

As a result, the Commission is often required to address good faith mistakes of law. This is one of those occasions.

A. Reporting Technicalities

Under the Act, an individual may be deemed a candidate upon “receiv[ing] \$5,000 in contributions to advance a [] candidacy or ma[king] \$5,000 in expenditures unambiguously related to...[the] campaign.”⁴ “After an individual exceeds the \$5,000 threshold and becomes a ‘candidate,’ the individual has 15 days to file a Statement of Candidacy designating a political committee as the individual’s principal campaign committee. The principal campaign committee then has 10 days after its designation to file a Statement of Organization.”⁵

The Statement of Organization provides the Commission with, *inter alia*, the identity of a committee’s treasurer, together with its contact and banking information.⁶ Importantly, the Statement must be filed before the committee can receive a committee identification number—without which it is impossible to file reports with the FEC.⁷

In sum, upon crossing the \$5,000 candidacy threshold, a candidate’s committee has 25 days to file its Statement of Organization. By contrast, “[a]ll other committees” must do so “within 10 days after becoming a political committee within the meaning of” the Act.⁸ In other words, Congress expressly chose to treat candidate committees differently from all other regulated entities by giving them fifteen additional days to file a Statement of Organization.

This is important because it is possible for a candidate committee—but no other type—to run into a rare problem. Committees must “file quarterly reports,

⁴ Statement of Reasons of Vice Chairman Cooksey and Comm’rs Dickerson and Trainor at 13, MURs 7931/8059 (Biden) and MURs 7968/7969 (Trump), Oct. 6, 2023 (applying 52 U.S.C. § 30101(2)).

⁵ First Gen’l Counsel’s Report (“FGCR”) at 7-8, MUR 8149 (Tim Sheehy for Mont.), Apr. 5, 2024. *See also* 52 U.S.C. §§ 30102-30103.

⁶ 11 C.F.R. § 102.2.

⁷ 11 C.F.R. § 102.2(c).

⁸ 52 U.S.C. § 30103(a).

which shall be filed not later than the 15th day after the last day of each calendar quarter.”⁹ “The report must be complete as of the last day of each calendar quarter.”¹⁰

The mathematically inclined may have already spotted the issue. Generally, if a committee formed on June 27, it would have ten days—until July 7—to file its Statement of Organization. Plenty of time to obtain its committee identification number and file its first quarterly report on July 15. But a candidate committee that takes 25 days to file its Statement of Organization, as is its statutory right? That committee would not have to file until July 22—a week *after* the first quarterly report is due.

B. The Sheehy Committee

The Sheehy committee, cognizant of this conundrum, assumed that *any* individual who crossed the candidacy threshold on June 27—as Mr. Sheehy did¹¹—need not file its first quarterly report on July 15 because it could, technically, have waited until July 22 to file its Statement of Organization.¹²

Respondents are right in general, but wrong here. Imagine a hypothetical where this committee availed itself of its statutory right to file its Statement of Organization on July 22. That committee need not have filed a July quarterly report. The contrary rule would create absurdities. For instance, the statute requires *treasurers* to file reports—but the Committee is not required to have a treasurer on July 15. Nor, without a committee identification number, could our Reports and Analysis Division even accept the filing! The only other alternative would be requiring the committee to file a late report on July 22. But there is no statutory support for that view either.

OGC has no response to these practical concerns, which are insurmountable. Either approach—requiring an early report or a late one—would impose unreasonable practical burdens on committees. More to the point, the Commission’s past practice (namely, requiring committees to have an identification number before

⁹ See *generally* 52 U.S.C. § 30104(a); 11 C.F.R. § 104.5(a)(1)(i). Non-candidate political committees, such as independent expenditure-only committees, need only file quarterly reports during election years.

¹⁰ 11 C.F.R. § 104.5(a)(1)(i) (implementing 52 U.S.C. § 30104(a)).

¹¹ FGCR at 9 (“Sheehy became a candidate on June 27, 2023, when he received contributions totaling \$100,800 after announcing his U.S. senatorial campaign”).

¹² Resp. at 3-4.

their reports can be accepted) suggests that the Commission has never anticipated this problem.

But while I agree with Respondents' reading of the background rule and believe they would be legally innocent under the hypothetical posed above, that is not what happened. Respondents filed their Statement of Organization on July 1, not July 22.¹³ Accordingly, there was no tension in the underlying statute or FEC practice: with a committee ID in hand, the Sheehy committee had two full weeks to prepare a July quarterly report covering its (not insubstantial) June activity. In my view, the better reading of the law is that it should have done so.

That result is not obvious, however, because the Commission has bungled its obligation to provide clear guidance to the public. This matter cries out for regulatory clarification. The statutory ambiguity is real. And past FEC action—including vague guidance in the Candidate Guide¹⁴ and the structure of our own electronic filing system—reflects an agency that has never considered the problem and is making a rule up on the fly. It would be patently unjust to pursue enforcement in such a circumstance.

Moreover, because Mr. Sheehy ultimately did file his October 2023 quarterly report, the electorate was informed of the identities of his financial supporters well in advance of his June 4, 2024 primary election.¹⁵ Accordingly, and in light of the foregoing, I concluded that proceeding with “enforcement [was not] ...a judicious use of the Commission’s scarce resources.”¹⁶

¹³ FGCR at 4.


¹⁴ See Resp. at 2-3 (discussing Fed. Election Comm’n, Campaign Guide for Congressional Candidates and Committees, Oct. 2021).

¹⁵ *Buckley v. Valeo*, 424 U.S. 1, 81 (1976) (*per curiam*).

¹⁶ Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 2, MUR 8110 (Am. Coal. for Conservative Policies), July 29, 2024.

CONCLUSION

For the foregoing reasons, I voted to dismiss the complaint as an exercise of prosecutorial discretion.¹⁷



Allen J. Dickerson
Commissioner

August 7, 2024

Date

¹⁷ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (“An agency generally cannot act against each technical violation of the statute it is charged with enforcing”).