



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 1, 2022

**BY ELECTRONIC MAIL ONLY**

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RE: MUR 7726  
David Brock, *et al.*

Dear Messrs. Elias, Reese, and Wilson, and Ms. Levien:

On April 13, 2020, the Federal Election Commission notified your clients, Media Matters for America (“MMA”), American Bridge 21st Century Foundation (“AB Foundation”), AB PAC and Rodell Mollineau in his official capacity as treasurer, Correct the Record and Elizabeth Cohen in her official capacity as treasurer (“CTR”), David Brock, and Hillary for America and Elizabeth Jones in her official capacity as treasurer (“HFA”), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”). A copy of the complaint was forwarded to your clients at the time.

The Commission considered the complaint, but was equally divided over whether to (1) find no reason to believe that MMA violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2 by making in-kind corporate contributions to HFA; (2) find no reason to believe HFA violated 52 U.S.C. §§ 30104(b)(3)(A), 30118(a) and 11 C.F.R. §§ 104.3(a), 114.2 by knowingly accepting or receiving and failing to report in-kind corporate contributions from MMA; (3) dismiss the allegation that AB PAC and CTR violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a) by failing to report in-kind contributions from MMA; (4) dismiss the allegation that AB PAC violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(b) by submitting inaccurate disclosure reports; (5) dismiss the allegation that AB Foundation violated the Act; (6) find reason to believe that CTR violated 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(a), 110.2(b) by making and failing to report excessive in-kind contributions to HFA; (7) find reason to believe that HFA violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b) by knowingly accepting and failing to report excessive in-kind contributions from CTR; (8) dismiss the allegation that AB PAC violated 52 U.S.C. §§ 30104(b)(6)(B)(i), 30116(a)(2)(A) and 11 C.F.R. §§ 104.3(b), 110.2(b) by making and failing to report excessive in-kind contributions to HFA and unknown committees; and (9) dismiss the allegation that HFA and unknown committees violated 52 U.S.C. §§ 30104(b)(3)(A), 30116(f)

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and 11 C.F.R. §§ 104.3(a), 110.9 by knowingly accepting and failing to report excessive in-kind contributions from AB PAC.

The Commission was also equally divided over whether to dismiss the matter for the reasons given by Commissioners Hunter and Petersen in their Statement of Reasons in MURs 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*). Accordingly, on August 29, 2022, the Commission closed its file in this matter. Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A Statement of Reasons providing a basis for the Commission's decision is attached.

If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574.

Sincerely,



Ana J. Peña-Wallace  
Assistant General Counsel

Enclosure:

Statement of Reasons of Chairman Dickerson & Commissioners Cooksey & Trainor



**FEDERAL ELECTION COMMISSION**  
Washington, DC

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

David Brock, *et al.*

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MUR 7726

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

This Matter arose from a Complaint alleging that a network of political committees and organizations established or controlled by David Brock, and Hillary for America and Elizabeth Jones in her official capacity as treasurer, violated the Federal Election Campaign Act of 1971 ("FECA" or the "Act") by making, or receiving and failing to report, excessive in-kind contributions. The Commission has already voted on whether to pursue the merits of these allegations in two separate matters and has declined to do so in both instances. Accordingly, the Commission has made its decision pursuant to our enabling statute and all that remains is to close the file as to the Matter still before us and release our work for public scrutiny.

Following the vote on OGC's substantive recommendations more than fifteen months ago, the Commission has voted twice on taking the ministerial act of "closing the file," which would make the Complaint, Response, vote certifications, and the Commission's reasoning in this Matter available for public and judicial review. Our Democratic and Independent colleagues, however, twice voted against taking this ministerial act. Since then, Chairman Dickerson has placed this Matter for consideration on an executive session agenda on seven separate occasions, and one of our colleagues has expressly requested that it be removed from consideration each time. As a result, this Matter has languished on the Commission's docket for nearly a year and a half, as of this writing, and the file remains shielded from public view.

The Commission's consideration of this Matter has concluded. With the expectation that the Commission's actions will eventually see the light of day, and to provide the reasoning for our votes to the public and the courts when that day comes, we provide this Statement of Reasons for inclusion in the file.

**I. PROCEDURAL HISTORY**

Between 2015 and 2016, the Commission received five separate complaints alleging that coordination between the named Respondents resulted in the making and/or accepting of

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unreported, excessive in-kind contributions to or from other organizations.<sup>1</sup> More specifically, the complaints alleged that Correct the Record, a hybrid PAC that supported Hillary Clinton's 2016 presidential candidacy, "announced that it could 'coordinate with campaigns and Party Committees' in connection with its internet communications, because its communications would not be 'paid media.'"<sup>2</sup> The complaints asserted that "the millions of dollars spent by Correct the Record actually constituted excessive and prohibited in-kind contributions to Hillary for America, Hillary Clinton's principal campaign committee."<sup>3</sup>

In October 2018, our Office of General Counsel ("OGC") agreed with the essence of the complaints and recommended that the Commission find reason to believe ("RTB") that there was unlawful coordination resulting in violations of the Act.<sup>4</sup>

During the executive session of June 4, 2019, the Commission declined to adopt OGC's recommendations to find RTB with regards to the allegations mentioned above (by a vote of 2-2), and also declined to adopt the Factual and Legal Analysis as recommended by OGC (by a vote of 1-3).<sup>5</sup> The Commission also declined to dismiss these Matters pursuant to the agency's prosecutorial discretion (by a vote of 0-2).<sup>6</sup> A motion to close the file and preemptively authorize defense of the agency if a lawsuit was brought by the complainant pursuant to 52 U.S.C. § 30109(a)(8) failed (by a vote of 3-1), but a stand-alone motion to close the file passed (by a vote of 4-0).<sup>7</sup> At this time, the complainants were notified that the Commission had declined to proceed with enforcement, and statements of reasons by our predecessors explaining their respective votes were published.<sup>8</sup>

However, nearly ten months after the files in MURs 6940, 7097, 7146, 7160, and 7793 had closed, an additional complaint regarding the same alleged activity was filed.<sup>9</sup> When the Commission voted on this new Matter on January 28, 2021, we declined to adopt OGC's recommendations for the reasons given by Commissioners Hunter and Petersen in their Statement of Reasons in the previous Matters.<sup>10</sup>

This ought to have been the end of this Matter, not only because the Commission had already spoken as to these allegations in the MURs considered more than a year prior, but also because the lack of four votes to find RTB is determinative. As the D.C. Circuit has

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<sup>1</sup> First Gen. Counsel's Rpt. at 4–6.

<sup>2</sup> Statement of Reasons of Vice Chairman Matthew S. Petersen and Comm'r Caroline C. Hunter at 1, MURs 6940, 7097, 7146, 7160, & 7193 (Correct the Record, *et al.*).

<sup>3</sup> *Id.*

<sup>4</sup> First Gen. Counsel's Rpt. at 5.

<sup>5</sup> Amended Certification, MURs 6940, 7097, 7146, 7160, and 7793 (June 13, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Democratic Congressional Campaign Comm. v. Fed. Election Comm'n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) ("DCCC").

<sup>9</sup> Complaint at 1–2.

<sup>10</sup> Certification, MUR 7726 (Jan. 28, 2021).

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observed, “[u]nder FECA, an affirmative vote of four commissioners is required for the agency to initiate enforcement proceedings” and where there are not “four votes in favor of moving forward with an enforcement action against [a respondent], the Commission dismis[s]...[the] complaint.”<sup>11</sup>

But when a motion was made to close the file, three of our colleagues declined to do so.<sup>12</sup>

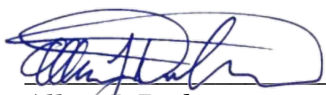
Nearly a year later, another effort to close the file in this Matter was made, and yet again, the same three Commissioners refused to vote in favor of the motion.<sup>13</sup> The Commission has not since voted on closing this Matter’s file due to one of our colleague’s repeated holdover requests. As a result, despite concluding its deliberations, the Commission’s lack of action has resulted in the file remaining unnecessarily open and the Complainant and Respondents being intentionally left in the dark.

## II. CONCLUSION

For the foregoing reasons, we declined to support OGC’s recommendations in this Matter.


Moreover, we note that good faith disagreement on the scope of campaign finance law has existed since the Act was passed in the 1970s, and we have long had a process for managing those disagreements and committing them to judicial oversight. In contrast, the instant approach adopted by our colleagues—that is, failing to close a file when the Commission does not vote to proceed with enforcement and failing to appear or defend the agency in a subsequent delay suit, thus unilaterally denying both courts and the public the ability to gain insight into our decision-making—does not reflect a mere difference of opinion. It is specifically intended to hamstring this agency by bottling up particular matters, blocking public review of the Commission’s deliberations and decisions, and outsourcing the Commission’s duties and authority to outside allies.

Trusting that this cynical approach will not stand the test of time, we have entered our reasoning in this Matter into the file for future consideration by the public and the courts.

  
 Allen J. Dickerson  
 Chairman

May 13, 2022

Date

  
 Sean J. Cooksey  
 Commissioner

May 13, 2022

Date

<sup>11</sup> *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm’n*, 993 F.3d 880, 883 (D.C. Cir. 2021)

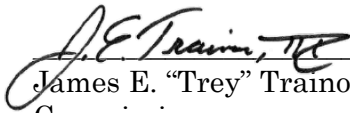
<sup>12</sup> Certification, MUR 7726 (Jan. 28, 2021).

<sup>13</sup> Certification, MUR 7726 (Jan. 11, 2022).

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A handwritten signature in black ink, appearing to read "J.E. Trainor, III", written over a horizontal line.

James E. "Trey" Trainor III  
Commissioner

May 13, 2022

Date