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

STATEMENT OF COMMISSIONERS
ALLEN J. DICKERSON AND JAMES E. "TREY" TRAINOR, III
REGARDING REQUEST FOR LEGAL CONSIDERATION 1193

In this request for legal consideration, a political committee chose to name itself Stop These Oppressive People: Tyrants Racists Unqualifieds Misogynists Propagandists ("STOP TRUMP").[1] The Committee asked whether this name violated 52 U.S.C. § 30102(e)(4) after our Reports Analysis Division ("RAD") directed the group to change it.[2] The Office of General Counsel ("OGC") advised that the group's name indeed violated federal law, and the Commission deadlocked in reviewing that opinion.[3] We disagreed with OGC and write to explain why.

The law in question provides that "[t]he name of each authorized committee shall include the name of the candidate who authorized such committee."[4] Conversely, "any political committee which is *not* an authorized committee…shall *not* include the name of any candidate in its name."[5] Our regulations also state that, with the exception of delegate committees, "no unauthorized committee shall include the name of any candidate in its name."[6] This prohibition extends to "any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation."[7]

[1] Form 1, Stop These Oppressive People; Tyrants Racists Unqualifieds Misogynists Propagandists ("STOP TRUMP"), Aug. 9, 2023.

[2] Request for Consideration of Legal Question, Stop These Oppressive People: Tyrants Racists Unqualifieds Misogynists Propagandists, Oct. 18, 2023.

[3] Certification at 1, Dec. 14, 2023.

[4] 52 U.S.C. § 30102(e)(4),

[5] *Id.* (emphasis supplied).

[6] 11 C.F.R. § 102.14(a).

[7] *Id.*

Importantly, in 2019, the regulation's application to special project names was declared unconstitutional and enjoined by a federal district court because it was "not narrowly tailored to promote a compelling governmental interest."[8] By contrast, a facial First Amendment challenge to 52 U.S.C. § 30102(e)(4) failed, in a different district court, in 2015.[9] No court of appeals has reached the question.

OGC concluded that the political committee's name was prohibited by 52 U.S.C. § 30102(e)(4).[10] Its position finds some support in a 14-year-old enforcement matter, MUR 6213, where the Commission dismissed allegations that another acronym-friendly organization, Decidedly Unhappy Mainstream Patriots Rejecting Evil-mongering Incompetent Democrats Political Action Committee – that is, "DUMPREID PAC" – had violated the law. The Commission nonetheless cautioned the committee in its dismissal letter, noting that it should "take steps to ensure" it followed the law "by amending its Form 1 to remove the parenthetical '(DUMPREID PAC)' from its official name."[11] MUR 6213 predates the relevant case law and was decided long before we joined the Commission. But even applying it here, OGC and our colleagues appear to agree that this committee would be in the clear if it simply dropped its acronym from Form 1.

Another practical wrinkle, pointed out by the Requester, is OGC's apparent view that *this* committee violated the law because "'Trump' is a name that clearly refers to only one person registered as a candidate" while another committee, Ron Response PAC, did not because "there are presently four federal candidates with the name 'Ron.'"[12] In other words, whether an organization violates the law or not depends on whether its name (or acronym) refers to only a single individual. There is much to recommend this approach, especially that it is a bright-line rule that can be fairly administered by RAD. But it does create an obvious danger that an organization's liability will turn on the unrelated actions of others.

Both of the rules suggested by OGC's analysis – that an organization's acronym may include a candidate's name so long as that acronym is not made explicit, and

[8] *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 363 F. Supp. 3d 94, 97 (D.D.C. 2019).

[9] *Stop Hillary PAC v. Fed. Election Comm'n*, 166 F. Supp. 3d 643 (E.D.Va. 2015).

[10] Memorandum to Comm'n, Request for Consideration of a Legal Question Submitted by Stop These Oppressive People: Tyrants Racists Unqualifieds Misogynists Propagandists ("STOP TRUMP"), Nov. 27, 2023 ("Mem.").

[11] Ltr. from Susan L. Lebeaux to Benjamin Ginsberg, RE: MUR 6213, May 17, 2010.

[12] Mem. at 7. OGC also notes that there are four additional candidates with the name "Ronald," but those individuals do not appear crucial to OGC's legal point.

that an organization may include a candidate's name so long as that name is shared by more than one candidate – are unsatisfying but point in the right direction. The statute clearly implicates the First Amendment because it prohibits organizations from adopting the name of their own choosing – including, as here, a name or acronym with obvious expressive content. OGC and RAD are right to interpret that prohibition narrowly. But they do not go far enough.

In our opinion, the organization "Stop These Oppressive People: Tyrants Racists Unqualifieds Misogynists Propagandists" does not violate the law because it does not include the name of a candidate in the committee's name. There is a difference between an organization literally named "Stop Trump PAC"[13] and an organization whose name can be shortened to "STOP TRUMP."[14] The group's *actual* name does create, no doubt intentionally, a double acronym that spells out "Stop Trump," a reference to (and call to action concerning) Donald Trump, the 45th President of the United States and a candidate for election in 2024. But that acronym is not the name of the committee, and both the statute and our regulations explicitly reach only "names."[15]

We readily concede that this is not a wholly satisfying reading of the law, but neither is OGC's. The approach we propose creates a bright-line rule that, like RAD's unambiguous-individual test, is capable of regular application. This approach also has three important advantages.

First, it more fully accords with the recognized governmental interest undergirding the candidate-name prohibition: preventing voter confusion.[16] One court has recognized that this interest applies to groups using a candidate's name negatively, although we believe our legitimate interest is more attenuated in that context.[17] An organization calling itself "Frémont for President" is much more likely

[13] In the *Stop Hillary PAC* case, for example, the organization was literally called "Stop Hillary PAC." The candidate reference did not result from a clever acronym. V. Comp. at 4-5, ¶¶ 12-13, *Stop Hillary PAC v. Fed. Election Comm'n*, Case No. 15-1208 (E.D. Va. Sept. 22, 2015).

[14] This also distinguishes the instant facts from a 1995 advisory opinion concluding that an organization entitled "NewtWatch" inappropriately contained the name of then-Representative Newt Gingrich, a federal candidate. Advisory Opinion 1995-09 (NewtWatch).

[15] 11 C.F.R. § 102.14 ("Names of political committees").

[16] *Stop Hillary PAC*, 166 F. Supp. 3d at 653 ("The rules mandate a floor level of disclosure about the relationship, or lack thereof, between the speaker and any candidate mentioned by the speaker in order to limit the potential for confusion") (citations and internal quotation marks omitted).

[17] *Id.* at 654.

to be confused with Sen. Frémont's authorized committee than a group calling itself "Vote Out Frémont." So it is here.

Secondly, this approach avoids a serious First Amendment controversy. Our ban on the use of candidate names in unauthorized committee names is a content-based ban on speech, and while it is comparatively narrow, the availability of "alternative means of expression does not factor into whether a speech ban is content based."[18] Accordingly, 11 C.F.R. § 102.14(a) is vulnerable to constitutional challenge. In such circumstances we are mindful of the D.C. Circuit's instruction that, in interpreting regulations, we "must allow the maximum of First Amendment freedom of expression commensurate with Congress's regulatory aims."[19] Here, as already noted, the goal is avoiding confusion between Mr. Trump's authorized committee and a committee clearly opposed to his election – confusion, in other words, that simply doesn't exist. With no opposing interest in the balance, we would permit the Requester's members to freely express themselves – as we suspect a court would do, applying *Pursuing America's Greatness,* if presented with these as-applied facts.

Third, this reading avoids the First Amendment *underbreadth* issues posed by OGC's approach to the law.[20] A group calling itself "Ron Response PAC" is given a pass so long as other people named "Ron" are federal candidates this election cycle, even though the word "response" does not unambiguously signal opposition. Meanwhile, OGC would prohibit a group whose name is *openly* opposed to a candidate. Its approach, in other words, gets thing backwards by cracking down on groups that are *less* likely to create confusion. This is itself problematic as "[u]nderinclusiveness raises serious doubts about whether the government is . . . pursuing the interest it invokes, rather than disfavoring a particular speaker[21] or viewpoint."[22]

Given the complete lack of likely voter confusion, the pronounced danger that the Commission would lose an as-applied challenge under OGC's interpretation, and our legal obligation to interpret speech-restricting provisions narrowly, we believe

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[18] *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 510 (D.C. Cir. 2016) (citing *United States v. Playboy Entertainment Grp.*, 529 U.S. 803, 812 (2000)).

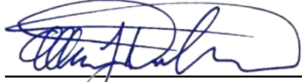
[19] *Common Cause v. Fed. Election Comm'n*, 842 F.2d 436, 448 (D.C. Cir. 1988) (capitalization and spelling slightly altered for clarity).

[20] *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 805 (2011) (even where a government's "ends are legitimate…when they affect First Amendment rights they must be pursued by means that are neither seriously underinclusive nor seriously overinclusive").

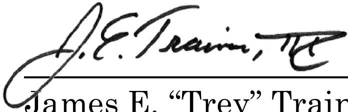
[21] Such as independent committees opposed to incumbent officeholders' re-election.

[22] *Brown*, 564 U.S. at 802.

our regulation should be read to reach only an organization's formal name. We voted accordingly.



Allen J. Dickerson Commissioner	January 4, 2024 Date



James E. "Trey" Trainor, III Commissioner	January 4, 2024 Date