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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 7879
NRA Victory Fund, Inc.	)	
	)	

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

Considering prior Commission action on procedurally similar matters, informed by Commission-approved referral thresholds, we could not support moving forward in this matter on the allegation that NRA Victory Fund, Inc. ("NRA-VF") failed to timely report certain information about some of its contributors. Pursuant to governing law, we provide this statement to explain our reasoning for voting in support of the Office of General Counsel ("OGC")'s recommendation to dismiss this matter as exercise of prosecutorial discretion.[1]

On February 2, 2021, the Federal Election Commission ("FEC") sent NRA-VF a Request for Additional Information ("RFAI") pertaining to its 2020 Post-General Report. An RFAI is issued "when an FEC Campaign Finance Analyst needs additional clarification or identifies an error, omission or possible prohibited activity."[2] An RFAI provides "an opportunity to correct or explain report information for the public record."[3] RFAIs are issued pursuant to a Commission-approved review policy. An RFAI is not an allegation of wrongdoing against the recipient. Pursuant to a 1976 Commission policy, the FEC makes all RFAIs public at the time they are

[1] *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).

[2] https://www.fec.gov/help-candidates-and-committees/request-additional-information/ (accessed Aug. 1, 2022).

[3] *Id.*

issued. Under current FEC policy, the recipient of an RFAI has 35 days to respond for the response to be considered timely.

The RFAI in this matter invited NRA-VF to provide certain employer and occupation information or an explanation of its best efforts to obtain this information. Two weeks later, the complaint in this matter was filed, alleging that NRA-VF failed to provide the information that was sought by the RFAI. On March 9, 2022, NRA-VF filed an amended 2020 Post-General Report, disclosing some of the information invited by the RFAI, and filed a narrative response asserting that the initial omission of employer-occupation information does not indicate that it failed to use best efforts to attempt to collect such information.

A supplemental complaint, received April 7, 2021, contended that NRA-VF's amended Year-End Report was insufficient to cure the problem raised in the complaint because the amended Year-End Report provided employer-occupation information for prior contributors but did not provide the date and amount of their contributions in the same report. After being notified of the supplemental complaint, on April 23, 2021, NRA-VF submitted a Second Amended 2020 Year-End Report, which added a memo line with the date of the original contribution to each entry listing employer and occupation information, and it also submitted a narrative Supplemental Response contending that the Second Amended 2020 Year-End Report "provide[d] cross-references to the original donations."[4]

As OGC noted in its First General Counsel's Report in this matter, the allegations in the complaint essentially copied the issues raised in the RFAI issued to the Committee. [redacted] The Commission has in prior matters dismissed similar allegations where the respondent cured missing employer and occupation information by amending reports.[7] Accordingly, to pursue the allegation raised in the complaints in this matter would be arbitrary and capricious.[8] Furthermore, as a substantive

[4] Supp. Resp. at 1 (Apr. 29, 2021).

[5] [redacted]

[6] [redacted]

[7] See F&LA at 1, MUR 7814 (Salazar for Congress, *et al.*) (dismissing allegations that committee accepted excessive contributions where it refunded contributions after receiving the complaint and an RFAI); F&LA at 6, MUR 7799 (Stephanie for New Jersey, *et al.*) (dismissing reporting violations where committee had taken corrective actions, though prior to receiving the complaint and RFAI in the matter); F&LA at 1, MUR 7400 (Jim Francis for Congress, *et al.*) (dismissing under Enforcement Priority System allegations that committee failed to report disbursements on its disclosure reports when committee filed amended reports to correct the error after receiving the complaint). By comparison, in MUR 5957 (Committee to Elect Sekhon for Congress), the Commission found reason to believe a committee failed to provide required contributor information when it did not amend its reports to add this information or demonstrated that it had used best efforts to attempt to collect this information despite repeated requests from RAD. F&LA at 2-3, MUR 5957 (Committee to Elect Sekhon for Congress).

[8] In addition, the structural defect in the Commission's processes of making RFAIs public when they are issued (and 35 days prior to when a response is due) leaves entities vulnerable to overzealous would-be complainants scouring the FEC's website for RFAIs to weaponize against their political opponents. Moreover, given that issues raised in an RFAI could result in an enforcement action against the recipient, there is some question about whether RFAIs are, in

matter, we note that the respondent's amended reports and narrative responses to the RFAI, complaint, and amended complaint provide a substantially complete public record of the contributions at issue.

For the reasons set forth above, we agreed with OGC's recommendation not to pursue this matter further, as a matter of prosecutorial discretion.[9]

9/7/2022
Date

Allen J. Dickerson
Chairman

9/7/2022
Date

Sean J. Cooksey
Commissioner

9/7/2022
Date

James E. "Trey" Trainor, III
Commissioner

fact, part of the enforcement process and subject to the Act's confidentiality provisions pertaining to enforcement actions. *See generally* 52 U.S.C. § 30109 (a)(12)(A). It is unclear whether the Commission considered these issues when it adopted the policy making RFAIs public upon issuance. We believe the time has come for the Commission to consider these questions.

[9] Chairman Dickerson and Commissioners Cooksey and Trainor supported OGC's recommendations to dismiss as a matter of prosecutorial discretion the allegations that NRA Victory Fund, Inc., and Christina M. Majors in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4) by failing to report employer and occupation information for individual contributors. *See* MUR 7879, Certification dated Jun. 23, 2022.