



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
)	MURs 7772 & 8204
Salvemos a Puerto Rico and Joseph)	
Fuentes-Fernandez in his official capacity)	
as treasurer, <i>et al.</i>)	
)	

STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY AND COMMISSIONERS ALLEN DICKERSON AND JAMES E. “TREY” TRAINOR, III

This matter arose from both a Complaint and a referral to the Commission from Puerto Rico’s Oficina del Contralor Electoral alleging a wide-ranging conduit-contribution scheme related to Puerto Rico’s 2020 gubernatorial election. In short, they alleged that certain individuals established a federally registered independent expenditure-only political committee (“IEOPC”) named Salvemos a Puerto Rico (“Salvemos”), as well as two nonprofit organizations—Foundation for Progress, Inc. and Fundación Pro Igualdad, Inc. (the “Foundations”)—through which contributions to the IEOPC could be made in order to avoid disclosing certain individual contributors.¹ This was done in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).²

The U.S. Department of Justice criminally prosecuted Salvemos and its treasurer, Joseph Fuentes-Fernandez, for the scheme, and they pleaded guilty. Fuentes-Fernandez was sentenced to fourteen months in prison with three years of supervised release; Salvemos a Puerto Rico was sentenced to three years of supervised probation, ordered to pay a \$150,000 fine, and required to file amended reports with the Commission.³ Following those successful prosecutions, the Office of General Counsel (“OGC”) made a host of recommendations about whether or how the Commission should proceed with civil enforcement against the relevant parties. We agreed with all but one of those recommendations, and this statement explains the basis for that disagreement.

¹ First General Counsel’s Report at 5–9 (Dec. 19, 2023), MURs 7772 & 8204 (Salvemos a Puerto Rico, *et al.*).

² See 52 U.S.C. § 30122; First General Counsel’s Report at 9–15 (Dec. 19, 2023), MURs 7772 & 8204 (Salvemos a Puerto Rico, *et al.*).

³ First General Counsel’s Report at 9–10 n.37–38 (Dec. 19, 2023), MURs 7772 & 8204 (Salvemos a Puerto Rico, *et al.*).

First, we agreed with OGC’s analysis and recommendations to dismiss with admonishment allegations against Salvemos and its treasurer in light of the criminal prosecution.⁴ The Department of Justice’s efforts against Fuentes-Fernandez and the IEOPC sufficiently vindicate the Commission’s interests in the enforcement of federal campaign-finance laws, and further civil enforcement would therefore be duplicative. The Commission has consistently dismissed matters in similar circumstances.⁵

Second, we agreed with OGC’s judgment that the Commission should dismiss allegations against the original contributors.⁶ The available information does not indicate that these individuals sufficiently understood or intended that they were making contributions to a federally registered IEOPC. Moreover, this lack of understanding raises thorny legal questions. The contributors generally believed their funds would be used in support of a candidate for governor in Puerto Rico.⁷ It is therefore far from certain that the contributors provided the funds “for the purpose of influencing any election for Federal office,” such that they qualify as contributions under the Act.⁸

Finally, we broke with OGC with respect to the Foundations. OGC recommended that the Commission find reason to believe the Foundations violated 52 U.S.C. § 30122 by knowingly and willfully permitting their names to be used to effect contributions in the name of another.⁹

⁴ First General Counsel’s Report at 21–23 (Dec. 19, 2023), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*); Certification (Jan. 25, 2024), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*).

⁵ *See, e.g.*, MUR 6865 (Jose Susumo Azano Matsura) (declining to further pursue Azano’s 52 U.S.C. §§ 30121 and 30122 knowing and willful violations after criminal prosecution for same activity, and sentence of three years’ incarceration, assessment of \$3,700, and additional restitution of \$560,995); MUR 6761 (Kenneth A. Barfield) (declining to further pursue Barfield’s knowing and willful violation of 52 U.S.C. §§ 30102(b), 30102(c), 30114, 30116, 30122, and 30125(e), after he pleaded guilty to three criminal counts, including “Embezzlement of Funds Contributed to a Federal Candidate,” was sentenced to 87 months in federal prison, and was ordered to pay \$2,940,821 in restitution); Factual & Legal Analysis at 1–2 (Jan. 4, 2017), MUR 7072 (Babulal Bera) (declining to pursue further action against perpetrator of conduit scheme “among the largest [ever] considered” after Bera pleaded guilty to one criminal count each under 52 U.S.C. §§ 30116(a)(1)(A) and 30122 and was sentenced to a prison term of one year and one day, supervised release for a term of 36 months, and a criminal fine of \$100,000, while also noting statute of limitations concerns and respondent’s advanced age); Factual & Legal Analysis at 2, 5 (Nov. 17, 2009), MUR 6231 (Glenn Marshall) (declining to further pursue action against Marshall, who had pleaded guilty to five criminal counts for knowing and willful violations of provisions now codified at 52 U.S.C. §§ 30118 and 30122 and was sentenced to 41 months in federal prison and ordered to pay restitution of \$467,612.62); Factual & Legal Analysis at 1 (Nov. 17, 2009), MUR 6232 (Gladwin Gill) (declining to further pursue action against Gill who had pleaded guilty to one criminal count of making contributions in the name of another in violation of the provision now codified at 52 U.S.C. § 30122 and was sentenced to one year and one day in federal prison, followed by three years of supervised release, and was fined \$200,100).

⁶ First General Counsel’s Report at 23–24 (Dec. 19, 2023), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*); Certification (Jan. 25, 2024), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*).

⁷ First General Counsel’s Report at 23–24 (Dec. 19, 2023), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*) (“There is comparatively less information indicating that the contributors understood that the ultimate recipient of their money was a federal political committee.”).

⁸ 52 U.S.C. § 30101(8)(A).

⁹ First General Counsel’s Report at 24–29 (Dec. 19, 2023), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*).

According to OGC, there was little doubt that agents of the Foundations knowingly violated the statute because the evidence showed that agents of the Foundations established those organizations for the express purpose of acting as a conduit for individual contributors to the IEOPC.

Our disagreement, however, is anchored in practical and prudential concerns. In the exercise of prosecutorial discretion, the Commission must consider how to allocate its limited resources to best serve its interests in civil enforcement.¹⁰ Several factors in this matter counseled against the use of those resources here. First, as discussed above, the Commission’s interests have been significantly vindicated already by virtue of the criminal prosecutions of other parties. The principal individual actor pleaded guilty and will serve time in prison, and the IEOPC will pay a penalty, be subject to supervision, and will make the public record accurate and complete. This substantial enforcement effort not only ameliorates the violations’ harm, but provides significant deterrence to others. In similar matters with successful criminal prosecutions, the Commission has declined to move forward with overlapping civil enforcement—especially against organizational entities—even in matters where the Commission might pursue some additional penalties or pursue additional individuals.¹¹

In addition, the Foundations appear defunct, and this further counsels in favor of discretionary dismissal because it portends a fruitless enforcement effort. The available evidence indicates that the Foundations are not going concerns, have few if any assets, and would be unable to pay a meaningful penalty. In reports covering the year 2022, Foundation for Progress reported \$7,752 in assets, and Fundación Pro Igualdad reported just \$1,134 in assets.¹² Available information suggests they have no physical offices, officers, or employees, and we are aware of no ongoing activity through the Foundations.¹³ As such, we believe that civil enforcement against the Foundations alone would not result in a substantive penalty or impact the Foundations’ future behavior, and that Commission resources would therefore be better allocated toward other enforcement matters.¹⁴

¹⁰ Statement of Reasons of Chairman McDonald, Vice Chairman Mason, and Commissioners Sandstrom, Smith, Thomas, and Wold (May 7, 2001), Pre-MUR 385 (Phillip R. Davis) (“Because the violations at issue have been addressed by the Justice Department in a criminal prosecution and a further expenditure of resources is not warranted relative to other matters pending before the Commission, we exercised our prosecutorial discretion by not taking further action.”).

¹¹ See, e.g., Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 2 (April 6, 2021), MUR 7479 (KAIRC PAC) (providing reasons for the Commission’s 4-2 vote in favor of dismissal against an unregistered political committee after the individual associated with the committee pleaded guilty to criminal offenses). The Commission is unable to pursue enforcement against other individuals involved in the scheme for secondary liability because it lacks the legal authority to do so. *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115–16 (D. Utah 2018) (holding that the Commission exceeded its statutory authority in promulgating a regulation imposing secondary liability for aiding and abetting contributions in the name of another).

¹² First General Counsel’s Report at 6 (Dec. 19, 2023), MURs 7772 & 8204 (*Salvemos a Puerto Rico, et al.*).

¹³ *Id.*

¹⁴ See, e.g., Statement of Reasons of Vice Chair Petersen and Commissioners Hunter and Goodman at 4–5 & n.17 (Nov. 6, 2015), MURs 6391 & 6471 (Commission on Hope, Growth & Opportunity) (noting the defunct nature of the organization as a reason for dismissal and citing previous matters); Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 4–6 (Oct. 29, 2021), MUR 7502 (Utah Love PAC) (declining enforcement, in part, because the committee was defunct and unable to pay any penalty).


As we have noted in other matters, “we do not serve the public’s interests by duplicating other agencies’ work or pursuing pyrrhic victories.”¹⁵ So too here. Accordingly, for the reasons given above, we voted to dismiss allegations against the Foundations in this matter under *Heckler v. Chaney*.¹⁶



Sean J. Cooksey
Chairman

February 26, 2024

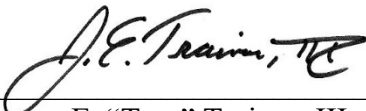
Date



Allen J. Dickerson
Commissioner

February 26, 2024

Date



James E. “Trey” Trainor, III
Commissioner

February 26, 2024

Date

¹⁵ Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 2 (April 6, 2021), MUR 7479 (KAIRC PAC).

¹⁶ 470 U.S. 821, 831 (1985).