



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Donald J. Trump;) MUR 7609R
Donald J. Trump for President, Inc. and)
Bradley Crate in his official capacity)
as treasurer)
)

STATEMENT OF REASONS OF COMMISSIONER ELLEN L. WEINTRAUB

In April 2021, the Commission once again considered credible allegations that Donald J. Trump for President violated the Federal Election Campaign Act (“FECA”), this time by illegally soliciting or directing soft money to America First Action (“AFA”), a pro-Trump super PAC that spent almost \$134 million on ads opposing Joe Biden in the 2020 election.¹ Once again, the non-partisan Office of General Counsel recommended that the Commission take action.² And once again, the Commission failed to garner the necessary four votes to approve that recommendation, with no Republican commissioners voting in favor.³ Subsequently, the Commission was sued for unlawfully dismissing the complaint.⁴

After the Commission was sued and two months after the filed was closed, the commissioners who had voted against proceeding issued a Statement of Reasons explaining why they invoked their judicially unreviewable “prosecutorial discretion” to dismiss another potential violation by Mr. Trump and his political committee.⁵ Their statement concluded that the Commission’s resources “would be best spent elsewhere.”⁶ I disagree. Limits and prohibitions on candidate contributions become meaningless if candidates can simply direct soft money donors to an “approved” super PAC, run by allies of the candidate.

¹ See America First Action, Inc., spending overview, FEC.gov, <https://www.fec.gov/data/committee/C00637512/?tab=spending&cycle=2020> (last visited Dec. 4, 2023) (reflecting total independent expenditures for AFA in opposition to Biden from Jan. 1, 2019 through Dec. 31, 2020).

² See First Gen. Counsel’s Rpt. at 23-29, MURs 7340 and 7609 (Great America Committee, *et al.*), https://www.fec.gov/files/legal/murs/7609/7609_06.pdf.

³ See Certification (“Cert.”), MURs 7340 and 7609 (Great America Committee, *et al.*) (April 20, 2021).

⁴ Complaint, *End Citizens United PAC v. FEC* (No. 1:21-cv-01665) (D.D.C.) (June 21, 2021).

⁵ Statement of Reasons of Vice Chair Allen Dickerson and Commissioner Sean Cooksey, MURs 7340 and 7609 (Great America PAC, *et al.*) (June 25, 2021), https://www.fec.gov/files/legal/murs/7609/7609_13.pdf.

⁶ *Id.* at 3.

The D.C. Circuit Court of Appeals ruled that the Republican statement was a post-hoc rationalization and not the required contemporaneous statement explaining their votes. The Court thus ordered that the matter be remanded back to the Commission for further action.⁷

There was a hint of optimism in the Court of Appeals' opinion that the Commission might reconsider its decision on remand:

Here the Commission has not defended its decision in court, much less the reasoning in the Dickerson/Cooksey statement. Moreover, the Commission's composition has apparently changed since its dismissal of ECU's administrative complaint, so that different "agency personnel" would consider the matter on remand.⁸

The Court rejected the argument that remand would be "pointless"; to the contrary, the Court seems to have anticipated that the case would get a fresh look on remand, noting the role of Statements of Reasons in contributing "'to reasoned decisionmaking' by the Commission" and providing "'an opportunity for self-correction.'"⁹ But to the extent that the Court was hoping that the Commission would reconsider the merits of this matter, they will be sorely disappointed. On remand, the same commissioners invoked prosecutorial discretion and dismissed the case again, issuing a substantially identical Statement of Reasons with alacrity.¹⁰

I voted for a second time to find reason to believe that the Trump campaign solicited soft money contributions.¹¹ The allegations were clear that on May 17, 2019, the Trump campaign issued the following public statement warning against "scam groups" using Trump's name to raise funds:

There are only four official fundraising organizations authorized by President Trump or the RNC: Donald J. Trump for President, the Republican National Committee, and two joint fundraising committees with the RNC, The Make America Great Again Committee (TMAGAC) and Trump Victory. In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump's policies and agendas.¹²

⁷ *End Citizens United PAC v. FEC* at 8-13, (D.C. Cir. June 9, 2023), [https://www.cadc.uscourts.gov/internet/opinions.nsf/7C3887D6CC668851852589C9004E39FE/\\$file/22-5176-2002917.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/7C3887D6CC668851852589C9004E39FE/$file/22-5176-2002917.pdf). In 2021, the Commission considered MUR 7609 in combination with another complaint from a different complainant that raised additional issues. That other complainant did not challenge the dismissal, so the remand only addresses the alleged illegal solicitation raised by End Citizens United PAC.

⁸ *Id.* at 13.

⁹ *Id.* at 11-12 (citations omitted).

¹⁰ Cert., MUR 7609R (Nov. 1, 2023); Statement of Reasons of Vice Chairman Sean J. Cooksey and Commissioner Allen Dickerson, MURs 7340 and 7609 (Great America PAC, *et al.*) (Nov. 1, 2023). In their re-issued Statement of Reasons, the Republican commissioners repeat the argument that dismissal was warranted in part due to the backlog of cases facing a newly regained quorum at the Commission. But to the extent that factor may have been relevant in 2021, it certainly no longer was at the time of the November 1, 2023 vote on remand. *Id.* at 3.

¹¹ *Id.*

¹² See First Gen. Counsel's Rpt. at 9, MURs 7340 and 7609 (Great America Committee, *et al.*), https://www.fec.gov/files/legal/murs/7609/7609_06.pdf.

The Complainant argues, and I agree, that this statement illegally solicited soft money for or directed soft money to AFA. The Trump committee asserts that it “merely provid[ed] the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds” and that such a statement is not a solicitation.¹³ But, as the Commission’s nonpartisan Office of General Counsel concluded, referring to AFA as an “approved” group in the context of fundraising is a clear message recommending that the reader contribute to the authorized and approved fundraising organizations and not contribute to other groups.¹⁴ Certainly, Mr. Trump could have warned his supporters about the existence of fraudulent PACs and directed potential donors to his authorized committees. There would be no need to identify an additional “approved” and “trusted” outside group if not to encourage contributions to that group.

Commissioners will continue to exercise prosecutorial discretion – the judicially unreviewable superpower granted to them by the D.C. Circuit Court of Appeals – unless and until the Court reconsiders its rulings in the *Commission on Hope, Growth & Opportunity* and *New Models* cases.¹⁵ Until then, commissioners will be free to determine that Commission resources “would be best spent elsewhere” - although with only seven cases currently under investigation and the enforcement division’s investigatory authority newly hamstrung,¹⁶ it’s not clear where.

And for those keeping count, the tally is now 59 times the Commission has been presented with allegations that Mr. Trump or his committees violated the FECA, 29 times the Commission’s non-partisan professional staff recommended that we take some steps to enforce the law, and (checks notes) still **zero** times a Republican commissioner has voted to approve any recommendation to enforce the law against Mr. Trump.¹⁷

December 5, 2023

Date



Ellen L. Weintraub
Commissioner

¹³ See *id.* at 9-10.

¹⁴ See *id.* at 27.

¹⁵ *Citizens for Resp. & Ethics in Washington v. FEC* (“*Commission on Hope, Growth & Opportunity*”), 892 F.3d 434 (D.C. Cir. 2018); *Citizens for Resp. & Ethics in Washington v. FEC* (“*New Models*”), 993 F.3d 880, 882 (D.C. Cir. 2021). See Statement of Ellen L. Weintraub on District Court Decision in *CREW v. FEC* (*New Models*) (April 5, 2019), https://www.fec.gov/resources/cms-content/documents/2019-04-05_ELW_Statement_-_DDC_decision_in_New_Models.pdf.

¹⁶ See Directive Concerning Investigations Conducted by the Office of General Counsel (adopted Nov. 2, 2023), https://www.fec.gov/resources/cms-content/documents/directive_74.pdf; see also Statement of Commissioner Ellen L. Weintraub Regarding The Commission’s Newly Adopted Directive Concerning Investigations Conducted by the Office of General Counsel (Nov. 9, 2023), <https://www.fec.gov/resources/cms-content/documents/Weintraub-Stmt-on-Investigative-Directive-11-9.pdf>.

¹⁷ See Statement of Reasons of Ellen L. Weintraub, MURs 7968 and 7969 (Donald J. Trump, *et al.*) (Nov. 9, 2023), https://www.fec.gov/files/legal/murs/7968/7968_14.pdf.