an action to remedy American Action Network's ('AAN') violations of the Federal Election Campaign Act of 1971 ('FECA'), brought pursuant to 52 U.S.C. § 30109(a)(8)(C)."); 52 U.S.C. § 30109(a)(8)(C) (the "complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint").

The district court applied the correct legal standard to the then-active Commission positions in *CREW I* in 2016 and *CREW II* in 2018, but by March 2022, the Commission's position had changed. When the *New Models* decision was published April 9, 2021, unbeknownst to the court, the underlying complaint was not being pursued because of the May 10, 2018, RTB votes, not any previous Commission votes. The 2014 and 2016 Republican SORs were no longer active; within the Commission, they had been superseded by subsequent votes, and beyond the Commission, all the litigation that had challenged them had concluded. On April 9, 2021, the rationale for the Commission's failure to pursue this complaint was not any sort of prosecutorial discretion.

SO, WHAT *IS* THE CONTROLLING-COMMISSIONER EXPLANATION OF THE MAY 10, 2018 RTB VOTES?

My vote on May 10, 2018 prevented the Commission from finding reason to believe that a violation had occurred in this matter – as I intended it to do. Because this was the last time such a motion was made in this matter, my reasoning, and my reasoning alone, controls as the Commission's position.

Oddly, in this case, D.C. Circuit caselaw demands an explanation from the commissioner who voted against RTB but also against dismissing this matter – a commissioner who believes that this dismissal is firmly contrary to law.[35] And this is hardly the most serious distortion the D.C. Circuit's conflations have inflicted upon the Commission's ability to enforce the law. The D.C. Circuit should take the opportunity presented by the *New Models en banc* petition to reverse its *New Models*, *CHGO*, and *NRSC*[36] precedents.

Now, ordinarily, those explaining a dismissal's rationale agree with the outcome and explain all the ways the dismissal was not contrary to law. Not this time. This controlling statement of reasons will explain why dismissing the complaint in this matter was *absolutely* contrary to law.

As an initial matter, here's what the reasoning is *not:*

- I explicitly *disclaim* in its entirety the reasoning contained in the Statements of Reasons of Commissioners Goodman, Hunter, and Petersen in MURs 6589 and 6589R.[37]

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[35] And this is not the only matter where this is the case. I am also the controlling commissioner in MURs 6915 and 6927 (Bush). This kind of outcome from the D.C. Circuit's conflations was predictable and predicted. *See, e.g.*, Weintraub *New Models* Statement, *supra* note 11, at 12, note 50 ("This is made even more clear when there are significant temporal or voting-lineup differences between the RTB vote and the dismissal vote. If three commissioners voted against RTB in a matter where the Commission's General Counsel counseled otherwise, the President replaced the entire lineup of commissioners, and the newly constituted Commission then simply voted to close the file, from whom is an explanation required? Former commissioners cannot speak for the Commission, nor did their votes cause the matter to be dismissed. Only the sitting commissioners who just dismissed the matter by voting to closing the file can provide the Commission's rationale.").

[36] *FEC v. NRSC*, 966 F.2d 1471 (D.C. Cir. 1992). I discuss this case's flaws in depth here: Weintraub *New Models* Statement, *supra* note 11, at 4-8.

[37] *See* 2014 Republican SOR, *supra* note 10, and Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, MUR 6589R (AAN) (Oct. 19, 2016) ("2016 Republican SOR"), *found at* http://eqs.fec.gov/eqsdocsMUR/16044401031.pdf.

- The Commission did *not* dismiss this matter pursuant to its prosecutorial discretion.[38] To be clear: this statement, this matter's Controlling Statement of Reasons unequivocally disclaims prosecutorial discretion as a rationale for the Commission's dismissal of this matter.

- The Commission did *not* dismiss this matter because the statute of limitations had elapsed.[39] The Commission has considerable equitable remedies available to it that are not subject to 28 U.S.C. § 2462. The general statute limits itself quite specifically to any action, suit, or proceeding for the enforcement of *"any civil fine, penalty, or forfeiture, pecuniary or otherwise."* This describes some of the tools Congress has given the Commission to enforce the law, but not all of them.

  One power of the Commission is to levy "a civil penalty."[40] This falls directly under the "civil fine, penalty, or forfeiture" terms of 28 U.S.C. § 2462. The law is clear that past the five-year statute of limitations, the Commission may not impose a civil penalty on a respondent. But the Act separately gives the Commission the power to "institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order[.]"[41] These are the Commission's "equitable remedies." Equitable remedies are had when the Commission compels a respondent to, say, file missing reports, amend its filings, register as a political committee, halt a current practice, or attend compliance training. Equitable remedies are also had when the Commission signs agreements with respondents where respondents agree to desist from violating the law going forward, or not to work for a federal political committee for a specified period of time, or to secure their own independent compliance audits and provide the Commission with the results.[42] None of these equitable remedies involve paying a fine or suffering some other monetary penalty. 28 U.S.C. § 2462 cannot reasonably be read to extend to the Commission's equitable remedies.

  In this matter, the Commission has substantial equitable remedies available to it. This is a classic political-committee status matter. AAN styled itself as a 501(c)(4) social-welfare organization that does not have to disclose its donors. But the evidence before

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[38] *See Heckler v. Chaney*, 470 U.S. 821 (1985).

[39] It is worth noting that whether the statute of limitations has elapsed is a legal judgment not properly subject to prosecutorial discretion. If the statute has indeed run on a matter, the Commission lacks the discretion to choose to pursue financial penalties in that matter. Every assertion that the statute of limitations has elapsed draws on an evaluation of the facts of the matter and an evaluation of a statutory provision outside the Act (28 U.S.C. § 2462) and the judicial glosses on that statute – all of which are matters subject to judicial review under the Act. *See* 52 U.S.C. § 30109(a)(8).

[40] 52 U.S.C. §30109(a)(5)(A).

[41] 52 U.S.C. §30109(a)(6); *see also Christian Coalition*, 965 F.Supp. at 72 ("Under the FECA, the Commission has the authority to seek injunctive relief wholly separate and apart from its authority to seek a legal remedy") (*citing* 52 U.S.C. § 30109(a)(6)'s antecedent).

[42] Courts also have equitable remedies available in FECA-related matters, such as issuing a declaratory judgment that the conduct at issue violated the Act.

> the Commission showed that AAN met the definition of a political committee, which *does* have to disclose the identity of its donors. Had the Commission successfully pursued this matter, it would have been well within its authority to require AAN to update its filings with the Commission to include all the information about its contributors that the Act requires.[43]

Now, the practice of courts has been to accept Statements of Reasons published by controlling commissioners after the Commission has voted to dismiss the matter and even after the 60-day deadline has passed for complainants to challenge the dismissals.[44] This approach raises questions under basic administrative law principles.[45]

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[43] The Commission's ability to secure such an outcome was demonstrated in MUR 6538R (Americans for Job Security), *found at* https://www.fec.gov/data/legal/matter-under-review/6538R/.

[44] *See* 52 U.S.C. §30109(a)(8)(B).

[45] The lurking question here is: what constitutes the FEC's administrative record in this or any other enforcement matter? This statement, for instance, was not before this agency when it decided to dismiss this matter. Can it be considered by a court to be part of the administrative record of this matter? The question has not been put directly before the D.C. Circuit in the context of FEC decisions.

The D.C. Circuit defines an agency's administrative record as all materials compiled by the agency that were before the agency at the time a decision was made, and it confines a court's review to the administrative record. *See, e.g., James Madison Ltd. by Hecht v. Ludwig,* 82 F.3d 1085, 1095 (D.C. Cir. 1996) ("The APA requires courts to "review the whole record or those parts of it cited by a party." 5 U.S.C. § 706. "Ordinarily, courts confine their review to the "administrative record." *Edison Elec. Inst. v. OSHA,* 849 F.2d 611, 617–18 (D.C.Cir.1988). The administrative record includes all materials "compiled" by the agency, *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402, 419, 91 S.Ct. 814, 825, 28 L.Ed.2d 136 (1971), that were "before the agency at the time the decision was made," *Environmental Defense Fund, Inc. v. Costle,* 657 F.2d 275, 284 (D.C.Cir.1981).").

My April 2018 statement, (2018 Weintraub AAN Statement, *supra* note 5), which explained in advance my eventual controlling non-RTB vote in the matter, *was* in the record when the Commission voted to close the administrative record in this matter and dismiss the complaint in August 2022 (and even when the Commission took its May 2018 RTB votes).

(Note that this analysis would render the 2014 and 2016 dismissals of this matter as textbook arbitrary and capricious contrary-to-law actions, because when the Commission voted to close the administrative file and dismiss the matter on June 24, 2014 and Oct. 8, 2016, respectively, the reasoning of the Commission (released July 30, 2014 and Oct. 16, 2016, respectively) was not before the Commission.)

As I explained in my 2018 statement, I was withholding my affirmative vote on RTB motions because I believed that dismissing this matter was contrary to law. I knew from long and painful experience that providing a fourth vote for RTB at that moment would only serve to eventually sink the matter, and that voting to instead send the matter to a third-party suit was the best way to get the law enforced. As I wrote of my colleagues in that statement: "Their actions in this matter – and over the past decade – have convinced me that despite two clear defeats before the District Court, they will eventually find a way to block meaningful enforcement of the law in this and any other dark-money matter that comes before us." 2018 Weintraub AAN Statement, *supra* note 5 at 1. So I voted to take the matter out of their hands. My expectations were sadly confirmed by the subsequent dismissals without action on many more dark-money complaints, dispositions exacerbated when the D.C. Circuit utterly destroyed the statutory right of complainants to challenge contrary-to-law dismissals through its *CHGO* and *New Models* precedents.

My April 2018 statement explained why dismissing this matter was contrary to law by incorporating the rationale of the *CREW I* district court: "I fully support the sound reasoning of the [District] Court's March 20[, 2018] opinion." The statement references the opinion in *CREW v. FEC,* 299 F. Supp. 3d 83, 101 (D.D.C. 2018) *(CREW II)* (finding the second dismissal of CREW's complaint contrary to law, and again remanding the matter to the Commission), *found at* https://www.fec.gov/resources/legal-resources/litigation/crew_162255_dc_opinion.pdf.

But unless and until a court outlaws that practice, the reasoning contained in *this* statement will control. Though released after the Commission's Aug. 29, 2022, dismissal vote in this matter, this statement is available to the complainant well before its Oct. 30, 2022, statutory deadline to challenge this dismissal.[46]

As noted above, I incorporate by reference the analysis and discussion made in my previous statements on all points.[47] Because the dismissal of this matter was unreasonable, given the facts before the Commission, the law governing this activity, and the reasoning referenced above, I voted against dismissing it. The Commission's dismissal of this matter was contrary to law.

THE EASE WITH WHICH A COMMISSIONER CAN KILL WORTHY COMPLAINTS

The *New Models* decision has made it absurdly easy for less than a majority of commissioners – or even a single commissioner – to nullify the ability of complainants to challenge the dismissals of their complaints, thus insulating Commission dismissals from any sort of judicial oversight. *New Models* empowers any and every justification for prosecutorial discretion:

- Legal judgments regarding the Act, no matter how inaccurate: *"I voted to dismiss this matter in an exercise of the Commission's prosecutorial discretion because the Act does not cover such activity."*
- Legal interpretations of any *non-FECA* statute or judicial decision, no matter how inaccurate: *"I voted to dismiss this matter in an exercise of the Commission's prosecutorial discretion pursuant to* Marbury v. Madison,[48] *which declared the Federal Election Campaign Act to be unconstitutional."*
- Even an inaccurate factual statement related to or entirely unrelated to the facts of the matter would be upheld under *New Models* as an unreviewable rationale: *"I voted to dismiss this matter in an exercise of the Commission's prosecutorial discretion because the Moon is made of green cheese."*
- No reason need be given at all: *"I voted to dismiss this matter in an exercise of the Commission's prosecutorial discretion, period."*

Were I to include any of the above statements in the reasoning of my statement in this matter, *New Models* would render the Commission's dismissal of this matter invincible to

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Should a court decide that the Commission is indeed subject to basic administrative law principles, my April 2018 statement should be taken as controlling, and this present statement should merely be taken as illuminating.

[46] *See* 52 U.S.C. §30109(a)(8)(B).

[47] Statement of Reasons of Vice Chair Ann M. Ravel and Commissioners Steven T. Walther and Ellen L. Weintraub, MURs 6538 and 6589 (Americans for Job Security and American Action Network) (July 30, 2014), *found at* http://eqs.fec.gov/eqsdocsMUR/14044362039.pdf; Statement of Reasons of Commissioners Ann M. Ravel and Ellen L. Weintraub, MUR 6589R (AAN) (Dec. 5, 2016), *found at* http://eqs.fec.gov/eqsdocsMUR/16044403699.pdf; 2018 Weintraub AAN Statement, *supra* note 5.

[48] 5 U.S. 137 (1803).

challenge. This eviscerates the citizen-suit provisions Congress built into the Act to provide oversight over the Commission's conduct of its enforcement duties.

The point I am raising is not speculative. My colleagues recently cited prosecutorial discretion in explaining their votes that blocked the Commission from pursuing a complaint that alleged a violation *in excess of $780 million.*[49] They based their opinion on their factual and legal assessments of the matter. Commissioner Broussard and I forcefully disputed those assessments,[50] and I wrote separately to note that my colleagues' *entire* statement was based on nothing but factual and legal assessments.[51] But our colleagues' claims were enthusiastically picked up by the Commission's litigators, who, understandably enough, always like a slam-dunk argument. The Commission's litigators filed a motion earlier this month to dismiss a complainant lawsuit filed under § 30109(a)(8) arguing that *New Models* so entirely protected my colleagues' invocation of prosecutorial discretion that it caused the plaintiff's complaint to fail to state a claim, and it should therefore be dismissed under FRCP 12(b)(6).[52]

My colleagues also brazenly asserted controlling-commissioner authority over the *judicial branch* in their June 8, 2022 "policy statement"[53] regarding *CREW v. FEC,* 971 F.3d 340 (D.C. Cir. 2020).[54] In *CREW v. FEC*, the D.C. Circuit had affirmed the district court's characterization of the Act's reporting mandates. But my colleagues dismissed this as "vague and imprecise" and announced that they would be enforcing the law as they – not the D.C. Circuit – saw it. They embraced the Second Circuit's reasoning in *FEC v. Survival Educ. Fund,*[55] and announced their intent to enforce 52 U.S.C. § 30104(c)(1) only as to contributions earmarked to independent expenditures. They would, they announced airily, dismiss other activity pursuant to their powers of prosecutorial discretion.[56]

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[49] Statement of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III, MUR 7784 (Make America Great Again PAC, *et al.)* at 1 (June 9, 2022), *found at* https://www.fec.gov/files/legal/murs/7784/7784_42.pdf.

[50] Statement of Reasons of Commissioners Shana M. Broussard and Ellen L. Weintraub, MUR 7784 (Make America Great Again PAC, *et al.*), (June 15, 2022), *found at* https://www.fec.gov/files/legal/murs/7784/7784_43.pdf.

[51] Supplemental Statement of Reasons of Commissioner Ellen L. Weintraub, MUR 7784 (Make America Great Again PAC, *et al.*) (July 14, 2022), *found at* https://www.fec.gov/files/legal/murs/7784/7784_44.pdf.

[52] Motion to Dismiss, *Campaign Legal Center v. FEC,* No. 22-1796 (Sept. 12, 2022) ("Plaintiff now challenges the FEC's decision not to pursue this matter further, but under binding D.C. Circuit precedent, judicial review is not available where, as here, the votes of the Commissioners who declined to go forward were explicitly based on prosecutorial discretion. *See Citizens for Resp. & Ethics in Wash. v. FEC*, 892 F.3d 434, 438 (D.C. Cir. 2018) ('*Commission on Hope*'). And because this was an exercise of 'unreviewable prosecutorial discretion,' *id*., plaintiff has failed to state a claim for relief that can be granted. Plaintiff's court complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6).").

[53] *Policy Statement of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III Concerning the Application of 52 U.S.C. § 30104(c)* (June 8, 2022) ("Republican Policy Statement"), *found at* https://www.fec.gov/resources/cms-content/documents/CREW_contributions_earmarked_political_purposes_Dickerson_Cooksey_Trainor_06082022.pdf.

[54] 971 F.3d 340 (D.C. Cir. 2020), *aff'g* 316 F. Supp. 3d 349 (D.D.C. 2018).

[55] 65 F.3d 285, 295 (2d Cir. 1995).

[56] Republican Policy Statement, *supra* note 53, at 6.

This amazingly arrogant statement (a) directly contradicted the binding holding in *CREW v. FEC* that the term "earmarked for political purposes" applies more broadly and (b) ignored that the district and circuit courts in *CREW v. FEC* had *expressly rejected* the Second Circuit's reasoning *on exactly that point*.[57] But as outrageous as all that is, what's more outrageous is that they will likely get away with it under the *CHGO* and *New Models* decisions.

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I am deeply disappointed that the Commission has, once again, dismissed a meritorious and important complaint for reasons that are contrary to law. Fortunately, Congress created two more paths to get the law enforced. They are both available to this complainant.

First, within 60 days after the Commission's Aug. 29, 2022 vote to dismiss the matter by closing the file, CREW can sue the Commission on the grounds that the dismissal of its complaint was contrary to law.[58] This lawsuit should succeed, as the position of the Federal Election Commission, as set forth in this controlling Statement of Reasons, is that the dismissal of MUR 6589R was indeed contrary to law.

Next, the complainant has already successfully alleged that the Commission failed to act on its complaint.[59] That suit's conclusion gave rise to the third-party lawsuit the complainant filed against several of the respondents.[60] (The appeal[61] of the dismissal of that lawsuit is on hold until the D.C. Circuit makes a decision regarding the pending *New Models en banc* petition.) The complainant's third-party lawsuit should not be affected by the Commission's dismissal of this matter. The complainant's cause of action against the respondent arose on April 19, 2018, after a thirty-day period during which the Commission did not conform with the district court's March 20, 2018 declaration that the Commission's failure to act on the complainant's complaint was contrary to law.[62] The Commission's dismissal of this matter did nothing to cure the injury that provided the complainant with the Article III standing it needed to maintain its 52 U.S.C. § 30109(a)(8)(A) lawsuit against the Commission and its 52 U.S.C. § 30109(a)(8)(C) lawsuit against respondents.

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In a more functional era for the Commission, commissioners worked hard to find a place where four commissioners could find common ground. Now, however, it has become common practice for half the Commission to simply block enforcement of the law. Such was the case in this matter. Accordingly, it should come as no surprise that many complainants have sought recourse

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[57] *See* 971 F.3d. at 353; 316 F. Supp. 3d at 401 n.43.

[58] 52 U.S.C. § 30109(a)(8)(A) & (B).

[59] *CREW v. FEC*, No. 16-2255 (D.D.C.) *(CREW II)*.

[60] *CREW v. AAN*, 18-945 (D.D.C.) *(CREW III)*.

[61] *CREW v. AAN*, 22-7038 (D.C. Cir.).

[62] *CREW v. AAN*, 18-945 (D.D.C.) *(CREW III)*.

from the courts. Congress anticipated that this bipartisan Commission would sometimes split on enforcement votes and provided a mechanism for the Commission's failure to enforce the law to obtain judicial review. I make no apologies for using the provisions that Congress enacted to try to ensure that those complaints can get a fair hearing in the courts. Those who file complaints before the Commission deserve a meaningful review of their allegations, either by a Commission that will do its job to enforce the law or by a court that will do so.

Ellen L. Weintraub

Sept. 30, 2022

Ellen L. Weintraub
Commissioner

APPENDIX A: TIMELINE

2012 **June 7:** Complaint filed.[63] Commission opens MUR 6589.

2013 **Jan. 17:** Office of General Counsel recommends that the Commission pursue the allegations contained in the complaint.[64]

2014 **June 24:** Commission conducts first reason-to-believe votes. They fail 3-3 along partisan lines.[65]

June 24: Commission votes 6-0 to dismiss complaint.[66]

July 30: Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen publish their first statement of reasons.[67]

Aug. 20: Complainant files its first lawsuit.[68]

2016 **Sept. 19:** District Court declares July 30, 2014 Republican SOR to be contrary to law, writing that it "blinks reality"[69]; remands to Commission to conform with its declaration within 30 days.

Oct. 8: Commission conducts second round of reason-to-believe votes.[70]

Oct. 8: Commission votes 5-1 to dismiss complaint.[71]

Oct. 12: Commission opens MUR 6589R.

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[63] Complaint, MUR 6589 (AAN) (June 7, 2012), *found at* https://www.fec.gov/files/legal/murs/6589/14044361739.pdf.

[64] First General Counsel's Report, MUR 6589 (Jan. 17, 2013) ("FGCR"), *found at* https://www.fec.gov/files/legal/murs/6589/14044361896.pdf.

[65] Certification, MUR 6589 (June 24, 2014), *found at* https://www.fec.gov/files/legal/murs/6589/14044361924.pdf (Commissioners Ravel, Walther, and Weintraub voting Yes and Commissioners Goodman, Hunter, and Petersen voting No).

[66] *Id.*

[67] Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen, MUR 6589 (AAN) (July 30, 2014) ("2014 Republican SOR"), *found at* http://eqs.fec.gov/eqsdocsMUR/14044362004.pdf.

[68] Complaint, *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, No. 14-1419 (D.D.C.) *("CREW I")*, *found at* https://www.fec.gov/resources/legal-resources/litigation/crew141419_complaint.pdf.

[69] Opinion, *CREW v. FEC (CREW I)*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016) (finding the initial dismissal of CREW's complaint against AAN "contrary to law," and remanding to the Commission), *found at* https://www.fec.gov/resources/legal-resources/litigation/crew141419_dc_opinion2.pdf.

[70] Certification, MUR 6589R (Oct. 8, 2016) (Commissioners Ravel, Walther, and Weintraub voting Yes and Commissioners Goodman, Hunter, Petersen voting No).

[71] *Id.* (Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting Yes and Commissioner Ravel voting No).

Oct. 16: Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman publish their second statement of reasons, this time regarding MUR 6589R.[72]

Nov. 14: Complainant files its second lawsuit against Commission.[73]

2018 **March 20:** District Court declares 2016 Republican SOR to be contrary to law, remands to Commission to conform with its declaration within 30 days.[74]

April 19: Commission does not conform by court's deadline. Third-party suit is authorized.[75]

April 19: I publish my third statement regarding this matter.[76]

April 23: CREW files third-party suit against AAN.[77]

May 10: Commission conducts third and final round of reason-to-believe votes. One RTB vote fails 2-1, with the Commissioners Matthew S. Petersen and Caroline C. Hunter voting for, Commissioner Steven T. Walther voting against, and me abstaining. Two RTB votes fail 3-0-1 on my abstention.[78]

May 10: Motion to close the file and dismiss complaint fails 3-0-1 on my abstention.[79]

June 15: In the *CHGO* case, the D.C. Circuit affirms district court and establishes circuit precedent of unreviewable deference to invocations of prosecutorial discretion under *Heckler v. Chaney*.[80]

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[72] Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, MUR 6589R (AAN) (Oct. 19, 2016) ("2016 Republican SOR"), *found at* http://eqs.fec.gov/eqsdocsMUR/16044401031.pdf.

[73] Complaint, *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, No. 16-2255 *(CREW II), found at* https://www.fec.gov/resources/legal-resources/litigation/crew_162255_fec_complaint.pdf.

[74] *CREW II, supra* note 45.

[75] 52 U.S.C. § 30109(a)(8)(C).

[76] 2018 Weintraub AAN Statement, *supra* note 5.

[77] *CREW v. AAN*, No. 18-945 (D.D.C.) *(CREW III).*

[78] Certification, MUR 6589R (May 10, 2018) (Commissioners Goodman, Hunter, Petersen voting Yes and Commissioner Weintraub abstaining).

[79] *Id.* (Commissioners Goodman, Hunter, Petersen, Walther, and Weintraub voting Yes and Commissioner Ravel voting No).

[80] *CHGO, supra* note 12. *See also Heckler v. Chaney*, 470 U.S. 821 (1985); *see also* Vice Chair Ellen L. Weintraub, Statement on the D.C. Circuit's Decision in *CREW v. FEC*, June 22, 2018, *found at* https://www.fec.gov/resources/cms-content/documents/2018-06-22_ELW_statement_re_CREWvFEC-CHGO.pdf.

2019 **March 29:** In the *New Models* case, the district court dismisses, on *CHGO* grounds, lawsuit challenging Commission's dismissal of CREW's complaint against New Models.[81]

May 14: In the *CHGO* case, the D.C. Circuit denies petition to rehear the matter *en banc.*[82]

Sept. 23: District Court denies AAN's motion to dismiss CREW's citizen suit.[83]

2021 **April 9:** In the *New Models* case, the D.C. Circuit affirms the district court.[84]

June 23: In the *New Models* case, CREW files petition with D.C. Circuit seeking *en banc* review of the April 9 panel decision.[85]

2022 **March 2:** District Court grants motion for reconsideration of its Sept. 23, 2019 decision and dismisses third-party lawsuit.[86]

Aug. 29: Commission dismisses CREW's complaint regarding AAN by voting to close the file.[87]

[81] District Court Opinion, *CREW v. FEC*, 380 F. Supp. 3d 30 (D.D.C. 2019), *found at* https://www.fec.gov/resources/cms-content/documents/crew_180076_dc_mem_opinion_03-29-19.pdf.

[82] Order (denying pet. for reh'g en banc), *CREW v. FEC (CHGO)*, 923 F.3d 1141 (D.C. Cir. 2019), *found at* https://www.fec.gov/resources/cms-content/documents/crew152038_ac_order2.pdf.

[83] *CREW v. AAN ("CREW III"),* 410 F. Supp. 3d 1 (D.D.C. 2019).

[84] *New Models* panel decision, *supra* note 11.

[85] *New Models en banc* petition, *supra* note 11.

[86] Memorandum Opinion and Order, *CREW v. AAN* (No. 18-945) (March 2, 2022) *(CREW III)*.

[87] Certification, MUR 6589R (AAN) (Aug. 29, 2022).