



FEDERAL ELECTION COMMISSION
 1050 FIRST STREET, N.E.
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7320
 Libertarian Party of Miami-Dade, *et al.*)
)

**STATEMENT OF REASONS OF CHAIRMAN ALLEN DICKERSON
 AND COMMISSIONER JAMES E. "TREY" TRAINOR, III**

In this Matter, our Office of General Counsel recommended, and our colleagues voted to approve, a letter "instruct[ing]" the Libertarian Party of Miami-Dade ("LPMD") "of its obligation to refund or disgorge a \$100 prohibited contribution it received from Pierre Crevaux."¹ Because a lapsed statute of limitation deprived us of authority to issue any such instruction,² we dissented.³

¹ Certification at 1, MUR 7320 (Libertarian Party of Miami-Dade, *et al.*), July 12, 2022.

² Statement of Reasons of Vice Chair Dickerson and Comm'rs Cooksey and Trainor at 1, MURs 7859/7860 (Citizens for a Working Am., *et al.* and Jobs and Progress Fund, *et al.*), Dec. 17, 2021 ("The Commission's exclusive jurisdiction over civil enforcement of the Federal Election Campaign Act...is not indefinite. In creating this agency, Congress subjected our authority to a five-year statute of limitations") (quotation marks omitted); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) ("Hypothetical jurisdiction produces nothing more than a hypothetical judgment").

³ Certification at 1, MUR 7320 (Libertarian Party of Miami-Dade, *et al.*), July 12, 2022. We provide this Statement to explain our reasoning. *See Dem. Cong. Campaign Comm. v. Fed. Election Comm'n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) ("*DCCC*") (establishing requirement that "[t]he Commission or the individual Commissioners" must provide a statement of reasons why the agency "rejected or failed to follow the General Counsel's recommendation"); *Common Cause v. Fed. Election Comm'n*, 842 F.2d 436, 453 (D.C. Cir. 1988) ("A statement of reasons...is necessary to allow meaningful judicial review of the Commission's decision not to proceed"); *see also id.* at 451 (R.B. Ginsburg, J., dissenting in part and concurring in part) ("I concur in part III of the court's opinion holding the *DCCC* rule applicable, prospectively, to all Commission dismissal orders based on tie votes when the dismissal is contrary to the recommendation of the FEC General Counsel"); *Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) ("We further held that, to make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting. Since those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency's reasons for acting as it did") (citation omitted); *Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm'n*, 952 F.3d 352, 355 (D.C. Cir. 2020).

I. FACTUAL BACKGROUND AND LEGAL ANALYSIS

Pierre Crevaux was a politically-active high school student who volunteered with the Florida and Miami-Dade chapters of the Libertarian Party.⁴ Mr. Crevaux's teenage fascination with limited government⁵ came to the attention of the Federal Election Commission due to his parentage and place of birth (Paris, France).⁶ Foreign nationals are prohibited from making even very small financial contributions to party committees such as the LPMD.⁷

Nevertheless, on April 11, 2017, Mr. Crevaux contributed \$100 to the LPMD.⁸ While the Commission in 2019 found reason-to-believe that Mr. Crevaux's contributions (and other alleged activities) violated the foreign national ban,⁹ by the time our Office of General Counsel ("OGC") conducted an investigation and the Commission was provided with the Second General Counsel's Report, it was May 6, 2022.¹⁰

⁴ Second Gen'l Counsel's Report ("SGCR") at 2, MUR 7320 ("Libertarian Party of Miami-Dade"), May 6, 2022.

⁵ SGCR at 5 ("Crevaux was actually only a volunteer who began attending LPMD meetings in 2012 or 2013 while he was still a teenager in high school and never held an official position")

⁶ U.S. Const., amend. XIV ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside"). The record contains no evidence that Mr. Crevaux ever undertook the naturalization process, and he did not respond to Commission requests for information. SGCR at 2-3 (analyzing Mr. Crevaux's citizenship status).

⁷ 52 U.S.C. § 30121(a)(1); *Bluman v. Fed. Election Comm'n*, 800 F.Supp.2d 281, 289 (D.D.C. 2011) (three-judge court) ("It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government"); *aff'd* 565 U.S. 1104 (2012).

⁸ Mr. Crevaux also apparently was elected Vice Chair of the LPMD, but "resigned within minutes due to his ineligibility to serve in a leadership position with them" because he could not demonstrate that he was a Florida voter. SGCR at 11; *also id.* at 5.

⁹ Certification at 1, MUR 7320 (Libertarian Party of Miami-Dade), July 11, 2019.

¹⁰ "[B]ased on the findings of the investigation," which revealed that Mr. Crevaux's role within the Florida Libertarian world was exceedingly modest, OGC generally "recommend[ed]" that the Commission "take no further action and close the" file. SGCR at 2; *cf. id.* at 2-8 ("Results of Investigation").

That date is crucial, as the Commission’s civil enforcement authority under the Federal Election Campaign Act of 1971 (“FECA” or “Act”), as amended, is subject to a five year statute of limitations.¹¹ That deadline expired on April 11, 2022, and the Commission therefore had no authority to “instruct LPMD of its obligation to refund or disgorge [to the U.S. Treasury] Crevaux’s prohibited \$100 contribution.”¹² Indeed, the Commission lacked authority to instruct respondents to do anything whatsoever related to the April 11, 2017 contribution.¹³

It was suggested, however, that because our regulations prohibit “knowingly solicit[ing], accept[ing], or receiv[ing]” a contribution from a foreign national,¹⁴ and because the LPMD was not aware of the unlawful nature of Mr. Crevaux’s \$100 contribution until it was notified of this matter in 2018,¹⁵ the statute of limitations should run from that later date rather than the date Mr. Crevaux made his contribution.¹⁶ In other words, it was argued—and some of our colleagues presumably concurred—that our regulations cause the statute of limitations to run

¹¹ 52 U.S.C. § 30145(a) (“No person shall be...punished for any violation of” the Act “unless...the information is instituted within 5 years after the date of the violation”); 28 U.S.C. § 2462 (“Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon”).

¹² SGCR at 13-14. While OGC contends that illegally obtained funds may be kicked to the U.S. Treasury, there is no legal authority for that proposition, which is grounded in an erroneous advisory opinion issued by the Commission in 1996. As one of us has written, “the clear text of our regulations...require the recipient of an unlawful contribution to refund the money rather than sending it to the Treasury.” Interpretative Statement of Chairman Dickerson Concerning 11 C.F.R. § 103.3 and the Disgorgement of Unlawful Contributions at 1, Apr. 22, 2022. Because we had no jurisdiction to order the LPMD to do *anything*, it is unnecessary to further propound on OGC’s recommended instruction.

¹³ “Statutes of limitations are intended to ‘promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.’” *Gabelli v. Securities and Exch’g Comm’n*, 568 U.S. 442, 448 (2013) (quoting *Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-349 (1944)); Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor at 3, n.11, MURs 7859/7860 (Citizens for a Working Am., *et al.* and Jobs and Progress Fund, *et al.*), Dec. 17, 2021.

¹⁴ 11 C.F.R. § 110.20(g).

¹⁵ First Gen’l Counsel’s Report at 1, MUR 7320 (Libertarian Party of Miami-Dade, *et al.*), Sept. 19, 2018 (“DATE OF NOTIFICATION: February 16, 2018”).

¹⁶ There is also reason to doubt this characterization of the facts. The record suggests that Mr. Crevaux held himself out as a foreign national during his time volunteering with the LPMD. SGCR at 3-4.

from the *discovery* of an illegal act, at least where our regulations imposed a knowledge requirement.¹⁷

The Supreme Court has unanimously rejected that reading of the 160-year-old statute of limitations binding this Commission and many other components of the federal government.¹⁸ Furthermore, at least one federal court of appeal has rejected similar efforts by this very agency to attempt end-runs around the statute of limitations.¹⁹

These dry observations aside, why oppose an instruction to refund a solitary hundred-dollar contribution? Simply put, because whether the offense to jurisdiction is great or petty, we cannot condone the claim that this agency has any more authority than what Congress, in its judgment, specifically granted. “Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”²⁰ Instructing a respondent, in the name of the Commission, to refund a contribution necessarily implies that there would be legal consequences if it declines does not do so. Such a threat, made without force of law or the possibility of sanction, is simply an abuse of power, however slight.

¹⁷ As discussed *infra*, the Supreme Court has flatly rejected this reading of the statute of limitations. But it bears notice that adopting the discovery rule as it applies to illegal contributions would create numerous absurdities. For example, if it was discovered by a historian writing a biography about former Senator Bob Dole that Dole’s 1980 presidential campaign committee had received an illegal \$25 contribution from a Canadian national, it does not follow that the Commission would have until 2027 to act on any subsequent complaint filed by a reader of that manuscript in 2022. *Cf. Adams v. Woods*, 2 Cranch 336, 342 (1805) (“In expounding this law, it deserves some consideration, that if it does not limit actions of debt for penalties, those actions might, in many cases, be brought at any distance of time. This would be utterly repugnant to the genius of our laws. In a country where not even treason can be prosecuted after a lapse of three years, it could scarcely be supposed that an individual would remain forever liable to a pecuniary forfeiture”) (Marshall, C.J., for the Court).

¹⁸ *Gabelli*, 568 U.S. at 452 (rejecting effort to “graft[] the discovery rule onto § 2462” because “[i]t would leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future. Repose would hinge on speculation about what the Government knew, when it knew it, and when it should have known it”).

¹⁹ *See Fed. Election Comm’n v. Williams*, 104 F.3d 237, 240 (9th Cir. 1996).

²⁰ *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 595 U.S. __; 142 S. Ct. 661, 665 (2022); *see also Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 (1988) (holding that adjudicative bodies “created by statute can have no jurisdiction but such as the statute confers”) (quoting *Sheldon v. Sill*, 49 U.S. 441, 449 (1850)).

CONCLUSION

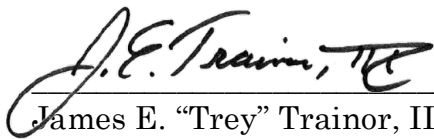
Accordingly, where the Commission lacked statutory authority to threaten or impose any sanction for the LPMD's minor and apparently unwitting error, we declined to pretend otherwise and opposed OGC's recommended letter of instruction.



Allen Dickerson
Chairman

August 30, 2022

Date



James E. "Trey" Trainor, III
Commissioner

August 30, 2022

Date