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On July 2, 2018, Citizens for Responsibility and Ethics in Washington (CREW) filed its complaint in this Matter.³ It alleged that “unknown persons” contributed to two federal independent expenditure-only political committees (IEOPCs) without disclosing their identities by using two 501(c)(4) organizations as intermediaries to conceal the true sources of the contributions.⁴ The IEOPCs allegedly then used the funds to make a donation and disbursements supporting Eric Greitens’s 2016 campaign for Governor of Missouri in the lead-up to the Republican primary.⁵ Greitens won the primary and general elections and served as Governor of Missouri until he resigned on June 1, 2018—approximately one month before CREW filed its complaint in this Matter.⁶

In November 2019, the Commission’s Office of General Counsel (OGC) issued its report and recommendation.⁷ At that time, the Commission lacked a quorum, which it did not regain until Commissioner Trainor’s swearing-in on June 5, 2020. On June 25, 2020, promptly after regaining a quorum, the Commission considered whether to pursue enforcement in this Matter, voting 2-2 to dismiss it as an exercise of prosecutorial discretion based on *Heckler v. Chaney*.⁸ But, in a departure from its historical practice of unanimously voting to close the file following a dispositive enforcement vote,⁹ the Commission divided 2-2 on whether to perform that ministerial act.¹⁰

Federal courts have instructed that, where the Commission declines to follow an OGC enforcement recommendation, “[t]he Commission or individual Commissioners” must put a statement of reasons into the file so that any reviewing court may

³ Comp’l, MUR 7742 (Jun. 27, 2018). CREW filed two amendments adding a smattering of additional allegations. Amend. Comp’l, MUR 7742 (Aug. 8, 2018); 2nd Amend. Comp’l, MUR 7742 (Nov. 20, 2018).

⁴ 1st Gen’l Counsel’s Rept. at 1-2, MUR 7422 (Nov. 22, 2019).

⁵ *Id.*

⁶ *Id.* at 6, n. 19; *see also, e.g.*, Comp’l, MUR 7742 (Jun. 27, 2018).

⁷ 1st Gen’l Counsel’s Report, MUR 7422 (Nov. 22, 2019).

⁸ Certification ¶ 1, MUR 7422 (June 25, 2020).

⁹ *See, e.g.*, Certification ¶ 2, MUR 6589 (June 24, 2014) (reflecting that, despite splitting 3-3 on whether to find RTB, the Commission unanimously voted to close the file); Stmt. of Chairman Trainor on the Dangers of Procedural Disfunction at 2, 7 (Aug. 28, 2020); [REDACTED]

[REDACTED]. *See also, e.g.*, Stmt. of Chairman Dickerson & Commr’s Cooksey & Trainor Regarding Concluded Enforcement Matters (May 13, 2022); Stmt. of Reasons of Chairman Dickerson & Commr’s Cooksey & Trainor, MUR 7516, Heritage Action for Am. (May 13, 2022); Stmt. of Reasons of Chairman Dickerson & Commr’s Cooksey & Trainor, MUR 6589R, Am. Action Network (May 13, 2022); [REDACTED]

¹⁰ Certification ¶¶ 2, 5, MUR 7422 (June 25, 2020). Other votes taken that day show that the Commission considered various enforcement theories, none of which garnered the four votes necessary to proceed with enforcement action. *See id.* ¶¶ 3, 4; 52 U.S.C. § 30109(a)(2).

determine “whether reason or caprice determined” the agency’s action.¹¹ Courts have explicitly recognized that the statement of reasons of the controlling Commissioners (*i.e.*, those who declined to proceed with enforcement) is necessary “to make judicial review a meaningful exercise.”¹² After all, “[s]ince those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency’s reasons for acting as it did.”¹³

Accordingly, Commissioner Trainor issued a statement of reasons explaining the dispositive vote to dismiss this Matter under *Heckler*.¹⁴ Commissioner Hunter voted with Commissioner Trainor, but submitted her resignation letter the very next day,¹⁵ which presumably explains why she did not sign Commissioner Trainor’s statement of reasons. In her resignation letter, Commissioner Hunter emphasized that “Congress established the FEC to prevent single-party control, with every significant decision requiring bipartisan approval.”¹⁶ It is telling that—on the heels of the refusal by some of my colleagues to close the file on this Matter—Commissioner Hunter expressed concern about a Commissioner who “routinely mischaracterizes disagreements among Commissioners about the law as ‘dysfunction,’ rather than a natural consequence of the FEC’s unique structure, misrepresents the jurisdiction of the agency and deliberately enables outside groups to usurp the Commission’s role in litigation and chill protected speech.”¹⁷

Commissioner Hunter’s words have proved prescient. Although this Matter has been on the executive session agenda numerous times since the June 2020 vote declining to proceed with enforcement, it continues to languish before the Commission.¹⁸ On January 14, 2021—shortly after Commissioner Broussard,

¹¹ *Democratic Cong. Campaign Comm. v. Fed. Election Comm’n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (“*DCCC*”). This 35-year-old precedent remains good law. *See, e.g., Common Cause v. Fed. Election Comm’n*, 842 F.2d 436, 449 (D.C. Cir. 1988) (“A statement of reasons...is necessary to allow meaningful judicial review of the Commission’s decision not to proceed”) (discussing *DCCC*); *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.”); *Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm’n*, 952 F.3d 352, 355 (D.C. Cir. 2020); *CREW v. Fed. Election Comm’n*, 993 F.3d 880, 894 (D.C. Cir. 2021) (“[t]he Commission must provide a statement of reasons explaining dismissal of a complaint”).

¹² *Fed. Election Comm’n v. Nat’l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992).

¹³ *Id.* (citing *DCCC*, 831 F.2d at 1134–35).

¹⁴ Stmt. of Reasons of Chairman Trainor, MUR 7422 (Aug. 28, 2020).

¹⁵ *See* Resignation Letter of Commissioner Caroline C. Hunter (June 26, 2020) (listing effective date of resignation as July 3, 2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ According to the Commission Secretary’s Office, as of this writing, this Matter has been held over from the meetings of June 23 & 25, 2020; Jan. 12 & 14, 2021; Jan. 11 & 13, 2022; Jan. 25 & 27, 2022; Feb. 15 & 17, 2022; Mar. 8 & 10, 2022; Mar. 22 & 24, 2022; Apr. 5 & 7, 2022; Apr. 26 & 28, 2022; and

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Commissioner Cooksey and I took the oath of office—the Commission again voted on this Matter. Though acting with a full slate of Commissioners (only three of whom participated in the 2020 vote), the result was the same as the previous year: the Commission divided evenly on whether to find reason to believe and initiate an enforcement action,¹⁹ resulting in a so-called “deadlock dismissal.” Despite this second decisive vote on whether to proceed with enforcement, three Commissioners still voted against closing the file.²⁰

This past January, with an eye toward resolving stale matters and ensuring responsible stewardship of agency resources, I again placed this Matter on the executive session agenda. Because the Commission had already voted not to pursue enforcement, the only action before us was to close the file. I (again) voted to do so, but three of my colleagues (again) dissented.²¹ Since then, this Matter has been on the executive session agenda seven additional times.²² But each time, a Democratic commissioner has asked that the Matter be “held over” to a future, though never specified, Commission meeting. Consequently, the file remains open today.

This refusal to close the file has, to date, had the effect of shielding this file from public view.²³ Predictably—and as observed in other statements of reasons where the housekeeping act of “file closure” has been weaponized to frustrate FECA’s carefully crafted framework²⁴—this has undermined the rule of law and created unfortunate practical consequences.²⁵

* * *

It is true that the Commission took multiple votes in this Matter. But let it be clear—the initial vote disposing of all allegations and respondents in this MUR was the dispositive decision here. Shortly after joining the Commission, I voted to uphold that decision. Since then, I have developed a practice of abstaining in matters where the Commission has already made its decision on the merits. But in my view, it has always been the case that an enforcement matter before the Commission is resolved once there has been a vote declining to find reason to believe, especially in cases

May 10 & 12, 2022. This is particularly absurd given that, according to OGC, the longest applicable statute of limitations expired on Oct. 5, 2021.

¹⁹ Certification, MUR 7422 (Jan. 14, 2021).

²⁰ *Id.* ¶ 5.

²¹ Certification, MUR 7422 (Jan. 13, 2022).

²² *Supra* n. 18.

²³ See Federal Election Commission, Stmt. of Policy: Disclosure of Certain Documents in Enforcement & Other Matters, 81 Fed. Reg. 50702, 50703 (Aug. 2, 2016) (listing documents which the Commission will place on the public record).

²⁴ See *supra* n. 9.

²⁵ See, e.g., Stmt. of Chairman Dickerson & Comm’rs Cooksey & Trainor Regarding Concluded Enforcement Matters (May 13, 2022).

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where the controlling Commissioners have placed a statement of reasons explaining their vote into the file.

I have said all of this numerous times,²⁶ but I will say it again. It is my earnest hope that the Commission will turn away from its errors and return to the soberer approach of moving beyond enforcement matters where there are not four votes to pursue further enforcement. This is the only natural reading of our enabling statute, and it is essential to the Commission's continued effectiveness and legitimacy.

May 13, 2022

Date



Allen Dickerson
Chairman

²⁶ *Supra* n. 9.