



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Independent Women's Voice)

) MUR 7181
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**STATEMENT OF REASONS OF
VICE CHAIR ALLEN DICKERSON AND COMMISSIONERS SEAN J. COOKSEY
AND JAMES E. "TREY" TRAINOR III**

This matter began in November 2016, when the Commission received a complaint from the Center for Media and Democracy ("CMD") alleging that Independent Women's Voice ("IWV"), a social welfare organization established under § 501(c)(4) of the Internal Revenue Code, failed to organize, register, and report as a political committee. The underlying conduct at issue is even older, dating back to the 2010 election cycle, and well outside the five-year statute of limitations.¹

For three years, two months, and nineteen days, this case languished within the Office of General Counsel ("OGC"). Then, when the Commission finally received a First General Counsel's Report on January 21, 2020, it could not act on the complaint for another year because it lacked the requisite quorum. Once a quorum was restored in December 2020, we considered this matter for the first time on February 9, 2021. Considering the staleness of the facts, the expiration of the statute of limitations, our limited agency resources, and the fundamental unfairness to the Respondent of holding a case open for more than four years without action, the Commission voted 4-2 to exercise its prosecutorial discretion to dismiss this matter and to close the file.

* * *

IWV is a 501(c)(4) non-profit organization "for mainstream women, men and families dedicated to promoting limited government, free markets, and personal responsibility."² According to its website, IWV "fights for women and their loved ones by effectively expanding support among women, independents, and millennials for policy solutions."³ As an educational

¹ See 28 U.S.C. § 2462.

² Resp. at 4 (Apr. 19, 2017).

³ Independent Women's Voice, *Who We Are*, available at <http://iwv.org/about> (last visited Feb.5, 2021).

and issues-advocacy organization, IWV has exercised its First Amendment rights to promote its views on issues like health care policy through educational campaigns, issue-based literature, electioneering communications, and limited independent expenditures.⁴

On November 2, 2016, CMD filed a complaint against IWV, alleging that the group violated the Federal Election Campaign Act of 1971 (“the Act”) by failing to organize, register, and report as a political committee beginning in 2010.⁵ CMD argued that IWV had an obligation to register and report as a political committee because it allegedly spent millions of dollars on the 2010, 2012, and 2014 federal elections, and its major purpose since 2010 was apparently to influence federal elections.⁶

In its response filed on March 13, 2017, IWV generally contended that it never had the major purpose to influence federal elections and that its limited electioneering communications and independent expenditures were entirely consistent with its status as a 501(c)(4) organization.⁷ Moreover, it denied that any public statements by its officers evinced a change in its major purpose, and it argued the complaint was therefore factually deficient.⁸ Finally, IWV maintained that much of the conduct at issue was outside of the five-year statute of limitations.⁹

What happened over the next three years remains a mystery. Having received the complaint and the response, OGC should have had everything it needed to begin drafting and finalizing a First General Counsel’s Report. That report would analyze the merits of the complaint and recommend to the Commission whether to find reason to believe a violation of the Act had occurred. The Commission would then consider and, when ready, vote on whether to pursue (or not) the matter so the case could advance toward some ultimate resolution.

That did not happen. Instead, for three years, two months, and nineteen days from the time the complaint was filed, the report sat somewhere within OGC unfinished. All the while, under FEC Directive 68,¹⁰ OGC sent IWV annual status letters from the Commission on the case pending against it. Those largely pro forma status letters offered no explanation for the delay. Indeed, in some cases, they even gave the impression of imminent action, telling IWV in November 2017 and October 2018 that “we expect the Commission to vote on this matter within the next six

⁴ Resp. at 4–5.

⁵ Compl. at 1 (November 2, 2016).

⁶ *Id.* at 1, 5–6.

⁷ Resp. at 10–13.

⁸ *Id.* at 13–15.

⁹ *Id.* at 16.

¹⁰ See FEC Directive 68, Enforcement Procedures (Dec. 14, 2017), available at https://www.fec.gov/resources/cms-content/documents/directive_68.pdf (directing the Office of General Counsel to provide status reports to respondents at 12-month intervals).

months.”¹¹ That language was removed in the status letters for October 2019 and October 2020 and replaced with a more noncommittal statement that “we do not have an estimate of when the Commission will vote on this matter.”¹²

A First General Counsel’s Report was circulated to the Commission on January 21, 2020. That report recommended that the Commission find reason to believe that IWV violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee going back to the 2010 election cycle.¹³ OGC also asked the Commission to authorize compulsory process against IWV.¹⁴ But by this point, the Commission lacked the necessary quorum to vote on OGC’s recommendation.

When a quorum was restored a year later, the Commission considered the matter in executive session on February 9, 2021. We were left, then, to assess an alleged violation involving conduct that was eleven years old, contained in a complaint that was over four years old, described in a First General Counsel’s Report issued more than a year prior. For several reasons, we concluded that the most appropriate action was to dismiss this case as an exercise of prosecutorial discretion.

All the relevant facts included in CMD’s complaint fell outside of the five-year statute of limitations, with some of the relevant activity being more than a decade past. Statutes of limitations exist to protect defendants against just this kind of case, where stagnant or unduly delayed claims undermine fair adjudication. When investigations or lawsuits are based on long-forgotten conduct, the passage of time hampers defendants’ ability to raise an adequate defense: evidence has been lost, memories have faded, and witnesses have disappeared.¹⁵ Statutes of limitations are especially important for campaign-finance law. Political campaigns and committees are, by their nature, often temporary enterprises without permanent structures or personnel, and reconstituting their activities from far in the past often poses significant investigatory obstacles.

Under these circumstances, we also concluded that it would be imprudent to expend limited agency resources to investigate such outdated conduct at a time when the agency faces a severe backlog of cases. As one of our colleagues has observed, at the time a quorum was restored in December 2020, the Commission faced a backlog of 446 cases.¹⁶ Many of those cases are

¹¹ See Status Letter to Independent Women’s Voice (Nov. 8, 2017); Status Letter to Independent Women’s Voice (Oct. 18, 2018).

¹² See Status Letter to Independent Women’s Voice (Oct. 24, 2019); Status Letter to Independent Women’s Voice (Oct. 30, 2020).

¹³ First General Counsel’s Rpt. at 30.

¹⁴ *Id.*

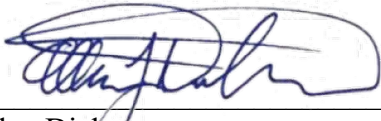
¹⁵ See *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008); *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 473 (1975) (Marshall, J., concurring in part and dissenting in part).

¹⁶ Statement of Commissioner Ellen L. Weintraub on the Senate’s Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), available at <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf>.

imperiled by the statute of limitations, but it has not yet lapsed.¹⁷ We concluded that the Commission’s mission would therefore be better served in focusing our efforts on those cases where a timely enforcement action is still possible.

For years, IWV has been left with this complaint pending against it—hanging overhead like the proverbial Sword of Damocles—not knowing if, one day, the federal government might decide to investigate and pursue an enforcement action. It undermines fundamental values of due process for a federal agency to hold individuals in jeopardy in this way without end and without explanation.¹⁸ Individuals and organizations cannot operate with confidence in the political system when, ten years hence, they may be subject to a years-long open investigation for an undetermined charge. This has a deleterious chilling effect on constitutionally protected activity.¹⁹

Facing these stale facts, a lapsed statute of limitations, and limited resources, we concluded that the fairest and most prudent course was to dismiss this case as an exercise of our prosecutorial discretion under *Heckler v. Cheney* and to close the file.²⁰



Allen Dickerson
Vice Chair

March 18, 2021

Date

¹⁷ *Id.*

¹⁸ See Statement of Reasons of Commissioner Donald F. McGahn II, MUR 6576 (Wright McLeod for Congress) (noting the due process concerns caused by, among other things, undue delays in the drafting of OGC reports and adjudication of matters).

¹⁹ Cf. Statement of Reasons of Commissioner Bradley A. Smith, MUR 4624 (NRCC) (noting the chilling effect on political activity of legal uncertainty in campaign-finance law).

²⁰ See *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (“[A]n agency’s decision not to prosecute or enforce ... is a decision generally committed to an agency’s absolute discretion ... [and] often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, ...”). See also Statement of Reasons of Commissioners Weintraub, McDonald, Thomas, and Toner, MUR 5089 (Matta Tuchman for Congress, et al.) (exercising prosecutorial discretion to dismiss a matter four years and two months after respondents fraudulently misrepresented themselves as writing on behalf of a party committee due, in part, to “the age of the case”); Statement of Reasons of Commissioners Petersen, Hunter, and McGahn, MURs 5957,6031 (Sekhon for Congress) (dismissing matters under *Heckler* and noting that “Commissioners must exercise discretion to ensure an appropriate and just result is ultimately achieved”); Statement of Reasons of Commissioners Petersen, Hunter, and Goodman, MURs 6391,6471 (The Commission on Hope, Growth, and Opportunity) (dismissing matters under *Heckler*, among other reasons, because “the statute of limitations [was] effectively expired” and the matter “did not warrant the further use of Commission resources”).



Sean J. Cooksey
Commissioner

March 18, 2021

Date



James E. "Trey" Trainor III
Commissioner

March 18, 2021

Date