

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAMPAIGN LEGAL CENTER,

Plaintiff,

V.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 24-2585 (SLS)

MOTION FOR STAY,
NOTICE OF LACK OF QUORUM
AND OF SUPPLEMENTAL
STATEMENTS

**DEFENDANT FEDERAL ELECTION COMMISSION'S
MOTION FOR STAY, NOTICE OF LACK OF QUORUM AND OF SUPPLEMENTAL
STATEMENTS OF REASONS**

Defendant Federal Election Commission (“FEC” or “Commission”) respectfully submits this Motion and Notice in response to this Court’s June 26, 2025 Order granting plaintiff Campaign Legal Center’s motion for summary judgment, denying the FEC’s cross-motion for summary judgment, and remanding the matter to the FEC in order to “conform with such declaration within [thirty] days,” 52 U.S.C. § 30109(a)(8)(C). (Order (ECF No. 22) (“Remand Order”).) The period for conformance concludes on July 28, 2025.

Two of the four Commissioners who formed the four-vote majority to dismiss the administrative Matter Under Review (“MUR”) at issue in this case resigned from the Commission prior to the Court’s Remand Order and have not been replaced. Thus, as of May 1, 2025, the Commission has been without a quorum of at least four Commissioners. The Commission is currently comprised of three members. The current three-member Commission does not have the statutorily required minimum number of Commissioners necessary to reconsider or vote on the MUR at issue here.

Accordingly, the FEC moves to stay this case and hold it in abeyance until such time that the Commission regains a quorum of at least four Commissioners, in order to provide a reconstituted Commission with an adequate opportunity to reconsider the matter as remanded to the Commission.

If, however, the Court finds that a stay is not appropriate, in a good faith effort to respond to the Court's determination that the "dismissal was based on a permissible interpretation of the statute, [but] the reasons it provided for its dismissal were too conclusory," ("Mem. Op.") at 1 (ECF No. 21)), the Commission provides for the Court a Supplemental Statement of Reasons from the two still-serving Commissioners who were part of the majority in the vote to dismiss the MUR.¹ These supplemental statements are the only statements that the Commission can currently provide in an effort to comply with the Court's Remand Order.

As required by Local Civil Rule 7(m), counsel for the Commission has conferred with counsel for plaintiff on the Commission's Motion, who stated that plaintiff would consent to a 30-day or 60-day extension to the conformance period deadline, but not a stay.

NOTICE OF LACK OF QUORUM

The Federal Election Campaign Act ("FECA") provides for six voting Commissioners, not more than three of whom may be the members of the same political party. 52 U.S.C. § 30106(a). For certain core functions, FECA specifically requires four affirmative votes, not merely a majority of the members serving at the time. 52 U.S.C. § 30106(c); *see also id.* § 30107(a)(6) (initiate, defend or appeal a civil action); § 30109(a)(2) (vote on reason to believe a violation of FECA). This requirement ensures that when the Commission takes any of the core

¹ For the Court's information, the Commission also separately provides a Supplemental Statement from the dissenting Commissioner who was in the two-Commissioner minority in the original vote.

actions specified in the statute, it does so on a bipartisan or nonpartisan basis; it also means that for these core actions, FECA has an implicit quorum requirement of four. On April 30, 2025, former Commissioner Allen J. Dickerson resigned from the FEC upon the expiration of his term.² This resignation left the Commission with only three Commissioners, and thus without a quorum to exercise these core functions.

MOTION FOR STAY

On June 26, 2025, this Court granted plaintiff’s motion for summary judgment on its claim under 52 U.S.C. § 30109(a)(8) challenging the dismissal of an administrative complaint, denied the Commission’s cross-motion for summary judgment, and ordered the Commission to “conform with such declaration within [thirty] days.” (Remand Order.) The Court found that the FEC’s dismissal of the administrative complaint “was based on a permissible interpretation of the statute, [but] the reasons it provided for its dismissal were too conclusory, rendering the dismissal arbitrary or capricious.” (Mem. Op. at 1.)

Two of the four Commissioners who voted affirmatively to dismiss the complaint and who issued a Statement of Reasons for that decision—former Commissioners Sean J. Cooksey and Allen Dickerson—are no longer with the Commission and thus unable to explain their reasoning as Commissioners.³ *See Common Cause v. FEC*, 842 F.2d 436, 450 (D.C. Cir. 1988) (“Today only two of the six Commissioners who participated in the challenged vote still remain at the FEC. Commissioner Reiche, who cast the deciding vote to terminate further inquiry . . . is

² See <https://www.fec.gov/resources/cms-content/documents/Statement-Commissioner-Allen-J-Dickerson-Upon-Conclusion-of-Term.pdf>.

³ On January 20, 2025, former Commissioner Sean J. Cooksey resigned from his position at FEC. See <https://www.fec.gov/resources/cms-content/documents/Letter-from-Commissioner-Sean-Cooksey-to-President-Joseph-Biden-Jan-13-2025.pdf>.

among those no longer with the Commission. To attempt to reconstruct and review his reasoning at this late date when he is no longer a public official would be to engage in a strange exercise indeed.”).

Because the Commission lacks a quorum and two of the members of the original majority of four Commissioners are no longer with the Commission and therefore unable to explain their reasoning, a stay in this case is necessary. As such, the FEC moves to stay this case and hold it in abeyance until such time that the Commission regains a quorum of at least four Commissioners, in order to provide a reconstituted Commission with an adequate opportunity to reconsider the matter as remanded to the Commission.

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Oceana, Inc. v. Bryson*, No. CV 08-1881 (PLF), 2012 WL 13060013, at *2 (D.D.C. Mar. 22, 2012) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); *see also American Ctr. for Civil Justice v. Ambush*, 794 F. Supp. 2d 123, 129 (D.D.C. 2011) (whether to stay a case is a matter “committed to a district court’s broad discretion”). The current three-member Commission does not have the statutorily required minimum number of Commissioners necessary to reconsider or vote on the MUR at issue here. Accordingly, a stay is warranted based on prudential concerns, including the preservation of judicial resources. Such a stay would preserve for the Commission, upon regaining a quorum, the ability to reconsider the matter as it typically would on remand, including voting anew on whether to find reason to believe that a violation occurred, proceeding with the enforcement matter if reason to believe is found or

issuing new statements of reasons consistent with this Court’s findings upon dismissal if it is not.⁴

If a stay is entered, the FEC will promptly notify the Court when the Commission regains a quorum of at least four Commissioners and request that the stay be lifted, enabling the Commission to reconsider the matter within a 30-day period from the time the stay is lifted pursuant to 52 U.S.C. § 30109(a)(8)(C). In addition, the Commission will file a status report within 30 days after the stay is lifted to inform the Court of subsequent actions by the Commission.

SUPPLEMENTAL STATEMENTS OF REASONS

The Commission recognizes that two of the members of the original majority of four Commissioners are no longer with the Commission and are therefore unable to further explain their reasoning. However, if the Court determines that a stay is not warranted, in a good faith effort to respond to the Court’s order to “adequately explain its dismissal,” (Mem. Op. at 8), the Commission provides for the Court a Supplemental Statement of Reasons from the two remaining Commissioners who voted to dismiss the matter. (*See* Exh. A (Suppl. Statement of Reasons of Vice-Chairman James E. “Trey” Trainor and Commissioner Dara Lindenbaum, *available at* https://www.fec.gov/files/legal/murs/8216/8216_13.pdf) (“The Trainor/Lindenbaum Statement”).) The Commission separately provides for the Court’s information a Statement of Reasons from Chair Shana M. Broussard, who dissented in the vote to dismiss the matter. (*See*

⁴ Such a stay is not unprecedented. For example, when the Commission was without a quorum in 2019, in *Legacy Foundation v. FEC*, 19-cv-1389 (CJN), the parties jointly moved to stay the case and plaintiff’s request for attorney’s fees until a quorum was restored, which the court granted. *See* Minute Order, *Legacy Found. v. FEC*, 19-cv-01389 (CJN), Oct. 23, 2019 (granting motion to stay “until the Commission regains a complement of at least four FEC Commissioners”).

Exh. B. (Statement of Reasons of Chair Shana M. Broussard, *available at* https://www.fec.gov/files/legal/murs/8216/8216_12.pdf) (“Broussard Statement”).) These are the only Statements that the Commission can currently provide in response to the Court’s Remand Order.

The Trainor/Lindenbaum Statement seeks to address the Court’s concern that the prior statement “does not allow the Court to evaluate its rationale for dismissal,” and was therefore arbitrary and capricious because it discussed “no factors other than timing,” in making a determination of whether the challenged advertisement meets the meaning of express advocacy. (Mem. Op. at 16.) The Trainor/Lindenbaum Statement explains that these Commissioners “do not understand the Court’s reference to ‘other factors’ require the Commission to analyze other external events, but rather is an indication that the Commission should more fulsomely analyze the words of the ad itself for context.” (Trainor/Lindenbaum Statement at 4.) In this regard, the Trainor/Lindenbaum Statement concludes that “the words of the ads themselves do not contain an electoral exhortation,” and “there was no other relevant context from the ad that would indicate an encouragement to take electoral action.” (*Id.* at 6.) It further notes that the ad at issue was “not sufficiently proximate to the election to convey an electoral exhortation.” (*Id.* at 5.)

The Broussard Statement republishes the original Statement of Reasons of then-Vice Chair Ellen Weintraub and Commissioner Shana M. Broussard explaining Chair Broussard’s dissent in the vote to dismiss the matter, but because Commissioner Weintraub is no longer a member of the FEC, republishes it without her name. (Broussard Statement at 1.)

CONCLUSION

The Commission is currently without a quorum. Furthermore, two of the members of the original majority of four Commissioners are no longer with the Commission and are therefore unable to further explain their reasoning. Accordingly, the Commission respectfully requests that the Court stay this case and hold it in abeyance until such time that the Commission regains a quorum of at least four Commissioners, in order to provide a reconstituted Commission with an adequate opportunity to reconsider the matter. Should the Court not find a stay appropriate, the Commission provides the supplemental statements of the three remaining Commissioners in its best effort to respond to the Remand Order. A Proposed Order on the Commission's Motion is attached.

Respectfully submitted,

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