



FEDERAL ELECTION COMMISSION
 1150 FIRST STREET, N.E.
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7502
Utah Love PAC f/ka)	
Friends of Mia Love, <i>et al.</i>)	
)	

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

This Matter involved a political committee that has repeatedly sought to terminate and has long reported no contributions, expenditures, or cash-on-hand. Its continued existence is principally due to this outstanding complaint against it alleging a violation of the Federal Election Campaign Act's ("FECA" or the "Act") rules regarding the redesignation of contributions received for a canceled primary election.

Rather than authorize an invasive investigation into a defunct and desultory entity's records and "internal communications,"¹ or propose a significant civil fine against a committee with no ability to pay,² we declined to proceed pursuant to our prosecutorial discretion under *Heckler v. Chaney*.³

¹ First Gen'l Counsel's Report ("FGCR") at 14, MUR 7502 (Utah Love PAC f/k/a Friends of Mia Love, *et al.*), Aug. 23, 2019.

² Certification at 2, MUR 7502 (Utah Love PAC f/k/a Friends of Mia Love, *et al.*), Sept. 30, 2021 ("Direct the Office of General Counsel to draft a conciliation agreement, that includes a civil penalty of \$55,000...").

³ 470 U.S. 821 (1985).

Our colleagues disagreed,⁴ and in accordance with governing law, we provide this Statement of Reasons to explain our decision.⁵

I. FACTUAL AND LEGAL ANALYSIS

a. Contribution limits, reporting, and Utah's hybrid nomination system.

FECA provides that no individual may contribute more than a set sum (currently \$2,900)⁶ to any candidate campaign in any given election.⁷ But the term “election” has a specific meaning under the Act: it does not mean all of the electoral contests occurring in a given election cycle, the way that one might casually say that “Arlen Specter was a candidate for the U.S. Senate in the 2004 election.”

Rather, the Act treats primary, general, and special elections as separate events.⁸ In 2004, Senator Specter ran for reelection in *two* elections: the Republican

⁴ Strictly speaking, no member of the Commission supported the recommendation of our Office of General Counsel (“OGC”) to investigate Respondents. Certification at 1, MUR 7502 (Utah Love PAC f/k/a Friends of Mia Love, *et al.*), Sept. 30, 2021. Rather, three of our colleagues supported forgoing an investigation and seeking a significant civil fine on the basis of the existing record. *Id.* at 2.

⁵ See *Dem. Cong. Campaign Comm. v. Fed. Election Comm'n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (“DCCC”) (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, 453 (D.C. Cir. 1988) (“A 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).

⁶ The Act requires that this limit be periodically increased to keep pace with inflation. 52 U.S.C. § 30116(c). Thus, the \$2,000 per-election limit set by the Congress in 2002 has now grown to \$2,900. Fed. Election Comm’n, “Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold,” 86 Fed. Reg. 7867, 7869, Feb. 2, 2021.

⁷ 52 U.S.C. § 30116(a)(1)(A).

⁸ 52 U.S.C. § 30101(1)(A)-(B) (“When used in this Act...[t]he term ‘election’ means...a general, special, primary, or runoff election; [and] a convention or caucus of a political party which has authority to nominate a candidate”).

primary and the general election, and the Act treated these two contests within a single election cycle as separate events.⁹ The Act also anticipates that some jurisdictions will use a different party nominating process, such as a caucus or convention, rather than a primary election.¹⁰

Of course, not all states have such a simple two-step process,¹¹ and one of those jurisdictions is Utah. Its “unique electoral system features two ‘election’ periods—a convention and a primary—that run concurrently rather than sequentially.”¹² Utah holds party conventions to nominate candidates, but there’s a catch. “[R]egardless of who the party nominates at its convention, a candidate may use a petition process to bypass the convention results and have...her name included on the primary election ballot.”¹³ And if, and only if, no candidate qualifies for the primary, that primary election is canceled.¹⁴

Thus, because “in Utah, the primary election and the party convention both have the authority to nominate a candidate,” both events “qualify as separate elections” under the Act “with separate fundraising limits.”¹⁵ Moreover, the temporal gap between a convention and the primary is an unusually “short time frame.”¹⁶

⁹ “When establishing [contribution] limits, Congress had to pick *some* temporal frame of reference: a contribution ceiling, to be effective, must specify not only a maximum contribution amount (*e.g.*, \$2,600) but also a timeframe in which that amount may be expected (*e.g.*, \$2,600 in each election).” *Holmes v. Fed. Election Comm’n*, 875 F.3d 1153, 1155-1156 (D.C. Cir. 2017) (*en banc*) (emphasis in original).

¹⁰ 52 U.S.C. § 30101(1)(B).

¹¹ For instance, a state could have a party primary, a general election with a 50 per cent threshold for victory, and a top-two runoff between the first and second place finishers in the general election if no candidate receives 50 per cent of the vote. In such circumstances, a candidate running for federal office could conceivably run in three elections in a cycle, and raise individual contributions of up to \$2,900 for each of those three elections. 52 U.S.C. § 30101(1)(A).

¹² Resp. at 1, MUR 7502 (Utah Love PAC f/k/a Friends of Mia Love, *et al.*), Nov. 26, 2018.

¹³ FGCR at 7 (citing Utah Code. Ann. § 20A-9-403, 20A-9-407 (West 2019)).

¹⁴ Utah Code Ann. § 20A-9-403(4)(a)(ii) (“[T]he lieutenant governor shall provide to the county clerks...a list of unopposed candidates for elective office who have been nominated by a registered political party...and instruct the county clerks to exclude the unopposed candidates from the primary election ballot”).

¹⁵ Response to Request for Legal Consideration at 1, LRA 1044 (“Friends of Mike Lee”), Aug. 1, 2017.

¹⁶ *Id.*

Accordingly, “[t]he Commission [has] determined that” a candidate “[c]ommittee ha[s] no choice but to prepare for both the primary election and the party convention at the same time” because any “subsequent cancellation of the primary election w[ill be] out of the [c]ommittee’s control.”¹⁷

So, in Utah, a candidate may simultaneously raise contributions up to the per-election limit for both conventions and primaries. But what happens to those funds “designated for the primary and received before the party convention” if the primary election is ultimately cancelled?¹⁸ In such circumstances, we have “concluded that [committees]...may retain” those contributions, so long as they are “redesignated for another election in which the candidate has participated or is participating, or reattributed to another contributor.”¹⁹

b. The accusations against Respondents.

During the 2018 election cycle, then-Rep. Mia Love²⁰ was a candidate for the Republican nomination for her Congressional seat and raised funds for the party convention and the primary election.²¹ The Commission received a complaint that Love had “impermissibly accepted contributions for the primary election,”²² because the primary election was cancelled—a fact that the Love committee “learned only the day before the convention.”²³

In this respect, the complaint fundamentally misunderstood how we interpret the Act. OGC determined, and we agreed, that Rep. Love’s committee “was permitted to retain the primary election contributions it received before April 21, 2018, the date Love became the party’s nominee at the convention.”²⁴

¹⁷ *Id.*; *see also id.* (“Even though the candidate did not have any opponents in the primary, they still were required to spend money and campaign because they did not know at the time whether they would have any opponents”).

¹⁸ *Id.*

¹⁹ *Id.* (citing 11 C.F.R. §§ 102.9(e)(3); 110.1(b)(5); 110.1(k)(3)).

²⁰ Rep. Love represented Utah’s Fourth Congressional District from 2015 to 2019.

²¹ Resp. at 2-4.

²² FGCR at 2.

²³ *Id.* at 10.

²⁴ *Id.*

The complaint, however, also alleged that Love’s “Committee violated the Act by accepting approximately \$370,000 in primary election contributions *after* the convention, when it was clear there would be no primary election.”²⁵ Counsel for the Respondents, however, contended that the committee “properly remedied all contributions received after” Utah’s “cancellation of the primary election.”²⁶

Our regulations provide that “contributions designated for an election that does not occur...must be refunded, redesignated...or reattributed.”²⁷ Commission regulations also specify that a “contribution shall be considered to be redesignated for another election if” the committee notifies the contributor of the issue and “the contributor provides the [committee’s] treasurer with a written redesignation of the contribution for another election” “[w]ithin sixty days from the date of the treasurer’s receipt of the contribution.”²⁸ Respondents continued to receive contributions designated for the cancelled primary until June 29th.²⁹

On October 15, 2018, well past the 60-day window,³⁰ the Love committee filed amended reports with the Commission that “changed the designation from ‘2018 primary’ to ‘2018 general’ for contributions received after April 21, 2018.”³¹ The committee did “not provide[] any documentation regarding the redesignations.”³² As a result, it is unclear whether the Respondents had timely and properly redesignated those contributions within the 60-day window.³³

Rep. Love lost the 2018 general election. After the election, her campaign committee reorganized itself as the “Utah Love PAC,” and raised a grand total of

²⁵ *Id.* (emphasis supplied).

²⁶ Resp. at 4.

²⁷ Response to Request for Legal Consideration at 1, LRA 1044 (“Friends of Mike Lee”), Aug. 1, 2017.

²⁸ 11 C.F.R. § 110.1(b)(5)(ii).

²⁹ FGCR at 13.

³⁰ *Id.* (“[T]he earliest primary contributions should have been remedied by June 20 and the latest primary contributions, received on June 29, should have been remedied by August 28, 2018”).

³¹ *Id.*

³² *Id.*

³³ *Id.*

\$5,290 in the 2019-2020 cycle. Since then, it has raised no funds. It presently has no cash-on-hand and has been filing termination reports since September 12, 2019.³⁴ It is not, in short, a going concern.

Nevertheless, OGC recommended that we find reason-to-believe that the Love committee “knowingly accept[ed] excessive contributions³⁵ after Love secured the Republican Party nomination “at the party convention,”³⁶ and open an investigation, which would include obtaining—by subpoena, if necessary—the committee’s internal records and communications. OGC hoped these documents would prove whether this defunct organization’s redesignation of its primary contributions had been timely or, instead, occurred a couple months late.³⁷

These sorts of investigations, even if they can be narrowed, are “no small matter.”³⁸ On that point, all six commissioners agreed that an investigation was not required.³⁹

Three of our colleagues proposed that we instead pursue, on the existing record, a civil penalty of nearly ten times the Love committee’s overall contributions in 2019. We could not support this either. The proposed penalty, even if the committee had the funds to pay it, was hardly proportional. However characterized, the fact is that this matter involved limited harm: the relevant contributions were ultimately

³⁴ Fed. Election Comm’n, “Utah Love PAC: ID: C00505776”, *available at*: <https://www.fec.gov/data/committee/C00505776>.

³⁵ FGCR at 14. The “excessive” funds were those accepted after the cancellation of the primary, even though they were ultimately redesignated for the 2018 general election.

³⁶ *Id.*

³⁷ FGCR at 14-15.

³⁸ Statement of Reasons of Vice Chair Dickerson at 4, MURs 7165/7196 (Benton), Oct. 13, 2021. As the D.C. Circuit has recognized, “Commission investigations into alleged election law violations frequently involve subpoenaing materials of a ‘delicate nature...representing the very heart of the organism which the First Amendment was intended to nurture and protect: political expression and association concerning federal elections and officeholding.’” *Am. Fed’n of Labor-Congress of Indus. Orgs. v. Fed. Election Comm’n*, 333 F.3d 168, 170 (D.C. Cir. 2003) (quoting *Fed. Election Comm’n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981)) (cleaned up); *see also Perry v. Schwarzenegger*, 591 F.3d 1147, 1162 (9th Cir. 2011) (“We have little difficulty concluding that the disclosure of internal campaign communications can have” an unconstitutional “effect on the exercise of protected activities”) (emphasis omitted).

³⁹ Certification at 1, MUR 7502 (Utah Love PAC f/k/a Friends of Mia Love, *et al.*), Sept. 30, 2021.

redesignated, albeit possibly untimely so.

Given the nature of the alleged offense, the documented inability of the Respondents to pay a significant civil penalty, the press of other business, and the fact the committee is no longer active and has been consistently attempting to discontinue its operations, we could not justify the investment of further Commission resources pursuing this Matter. Accordingly, we elected to dismiss under *Heckler v. Chaney*.⁴⁰



Allen Dickerson
Vice Chair

October 29, 2021

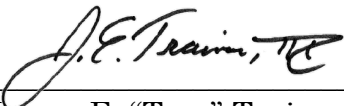
Date



Sean J. Cooksey
Commissioner

October 29, 2021

Date



James E. "Trey" Trainor, III
Commissioner

October 29, 2021

Date

⁴⁰ "Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another...and, indeed, whether the agency has enough resources to undertake the action at all. An agency generally cannot act against each technical violation of the statute it is charged with enforcing." *Heckler*, 470 U.S. at 831.