



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
45Committee, Inc.) MUR 7486
)
)

**STATEMENT OF REASONS OF COMMISSIONERS
SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

This matter involved an allegation that an entity registered with the Internal Revenue Service (“IRS”) as a 501(c)(4) organization was, in fact, a political committee under the Federal Election Campaign Act (“the Act”) and Commission regulations and should have registered and reported as such with the Commission. Although the Respondent, 45Committee, was ostensibly established for issue advocacy, the information available to the Commission indicated that over 50 percent of the organization’s spending was used to advocate for the election of a federal candidate. Our nonpartisan Office of General Counsel (“OGC”) recommended that the Commission find reason to believe that the organization had failed to register and report as a political committee, in violation of the Act and Commission regulations, and initiate an investigation.¹ Yet, several of our colleagues ignored OGC’s well-reasoned advice and prevented the Commission from investigating.²

I. Political Committee Status

The Act defines a political committee as “any committee, club, association, or other group of persons” that receives aggregate contributions or makes aggregate expenditures in excess of \$1,000 during a calendar year.³ Notwithstanding the statutory threshold for contributions and expenditures, an organization that is not controlled by a candidate will be considered a political committee only if its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁴

¹ First Gen. Counsel’s Rept. (“FGCR”) at 1, MUR 7486.

² Cert., MUR 7486 (June 23, 2020); Cert., MUR 7486 (Dec. 2, 2021).

³ 52 U.S.C. § 30101(4)(A).

⁴ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007) (“Suppl. E&J”) (“[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986). In *Buckley*, the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was overbroad, reaching “groups engaged purely in issue discussion.” *Buckley*, 424 U.S. at 79. To cure that infirmity, the Court concluded that the term “political committee” “need

Political committees are required to register with the Commission, meet organizational and recordkeeping requirements, and file periodic disclosure reports.⁵

The Commission has explained that applying the “major purpose” test “requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size-fits-all rule” and that “any list of factors developed by the Commission would not likely be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various entities.”⁶ In conducting that analysis, the Commission will consider whether an organization has satisfied the “major purpose doctrine through sufficiently extensive spending on Federal campaign activity.”⁷ The Commission also looks to the organization’s public statements, which “can also be instructive in determining an organization’s purpose[.]” while “giving due weight to the form and nature of the statements, as well as the speaker’s position within the organization.”⁸ In addition, the Commission may also need to consider the organization’s “fundraising appeals” and solicitations to prospective supporters.⁹ Disbursements for electioneering communications are also presumptively treated as indicating a purpose of nominating or electing a candidate.¹⁰

II. 45Committee

The facts in in this matter are straightforward and laid out in detail in the First General Counsel’s Report. 45Committee was established in 2015.¹¹ That 45Committee satisfied the statutory threshold for political committee status is plainly evident from the record. 45Committee reported

only encompass organizations that are under the control of a candidate or *the major purpose of which is the nomination or election of a candidate.*” *Id.* (emphasis added).

⁵ See 52 U.S.C. §§ 30102, 30103, 30104.

⁶ Suppl. E&J at 5,601-02. See *Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007) (approving the Commission’s case-by-case adjudication approach to resolving political committee status). Though it has periodically considered crafting a bright-line major-purpose rule through rulemaking, the Commission has consistently declined to do so. See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Cert. (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

⁷ Suppl. E&J at 5,601.

⁸ *Id.*

⁹ *Id.* at 5,604, 5,606.

¹⁰ See *CREW v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (determining that Commission “must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate”); see also *id.* at 100 (“The Commission may *in special circumstances* conclude that an electioneering ad does not have [an election-related major] purpose. But given Congress’s recognition that the ‘vast majority’ of electioneering ads have the purpose of electing a candidate, the Commission’s exclusion of electioneering ads from its major-purpose analysis *should be the rare exception, not the rule.*”) (emphases added).

¹¹ 45Committee, Fiscal Year (“FY”) 2015-2016 Return of Organization Exempt from Income Tax (“IRS Form 990”) at 1 (Feb. 16, 2017); 45Committee Resp. at 1 (Oct. 10, 2018).

making over \$21 million in independent expenditures in calendar year 2016 and therefore exceeded the \$1,000 statutory threshold set forth in the Act, which 45Committee did not dispute.¹² So the question before the Commission in this matter was whether 45Committee had a major purpose of nominating or electing a federal candidate.

45Committee’s overall conduct – as evidenced by its public statements, fundraising approach, and relative spending on independent expenditures and disbursements for electioneering communications – objectively indicated that its major purpose was the nomination or election of federal candidates. The Complaint alleged that fundraising efforts promoted 45Committee as a vehicle for potential donors to support the election of a federal candidate, Donald J. Trump, without disclosing their identities.¹³ The Complaint cited a news article reporting that “three Republican fundraisers familiar with the effort . . . and others in GOP finance circles say [Todd] Ricketts is making a particular effort to win over donors who want to help [Donald] Trump but are leery of having their names publicly associated with the polarizing Republican nominee.”¹⁴ According to that article, “Ricketts’s pitch to these donors focuses on the fact that one of the pro-Trump groups he’s fronting can accept unlimited checks while keeping its donors’ names secret.”¹⁵

Our Republican colleagues wave off these public statements, arguing that “[t]he record before the Commission contains little – beyond election-related spending – that would indicate that 45Committee’s major purpose is the election or defeat of federal candidates.”¹⁶ Very well. As our colleagues have also stated, “an organization’s revealed goals are exposed by its actual spending, which is the surest guide to a group’s major purpose.”¹⁷

¹² See 52 U.S.C. § 30101(4)(A); 45Committee Resp. at 6 (acknowledging that “45Committee did surpass the Act’s \$1,000 spending threshold in 2016”).

¹³ Compl. ¶ 7.

¹⁴ Kenneth P. Vogel, *Secret Money to Boost Trump*, POLITICO (Sept. 28, 2016), available at <https://www.politico.com/story/2016/09/secret-money-to-boost-trump-228817> (cited at Compl. ¶¶ 7, 30.iii).

¹⁵ *Id.*

¹⁶ Statement of Reasons of Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, MUR 7486 (Aug. 30, 2022).

¹⁷ Statement of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, MURs 7672, 7674, and 7732 (May 13, 2022).

The available information concerning 45Committee’s spending is summarized in the following chart.¹⁸

	Calendar Year 2016	Fiscal Year¹⁹ 2016-2017 (Apr. 1, 2016 – Mar. 31, 2017)	Lifetime
IEs	\$21,339,015	\$21,650,515	\$23,026,077
ECs	\$671,320	\$671,320	\$838,989
Overall Expenses	\$42,564,823 ²⁰	\$45,556,334	\$59,854,457
IEs/Overall	50.1%	47.5%	38.5%
(IEs + ECs)/Overall	51.7%	49%	39.9%

In short, 51.7% of 45Committee’s spending in calendar year 2016 was for independent expenditures and electioneering communications. Even applying 45Committee’s desired fiscal year framework, 49% of 45Committee’s overall spending in FY2016-2017 — \$22,321,835 — was used to make independent expenditures and electioneering communications.²¹ Our colleagues suggest that

¹⁸ 45Committee’s expenses for FY 2015-2016, from April 23, 2015, through March 31, 2016, totaled \$1,008,489; its expenses for FY 2016-2017, from April 1, 2016 through March 31, 2017 totaled \$45,556,334. 45Committee, FY 2015-2016 IRS Form 990 at 1; 45Committee, FY 2016-2017 IRS Form 990 at 1. 45Committee’s lifetime reported expenses, from April 23, 2015, through March 31, 2018, totaled \$59,854,457. *See* 45Committee FY 2017-2018 IRS Tax Form 990 at 1 (Feb. 15, 2019).

¹⁹ The figures in this column are based on the 45Committee’s Response and the sworn declaration of its treasurer. *See* 45Committee Resp., Ex. C ¶¶ 4-6. 45Committee’s treasurer states that if all of the organization’s FY 2016-2017 operating costs (\$447,430.53) are allocated as political expenses, its “political spending remained under 50% of total expenditures[.]” *Id.* ¶ 7. In that case, the combined “political expenses” — *i.e.*, independent expenditures, disbursements for electioneering communications, and operating expenses — would be \$22,769,265, or almost exactly half (49.98%) of its \$45,556,334 in overall expenditures for the fiscal year.

²⁰ News reports indicated that \$4 million of 45Committee’s FY 2016-2017 activity occurred during the first five weeks of 2017, and based on that information, the Complaint contends that even if all of 45Committee’s FY 2015-2016 expenses, and all but the \$4 million of its FY 2016-2017 expenses, were incurred during calendar year 2016, 45Committee’s total expenses during the 2016 calendar year were, at most, \$42,564,823. *See* Compl. ¶ 27 (citing Tom LoBianco, *First on CNN: Pro-Trump Group Hacked, Website Taken Down in Cabinet Fight*, CNN (Feb. 6, 2017), available at <https://www.cnn.com/2017/02/06/politics/45-committee-website-hacked/index.html>) (“The 45 Committee [sic] has spent upward of \$4 million so far on-air and online supporting Trump’s Cabinet picks[.]”); *see* David M. Drucker, *Pro-Trump Outside Groups Ready to Shell Out Cash for 2018*, WASH. EXAMINER (Feb. 7, 2017), available at <https://www.washingtonexaminer.com/pro-trump-outside-groups-ready-to-shell-out-cash-for-2018> (“45Committee has invested \$4 million this year alone to generate support for Trump’s Cabinet nominees, a senior official with the political nonprofit said Tuesday.”) (emphasis added).

²¹ 45Committee’s basis for asserting that the Commission must apply a fiscal year framework is unclear – the Act and Commission regulations use calendar year and election cycle as relevant time periods, and specifically pegs the definition of a political committee to the calendar year. *See, e.g.* 52 U.S.C. §§ 30101(4)(A) (defining “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year”), 30104(b)(3)(A) (requiring political committees to disclose certain information about each person (other than a political committee) who makes a contribution during the reporting period whose contributions during the calendar year aggregate in excess of \$200 within the calendar year (for nonauthorized political committees) or within the election cycle (for authorized committees)), (c)(1) (requiring every person other than a political committee who makes independent expenditures in excess of \$250 in a calendar year to disclose certain information), (f) (requiring every person who makes disbursements for electioneering communications in an aggregate amount exceeding \$10,000 in a calendar year to disclose certain information).

looking at a single year of activity constitutes “cherry-picking” data,²² yet they provide no support for their assertion that OGC must look at the lifetime of an organization in analyzing its major purpose.²³

On the basis of the available information, our nonpartisan OGC recommended that the Commission find reason to believe that 45Committee had violated the Act and Commission regulations by failing to register and report as a political committee.²⁴ At the initial stage of the enforcement process, the Commission’s duty is not to determine beyond a reasonable doubt or by a preponderance of evidence whether a violation has occurred. The Commission’s duty is to determine whether there is *reason to believe* that a violation has occurred. The reason to believe standard is necessarily low – the Commission has not yet conducted any investigation.²⁵ The Commission has not deposed any individuals, issued any subpoenas, or even asked the Respondent to provide documents voluntarily for the Commission’s review. Because the available information strongly supports finding reason to believe that 45Committee violated the Act and Commission regulations by failing to register and report as a political committee, we voted to initiate an investigation.²⁶ In contrast, our colleagues blocked an investigation and, in doing so, prevented the public from obtaining crucial information about the funding source for millions of dollars used to support candidates.²⁷ Unfortunately, this result has

²² Statement of Reasons of Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, MUR 7486.

²³ *Id.* at 6 (rejecting OGC’s examination of “only a single election year” in favor of “looking at 45Committee’s broader *lifetime spending*.”) (emphasis added). In no context does the Act apply a lifetime look-back period.

²⁴ FGCR at 1–2, MUR 7486.

²⁵ Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (“a ‘reason to believe’ finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.”)

²⁶ Cert., MUR 7486 (June 23, 2020); Cert., MUR 7486 (Dec. 2, 2021).

²⁷ *Id.*

become far too predictable. More than a billion dollars of dark money has flooded into our elections since *Citizens United*.²⁸ The Commission's well-known failure to pursue investigations into dark money groups like 45Committee is one of the reasons why.²⁹

September 28, 2022

Date



Shana M. Broussard
Commissioner

September 28, 2022

Date



Ellen L. Weintraub
Commissioner

²⁸ [Michael Beckel, *Dark money spending since Citizens United set to eclipse \\$1 billion*, ISSUE ONE \(Sep. 10, 2020\), available at <https://issueone.org/articles/dark-money-spending-since-citizens-united-set-to-eclipse-1-billion/>; \[Anna Massoglia and Karl Evers-Hillstrom, 'Dark money' topped \\\$1 billion in 2020, largely boosting Democrats, OPENSECRETS \\(Mar. 17, 2021\\) available at <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>.\]\(https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/\)](https://issueone.org/articles/dark-money-spending-since-citizens-united-set-to-eclipse-1-billion/)

²⁹ *See, e.g.*, MURs 7672, 7674, and 7732 (Iowa Values, *et al.*) (OGC recommended finding reason to believe respondent violated the Act by not registering and reporting as a political committee, but an insufficient number of Commissioners voted to support OGC's recommendations; see FGCR dated Sept. 25, 2020 and Cert. dated Feb. 11, 2021); MUR 7860 (Jobs and Progress Fund, Inc., *et al.*) (same; see FGCR dated Aug. 27, 2021 and Cert. dated Nov. 2, 2021); MUR 7513 (Community Issues Project) (same; see FGCR dated Sept. 18, 2019 and Cert. dated Sept. 12, 2021); MUR 7405 (Iowans for a Progressive Tomorrow, Inc.) (same; see FGCR dated May 30, 2019 and Cert. dated Apr. 23, 2021 (settled in ADR 1013 on other violations)); MUR 7479 (Keeping America in Republican Control PAC, *et al.*) (same; see FGCR dated Apr. 26, 2019 and Cert. dated Apr. 5, 2021); MUR 7181 (Independent Women's Voice) (same; see FGCR dated Jan. 21, 2020 and Cert. dated Mar. 1, 2021); MUR 6596 (Crossroads Grassroots Policy Strategies) (same; see FGCR dated Mar. 7, 2014 and Certs. dated Nov. 2, 2015, Nov. 18, 2015, Dec. 18, 2015, and Mar. 27, 2019); MUR 6872 (New Models) (same; see FGCR dated May 21, 2015 and Cert. dated Nov. 15, 2017); MURs 6391 and 6471 (Commission on Hope, Growth and Opportunity) (same; see FGCR dated Dec. 26, 2013 and Cert. dated Sept. 18, 2014); MUR 6402 (American Future Fund) (same; see FGCR dated Jan. 17, 2013 and Cert. dated Nov. 20, 2014); MUR 6538 (Americans for Job Security) (same; see FGCR dated May 2, 2013 and Cert. dated June 26, 2014); MUR 6589 (American Action Network) (same; see FGCR dated Jan. 17, 2013 and Cert. dated June 26, 2014). In MUR 6538 (Americans for Job Security), in an action brought by the administrative complainant (CREW), a court found the Commission's dismissal to be contrary to law and remanded the matter. *See CREW v. FEC (CREW I)*, 209 F. Supp. 3d 77 (D.D.C. 2016). The Commission ultimately entered into a conciliation agreement requiring Americans for Job Security to register as a political committee and entered into a conciliation agreement requiring Americans for Job Security to register as a political committee and file disclosure reports. In MUR 6589 (American Action Network), the Commission twice dismissed the complaint and, in actions brought by CREW against the Commission, the court found both dismissals to be contrary to law. *See CREW I; CREW v. FEC (CREW II)*, 299 F. Supp. 3d 83 (D.D.C. 2018). CREW ultimately sued American Action Network under the Act's "citizen-suit" provision. 52 U.S.C. § 30109(a)(8)(C).