



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MURs 7265 and 7266
Donald J. Trump for President, Inc. and)
Bradley T. Crate in his official capacity as treasurer;)
Donald Trump, Jr.; Paul Manafort;)
Jared Kushner; Rob Goldstone)

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

The Complaints in these matters claim that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer ("Trump Committee"),¹ through its agents, solicited a prohibited foreign-national contribution in the form of negative information about the committee's 2016 election opponent. The allegations center around a meeting between Trump Committee representatives and various foreign nationals on June 9, 2016, at Trump Tower in New York City.²

The Commission received the first complaint on July 10, 2017, and the second complaint three days later, but it did not immediately assess their merits.³ Instead, the Commission opted to hold the matters in abeyance for nearly two years pending the outcome of other publicly known government investigations. By the time the relevant investigations finished in mid-2019 with no civil or criminal charges, however, the Office of General Counsel ("OGC") still had not evaluated the complaints to make recommendations to the Commission as to how to proceed. Shortly thereafter, the Commission lost its quorum to do business, leaving it, except for a few weeks, unable to deliberate or vote to open any investigations until December 2020.⁴ The current Commission finally received a First General Counsel's Report recommending enforcement and

¹ These Complaints were originally filed against, among others, the political committee Donald J. Trump for President, Inc. After the 2020 election, the committee changed its name to Make America Great Again PAC. *See* Trump Committee, Amend. Statement of Org. (Feb. 27, 2021).

² *See* Complaint at 2–4 (July 10, 2017), MUR 7265 (Donald J. Trump for President, Inc., *et al.*); Complaint at 2–9 (July 13, 2017), MUR 7266 (Donald J. Trump for President, Inc., *et al.*).

³ Complaint (July 10, 2017), MUR 7265 (Donald J. Trump for President, Inc. *et al.*).

⁴ *See* Statement of Commissioner Ellen L. Weintraub on the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), *available at* <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf> ("We have had enough commissioners to vote on enforcement matters for only 28 days since September 2019.").

conciliation with the Respondents on February 5, 2021, and OGC’s recommendations were first placed on the agenda for discussion at our March 9, 2021, executive session.⁵

By that point, the statute of limitations had nearly run: a mere 92 days remained, despite our having received the complaints 1,332 days prior.⁶ Being only at the initial stage of enforcement—considering whether there was reason to believe the law had been violated—there was no reasonable chance for the Commission to bring an enforcement action to fruition in the remaining time.⁷ Moreover, attempting to press enforcement in these matters would have required expending significant resources and forgoing critical Commission deliberation. All this, in pursuit of a tenuous legal theory of what constitutes a “thing of value” under our statutes—a legal theory that would likely be the subject of protracted and costly litigation.⁸

In short, the Commission had no viable course of action but to dismiss these matters. Indeed, the Commission recently unanimously dismissed another matter that faced a nearly identical statute-of-limitations problem.⁹

Nonetheless, it is regrettable that the Commission did not have the opportunity to consider these matters with the luxury of time. This outcome should prompt the Commission to reflect on when, and under what circumstances, it abates its own investigations pending the work of other agencies. In many cases, the Commission does so to its own detriment, and this is perhaps one example.

⁵ First General Counsel’s Report at 36–37 (Feb. 5, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al.*); Certification (March 9, 2021), MURs 7265 and 7266 (Donald J. Trump for President, Inc., *et al.*).

⁶ See 28 U.S.C. § 2462 (“[A]n action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”). The Complainants might have brought a delay suit against the Commission for failing to act on their complaints after 120 days under 52 U.S.C. § 30109(a)(8), but did not in this case.

⁷ After finding reason to believe a violation has occurred, the Commission must undertake additional investigatory and deliberative steps before it can bring an enforcement action in federal court in a matter. After any attempt to conciliate with Respondents fails, OGC would then need to draft probable-cause briefs recommending that the Commission pursue enforcement. Respondents would be given fifteen days to respond to those briefs, as well as the right to request a probable-cause hearing. Following any hearing, the Commission would need to deliberate again over whether to find probable cause to believe Respondents violated the law. If the Commission found probable cause, under the Federal Election Campaign Act, it must then attempt to conciliate with respondents again for no less than thirty days. See 52 U.S.C. § 30109(a)(6). Only after that effort would the Commission consider whether to file a civil enforcement suit. Completing these steps within the remaining statute of limitations in these matters was a practical impossibility.

⁸ OGC’s theory of a violation relied upon an expansive and novel definition of what constitutes a “thing of value” and, consequently, a “contribution” under the Federal Election Campaign Act. 52 U.S.C. § 30101(8)(A). The Commission has previously divided over whether general information that is helpful to a campaign is a “thing of value.” See Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen at 6–7, MUR 6958 (Senator Claire McCaskill, *et al.*) (concluding that general advice from polling was not a “thing of value”).

⁹ See Certification (April 9, 2021), MUR 7395 (Heller for Senate, *et al.*) (dismissing under *Heckler v. Chaney* a matter with 88 days remaining on the statute of limitations); see also Statement of Chair Shana M. Broussard and Commissioner Ellen L. Weintraub at 2, MUR 7395 (Heller for Senate, *et al.*) (“[I]n light of the imminent statute of limitations and other priorities on the Commission’s docket, we voted to dismiss the allegations.”).


In this position, however, our agency's limited enforcement resources are better directed toward other investigations with better odds of success. Commission staff time and funds are especially precious in light of the significant backlog of enforcement cases that the Commission accrued while lacking a quorum.¹⁰ Considering the foregoing, three Commissioners declined to pursue this quixotic enforcement effort and instead voted to dismiss the complaints as a matter of prosecutorial discretion under *Heckler v. Chaney*.¹¹



 Allen Dickerson
 Vice Chair

_____ May 10, 2021

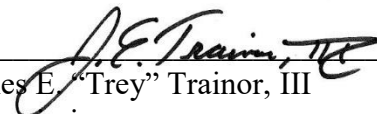
 Date



 Sean J. Cooksey
 Commissioner

_____ May 10, 2021

 Date



 James E. "Trey" Trainor, III
 Commissioner

_____ May 10, 2021

 Date

¹⁰ Statement of Commissioner Ellen L. Weintraub, *supra* n.4.

¹¹ 470 U.S. 821, 831 (1985).