



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7181
INDEPENDENT WOMEN’S VOICE)

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONER JAMES E. “TREY” TRAINOR, III**

We join in full the Statement of Reasons that has already been issued in this Matter.¹ Dismissal under *Heckler v. Chaney*² was an appropriate resolution to this case, which involved conduct dating back to the 2010 election cycle, well outside the five-year statute of limitations.³ The issues presented, however, are common ones. Knowing that they will arise in future Matters, we write separately to explain why the complaint should also have been dismissed on its merits.

Independent Women’s Voice (“IWV”) was accused of operating as an unregistered political committee under the Federal Election Campaign Act of 1971, as amended (“the Act”)—a charge that turns on whether IWV’s major purpose during the relevant period was the nomination or election of federal candidates. In its analysis, the Commission’s Office of General Counsel (“OGC”) relied principally on isolated statements by IWV personnel to compensate for the undisputed fact that the majority of IWV’s spending did not go toward electing federal candidates to office.

Because OGC’s aggressive reading would effectively sideline the central protections of the major purpose test, we cannot agree with OGC’s analysis. And because IWV lacked the requisite major purpose, it was not, as a matter of law, a political committee.

¹ Statement of Reasons of Vice Chair Dickerson, and Comm’rs Trainor and Cooksey, MUR 7181 (Independent Women’s Voice).

² 470 U.S. 821 (1985).

³ 28 U.S.C. § 2462.

I. FACTUAL BACKGROUND

The complaint in this Matter alleged that IWV failed to register and report as a political committee from 2010 to 2014. In course of its investigation, OGC reviewed IWV's tax filings as well as the independent expenditure and electioneering communications reports it filed with the FEC, in accordance with the Act, when it conducted federal electoral advocacy.

As OGC stated, “[b]y itself, such spending would not appear to indicate a major purpose of nominating or electing candidates. However, in addition, the available information also includes certain of IWV's representatives' own express statements concerning its activities directed toward the nomination or election of candidates.”⁴ OGC's analysis emphasized that IWV spoke positively about its federal spending and bragged about its impact in federal elections. OGC suggested that as a result of “the direct manner in which IWV publicly claimed credit for the election of a federal candidate...IWV's major purpose changed” to that of a political committee.⁵

II. LEGAL ANALYSIS

The Act divides the world of federal campaign regulation into two groups: political committees fully regulated by the Commission and other individuals and groups that incidentally engage in regulated political activity. The difference is not a mere technicality. Political committee status is burdensome and invasive. As the Supreme Court recognized in *Citizens United v. Federal Election Commission*, political committees “are expensive to administer and subject to extensive regulations.”⁶

The Act defines a “political committee” to include any group of persons that within a calendar year receives more than \$1,000 in contributions or makes more than \$1,000 in expenditures.⁷ In *Buckley v. Valeo*,⁸ the Supreme Court held that the Act's definition of “political committee” impermissibly swept within its ambit groups engaged primarily in issue discussion.⁹ For this reason, the Court narrowly construed the definition

⁴ First General Counsel's Report at 2.

⁵ *Id.* at 16.

⁶ 558 U.S. 310, 337 (2010).

⁷ 52 U.S.C. § 30101(4)(A).

⁸ 424 U.S. 1 (1976) (*per curiam*) (citation supplied).

⁹ *Buckley*, 424 U.S. at 79; (additional citation omitted).

of political committee to reach only groups that have as their major purpose the nomination or election of a federal candidate...

Accordingly, the Commission may regulate entities as “political committees” under the Act only if they, first, meet the statutory definition of the term and then, second, have as their major purpose the nomination or election of a federal candidate.¹⁰

Because IWV clearly spent more than \$1,000 on qualifying expenditures, its status as a political committee turns on the major purpose test.

Congress did not update the definitions of “contribution,” “expenditure,” or “political committee” in the years after *Buckley*.¹¹ Unless and until Congress enacts a new “political committee” definition with the “[p]recision of regulation” that “must be the touchstone in an area so closely touching our most precious freedoms,”¹² it is our duty to enforce that statute pursuant to the *Buckley* Court’s narrowing constructions “through a case-by-case analysis of a specific organization’s conduct.”¹³

While not the only metric,¹⁴ the simplest, cleanest, and fairest standard for determining whether an organization has the major purpose of nominating and electing federal candidates is to analyze its total spending on federal campaigns. After all, the Act has always defined political committees solely in monetary terms, as groups receiving “contributions” and making “expenditures.”¹⁵ By this measure, IWV could not possibly be perceived as having the major purpose of electing federal candidates. Indeed, IWV *never* reported spending a majority of its outlays on *any* politics at *any* level.¹⁶ One cannot truly say that IWV’s major purpose is electing any candidates to office—let alone candidates in the federal races within our regulatory and statutory ambit.

¹⁰ Statement of Reasons of Vice Chairman Petersen and Comm’r Hunter, MUR 6596 (Crossroads GPS) at 9 (internal citations in original, except where noted).

¹¹ See *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 103 (2003).

¹² *NAACP v. Button*, 371 U.S. 415, 438 (1963).

¹³ Fed. Election Comm’n, “Political Committee Status,” 72 Fed. Reg. 5595, 5596 (Feb. 7, 2007).

¹⁴ *Id.*

¹⁵ 52 U.S.C. 30101(4)(A); *Buckley*, 424 U.S. at 62 (“‘Political committee’ is defined in § 431(d) as a group of persons that receives ‘contributions’ or makes ‘expenditures’ of over \$1,000 in a calendar year”).

¹⁶ Non-federal political spending is reported to the Internal Revenue Service by § 501(c)(4) organizations like IWV.

Summary of IWV's Spending (2010-2020)					
Year	Total Spending Reported to IRS	Political Expenditures Reported to IRS	Political Expenditures Reported to IRS/Total Spending Reported to IRS	Total Federal Political Spending Reported to FEC	Total Federal Political Spending Reported to FEC/ Total Spending Reported to IRS
2010	\$1,986,937	\$772,435	38.9%	\$686,426 (\$387,251 in IEs; \$299,175 in ECs)	34.5%
2011	\$984,378	\$349,001	35.5%	\$28,600 in IEs	2.9%
2012	\$5,040,110	\$382,542	7.6%	\$961,019 in IEs	19.1%
2013	\$2,318,795	\$958,770	41.3%	\$160,287 in IEs	6.9%
2014	\$5,490,529	\$747,359	13.6%	\$783,403 in IEs	14.3%
2016	\$2,317,287	\$12,900	.5% ¹⁷	None	N/A
2018	\$2,911,604	\$271,520	9.3%	None	N/A
2020	No Report Available			\$803,350.04 IE's	N/A

As illustrated above, IWV's spending alone could not possibly support a major purpose finding. Instead, OGC recommended that we find reason to believe that test was met based on observations from IWV speakers that its lawfully-reported federal election activities were extensive and effective. These statements were routine and unsurprising; what political actor, even a part-timer, would publicly suggest its political influence was fleeting and irrelevant?

¹⁷ We will never know for sure whether IWV's hesitancy to engage in the 2016 election cycle was due to its knowledge of the Commission's consideration of this Matter. If so, our failure to expeditiously dismiss the complaint imposed concrete and irreparable harm.

More to the point, IWV's total political spending—including non-federal activity over which we lack jurisdiction—never exceeded 42% of its budget. In most years it was far lower. And that high-water mark came in 2013, when just 6.9% of its activity was federal. The greatest share of IWV's budget ever devoted to reportable federal activity was roughly a third, in 2010. In other words, this is not a case where an organization flew close to the sun, and where a swing of a few thousand dollars would make it a political committee. To believe IWV was a political committee would require one to assume that IWV cleverly hid its true purpose of electing federal candidates by annually burning somewhere between 60% and 100% of its annual budget on other priorities. We see no reason to credit that premise.

If a group spent 5% of its budget on independent expenditures in a congressional race in Florida, and 95% discussing Florida policy choices and lobbying state legislators in Tallahassee, we would quite properly conclude that the organization might be many things, but it was not a federal political committee. If its leadership nevertheless took every opportunity to brag about its participation in the federal race, and to suggest it was key to its preferred candidate's victory, those statements would not alter the calculus. In our view, an organization's revealed preferences, as exposed by the inescapable mathematical facts of its actual spending, are the surest guide to a group's major purpose. Certainly, they are a more reliable lodestar than our necessarily subjective, and often contextless, reading of stray comments made to the press.

CONCLUSION

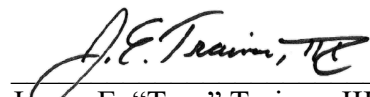
Based on this record, IWV did not have as its major purpose the nomination or election of federal candidates and, therefore, was not a political committee under the Act. Accordingly, even if four commissioners had not voted to invoke our administrative discretion under *Heckler v. Chaney*, we would not have supported a reason to believe finding in this Matter.



Allen Dickerson
Vice Chair

May 10, 2021

Date



James E. "Trey" Trainor, III
Commissioner

May 10, 2021

Date