



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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7486
 45Committee, Inc.)
)

STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON

More than a year after the Commission declined to find reason to believe in this matter, it was suddenly placed on the Commission’s agenda.¹ No indication was given concerning the reason for its unannounced appearance, any intentions as to motions, or views on the underlying merits. At the executive session of December 2, 2021, a duplicate reason to believe vote was taken with no discussion of any kind.

I abstained, for two reasons.

First, the statute of limitations in this matter has expired, and despite the Office of General Counsel’s efforts to claim perpetual jurisdiction over alleged political committees, that is not the law.² That office’s efforts in this regard, and the support received from three of my colleagues, has occurred in the face of clear, contrary circuit precedent.³ It is an exercise in government by wishful thinking.

Second, the Commission had already determined whether there is reason to believe when, with a lawful quorum, it failed to find the requisite four votes (or,

¹ Amended Cert. at 1, MUR 7486 (45Comm., Inc.), Aug. 14, 2020.

² 28 U.S.C. § 2642; 52 U.S.C. § 30145(a).

³ *Fed. Election Comm’n v. Williams*, 104 F.3d 237, 240 (9th Cir. 1996) (“FEC argues that § 2462 does not apply to actions for injunctive relief. This assertion runs directly contrary to the Supreme Court’s holding in *Cope v. Anderson*, 331 U.S. 461, 464 (1947)...[B]ecause the claim for injunctive relief is connected to the claim for legal relief, the statute of limitations applies to both”).

indeed, even three) supporting that proposition.⁴ Even if I disagreed, my predecessor had already voted against reason to believe.⁵ As a matter of policy, efforts to “commission shop” by holding a matter open, despite a decision not to proceed with enforcement, in the hope that a future slate of commissioners will think differently is contrary to any view of fundamental fairness. It prejudices respondents, who are entitled to learn that they will not be subject to further proceedings, and complainants, who are entitled to learn the outcome of their complaint and to timely plan any legal action in response.

It also exercises a corrosive influence on the work of the Commission itself. Obviously, it is a significant burden on staff and a waste of our resources to take a matter to its conclusion and then simply try again, more than a year later when memories have faded. More importantly, it offers a cynical opportunity for gamesmanship, a temptation that, I fear, will be increasingly acted upon by commissioners of all parties. Why work diligently on a matter, why prepare thorough statements of reasons, why earnestly engage with colleagues, if the eventual votes have no meaning and will simply be a dress rehearsal for some future “real” event?

But more fundamentally, the effort to reconsider a reason to believe vote, more than a year after the fact, flows from a deeply flawed legal premise. Our enabling statute requires four affirmative votes of the commission to proceed with enforcement.⁶ There is no similar requirement to dismiss a matter, as the D.C. Circuit explicitly acknowledged just this year,⁷ nor to take a ministerial action like closing the file. Moreover, the D.C. Circuit has explicitly acknowledged the existence of “deadlock dismissals.”⁸ That is precisely what occurred here, and the theory that a failed reason to believe vote has no effect is simply wrong as a matter of statutory construction.

⁴ Amended Cert. at 1, MUR 7486 (45Comm., Inc.), Aug. 14, 2020.

⁵ *Id.*

⁶ 52 U.S.C. § 30109(a)(2).

⁷ *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, 993 F.3d 880, 891 (D.C. Cir. 2021) (“The statute specifically enumerates matters for which the affirmative vote of four members is needed and dismissals are not on this list, which suggests that they are not included under the standard construction that *expressio unius est exclusio alterius*. A decision to initiate enforcement, but not to decline enforcement, requires the votes of four commissioners”).

⁸ *Id.* at 891 (quoting *Common Cause v. Fed. Election Comm’n*, 842 F.2d 436, 449 (D.C. Cir. 1988)).

We have been warned that the center cannot hold. I am deeply concerned by efforts, in this matter and others, to undermine our longstanding procedures and engage in creative reinterpretations without statutory sanction. We have a responsibility “to see a day behind, a day ahead”⁹ and to guard against short-term tactics that can only lead to an escalating collapse of this agency’s ability to function.

Accordingly, I determined that abstention was preferable to engaging in an exercise that, in my view, lacked legal basis and threatened to further harm the agency entrusted to our care.



Allen Dickerson
Vice Chair

December 9, 2021

Date

⁹ Homer (tr. by Robert Fagles), *Iliad*, Bk. I, loc. 1649 (Penguin Classics, Kindle Ed.).