



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of)	
Fair People for Fair Government)	MUR 7460
Coalition for a Safe Secure America)	MURs 7536 & 7551

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

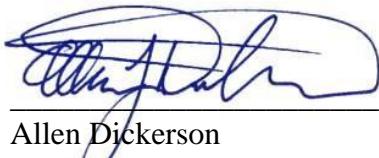
We joined our colleagues in voting unanimously to dismiss these matters as an exercise of prosecutorial discretion.¹ We write separately because we do not believe the Respondents in these matters violated the law. In reaching that judgment, we would adopt the reasoning set out by Commissioners McGahn, Hunter, and Petersen in previous statements analyzing what mailer features do and do not constitute express advocacy to conclude that these do not.² In particular, a mailer does not contain express advocacy under 11 C.F.R. § 100.22(b) merely because it identifies someone as a candidate for federal office, or because it compares two candidates’ policy positions with a clear preference for one, or because it comments on a candidate’s character, or even because the mailer is sent close in time to an election. It must be that “[r]easonable minds could not differ as to whether it encourages actions to elect or defeat” a candidate.³

¹ Certification (Apr. 22, 2021), MUR 7460 (Fair People for Fair Government); Certification (Apr. 28, 2021), MURs 7536 & 7551 (Coalition for a Safe Secure America).

² See, e.g., Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen (Sept. 19, 2013), MUR 6346 (Cornerstone Action, *et al.*); Statement of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen (May 9, 2012), Advisory Opinion 2012-11 (Free Speech); Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen (June 23, 2011), MUR 6429 (Unknown Respondents).

³ 11 C.F.R. § 110.22(b)(2). The constitutionality of 11 C.F.R. § 100.22(b) remains subject to debate. *Compare Me. Right to Life Comm. Inc. v. FEC*, 914 F. Supp. 8,13 (D. Me. 1996) (holding “that 11 C.F.R. § 100.22(b) is contrary to the statute as the United States Supreme Court and the First Circuit Court of Appeals have interpreted it and thus beyond the power of the FEC”), *aff’d per curiam*, 98 F.3d 1 (1st Cir.1996) (per curiam), *cert. denied*, 522 U.S. 810 (1997); *FEC v. Christian Action Network*, 894 F. Supp. 946, 958 (W.D. Va. 1995) (concluding that the FEC’s approach to express advocacy wrongly expanded the definition beyond that enunciated by the Court in *Buckley* and was “based on a misreading of the Ninth Circuit’s decision in *Furgatch*”), *aff’d*, 92 F.3d 1178 (4th Cir. 1996) (unpublished); *Va. Society for Human Life, Inc. v. FEC*, 263 F.3d 379, 392 (4th Cir. 2001) (holding that § 100.22(b) “violates the First Amendment”); *Right to Life of Dutchess County, Inc. v. FEC*, 6 F. Supp. 2d 248, 253–254 (S.D.N.Y. 1998) (finding

We further believe that any merits assessment in MURs 7536 and 7551 (Coalition for a Safe Secure America) should have followed the Commission's decision in MUR 5634 (Sierra Club, Inc.). There, the Commission voted 5-1 to find no reason to believe that a Sierra Club ad known as "The Dirt" contained express advocacy and therefore constituted a prohibited corporate expenditure.⁴ In our view, there is no legally meaningful difference between the content of "The Dirt" and the mailers sent by the Coalition for a Safe Secure America, the relevant portions of which are included below. Like matters should be treated alike. It is therefore regrettable that this important Commission decision was not cited or acknowledged by the Office of General Counsel in its First General Counsel's Report recommending enforcement in these matters.⁵



Allen Dickerson
Vice Chair

May 26, 2021

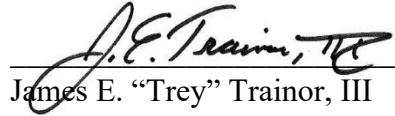
Date



Sean J. Cooksey
Commissioner

May 26, 2021

Date



James E. "Trey" Trainor, III
Commissioner

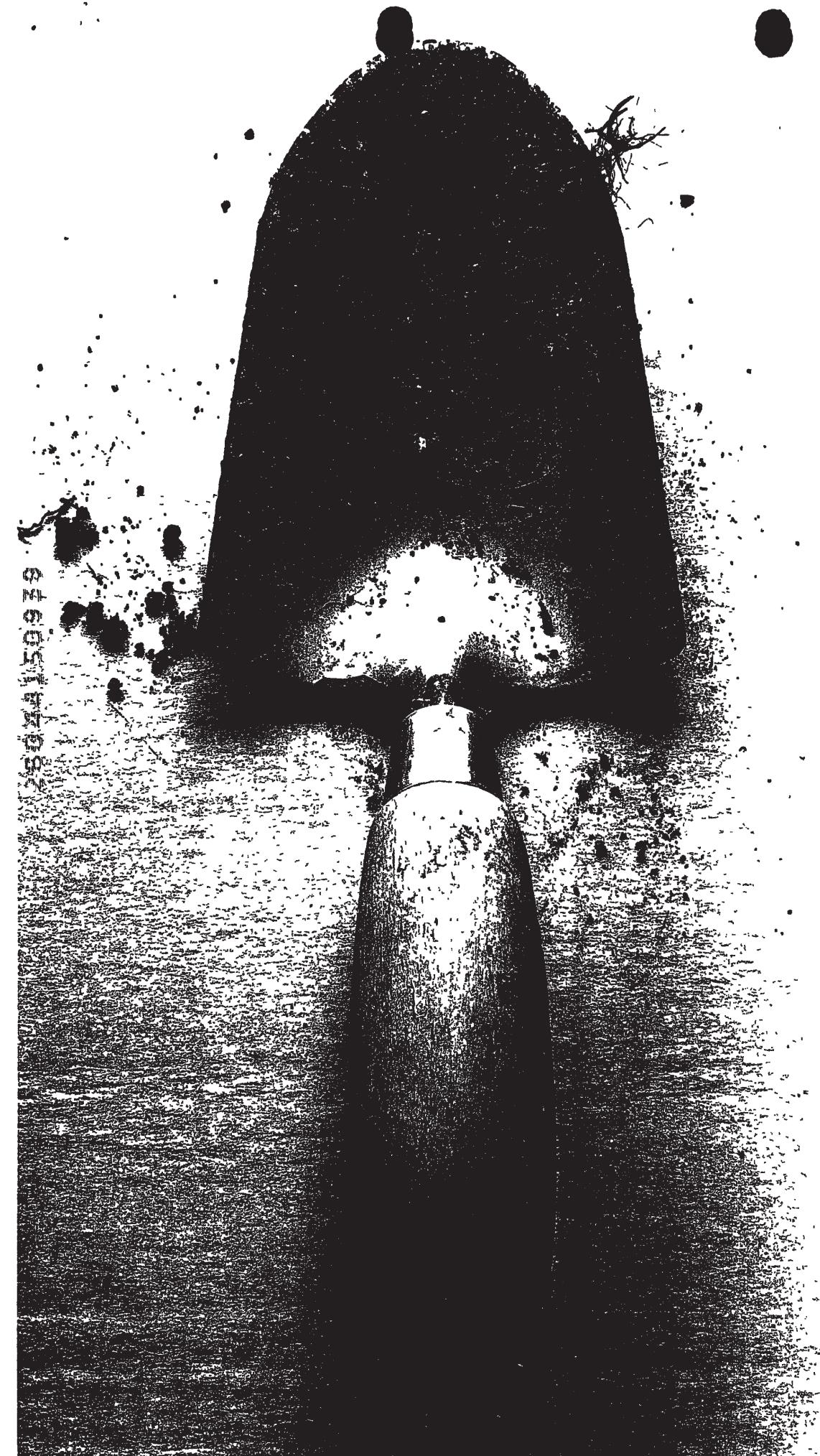
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Date

that § 100.22(b) is beyond the statute), *with Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (holding that 11 C.F.R. § 100.22(b) is neither overly broad nor impermissibly vague); *The Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012) (holding that 11 C.F.R. § 100.22(b) is constitutional).

⁴ Certification (Sept. 20, 2005), MUR 5634 (The Sierra Club, Inc.). *See also* First General Counsel's Report at 6–9 (Aug. 10, 2005), MUR 5634 (The Sierra Club, Inc.) (describing and analyzing "The Dirt").

⁵ *See* First General Counsel's Report (Jan. 13, 2020), MURs 7536 and 7551 (Coalition for a Safe Secure America).



George W.
Bush

Dig deep



John Kerry

As President, George W. Bush has consistently chosen to protect the interests of his oil and gas industry campaign contributors at the expense of public health, the environment, and a safer and sensible energy policy.

Bush has proposed to allow "blended" sewage to be discharged into Florida lakes and streams,¹ eliminated the polluter pays laws which require corporations to fund the cleanup of abandoned toxic waste sites,² and opened the Gulf of Mexico to the first oil and gas drilling lease sale since 1988.³

Bush proposed drilling in the Arctic National Wildlife Refuge and other pristine public lands, but stifled efforts to develop renewable energy sources.⁴ In Florida, solar power is a great untapped source of renewable energy, and our tourism, economy, and coastal ecosystem depends on protection from off shore oil drilling.

Bush issued a rule requiring cleaner diesel fuel and engines for heavy equipment, starting in 2010. The rule will help reduce soot and smog pollution.⁵

At a glance

- Proposed allowing "blended" sewage into Florida's lakes and streams
- Wants to open our national parks and shores for drilling across America
- Requiring cleaner diesel fuel and engines for heavy equipment, starting in 2010

CHECK THE FACTS:

- 1 Regulatory Review Plan 66, Federal Register 7701
- 2 "Bush, Kerry are Worlds Apart on Environment," Gannett News Service, 5/28/04
- 3 www.gomr.mms.gov/homepg/1sesale/181news.html
- 4 Report of the National Energy Policy Development Group, www.whitehouse.gov/energy/Chapter5.pdf
- 5 www.epa.gov/nonroad-diesel/2004fr/420104029.htm

For facts about the candidates for president

John Kerry has built a 30-year record of supporting strong environmental protection. In the U.S. Senate, he has consistently fought for strong air and water pollution laws.

Kerry has voted in support of the polluter pays laws abandoned by the Bush administration and is committed to ensuring that corporate polluters have to clean up their wastes, not taxpayers. This includes Florida's 51 toxic waste sites contaminating our groundwater and threatening our health.⁶

In the U.S. Senate, Kerry co-sponsored the Clean Power Act to force old, polluting power plants to clean up.⁷ One hundred percent of Florida's waters are under fish consumption warnings due to dangerous levels of mercury pollution from coal-fired power plants.⁸

Kerry has offered an energy plan which would put the United States on a path toward independence from Middle-Eastern oil.⁹

At a glance

- Committed to re-instating the polluter pays laws
- Fought to force polluting power plants to clean up their emissions
- Supports clean, renewable energy programs

CHECK THE FACTS:

- 6 www.epa.gov/superfund/sites/npl/fl.htm
- 7 S 366, 2/12/03
- 8 EPA Fact Sheet, National Listing of Fish Advisories, pg 4, www.epa.gov/waterscience/fish/advisories/factsheet.pdf
- 9 "Kerry vs. Bush on Environmental Issues," Scripps Howard News Service, 7/15/04

To learn more: www.sierraclubvotes.org

MIKE BRAUN: THE TAX HIKE KING OF INDIANA

Mike Braun voted to raise taxes and fees on:

- Gas for your car
- Car registration fees
- Airplane fuel
- Teachers' background checks
- Immunizations for students

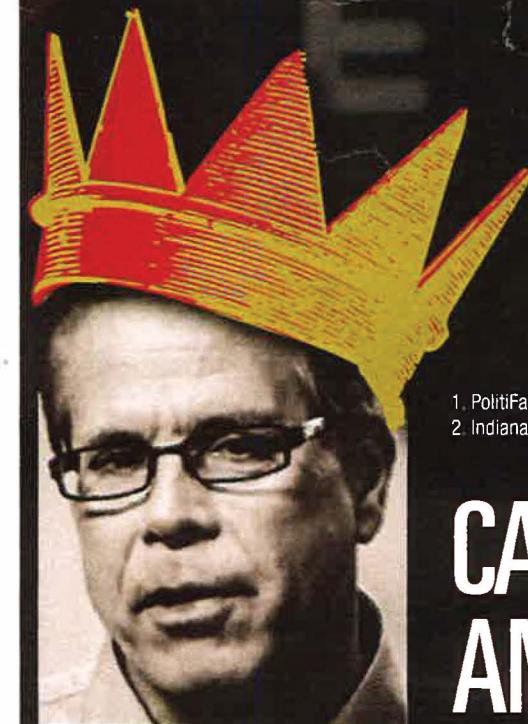
Mike Braun even supported the largest tax increase in Indiana history – the gas tax, which went up by a whopping 55 percent and will take \$5 BILLION out of taxpayers' pockets in the first seven years.¹



**Lucy
BRENTON**

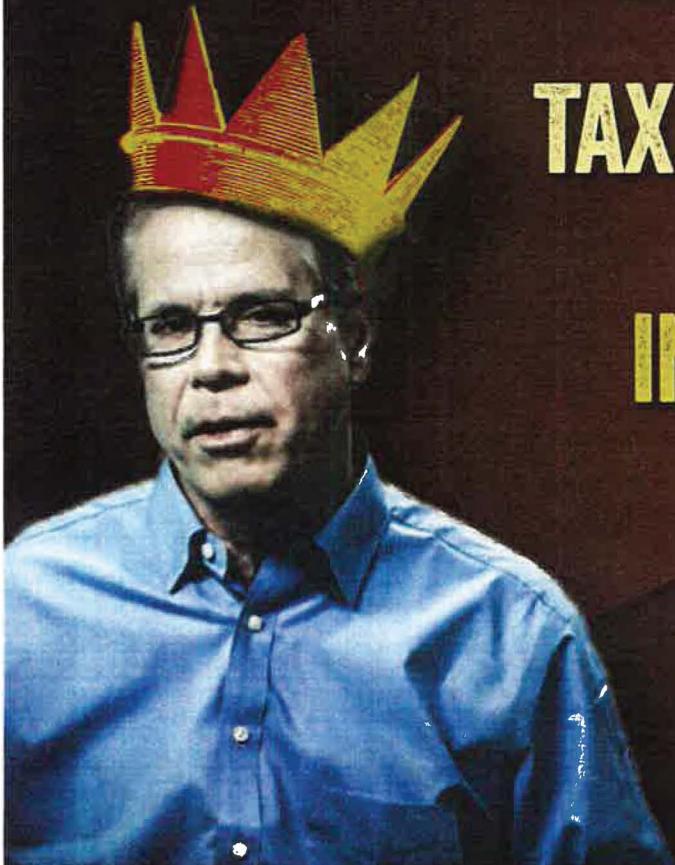
Opposed to Tax Hikes

Lucy Brenton strongly opposed the Mike Braun tax hikes. In fact, she has always opposed all taxes that take money from us to line the government's pockets.²



1. PolitiFact, April 30, 2018
2. Indianapolis Star, September 14, 2018

**CALL TAX HIKE MIKE AT (317) 732-8893
AND TELL HIM TO STOP RAISING OUR TAXES.**



TAX HIKE MIKE BRAUN SUPPORTED THE LARGEST TAX INCREASE IN INDIANA HISTORY.

Mike Braun raised the taxes we pay on gas by a whopping 55% – the largest tax hike in Indiana's history.¹ Thanks to Tax Hike Mike, this will cost us \$5 billion in the first seven years.

Mike Braun voted to impose or raise taxes and fees 45 times in 2017 alone.² Hoosiers are paying more for all sorts of things, from car registration fees to immunizations for students. Even our teachers must pay more for their own required background checks.

CALL TAX HIKE MIKE AT (317) 732-8893 AND TELL HIM TO STOP RAISING OUR TAXES.



Lucy Brenton: Opposed to all tax increases

Lucy Brenton strongly opposed the Mike Braun tax hikes. In fact, she opposes all taxes that take money from our pockets.³

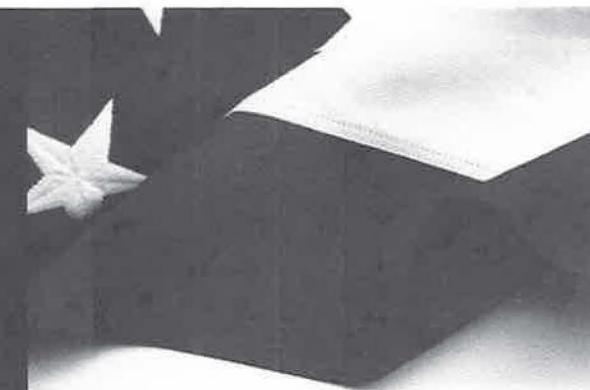
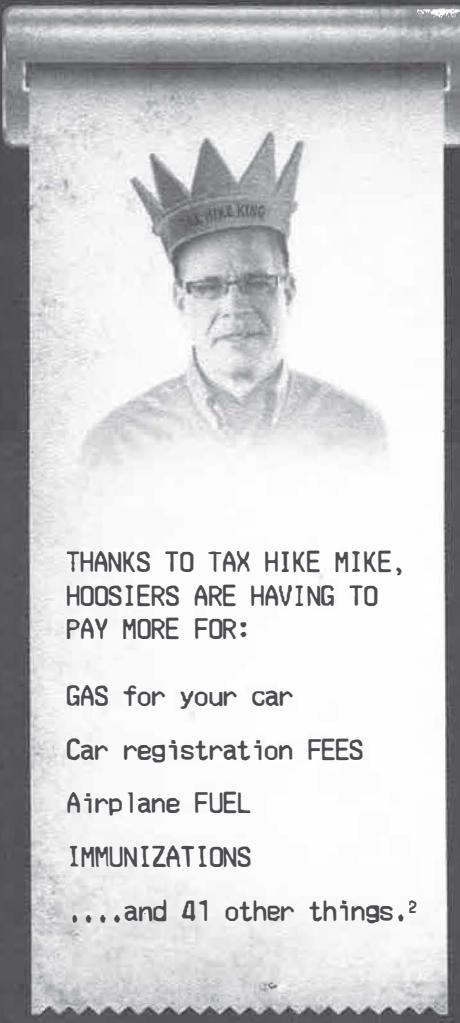
Call Lucy Brenton at (317) 721-3676 and tell her to keep opposing new taxes.

TAXPAYERS ARE OUT \$5 BILLION

THANKS TO TAX HIKE MIKE

Mike Braun's Gas Tax Hike – the largest tax increase in Indiana's history – will take \$5 billion from taxpayer pockets over the next seven years.¹ And the gas tax isn't the only tax or fee he voted to raise or impose.

CALL TAX HIKE MIKE AT (317) 732-8893
AND TELL HIM TO STOP RAISING OUR TAXES.



Lucy BRENTON: OPPOSED TO TAKING MORE MONEY FROM TAXPAYER POCKETS



Lucy Brenton is opposed to Mike Braun's Gas Tax Hike, and the 45 other taxes he voted to support or impose. In fact, she opposes all taxes that take money from taxpayers to line the government's pockets.³

Call Lucy Brenton at (317) 721-3676 and tell her to keep opposing new taxes.