



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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	PMUR 611
Donald J. Trump Found., <i>et al.</i>)	MUR 7425
)	

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

Although this file did not close until February 2022,¹ the Commission disposed of it on January 14, 2021. Our colleagues, for reasons they have yet to explain, refused, for more than a year, to undertake the ministerial act of closing the file.² As a result, this Matter³ languished despite a clear decision that enforcement would not proceed.

Despite the passage of time, our votes must be understood in the context of January 2021, when they were cast. Because New York authorities had already acted on the underlying facts, including imposing a \$2 million fine against Donald J. Trump personally, and because this Matter was severely imperiled by the statute of limitations, we voted to dismiss rather than adopt our Office of General Counsel's ("OGC") recommendation to proceed with an investigation with an eye toward future enforcement.⁴

¹ Certification at 1, PMUR 611/MUR 7425 (Trump Found.) at 1, Jan. 25, 2022.

² Certification at 2, PMUR 611/MUR 7425 (Trump Found.) at 2-3, Jan. 14, 2021.

³ We received a referral from the Office of the Attorney General of New York State regarding the instant respondents, as well as a complaint that was filed by employees of the Campaign Legal Center. In accord with Commission nomenclature, the referral was tagged as a "Pre-Matter Under Review" or "PMUR," while the complaint was tagged as a "Matter Under Review" or "MUR." For simplicity, we refer to both the PMUR and MUR as a singular "Matter."

⁴ We provide this Statement of Reasons pursuant to governing law, which requires it. *See DCCC*, 831 F.2d at 1135 (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, 449 (D.C. Cir. 1988) ("A

I. BACKGROUND

During the 2016 primary season, Donald Trump held a fundraiser for veterans' groups rather than attend a Republican primary debate.⁵ The fundraiser was organized by employees of his campaign committee and his longstanding § 501(c)(3) charitable nonprofit corporation, the Donald J. Trump Foundation ("Foundation").⁶ The event "raised approximately \$5.6 million" and, while some of the funds were held by the Foundation and then doled out at campaign events organized by the committee, all the funds raised were ultimately delivered to veterans' organizations.⁷

This fundraiser and its aftermath caught the attention of law enforcement in the State of New York, which had jurisdiction over Mr. Trump and the Foundation.⁸ Ultimately, the New York Supreme Court⁹ oversaw the dissolution of the Trump Foundation and specifically found that Mr. Trump breached his fiduciary duties to the Foundation by "allowing his campaign to orchestrate the fundraiser [and] allowing his campaign, instead of the Foundation, to direct distribution of the funds...

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).

⁵ First Gen'l Counsel's Report ("FGCR") at 5, PMUR 611/MUR 7425 (Trump Found.), May 30, 2019.

⁶ *Id.*

⁷ FGCR at 7; *id.* at 3 ("Half of the \$5.6 million was initially deposited into the Foundation's bank account and disbursed to charitable organizations at the direction of Trump and the Committee over the next three months...The remainder of the \$5.6 million, including \$1 million from Trump personally, was given directly to veterans' organizations")

⁸ *See* Stipulation of Final Settlement, *People of the State of N.Y. v. Trump*, No. 451130/2018, (N.Y. Sup. Ct. Nov. 7, 2019) ("Trump Found. Settlement"); *id.* at 4, ¶¶ 5-7 ("The Iowa Fundraiser and the Distribution of Its Proceeds (2016)").

⁹ A confusing label for those unfamiliar with the New York judiciary. The Supreme Court is a trial-level court of general jurisdiction, equivalent to a federal district court, and not the final court of appeal – a distinction held, appropriately enough, by the New York Court of Appeals.

to further [his] political campaign.”¹⁰ Accordingly, the court “direct[ed] Mr. Trump to pay... [a]\$2,000,000” fine out of his personal assets.¹¹

In other words, New York state authorities disbanded one respondent, the Foundation, and ordered another, Mr. Trump, to pay restitution for his campaign’s involvement in the very fundraiser at issue here.

II. LEGAL ANALYSIS

OGC took the view that the Trump committee’s involvement with the fundraiser suggested a violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, OGC urged us to find reason to believe that Trump’s fundraiser ran afoul of 52 U.S.C. § 30125(e)(1)(A), which bars any “candidate” from “solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office...unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.” That is, because the Trump fundraiser raised funds in excess of the individual contribution limits, OGC believed there was a potential soft money violation.

The soft money ban only applies to funds raised “in connection” with a federal election, and the relevant statute specifically permits federal candidates to raise money for charity.¹²

But more importantly, this Matter came before the Commission for a vote just two weeks before the statute of limitations began to run, and just six months before it would run entirely.¹³ Moreover, OGC recommended that we authorize an investigation with compulsory process,¹⁴ indicating that the record would have to be further supplemented before the Commission’s lawyers could make a probable cause recommendation.

Simply put, we were out of time. Even if the Commission had chosen not to investigate and instead moved to pre-probable cause conciliation, there would be little chance the Commission could successfully find probable cause and file an

¹⁰ *People of the State of N.Y. v. Trump*, 66 Misc.3d 200, 204 (N.Y. Sup. Ct. 2019).

¹¹ *Id.*

¹² 52 U.S.C. § 30125(e)(4)(A).

¹³ FGCR at 1 (“EXPIRATION OF SOL: January 28, 2021/May 31, 2021”).

¹⁴ FGCR at 30-31.

enforcement action before the total lapse of the statute of limitations at the end of May – and correspondingly little incentive for respondents to agree to a conciliation agreement.

Furthermore, by the time we addressed this Matter, New York had already secured a \$2 million penalty against Mr. Trump for legal violations related to the fundraiser, and the Foundation itself no longer existed. As we have noted previously, “[i]t has been the Commission’s longstanding practice to decline to pursue cases where there has already been adequate enforcement by other arms of the federal government.”¹⁵ Here, our decision not to obligate scarce Commission resources was informed by the fact that another law enforcement agency, albeit a state rather than federal entity, had already imposed a significant financial penalty directly related to the very conduct OGC wished to address.

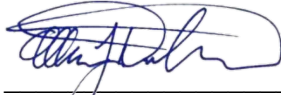
Finally, in January 2021, at one of our first executive sessions after the reconstitution of the quorum, our enforcement resources were unusually precious. At that time, as has been noted publicly, the Commission faced a substantial backlog of enforcement cases.¹⁶ In that position, we determined that our agency’s enforcement resources would be best spent addressing other matters where the Commission had a realistic chance of vindicating the interests of the United States in a timely fashion.

¹⁵ Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor at 3, MUR 7696 (Texans for Sen. John Cornyn, *et al.*), May 18, 2021.

¹⁶ See Statement of Comm’r 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/cmscontent/documents/2020-12-Quorum-Restoration-Statement.pdf>.

CONCLUSION

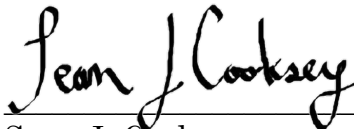
For the foregoing reasons, we voted to dismiss this Matter.¹⁷



Allen Dickerson
Chairman

February 22, 2022

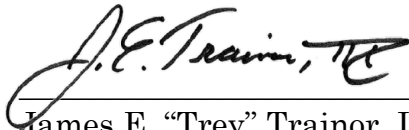
Date



Sean J. Cooksey
Commissioner

February 22, 2022

Date



James E. "Trey" Trainor, III
Commissioner

February 22, 2022

Date

¹⁷ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).