



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7139
Maryland USA and Joel Ritter in his)
official capacity as treasurer; Mark)
Epstein; Amie Hoeber; Amie Hoeber for)
Congress and Chris Marston in his)
official capacity as treasurer)
)

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

The Complaint in this matter alleges that Maryland USA—an independent expenditure-only political committee (“IEOPC”)—made prohibited in-kind contributions to Amie Hoeber for Congress (the “Committee”) both by coordinating communications with the Committee and by independently republishing Committee campaign materials, in violation of the Federal Election Campaign Act of 1971, as amended.¹ We voted against finding reason to believe that any violation occurred, and after waiting a year for colleagues to join us, the Commission voted to close the file.² This statement explains the reasons for our votes on the merits.³

First, the allegation that Maryland USA coordinated its communications with the Committee was entirely speculative and failed to establish any coordinating conduct. The Complaint based its coordination charge on the fact that Amie Hoeber’s husband, Mark Epstein—who briefly served in an administrative role in the early stages of his wife’s campaign—later made sizeable contributions to Maryland USA.⁴ Yet merely making a contribution to a committee is insufficient to support an inference that the contributor had material involvement with, or

¹ Complaint at 6–8 (Sept. 21, 2016), MUR 7139 (Maryland USA, *et al.*); 52 U.S.C. § 30116(a).

² Certification (Jan. 28, 2021), MUR 7139 (Maryland USA, *et al.*); Certification (Jan. 11, 2022), MUR 7139 (Maryland USA, *et al.*).

³ *See Dem. Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (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”).

⁴ First General Counsel’s Report at 1–3 (Sept. 24, 2019), MUR 7139 (Maryland USA, *et al.*). In the early stages of Hoeber’s campaign, Epstein served as the Committee’s Assistant Treasurer and Custodian of Records, though he resigned shortly after Hoeber announced her candidacy. Approximately one week after resigning, Epstein made the first of several substantial contributions to Maryland USA. *Id.*

substantial discussions about, the committee's communications.⁵ Likewise, we agreed with the Office of General Counsel that there was not sufficient evidence to demonstrate coordination through common vendors between Maryland USA and the Committee.⁶ As a result, there was no reason to believe that the Committee coordinated with Maryland USA on the IEOPC's communications.

The Complaint further claims that Maryland USA impermissibly used snippets from the Committee's candidate announcement video in its own independent expenditures and thus made an in-kind contribution by republishing campaign materials under 11 C.F.R. § 109.23(a).⁷ These expenditures are indistinguishable, however, from those the Commission has considered in prior matters, where clips of candidate B-roll footage "are incorporated into a communication in which [the committee] adds its own text, graphics, audio, and narration to create its own message."⁸ The Commission has failed to find that those kinds communications violate the regulation, and the controlling Commissioners' reasoning in those matters applies with equal force here, so we voted against finding reason to believe on that allegation. That conclusion is only made stronger by the serious legal infirmities in the regulation itself.⁹

Finally, while not true when the Commission initially considered these allegations, it is noteworthy that the applicable statute of limitations for this Complaint has lapsed.¹⁰ That too is a reason to dismiss. For the reasons described above, therefore, we voted to find no reason to believe a violation occurred in this matter.¹¹



Allen Dickerson
Chairman

February 14, 2022
Date

⁵ 11 C.F.R. § 109.21(d); *cf.* Factual & Legal Analysis at 8 (Dec. 2, 2015), MUR 8921 (Shaheen for Senate, *et al.*) (noting that mere temporal proximity of activities does not satisfy the conduct prong).

⁶ First General Counsel's Report at 19–20 (Sept. 24, 2019), MUR 7139 (Maryland USA, *et al.*).

⁷ Complaint at 8 (Sept. 21, 2016), MUR 7139 (Maryland USA, *et al.*).

⁸ Statement of Reasons of Chair Hunter and Commissioners McGahn and Petersen (Feb. 22, 2012), MUR 6357 (American Crossroads); Statement of Reasons of Vice Chair Petersen and Commissioners Hunter and Goodman (Dec. 17, 2015), MURs 6603, 6777, 6801, 6870 & 6902 (Ben Chandler for Congress, *et al.*).

⁹ *See* Interpretive Statement of Commissioner Sean J. Cooksey (Nov. 30, 2021), *available at* https://www.fec.gov/resources/cms-content/documents/2021-11-30_Interpretive_Statement_of_Cmsr_Cooksey.pdf (explaining the legal weaknesses of the Commission's republication regulation at 11 C.F.R. § 109.23(a)).

¹⁰ First General Counsel's Report at 1 (Sept. 24, 2019), MUR 7139 (Maryland USA, *et al.*) (noting the lapse of the statute of limitation on April 1, 2021).

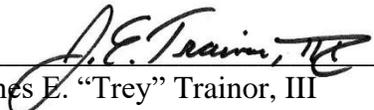
¹¹ Certification (Jan. 28, 2021), MUR 7139 (Maryland USA, *et al.*).



Sean J. Cooksey
Commissioner

February 14, 2022

Date



James E. "Trey" Trainor, III
Commissioner

February 14, 2022

Date