



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
Hansjörg Wyss)	MUR 7904
The Wyss Foundation)	
Berger Action Fund, Inc.)	
New Venture Fund)	
Sixteen Thirty Fund)	

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

The Complaint in this matter alleges that Hansjörg Wyss, a foreign national, made contributions in the name of another through his nonprofit organizations—the Wyss Foundation and the Berger Action Fund, Inc.—to the affiliated nonprofits Sixteen Thirty Fund (“STF”) and New Venture Fund (“NVF”), and to two unincorporated projects of those organizations, the Hub Project and the Hub Education and Engagement Fund. The Complaint also claims that the Wyss Foundation, the Berger Action Fund, STF, NVF, and the Hub Project violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to register and report as political committees. Finally, the Complaint asserts that Wyss made prohibited foreign national contributions.

Wyss, the Wyss Foundation, and the Berger Action Fund respond that any grants made through these organizations were given on the condition they not be used for partisan electoral purposes, and NVF and STF in turn assert that they complied with the grants’ restrictions and did not use those funds for election-related expenses.

The Commission’s Office of the General Counsel (“OGC”) recommended dismissing the allegations against the Wyss Foundation and the Berger Action Fund.¹ However, OGC did recommend the Commission find reason to believe that STF, along with the Hub Project, failed to register and report as a political committee, and it further recommended that the Commission take no action as to the political committee status allegations concerning NVF and the Hub Education and Engagement Fund, pending the outcome of an investigation of STF and the Hub Project.²

¹ First General Counsel’s Report at 31 (June 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

² *Id.*

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The Commission instead voted to dismiss the political committee status allegations with respect to STF, the Hub Project, NVF, and the Hub Education and Engagement Fund, due to a lack of evidence in the record indicating that those entities had the “major purpose” of influencing federal elections and therefore should have registered as political committees.³ This statement explains our reasoning for dismissing the allegations concerning those Respondents.

I. FACTUAL BACKGROUND

STF is a 501(c)(4) social welfare organization “that advocates for innovative policy solutions to address a wide range of issues,” including economic equity, affordable health care, climate solutions, racial justice, and voter access.⁴ The Hub Project “is one of numerous projects sponsored by STF.”⁵ According to a copy of STF’s IRS Form 990 for the 2020 calendar year, its total spending exceeded \$410 million that year, with the bulk of the spending (over \$320 million) made in the form of grants to other nonprofit groups.⁶ STF has also disclosed that it made \$60,125,567.48 in contributions to federal political committees and spent an additional \$12,770,259.14 on federal electioneering communications throughout 2020.⁷ STF’s aggregate contributions and electioneering communications accounted for 17.75% of its total spending in 2020.⁸ In the four years prior to 2020, SVF made additional contributions to federal committees and funded other disbursements in connection with federal elections, including independent expenditures totaling \$114,100.95 in 2018.⁹ STF states that, consistent with its tax-exempt status as a 501(c)(4) organization, influencing candidate elections has never been its “primary activity,” and that the extent of its federal campaign activity is insufficient to qualify it as a political committee.¹⁰

³ Certification (July 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*). Under the same reasoning articulated in other recent matters, we also voted to find no reason to believe as to the allegations regarding the foreign national contributions and contributions made in the name of another because they fell outside of the statute of limitations. See Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III at 3–7 (Mar. 7, 2022), MUR 7465 (Freedom Vote, Inc.); Statement of Reasons of Chairman Allen Dickerson and Commissioner James E. “Trey” Trainor, III (Aug. 30, 2022), MUR 7320 (Libertarian Party of Miami-Dade, *et al.*); Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III (Dec. 17, 2021), MURs 7859 & 7860 (Citizens for a Working Am., *et al.*/Jobs and Progress Fund, Inc., *et al.*); Supplemental Statement of Reasons of Commissioner Sean J. Cooksey (Apr. 29, 2021), MURs 6917 & 6929 (Scott Walker, *et al.*).

⁴ Response of NVF and STF at 2, 6 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*).

⁵ *Id.* at 6.

⁶ IRS Form 990, Sixteen Thirty Fund, 2020 Return of Organization Exempt from Income Tax, Sched. I, Part II (Oct. 29, 2021), <https://www.sixteenthrityfund.org/wp-content/uploads/2021/11/Sixteen-Thirty-Fund-2020-Public-Disclosure-Copy.pdf> (copy not available on IRS website).

⁷ Response of NVF and STF at 7 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 7–8.

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NVF is a 501(c)(3) charitable organization that works on issues including conservation, global health, international development, education, disaster recovery, and the arts.¹¹ NVF managed a total charitable portfolio of over \$460 million by the end of 2019, and the Hub Education and Engagement Fund is one of more than 500 projects under NVF’s auspices.¹² NVF asserts that, as a 501(c)(3) organization, it is prohibited from engaging in any “political campaign intervention” and has never directly or indirectly supported or opposed candidates for elective office at any level of government.¹³

II. LEGAL ANALYSIS

A. Determining Political Committee Status

Under the Act, a “political committee” is broadly defined as “any committee, club, association, or other group of persons” that receives contributions or makes expenditures in excess of \$1,000 during a calendar year.¹⁴ In *Buckley v. Valeo*, however, the Supreme Court narrowed the scope of the term “political committee,” so as to avoid overbreadth concerns that would proceed from regulating “groups engaged purely in issue discussion.”¹⁵ Accordingly, *Buckley* held that a “political committee” “need 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.”¹⁶ Following *Buckley*, a group that is not controlled by a candidate must register with the Commission and file reports as a political committee only if it both (1) receives contributions or makes expenditures exceeding the \$1,000 threshold, and (2) has the “major purpose” of influencing the nomination or election of federal candidates. Thus, “the major purpose test serves as an additional hurdle to establishing political committee status,”¹⁷ and “protect[s] policy advocacy organizations from being swept into the Commission’s burdensome regulatory scheme.”¹⁸

To determine a particular organization’s major purpose, the Commission engages in a fact-specific, “case-by-case” analysis that considers the organization’s “overall conduct,” including its public statements, fundraising appeals, organizational records, government filings, and the proportion of its spending on “Federal campaign activity” (that is, the nomination or election of a federal candidate) relative to its spending for non-campaign activities.¹⁹ Expenditures for “express

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 8–9.

¹⁴ 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5.

¹⁵ 424 U.S. 1, 79 (1976) (per curiam).

¹⁶ *Id.* (emphasis added).

¹⁷ Political Committee Status, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (Supplemental Explanation and Justification) [hereinafter Supplemental E&J].

¹⁸ Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 6 (Jan. 8, 2014), MUR 6396 (Crossroads Grassroots Policy Strategies).

¹⁹ Supplemental E&J at 5597, 5605. *See also* Factual & Legal Analysis at 9 n.40 (July 31, 2019), MUR 7465 (Freedom Vote, Inc.) (“[T]he Commission’s major purpose analysis has always focused on the proportion of [a

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advocacy” communications, along with contributions made to federal committees, are the principal types of campaign spending relevant to the Commission’s major purpose inquiry.²⁰

An organization that qualifies as a political committee under the foregoing two-part analysis must comply with extensive organizational, recordkeeping, and reporting requirements set forth in the Act and Commission regulations.²¹ Among its legal obligations, a political committee must register with the Commission within 10 days, appoint a treasurer to maintain records of all its transactions, file disclosure reports until its formal termination, and include appropriate disclaimer statements on its political advertising.²²

B. The Record Does Not Show the Respondents Had the Major Purpose of Influencing Federal Elections

The record in this matter does not support finding reason to believe STF and the Hub Project violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as political committees. STF does appear to have exceeded the \$1,000 statutory threshold for political committee status, having spent \$114,100.95 on federal independent expenditures in 2018.²³ However, after considering the key factors relevant to the major purpose analysis—including STF’s public statements, organizational documents, government filings, and the share of its spending related to federal campaign activity—we disagree with OGC’s determination that, by 2020, STF had the major purpose of influencing federal elections.²⁴

Publicly available statements by STF reflect its general mission of supporting and facilitating advocacy pertaining to a range of social and political issues, but not the major purpose of supporting or opposing candidates for federal office. For example, STF’s website highlights its efforts “to support leaders and causes that share our progressive values and aspirations” across different “focus areas.”²⁵ Likewise, a blog post by STF president Amy Kurtz discusses progressives’ “responsibility to mobilize” in order to address “challenges” such as “a global

group’s] spending related to ‘Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)’ ... rather than its amount.”).

²⁰ See Supplemental E&J at 5605; see also Concurring Statement of Commissioner Caroline C. Hunter at 2 (July 2, 2020), MUR 7465 (Freedom Vote, Inc.) (observing that “independent expenditures (by definition express advocacy communications) and contributions to SuperPACs (*i.e.*, independent expenditure-only committees)” are “squarely within the bright-line category of ‘campaign-related’ spending the Supreme Court described in *Buckley*” and therefore are most “indicative of having the major purpose of nominating or electing federal candidates”..”).

²¹ See 52 U.S.C. §§ 30102–30104; 11 C.F.R. §§ 102.1–102.17.

²² *Id.* See also 52 U.S.C. § 30120 (specifying disclaimer requirements); 11 C.F.R. § 110.11 (same).

²³ Response of NVF and STF at 7 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*). To assess whether an organization has made an “expenditure,” the Commission examines whether spending on any of an organization’s communications made independently of a candidate constitutes “express advocacy” under 11 C.F.R. § 100.22. See Supplemental E&J at 5606.

²⁴ See First General Counsel’s Report at 29 (June 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

²⁵ See *Focus Areas*, SIXTEEN THIRTY FUND, <https://www.sixteenthirtyfund.org/focus-areas/> (last visited Aug. 30, 2022).

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pandemic, a long-overdue reckoning with racial justice, and a climate crisis.”²⁶ These statements provide no indication that federal campaign activity is STF’s major purpose.

Similarly, STF’s organizational records and government filings do not support that its major purpose is nominating or electing federal candidates. With respect to STF’s internal documents, an affidavit submitted by Ms. Kurtz, the STF president, attests that grants the organization received from the Berger Action Fund were only for use in furtherance of STF’s 501(c)(4) social welfare mission and were made on the express, written condition that the grant funds could not be used for activities to support or oppose any candidates or political party.²⁷

Moreover, to maintain its tax-exempt status under section 501(c)(4) of the Internal Revenue Code, STF may only engage in limited amounts of “political campaign activities” that support or oppose candidates for federal, state, or local elective office,²⁸ and the Commission has reviewed no information that would suggest STF has not complied with this legal restriction. STF states that the campaign spending reported on its yearly Form 990 filings with the IRS—which includes both federal spending as well as state and local election activities outside the Commission’s jurisdiction—did not exceed 25.3% of its overall spending in any year between 2016 and 2019; according to STF, the percentage of its spending on federal, state, and local campaign activities compared to its overall spending for each of those years was as follows: 18.4% (2016), 1.9% (2017), 25.3% (2018), and 13.4% (2019).²⁹ Although STF’s 2020 tax return is not yet publicly available on the IRS website, STF’s own website hosts a copy of the organization’s Form 990 for calendar year 2020, on which it has reported spending roughly \$167 million on “political campaign activity expenditures” in all federal, state, and local elections, which even at that broader level amounts to only about 40% of STF’s total expenses for that year.³⁰

Finally, and most consequentially,³¹ the record establishes that STF’s disbursements specifically for federal campaign activity represented a relatively small percentage of its overall spending, both in 2020 and in prior years. Of its \$410,616,973 in total disbursements in 2020, STF

²⁶ Amy Kurtz, *Progressive Philanthropy Answered the Call in 2020*, MEDIUM (Nov. 17, 2021), <https://amy-kurtz.medium.com/progressive-philanthropy-answered-the-call-in-2020-57f038a6a5d2>.

²⁷ See Kurtz Affidavit ¶ 5.

²⁸ See generally JOHN FRANCIS REILLY & BARBARA A. BRAIG ALLEN, POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES OFIRC 501(C)(4), (C)(5), AND (C)(6) ORGANIZATIONS (2003), <https://www.irs.gov/pub/irs-tege/eotopic103.pdf>.

²⁹ Response of NVF and STF at 8 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*).

³⁰ See IRS Form 990, Sixteen Thirty Fund, 2020 Return of Organization Exempt from Income Tax, Sched. C, Part I-A, line 2 (Oct. 29, 2021), <https://www.sixteenthrifund.org/wp-content/uploads/2021/11/Sixteen-Thirty-Fund-2020-Public-Disclosure-Copy.pdf> (copy not available on IRS website); First General Counsel’s Report at 9 (June 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

³¹ See Statement of Reasons of Vice Chair Allen Dickerson and Commissioner James E. “Trey” Trainor, III at 3 (May 10, 2021), MUR 7181 (Independent Women’s Voice) (“While not the only metric, the simplest, cleanest, and fairest standard for determining whether an organization has the major purpose of nominating and electing federal candidates is to analyze its total spending on federal campaigns.”).

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expended only about \$60 million for direct contributions to federal political committees.³² And it made no independent expenditures in federal elections in 2020.³³ Even if we presume that all of STF’s \$12.8 million in electioneering communications in 2020 are indicative of whether its major purpose is nominating or electing federal candidates,³⁴ the organization still would have spent only 17.75% of its entire 2020 budget on electioneering communications and contributions to federal committees, which is a much lower amount of comparative spending than in other recent matters where the Commission has voted to proceed on equivalent allegations.³⁵ In previous years, STF’s federal campaign activity was an even smaller slice of its overall spending: In each of the four years preceding 2020, STF’s aggregate “FECA Disbursements” (*i.e.*, its contributions to federal committees, independent expenditures, and electioneering communications) never accounted for more than 8% of its total annual spending.³⁶

In sum, the record in this case does not set forth sufficient information that, if proven true, would establish a violation of the Act, and we therefore voted to dismiss the allegations that STF, the Hub Project, NVF, and the Hub Education and Engagement Fund failed to register and report as political committees in violation of 52 U.S.C. §§ 30102, 30103, and 30104.³⁷

C. OGC’s Major Purpose Analysis in this Matter Was Deeply Flawed

Undeterred by these facts and figures, OGC recommended that the Commission find reason to believe that STF and the Hub Project were political committees and launch an investigation. OGC made that recommendation based on an unprecedented and expansive construction of the

³² Response of NVF and STF at 7 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*).

³³ *Id.*

³⁴ See *Citizens for Resp. & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (determining that the Commission must “presumptively,” but not necessarily, include spending on electioneering communications when considering an organization’s major purpose).

³⁵ See, e.g., Factual & Legal Analysis at 8–10 (July 31, 2019), MUR 7465 (Freedom Vote, Inc.) (finding reason to believe where an organization’s federal campaign activity constituted 61% of its total spending one year, and nearly 47% over the span of two later years, with an open question about accounting irregularities in those years); Factual & Legal Analysis at 15 (June 6, 2017), MUR 6538R (Americans for Job Security, *et al.*) (“More than half of [respondent’s total spending] was for independent expenditures [] and the electioneering communications analyzed above The Commission has never set a threshold on the proportion of spending on major purpose activities required for political committee status and declines to do so now. Without determining whether it is *necessary* to cross a 50 percent threshold to determine an organization’s major purpose, it is *sufficient* in this case, based on the available information, to find reason to believe that AJS’s major purpose had become the nomination or election of federal candidates.” (emphasis in original)). See also Supplemental E&J at 5605 (providing three examples of organizations whose major purpose was federal campaign activity where the organizations spent 91%, 50–75%, and 68% of their budgets, respectively, on federal campaign activity).

³⁶ Response of NVF and STF at 7 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*).

³⁷ With respect to the political committee status allegations against NVF and the Hub Education and Engagement Fund, the Complaint did not contain specific information regarding the alleged campaign-related activities of these entities. See First General Counsel’s Report at 29–30 (June 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*). Furthermore, NVF is strictly barred from engaging in any “political campaign intervention” due to its status as a 501(c)(3) organization. Accordingly, we voted to dismiss the allegations against NVF and the Hub Education and Engagement Fund. Certification (July 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

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major purpose test’s framework that would subvert the test’s underlying objective—to ensure that groups primarily engaged in “issue discussion” and other non-campaign activities are not improperly subject to regulation as federal political committees.³⁸ Two issues stand out to us as especially problematic within OGC’s analysis.

First, in the absence of evidence that STF satisfied the major purpose test under the traditional factors assessed by the Commission, OGC chose to factor the federal campaign activities of third-party organizations that had received grants or other funding from STF into its assessment of STF’s major purpose, on the basis that “the overall spending patterns of STF’s grantees could reasonably be understood as activities STF intended to finance or knew it would be financing.”³⁹ The attribution of campaign spending by STF’s grantees back to STF would be an unprecedented deviation from the Commission’s longstanding case-by-case approach, which nonetheless “does not allow for the creation of new legal rules on a case-by-case basis.”⁴⁰ Instead, the major purpose analysis has always turned on the organization in question’s *own* conduct, such as its contributions to political committees and its expenditures for express advocacy. Unsurprisingly, OGC could not identify a single prior enforcement case before the Commission or federal courts in which an organization’s grantmaking was conceptualized as indicating its major purpose of nominating or electing candidates for federal office⁴¹

If the Commission had proceeded with enforcement against STF under this novel theory, it would have contravened basic due process, which “requires that the public know what is required *ex ante*, and that the Commission acknowledge and provide the public with prior notice of any regulatory change.”⁴² Rather, a majority of Commissioners concluded in this matter that “Respondents appear to have comported their conduct with the guidance previously issued by the Commission,” and that “the Commission cannot retroactively hold respondents to a standard in the enforcement context that they could not have previously divined.”⁴³

OGC’s assumption that STF must have “reasonably” intended to finance the campaign spending of a handful of organizations among its hundreds of grantees is a groundless assertion—there is no information in the record indicating that STF directed or expected its grantees to use

³⁸ *Buckley*, 424 U.S. at 79.

³⁹ First General Counsel’s Report at 25 (June 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

⁴⁰ Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 26–27 (Jan. 8, 2014), MUR 6396 (Crossroads Grassroots Policy Strategies).

⁴¹ We concur with our two colleagues who, in their statement of reasons in this matter, similarly concluded that “the Commission has not previously considered the spending of an organization’s grantees in establishing whether the organization itself met the major purpose test,” but rather “the Commission to date, has examined only the organization’s own direct contributions, expenditures, and relevant communications.” Statement of Reasons of Commissioners Shana M. Broussard and Ellen L. Weintraub at 9 (Sept. 1, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

⁴² Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 23 (July 25, 2013), MUR 6081 (American Issues Project, Inc.).

⁴³ Statement of Reasons of Commissioners Shana M. Broussard and Ellen L. Weintraub at 9 (Sept. 1, 2022), MUR 7904 (Hansjörg Wyss, *et al.*). We concur with those legal conclusions by our colleagues.

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their grant funds for federal campaign activity.⁴⁴ When imputing grant recipients’ activities to STF, OGC calculates STF’s campaign spending percentages as between 38% and 56% of its total 2020 expenses, but only by treating large portions—or even all—of the grant recipients’ contributions and expenditures as attributable to STF.⁴⁵ This problematic consideration and attribution of third-party spending would effectively change the Commission’s major purpose framework into an “easily manipulable standard” that “morph[s] from case to case,”⁴⁶ and it would ensnare in the FEC’s political committee regime the kinds of issue advocacy organizations that *Buckley* intended the major purpose test to protect.

Second, OGC’s major purpose analysis in this case depends on a calendar-year approach that past Commissioners have characterized as “myopic” and “legally erroneous,” because it “provides an incomplete and distorted picture of [a] group’s major purpose.”⁴⁷ By focusing predominantly on STF’s activities in 2020—a presidential election year and “the time period when spending to support or oppose the nomination of candidates for federal office is likely to be at its highest”—OGC overlooks the larger arc of STF’s activities over the course of its existence, which is far more indicative of the group’s “true major purpose.”⁴⁸ As already discussed, in the four years preceding 2020, STF’s IRS filings show it did not spend more than 8% of its total budget on federal campaign activity in any single year.⁴⁹ In 2016 and 2018, both federal election years, STF spent just 2.73% and 3.5% of its annual budget, respectively, on campaign spending regulated by the Act, and as recently as 2017, STF made no contributions, independent expenditures, or electioneering communications in connection with federal elections.⁵⁰ The rigid calendar-year approach fails to consider the ebb and flow of a nonprofit’s activities from year to year, and it is thus an inappropriate lens for evaluating an organization’s major purpose.⁵¹

⁴⁴ See *id.* (“[T]he information before the Commission does not establish the degree to which STF’s grants supported [its grant recipients’] activity.”).

⁴⁵ See First General Counsel’s Report at 25–28 (June 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).

⁴⁶ Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 24, 27 (Jan. 8, 2014), MUR 6396 (Crossroads Grassroots Policy Strategies).

⁴⁷ Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 24, 25 (July 30, 2014), MUR 6589 (American Action Network).

⁴⁸ Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 16, 17 (July 25, 2013), MUR 6081 (American Issues Project, Inc.).

⁴⁹ Response of NVF and STF at 7 (July 7, 2021), MUR 7904 (Hansjörg Wyss, *et al.*).

⁵⁰ *Id.*

⁵¹ See Supplemental E&J at 5597; see also Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 17 (July 25, 2013), MUR 6081 (American Issues Project, Inc.) (“By failing to consider an entity as a whole, the calendar-year approach misses the larger picture of a group’s true major purpose and can easily reach groups primarily engaged in issue advocacy—precisely the outcome the Court in *Buckley* sought to avoid by adopting the major purpose limitation.”).

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Too often, the Office of the General Counsel's approach to enforcement resembles the infamous command of the Queen of Hearts: "Sentence first—verdict afterwards."⁵² OGC routinely places respondents in jeopardy for allegedly violating statutes and regulations in ways that the Commission has never previously announced.⁵³ This practice undermines the most fundamental precepts of due process and fair notice by threatening to enforce the Act under legal theories of which the general public has no notice.⁵⁴ That we cannot abide.

Consistent with the Commission's regulations and precedents, the evidence in this matter shows that none of the Respondents have the major purpose of influencing federal elections. Accordingly, we voted to dismiss the allegations that Respondents failed to register and report as political committees and voted to find no reason to believe on the remaining claims.⁵⁵



Allen Dickerson
 Chairman

September 7, 2022

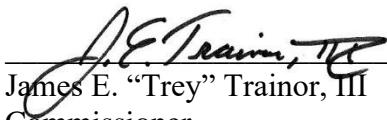
Date



Sean J. Cooksey
 Commissioner

September 7, 2022

Date



James E. "Trey" Trainor, III
 Commissioner

September 7, 2022

Date

⁵² LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND ch. 12 (1865).

⁵³ See Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III at 6 (Apr. 1, 2021), MUR 7243 (CITGO Petroleum Corp., *et al.*) ("[T]oo often, this agency seeks to engage in interpretation-by-enforcement, using pending actions against individuals as the means for changing or evolving our regulatory rules *sub silentio*.").

⁵⁴ See, e.g., *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.").

⁵⁵ Certification (July 28, 2022), MUR 7904 (Hansjörg Wyss, *et al.*).