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Statement of Commissioner Ellen L. Weintraub
On the Voting Decisions of FEC Commissioners

October 4, 2022

Some interesting assertions are being made in federal court and around Washington these days regarding how, some say, FEC commissioners are required to vote. Now, I've been at this job for a while now. This is a curious concept to me. I have decisions before me. I consider them. I decide. Motions are made. I vote on those motions. And every single time, I use my judgment and my knowledge of the law and the facts of the matter to determine whether to vote Yes or No. That's the job.

Yet litigants are attempting to convince district courts that the Commission's dismissal motions are "simply managerial and legally immaterial" and that votes against litigation-defense motions are some sort of "malfeasance." Several of my Commission colleagues even suggest that when I decline to flip my position to theirs and a dismissal motion fails, the matter is dismissed anyway because enforcement dismissals can just somehow kind of happen on their own.[1]

These efforts are ignoring the very core of the Commission's authority: *The Commission acts only through its votes.* And commissioners are empowered to vote Yes or No on any motion before them. There are no magical dismissals.

Typical is a document filed just yesterday by a litigant against the Commission that purports to provide "Additional Evidence of the Federal Election Commission's Bad Faith and Improper Behavior."[2] The filing picks over tweets I published late last week that lamented the Commission's dismissal of a series of important matters I had voted against dismissing over the past several years.[3]

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[1] *See* Statement of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III Regarding Concluded Enforcement Matters (May 13, 2022) ("Republican Enforcement Statement"), *found at* https://www.fec.gov/resources/cms-content/documents/Redacted_Statement_Regarding_Concluded_Matters_13_May_2022_Redacted.pdf. This statement is styled as being 'Regarding Concluded Enforcement Matters,' but their unsupported opinion on what constitutes a 'concluded enforcement matter' at the Commission is pure wishful thinking.

[2] Plaintiff's Notice of Additional Evidence of the Federal Election Commission's Bad Faith and Improper Behavior, *Heritage Action for America v. FEC,* No. 22-1422 ("Notice of Additional Evidence") (D.D.C.) (Oct. 3, 2022).

[3] These tweets, published under my account, @EllenLWeintraub, are found at https://twitter.com/EllenLWeintraub/status/1575981087427379202. The litigant provided several of the tweets in the series – but not all of them – to the Court; I have attached the entire thread as Attachment A. The omitted tweets linked to two statements of reasons I published on Friday regarding two dismissed matters. *See* Statement of Reasons of Commissioner Ellen L. Weintraub, MUR 6589R (American Action Network) (Sept. 30, 2022), *found at* https://www.fec.gov/files/legal/murs/6589R/6589R_31.pdf; Statement of Reasons of Commissioner Ellen L. Weintraub, MURs 6915 and 6927 (John Ellis Bush, Right to Rise, *et al.*) (Sept. 30, 2022), *found at*

The litigant's filing alleges a "concealment policy"[4] that "the Commission has not abandoned"[5] and asserts darkly that my votes involved "activating a previously unused, alternative enforcement path that Congress wrote into our governing statute"[6] that "allows those who file complaints to sue those they allege have violated the law when @FEC fails to act." [7]

The litigant's big conclusion was: "Plainly, the Commission has not abandoned using this 'alternative enforcement path' in the future to conceal votes and statements of reasons for the purpose of triggering citizen suits 'to get the law enforced' when Commissioner Weintraub is unable to persuade three other Commissioners to take enforcement action."

Now, I will take issue with the idea that the Commission is improperly concealing votes and statements of reasons – we are not[8] – but this much is true: "I make zero apologies for using every tool I can find to get the law enforced"[9] – including the alternative enforcement path that Congress wrote directly into the law that governs the Federal Election Commission, the Federal Election Campaign Act, as amended ("FECA" or the "Act").[10] It is neither bad faith nor improper for a commissioner to vote as she believes the law and her conscience dictate. It would be bad faith and a dereliction of duty to do anything else.[11]

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https://www.fec.gov/files/legal/murs/6915/6915_46.pdf. Notably, under D.C. Circuit caselaw, these statements of reasons explaining that these dismissals were, in fact, contrary to law will control as the Commission's position.

[4] Notice of Additional Evidence, *supra* note 2, at 1; *Id.* at 2 ("willful concealment"). Though litigants have alleged a general Commission "policy" of holding matters open, the truth is that the Commission dismisses the vast majority of the matters up for dismissal. *See* Federal Election Commission's Reply in Support of Its Motion to Dismiss, *Heritage Action for America v. FEC,* No. 22-1422 (Aug. 12, 2022). ("Indeed, in the roughly four years since the administrative complaint against plaintiff in MUR 7516 was filed, the agency has closed at least 594 MURs. Plaintiff alleges that seven MURs have been wrongly held open, but even assuming the truth of that claim, seven matters out of 594 is clearly insufficient to establish a general 'policy' to challenge under the APA"). Citing FEC, Status of Enforcement – Fiscal Year 2022, Second Quarter (01/01/22- 03/31/22) 4, *found at* https://www.fec.gov/resources/cms-content/documents/Status_of_Enforcement_Second_Quarter_2022_05-06-22_Redacted.pdf (reflecting matters closed in the agency's fiscal years 2019-21 and first two quarters of fiscal year 2022).

Moreover, the Commission has closed plenty of matters where complainants have alleged unlawful delay. *See, e.g.*, MUR 7207 (H. Russell Taub), *found at* https://www.fec.gov/data/legal/matter-under-review/7207/ (handling of matter challenged in *Free Speech for People, et al. v. FEC*, No. 21-3206 (D.D.C.); MUR 7422 (Greitens for Missouri), *found at* https://www.fec.gov/data/legal/matter-under-review/7422/ (handling of matter challenged in *CREW v. FEC*, No. 19-2753 (D.D.C)).

[5] *Id.* at 1 ("the Commission has not abandoned its policy of concealing its actions").

[6] *Id.* at 2.

[7] *Id.*

[8] *See* paragraph beginning with "Likewise," *infra* at 4.

[9] Notice of Additional Evidence, *supra* note 2, at 2.

[10] 52 U.S.C. § 30101 *et. seq.*

[11] It is not clear to me why this litigant continues to press this APA action, which is quite moot. The Commission not only dismissed the allegation against it, unanimously and with my vote in support (*see Certification,* MUR 7516 (Heritage Action) *found at* https://www.fec.gov/files/legal/murs/7516/7516_12.pdf), it appears to have dismissed the other matters this litigant had complained were held open improperly. *See* Federal Election Commission's Notice of Subsequent Developments, *Heritage Action for America v. FEC,* No. 22-1422 (Sept. 1, 2022), *found at*

I make zero apologies, but given the enthusiasm with which litigants and several of my colleagues are misrepresenting the law, some explanations would clearly be useful. Commissioners are voting on enforcement-complaint motions and dismissal motions and litigation-defense motions just as Congress provided for in the Act, and the results are just as Congress provided for in the Act.

Sometimes it takes four affirmative votes. Sometimes it takes a simple majority. But under the Act, the Commission acts only when more commissioners vote for a motion than vote against it. The law is really quite clear that until the Commission affirmatively votes to dismiss an enforcement complaint, it is not dismissed.[12]

The Act fully contemplates what happens when a majority of the Commission votes to take action on an enforcement complaint – and what happens when a majority of the Commission does *not* vote to take action.

It should shock no one when a commissioner does not vote to dismiss matters she does not believe should be dismissed. My votes on dismissal motions are deeply grounded in the Act's provisions, they were fully contemplated by Congress in the Act, and they aim to promote enforcement of the law.

It is no cause for alarm that a small number of enforcement complaints are being actively pursued in the courts instead of irrevocably dismissed by the Commission. As of this writing, five complainants are litigating directly against respondents to remedy the violation involved in the complaints they filed with the Commission ("third-party suits"): *CREW v. AAN*, No. 18-945 (D.D.C.),[13] *Giffords v. NRA Political Victory Fund*, No. 21-2887 (D.D.C.),[14] *Campaign Legal Center (CLC) v. Iowa Values*, No. 21-389 (D.D.C.),[15] *CLC v. 45Committee*, No. 22-1115 (D.D.C.),[16] *CLC v. Heritage Action*, No. 22-1248 (D.D.C).[17] These cases could be filed because the Act specifically provides for them.

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https://www.fec.gov/resources/cms-content/documents/fec_22_1422_notice_of_subsequent_developments_09-01-2022.pdf.

[12] The Act requires that all decisions exercising Commission duties or powers be made by a vote supported by at least a majority of commissioners. 52 U.S.C. §30106(c). *See also* 52 U.S.C. §§30109(a)(1) (referring to "a vote to dismiss"); 30109(a)(8)(A) (referring to "an order of the Commission dismissing a complaint").

[13] Underlying matters: *CREW v. FEC*, No. 16-2255 (D.D.C.); MUR 6589R (American Action Network).

[14] Underlying matters: *Giffords v. FEC*, No. 19-1192 (D.D.C.); MURs 7427, 7497, 7524, 7553 (NRA). This matter has resulted in two subsidiary FOIA lawsuits: *NRA Political Victory Fund v. FEC*, 22-1017 (D.D.C.) & *Josh Hawley for Senate v. FEC*, 22-1275 (D.D.C.).

[15] Underlying matters: *CLC v. FEC*, No. 20-1778 (D.D.C.); MUR 7674 (Iowa Values).

[16] Underlying matters: *CLC v. FEC*, 20-809 (D.D.C.); MUR 7486 (45Committee, Inc.). This matter has resulted in two subsidiary lawsuits: *45Committee v. FEC*, 22-502 (D.D.C.) (FOIA); *45Committee v. FEC*, 22-1749 (D.D.C.) (APA).

[17] Underlying matters: *CLC v. FEC*, 21-406 (D.D.C.); MUR 7516 (Heritage Action for America). This matter has resulted in a subsidiary FOIA lawsuit: *Heritage Action for Am. v. FEC, et al.*, 22-1422 (D.D.C.).

I have quite consciously and intentionally cast votes that put these matters on their current paths. It is indeed departing from past Commission practice, as litigants have pointed out,[18] but it is a departure that is a perfectly rational and proper response to changes the D.C. Circuit has made to the law underlying the Commission's dismissals.[19] It is neither "bad faith" nor "improper behavior."[20] It is simply a vote that a respondent does not like, because it kept an enforcement matter from being killed.

Likewise, when commissioners vote against waiving the Commission's legal privileges as to documents in open enforcement matters, it is not "unlawful concealment."[21] The Federal Election Commission is a law-enforcement agency. Until an enforcement complaint has been dismissed by a majority vote of the Commission, that enforcement matter remains open. The Commission holds a bevy of legal privileges over these documents. Despite the breathless statements of my colleagues and some litigants, there is nothing wrongful – nor unusual – about a law-enforcement agency holding close the contents of its file regarding an open enforcement matter. I have generally voted to protect the Commission's legal privileges regarding its open law-enforcement matters and I will continue to do so.

THE STRAIGHT-AHEAD PATH

Every substantive enforcement matter starts off the same. Under the Act's provisions, complaints received by the Commission move straight ahead to our Office of General Counsel, which analyzes them and prepares recommendations for the Commission. The complaint veers off in one direction when enough commissioners vote in favor of acting to pursue it.[22] The complaint veers off in the opposite direction when enough commissioners vote in favor of acting to dismiss it.[23]

And until a vote on a motion to take action is successful, the complaint's straight-ahead motion is unchanged. It doesn't matter whether commissioners have voted on zero motions or on a hundred motions that have failed. The Commission has not acted on the complaint until enough commissioners vote affirmatively to act one way or the other.

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[18] Plaintiff's Combined Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss and in Support of Plaintiff's Cross-Motion for Summary Judgment, *Heritage Action for Am. v. FEC, et al.,* 22-1422 (D.D.C.), Aug. 5, 2022 ("Heritage Motion"), at 2.

[19] If an iceberg appears in front of a ship, the captain is under no obligation to hit it.

[20] Heritage Motion at 2.

[21] *Id*. at 1.

[22] 52 U.S.C. §30109(a)(2) ("If the Commission, upon receiving a complaint ... determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act ...").

[23] The Act requires certain decisions to garner the affirmative vote of at least four commissioners while other decisions may be made by majority vote. Long ago, the Commission bound itself to the principle of bipartisan decision-making. Commission Directive 10(E)(3) provides: "*Any* principal or secondary motion that exercises a duty or power of the Commission under the Act shall require four votes for approval" *(emphasis added.) See also* FEC, *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007) ("As with other actions taken by the Commission, dismissal of a matter requires the vote of at least four Commissioners"). When all six seats on the Commission are filled, as is currently the case, and all commissioners vote, whether four votes or a majority is required is a distinction without a difference.

The Act provides a specific destination for complaints that remain on the straight-ahead path. Congress knew full well that a Commission evenly divided along partisan lines might not always be able to reach consensus on enforcement matters. Accordingly, it enacted a provision that governs when commissioners have not mustered enough votes to act on the complaint one way or the other. It gives a complainant the right to sue the Commission 120 days after filing its complaint.[24]

If the court agrees that the Commission's failure to pursue or dismiss the complaint is contrary to law, it can order the Commission to act on the complaint. The court does not order the Commission to take any *particular* action on the complaint – if enough commissioners vote to find RTB and pursue the complaint, that conforms with the court's order just as well as when enough commissioners vote to close the file and dismiss it. The failure the court has identified is a failure to *act*, not a failure to *dismiss.*

Now, Congress also foresaw that the Commission might not always be able to muster enough votes to act one way or the other even in the face of a court's determination that it should. So it wrote a powerful provision into the Act that ensures that a meritorious complaint in this situation can still get acted upon. If the Commission does not have four votes to act one way or the other on a complaint within the amount of time the court sets (usually 30 days), the complainant can then directly sue the respondent in federal court "to remedy the violation involved in the original complaint,"[25] that is, sue them on the merits.

CHANGE

These citizen-suit provisions of the Act have been invoked several times lately, and the FEC's Republican commissioners appear disgruntled when their colleagues do not automatically agree to dismiss whichever cases they seek to dismiss. In a statement they released in May, they harken back to the days long before they served on the Commission when commissioners "agreed to certain collegial norms"[26] – when not enough commissioners voted to pursue a complaint, one or more would then turn around and vote for the motion to close the file and dismiss the complaint. Commissioners would then vote to defend any litigation that might result from the dismissal.

I remember those days. Those were pretty good days. Commissioners worked hard to find a place where four or more commissioners could compromise to achieve consensus. As a result, it was far easier to gather the requisite votes to pursue or dismiss matters. Three-three splits on enforcement votes were rare. In the occasional instance when fewer than four commissioners voted to find reason to believe a violation of law may have occurred (an "RTB vote," in Commission shorthand), even those who wanted to pursue the complaint usually voted to dismiss those matters to get the details in front of the public and to enable the complainant to challenge the dismissal in court. And

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[24] 52 U.S.C. § 30109(a)(8): "Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia."

[25] *Id.* at (a)(8)(C): "In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint."

[26] Republican Enforcement Statement at 1.

when the Commission was sued on such dismissals, the requisite four commissioners usually voted to instruct Office of General Counsel attorneys to defend against those lawsuits.

But in their rosy look back at Commission history, the FEC's Republican commissioners fail to note the elephant that has dominated the Commission's enforcement matters since 2008. That year, a fresh crop of anti-enforcement commissioners discovered and set about abusing their ability to block action on even the most meritorious and important complaints. Since then, blocking pursuit of complaints along partisan ideological lines has become the rule, *especially* regarding the Commission's most consequential matters.[27]

Worse, the legal rationales (even the absurd ones) put forward by these blocking commissioners then get defended by the Commission's litigators – and deferred to by courts – as if they were the reasoning of the entire Commission.

The breaking point was the D.C. Circuit's 2018 *CREW v. FEC ("CHGO")* decision, a stunning blow to the Commission's ability to enforce the law.[28] The decision barred judicial review of *any* dismissals where the blocking commissioners' explanation cites "prosecutorial discretion" – if they write, more or less, 'We didn't think this matter was worth enforcing.' At the moment, the *CHGO* rule is bulletproof in dismissal cases.[29]

Before *CHGO,* pro-enforcement commissioners chose to vote to dismiss many matters they believed should be pursued on the theory that complainants had a shot at convincing a court that the Commission's dismissal action had been contrary to law, and the law could then be enforced. It would have been far better for the Commission itself to enforce the law, but they held their noses and swallowed their frustration and voted Yes.

But post-*CHGO*, voting to dismiss worthy complaints, rather than providing a chance for the law to be enforced, now empowers those who seek to *block* enforcement of the law. Because no matter how outlandish and contrary to law a dismissal might be, under *CHGO,* that dismissal cannot be challenged in court so long as those blocking action have sprinkled a few words of prosecutorial discretion into their explanatory statement. Until the D.C. Circuit overturns *CHGO,* voting to dismiss a matter in the hopes that a court will enforce the law is an exercise in futility.

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[27] In every matter where the Commission's Office of General Counsel has recommended RTB and the Commission has split on the recommendation, the voting line-up has been the same: the Republican commissioners have voted against enforcement and the Democratic and Independent commissioners have voted to approve our counsel's recommendations to proceed.

[28] *CREW v. FEC*, 892 F.3d 434 (D.C. Cir. 2018) *("CHGO")*.

[29] *See, e.g.*, Memorandum Opinion and Order, *CREW v. American Action Network* (No. 1:18-cv-00945-CRC), March 2, 2022 (dismissing third-party suit stemming from Commission dismissal and noting that a quick "rhetorical wink to prosecution discretion" was "fatal to CREW's claim." Mem. Op. at 16). The D.C. Circuit is currently considering whether to undo the series of unfortunate precedents it has set in this area. *See* Ellen L. Weintraub, *Statement On the Opportunities Before the D.C. Circuit in the New Models Case To Re-Examine* En Banc *Its Precedents Regarding 'Deadlock Deference'* (March 2, 2022), *found at* https://www.fec.gov/documents/3674/2022-03-02-ELW-New-Models-En_Banc.pdfm ("*New Models En Banc* Statement"); *see also* MUR 7784 (Make America Great Again PAC), Supplemental Statement of Reasons of Commissioner Ellen L. Weintraub (July 14, 2022), *found at* https://www.fec.gov/files/legal/murs/7784/7784_44.pdf.

So now, when one or more votes on RTB motions have failed and a commissioner makes a motion to dismiss the matter, the calculus behind the vote on the dismissal motion is quite different than it once was.

It is crystal-clear how everyone voting Yes on a motion to dismiss a complaint serves the interests of those commissioners who voted to block enforcement on the complaint. When a dismissal motion gets the fourth vote it needs to succeed, the blocking commissioners win. The complaint goes away. Whatever they cite as their reason automatically gets taken as the Commission's rationale by the D.C. Circuit. And if they sprinkle a few magic words of prosecutorial discretion into their statement, the dismissal they sought is invincible from challenge. Of *course* they want to maintain that unchecked power.

What's unclear, though, is how a Commissioner who votes Yes on a motion to dismiss a complaint she wants to pursue serves the public's interest in robust enforcement of our federal campaign-finance laws. That Yes vote truly kills the complaint – the dismissal lawsuit a Yes vote sets up is virtually doomed to fail.

Doing what pro-enforcement commissioners used to do – flipping their votes and supporting the position they had *opposed* on the matter – now does active harm to the law. Taking the novel step of *sticking to voting in support of their own position* provides a real opportunity under the Act to get the law enforced.

And from time to time, I have done just that. When I consider a motion to dismiss a complaint, I look at the facts and I look at the law and if I truly believe that complaint should not be dismissed, I stand my ground and vote No. When a sufficient number of commissioners (usually three) decide to vote No on a motion to dismiss, the motion fails and the complaint is not dismissed.

NO FECA MULTIVERSE

The existence of the Commission's dismissal votes is clearly a thorn in the Republican commissioners' sides. They would prefer a world in which their side always wins, so they have concocted an alternate universe, one where once a motion to find RTB fails, the matter is simply concluded.[30]

The Republican commissioners write, "There is no legal support for the argument that a majority of the Commission must vote to close a file in order to conclude a matter."[31] One third-party-suit defendant argued recently that "the reason to believe vote was a self-actuating dismissal, and the vote to 'close the file' was a legal nullity, not required by statute or regulation."[32]

These statements have no basis in the version of the Act that exists in this universe and they are utterly alien to uninterrupted decades of the practice of the Commission in this universe. As discussed, under FECA, the Commission only acts when more commissioners vote for a motion

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[30] *See, e.g.*, Republican Enforcement Statement at 3 (once an RTB vote has failed, "the Commission *has already passed judgment* on the entirety of the merits in these matters and has explained its reasoning."); Republican FOIA Statement at 3 (once an RTB vote has failed, "the Commission has passed judgment on the entirety of a matter's merits").

[31] *Id.* at 2.

[32] Mem. of Points and Authorities in Supp't of the NRA Defendants' Mot. to Dismiss Pl.'s Compl., *Giffords v. NRA Political Victory Fund,* No. 21-2887 (D.D.C.) (Jan. 28, 2022) at 15.

than vote against it. The Act distinguishes between RTB motions and motions to dismiss.[33] And the Act clearly contemplates the dismissal of a complaint as an affirmative decision of the Commission that commissioners must vote upon.[34]

A number of litigants who want to live in a universe where they are not facing third-party lawsuits are also pressing this argument throughout the U.S. District Court for the District of Columbia in suits brought against the Commission under the Freedom of Information Act ("FOIA")[35] and the Administrative Procedure Act ("APA").[36] They are eagerly repeating and quoting the arguments put forward by my colleagues.

But there is something wrong when these statements are dripping with, for lack of a better term, fake news. D.C.'s federal judges can undoubtedly withstand relentless and well-funded gaslighting, even if it comes from well-known D.C. law firms. But there is always a danger that unanswered fallacious arguments, especially when they are layered atop one another, could get more attention than they deserve, both inside and outside the courthouse.

Here is how the arguments generally have gone. Respondents sued the Commission under FOIA and the APA in order to – they asserted – assist in defending themselves against third-party lawsuits filed against them by FEC administrative complainants. They claimed the Commission was improperly refusing to hand over what they said were exculpatory documents.[37] The documents sought were generally (1) certifications of Commission votes and (2) statements of reasons from Republican commissioners explaining why they voted to dismiss matters.

The respondents argued that these documents, if *only* they could have been seen by the judges overseeing the third-party lawsuits, would have *proven* that the third-party suits were without merit and should have been dismissed immediately, because, as they argued with great conviction, as soon as a Commission vote on an RTB motion has failed, the matter is terminated,[38] and anyone

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[33] *Compare* 52 U.S.C. § 30109(a)(1) (referencing "a vote to dismiss") *with* § 30109(a)(2) (discussing RTB votes).

[34] *See* 52 U.S.C. §§30109(a)(1) (referring to "a vote to dismiss"); 30109(a)(8)(A) (referring to "an order of the Commission dismissing a complaint").

[35] 5 U.S.C. § 552 *et seq.*

[36] 5 U.S.C. § 551 *et seq.*

[37] As of this writing, the Commission has two lawsuits filed against it alleging Freedom of Information Act violations: *NRA Political Victory Fund v. FEC,* No. 22-1017, and *Josh Hawley for Senate v. FEC,* No. 22-1275; and one suit alleging violations of the Administrative Procedure Act: *Heritage Action for Am. v. FEC,* No. 22-1422. The Commission also facing subpoena requests in a third-party lawsuit, *CLC v. Iowa Values,* 21-389. All cases have been filed in U.S. District Court for the District of Columbia. One litigant has dismissed its FOIA and APA suits: *45Committee v. FEC,* No. 22-502 (FOIA); *45Committee v. FEC,* No. 22-1749 (APA).

[38] *See, e.g.,* Defendant's Opposition to the FEC Motion to Quash Defendant's Subpoena Ad Testificandum, *CLC v. Iowa Values,* No. 21-389 (D.D.C. 2021) (July 25, 2022) at 7 ("The FEC's deadlocked vote on whether to find reason to believe is the substantive action that rejects further enforcement activities and terminates the proceeding"); Complaint, *NRA Political Victory Fund v. FEC,* No. 22-1017 (D.D.C. 2022) (April 12, 2022) at ¶3 ("The Commission long ago held votes on the administrative complaints in the MURs and lacked the necessary four votes to proceed with an investigation, thereby terminating the administrative complaints."); Complaint, *45Committee, Inc. v. FEC,* No. 22-502 (D.D.C. 2022) (Feb. 25, 2022) at ¶2 ("45Committee believes that the six-member Commission held a vote on the administrative complaint long ago and lacked the necessary four votes to proceed with an investigation – thus terminating the administrative complaint."); Complaint, *Josh Hawley for Senate v. FEC,* No. 22-1275 (D.D.C. 2022) (May 10, 2022) at ¶5 ("The FEC long ago held votes on the administrative complaints in the MURs and lacked the

who argues otherwise is lying. "Simply put," one litigant said, "the FEC is being coy, if not outright dishonest, in pretending that the underlying MURs are still 'open.'" [39] It was not coy, or dishonest, or pretending. Those matters *were* open.

This is the faulty premise upon which the rest of the arguments sit. Assuming, *arguendo,* that the vote certifications requested *did* show that an RTB motion has failed, it simply is not true that such a failed motion would have acted to dismiss a matter. When a vote on an RTB motion fails, a specific motion to pursue the complaint in a specific manner has failed. And that's it. Perhaps individual commissioners have passed judgment, but the Commission itself has not done so. The Commission, which acts only by majority vote of its commissioners, has not done anything.[40]

There is zero legal support for the argument that a complaint can be dismissed by default or by a motion that has failed. Standard parliamentary procedure, the Act, and common sense all agree that when a vote on a motion – *any* motion – fails, no action has taken place.[41] The world is not different the moment after that vote is taken from what it was the moment before.

After an RTB motion fails, *any* sort of motion can come next; frequently, commissioners will craft multiple RTB motions, sometimes over a series of Commission meetings, to try to find four votes. Sometimes, commissioners will offer multiple motions to dismiss the matter. If all these motions fail, the complaint stays on the straight path it started on.

None of this is a novel concept. Courts have recognized over and over that the Commission's vote to close the file is the vote that dismisses enforcement complaints:

- Exhibit A: Under the Act, a complainant must challenge the Commission's dismissal of its complaint "within 60 days after the date of the dismissal."[42] Courts start that 60-day clock on the day the Commission successfully votes on a motion to close the file, *not* the day an

necessary four votes to proceed with an investigation, thereby terminating the administrative complaints."); Complaint, *Heritage Action for Am. v. FEC,* 22-1422 (D.D.C. 2022) (May 20, 2022) at ¶2 ("The concealment policy's purpose is to convey the false impression to complainants, respondents, and the courts that the FEC has not yet taken action on administrative complaints in its enforcement matters and to manipulate the courts into enforcing FECA against respondents when in fact the agency has already voted on the merits of the administrative complaint and terminated the matter because fewer than four Commissioners voted in favor of taking enforcement action."); Defendants The National Rifle Association Of America Political Victory Fund, The National Rifle Association Of America, And Josh Hawley For Senate's Joint Motion To Hold Proceedings In Abeyance, *Giffords v. National Rifle Association Political Victory Fund, et al.,* 21-2887 (D.D.C.) (July 29, 2022) at ¶2 ("The administrative complainant then sues the FEC under the guise that the FEC has failed to act on the administrative complaint, and those same Commissioners that refused to close the file for the sake of shielding the Commission's final disposition from public view then hamstring the FEC's ability to defend itself in Court, which then results in a court order permitting that same administrative complainant to sue the respondent directly in federal court – despite that respondent having prevailed before the Commission as a result of the undisclosed Commission decision not to proceed with an investigation.").

[39] Mem. of Points and Authorities in Supp't of the NRA Defendants' Mot. to Dismiss Pl.'s Compl., *Giffords v. NRA Political Victory Fund,* No. 21-2887 (D.D.C.) (Jan. 28, 2022) at 15.

[40] *See New Models En Banc* Statement at 9-10, where this is developed more fully.

[41] *See* 52 U.S.C. § 30106(c).

[42] 52 U.S.C. § 30109(a)(8)(B).

RTB motion fails.[43]

- Exhibit B: An RTB motion that fails can be followed by a subsequent RTB motion months later.[44] The very matter that caused dismissals pursuant to prosecutorial discretion to be invincible to challenge, *CHGO,* was itself the product of MUR votes spread over more than a year. The vote on the underlying MURs, 6391 & 6471, the RTB motion failed 3-3 on Sept. 16, 2014 and then again on Oct. 1, 2015. The Commission's subsequent 5-1 vote on the latter date to close the file dismissed the matter.[45] When, under the "automatic dismissal" theory, would this case have been dismissed?

- Exhibit C: Courts recognize that third-party suits are not a short-circuiting of the Act, but an essential element of the Act. The *Iowa Values* court turned back an attempt by the defendant to delegitimize third-party suits filed under the Act. "Defendant fails to reckon with the fact that the § 30109(a)(8)(C) citizen suit is a part of the 'long and cumbersome process' Congress created. A citizen suit is not a bypass of the process"[46]:

> *While defendant paints the FEC's regulatory breakdown as the unforeseeable and unintended result of FECA's citizen suit provision, it would be more accurate to say that the citizen suit provision was created in anticipation of FEC's regulatory breakdown or inaction. If there was no citizen suit provision, the FEC's inaction would hinder public access to information necessary to make informed choices in the political marketplace and would allow organizations to run election-related*

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[43] *See, e.g., CHGO* at 436 (FEC's dismissal occurred "in 2015," the year the Commission voted to close the file, even though the Commission's RTB vote had failed in 2014; s*ee* Amended Certification, MURs 6391 & 6471 (CHGO) (Sept. 16, 2014) (reflecting multiple failed 3-3 votes on RTB motions), *found at* https://eqs.fec.gov/eqsdocsMUR/15044380338.pdf; Certification, MURs 6391 & 6471 (CHGO) (Oct. 1, 2015) (reflecting a failed 3-3 vote on an RTB and a successful 5-1 vote on the motion to close the file), *found at* https://www.fec.gov/files/legal/murs/6391/15044380175.pdf; *Jordan v. FEC*, 68 F.3d 518, 519 (D.C. Cir. 1995) (holding plaintiff's dismissal challenge untimely because it was filed more than 60 days after "[t]he Commission voted to dismiss Jordan's complaint on July 24, 1991," the date the FEC voted to close the file); *See* Certification, MUR 3178 (Handgun Control, Inc.) (July 24, 1991), *found at* https://www.fec.gov/files/legal/murs/3178.pdf; *Spannaus v. FEC*, 990 F.2d 643, 644 (D.C. Cir. 1993) (holding that "the date of dismissal was January 9, 1991," the date the Commission successfully voted to close the file); *see* Certification, MUR 2163 (American Jewish Committee) (Jan. 9, 1991), *found at* https://www.fec.gov/files/legal/murs/2163.pdf; *CREW v. FEC*, 799 F. Supp. 2d 78, 83 (D.D.C. 2011) (Commission "voted to dismiss MUR 5908 on June 29, 2010," the date it voted to close the file, "thereby triggering Plaintiffs' 60-day clock in which to appeal the dismissal"); s*ee* Certification, MUR 5908 (Peace Through Strength PAC) (June 29, 2010), *found at* https://www.fec.gov/files/legal/murs/5908/10044274525.pdf.

[44] *See, e.g.*, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*). An RTB vote failed 2-0 in April 2019, *see* Certification (Apr. 12, 2019), *found at* https://www.fec.gov/files/legal/murs/7350/7350_27.pdf; another RTB motion and then passed 4-0 at the end of that summer, *see* Certifications (July 30, 2019 and Aug. 22, 2019), *found at* https://www.fec.gov/files/legal/murs/7350/7350_29.pdf and https://www.fec.gov/files/legal/murs/7350/7350_37.pdf. *Also see, e.g.*, Plaintiff's Combined Memorandum of Points and Authorities in Opposition to All Defendants' Motions to Dismiss, *Giffords v. NRA Political Victory Fund,* No. 21-2887 (D.D.C.) at 38, c*iting, e.g.*, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*); MUR 6623 (Scalise for Congress, *et al.*); MUR 5754 (MoveOn PAC, *et al.*); MUR 4012 (Freedom's Heritage Forum, *et al.*).

[45] *See* Amended Certification, MURs 6391 & 6471 *(CHGO)* (Sept. 16, 2014); Certification, MURs 6391 & 6471 *(CHGO)* (Oct. 1, 2015).

[46] *CLC v. Iowa Values,* 573 F. Supp. 3d 243, 257 (D.D.C. 2021) (internal references omitted).

> *advertisements while hiding behind dubious and misleading names. Congress foresaw potential issues with the FEC's process and added a safeguard to protect the First Amendment rights of complainants.*[47]

One colleague has written to decry "the Commission's continued and inexcusable failure" to perform what he termed "the ministerial act" of closing the file in a matter.[48] He is simply factually incorrect to characterize a Commissioner's vote to dismiss an enforcement complaint as ministerial. A *ministerial act* "involves obedience to instructions or laws instead of discretion, judgment, or skill; of, relating to, or involving a duty that is so plain in point of law and so clear in matter of fact that no element of discretion is left to the precise mode of its performance."[49]

Needless to say, nothing in the Act instructs commissioners to obediently vote one way or the other on *any* motion.[50] Each commissioner exercises their judgment and discretion in every vote they cast, including those on motions to dismiss enforcement matters. Particularly over the past two years, I have devoted quite a bit of my discretion, judgment, and skill to determining my votes on dismissal motions. These have been some of the most carefully considered votes I have cast on this Commission.

Votes on RTB motions and votes on dismissal motions are two separate votes, taken at two separate times, with two different voting lineups.[51] Whether the Republican commissioners like it or not, whether respondents like it or not, if not enough commissioners vote for a motion to close the file, the Commission does not act on that complaint and that complaint is not dismissed. The world has not changed.

THE LIMITS OF CONTROL

The shift in votes on dismissal motions revealed, to the Republican commissioners' acute dismay, that they do not control the outcome of every Commission enforcement matter. Part of the problem

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[47] *CLC v. Iowa Values,* 573 F. Supp. 3d 243, 257 (D.D.C. 2021) (internal references omitted).

[48] Statement of Chairman Allen J. Dickerson, MUR 7422 (Greitens for Missouri), May 13, 2022, *found at* https://www.fec.gov/files/legal/murs/7422/7422_82.pdf.

[49] *Ministerial,* Black's Law Dictionary (11th ed. 2019).

[50] The Commission's worst "continued and inexcusable failure" is its failure to pursue meritorious and important enforcement complaints before it.

[51] The notion that they are one and the same stems from the D.C. Circuit's conflation, in *dicta,* of two entirely separate Commission votes: *failed* votes on RTB motions and *successful* votes on dismissal motions. *New Models En Banc* Statement at 2 (The D.C. Circuit "accomplishes this by muddying the distinction between a *failed* vote to proceed with enforcement in a matter and the Commission's separate *majority* vote to dismiss the matter, leading some to suggest that the Commission's enforcement matters are magically dismissed when an enforcement vote splits. This is just not the case, nor *can* it be under the Commission's governing statute, which requires all decisions to be made by at least a majority vote. Though the Court has, in dicta, analytically conflated split enforcement votes and dismissal votes, they are two separate votes, taken at two separate times, with two different voting lineups").

may be the term the Republican commissioners have embraced for themselves: "controlling commissioners."[52] The concept appears to have gone to their heads.[53]

But the D.C. Circuit has granted the obstructive half of the Commission control over the fate of the Commission's enforcement matters in *one very specific situation only:* When courts are trying to discern whether the Commission acted contrary to law in the context of a lawsuit challenging the Commission's dismissal of a complaint, they will evaluate my colleagues' Statement of Reasons as "the agency's reasons for acting as it did."[54]

Their reasoning is granted this deference *if* their collective No votes prevented an RTB motion from succeeding against the recommendations of the Commission's professional legal staff; *if* a majority of the Commission then voted to dismiss the matter; and then *if* the complainant then sued the Commission, citing that dismissal.

But *until* a majority of commissioners votes to dismiss the matter, there *is* no action. There *is* no dismissal. There *is* no dismissal lawsuit. There *is* no control group. There *are* no controlling commissioners. And *no* statement of reasons has been anointed as the agency's reasons for a dismissal, *because there has been no dismissal.*

The Republican commissioners are spilling a tremendous number of words into the world without bothering to acknowledge that last and truly important detail: their statements of reasons only have *any* legal control in the context of *dismissals* and *dismissal lawsuits*.[55] Defendants in third-party

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[52] *See, e.g.*, Republican Enforcement Statement at 3.

[53] Anyone interested in seeing the dangerous effects of the D.C. Circuit's dubbing a bare half of the Commission as "controlling commissioners" should study carefully their June 8, 2022 "policy statement" regarding *CREW v. FEC*, 971 F.3d 340 (D.C. Cir. 2020), *aff'g* 316 F. Supp. 3d 349 (D.D.C. 2018). *See* Policy Statement of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III Concerning the Application of 52 U.S.C. § 30104(c) (June 8, 2022) ("Republican Policy Statement"), *found at* https://www.fec.gov/resources/cms-content/documents/CREW_contributions_earmarked_political_purposes_Dickerson_Cooksey_Trainor_06082022.pdf.

The styling of this document as a "policy statement" seemed overstated at first blush, as policy statements are ordinarily issued by the Commission itself after a majority of the Commission has voted to do so – and not by a group of individual commissioners. But the title turned out to be wildly understated. My colleagues' intent is not to impersonate the Commission. It is to impersonate the U.S. Supreme Court and overturn a binding D.C. Circuit opinion. In *CREW v. FEC*, the D.C. Circuit had affirmed the district court's characterization of the Act's reporting mandates. But my colleagues dismissed this as "vague and imprecise" and announced that they would be enforcing the law as they – not the D.C. Circuit – saw it. They embraced the Second Circuit's reasoning in *FEC v. Survival Educ. Fund*, 65 F.3d 285, 295 (2d Cir. 1995) and announced their intent to enforce 52 U.S.C. § 30104(c)(1) only as to contributions earmarked to independent expenditures. They would, they announced airily, dismiss other activity pursuant to their powers of prosecutorial discretion. Republican Policy Statement at 6.

This amazingly arrogant statement (a) directly contradicted the binding holding in *CREW v. FEC* that the term "earmarked for political purposes" applies more broadly and (b) ignored that the district and circuit courts in *CREW v. FEC* had *expressly rejected* the Second Circuit's reasoning *on exactly that point*. *See* 971 F.3d. at 353; 316 F. Supp. 3d at 401 n.43. But as outrageous as all that is, what's more outrageous is that they can likely get away with it under the *CHGO* and *New Models* decisions.

[54] *FEC v. NRSC ("NRSC")*, 966 F.2d 1471, 1476 (D.C. Cir. 1992).

[55] *See, e.g.*, Statement of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III Regarding Freedom of Information Act Litigation ("Republican FOIA Statement") at 2, June 28, 2022, *found at* https://www.fec.gov/resources/cms-content/documents/Statement-re-FOIA-Litigation-6.28.2022-Dickerson-Cooksey-Trainor.pdf.

actions also cling to the fiction that the Republican commissioners' statements gain their magical powers to make lawsuits go away and become "controlling for purposes of judicial review" as soon as they lift their quills from the page, no matter the status of the matter.[56]

But even if they are wearing their lucky "Controlling Commissioners" baseball caps, my three Republican colleagues do not control the dismissal of an enforcement complaint they might seek to dismiss. Those three do not control the waiver of Commission privileges they might seek to waive.

And they do not control whether the Commission defends itself against litigation filed pursuant to 52 U.S.C. §30109(a)(8) that they might seek to defend.

LITIGATION

That last one cropped up because of the second adjustment some commissioners had made in their voting: When complainants sued the Commission when it had not voted to take action on a complaint, these commissioners did not automatically vote to instruct OGC's attorneys to defend against the lawsuit. When three commissioners decide to vote No on a motion to defend litigation pursuant to §30109(a)(8), the motion fails and the Commission does not appear in court to defend itself.

On just a single page of a statement they have written recently, Republican commissioners wailed about "the scandalous spectacle" of failed motions to instruct the Commission's attorneys to defend against enforcement-related lawsuits[57] and gnashed their teeth over what they describe as "chaos and an escalating collapse of institutional norms."[58]

But this is not about spectacle or chaos or collapse. It is simply about the three commissioners on this Commission who oppose robust enforcement of federal campaign-finance law discovering that the Act does not give them control over the outcome of every enforcement matter, and they do not like it.

The so-called "controlling commissioners" can be unhappy about their lack of control here all they want, but substantive objections to votes against litigation-defense motions are misplaced. A commissioner who decides to vote No on a litigation-defense motion is acting well within her authority under the Act. Congress specifically chose to require that four or more commissioners affirmatively vote to defend against such litigation. Congress thus specifically subjected the question to commissioners' discretion. Congress could well have had the Commission automatically defend itself against these suits (as it did for every other type of lawsuit we face). It did not. In requiring four votes to defend (a)(8) litigation, Congress plainly anticipated that sometimes, there

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[56] Defendants The National Rifle Association of America Political Victory Fund, The National Rifle Association of America, and Josh Hawley for Senate's Joint Motion To Hold Proceedings In Abeyance, *Giffords v. NRA Political Victory Fund*, 21-2887 (D.D.C.) (July 29, 2022), at 9. These litigants breathlessly told the court, "FEC counsel revealed to the Court in a hearing that the Commissioners who voted to dismiss the administrative complaints had submitted a statement of reasons to the record, but did not mention that this statement of reasons is legally controlling under D.C. Circuit precedent." *Id.* at 19. Well, sure. The Commission's litigators neglected to mention that the statement of reasons in an open enforcement matter is legally controlling under D.C. Circuit precedent because it *isn't.*

[57] Republican Enforcement Statement at 1.

[58] *Id.*

would *not* be four votes to defend. The necessity of amassing those four votes should put some pressure on intransigent commissioners to work to find consensus.

One district court has referred to "the failure of a federal agency to appear" in court to defend against an (a)(8) lawsuit as "troubling," but in the next breath acknowledged that "the agency's failure to defend this litigation was not 'unprecedented,' and it grew out of the FEC's unique structure and enacting legislation."[59] The Court's latter comment hits the mark, and it is the key to why courts ought not be troubled when the Commission fails to appear to defend itself in these lawsuits.

Votes on motions to defend against suits filed pursuant to § 30109(a)(8) did not fail due to carelessness or a lack of respect for judicial process – or by accident.

The votes on those motions failed because the Commission's enacting legislation, the Act, requires a bipartisan majority of commissioners to vote affirmatively to defend against these lawsuits. If three commissioners believe that the reasons given for a dismissal are contrary to law, or that a failure of the Commission to act on a complaint has indeed been contrary to law, the Act fully empowers them to vote against defending against lawsuits alleging exactly that.

This is not, again, "bad faith" or "improper behavior," as some litigants argue.[60] It is not some sinister and lawless conspiracy cooked up in the dead of night. Every bit of it draws directly from the Act. One or more commissioners voted against dismissing a matter they did not believe should be dismissed, which is a vote perfectly proper under the Act.[61] When the complainant sued the Commission for neither garnering four votes to dismiss the matter – nor four votes to pursue it, mind you – which is a lawsuit authorized by the Act,[62] one or more commissioners voted against defending against that lawsuit, which is a vote perfectly proper under the Act.[63] The agency thus lost that lawsuit, which is a possibility contemplated by the Act,[64] and when it did, the Commission had 30 days to choose another course.[65] Since the Commission again garnered neither four votes to

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[59] Memorandum Opinion and Order, *CLC v. FEC*, No. 20-809 (D.D.C) (May 13, 2022), at 2.

[60] Heritage Motion at 2.

[61] The Act requires that all decisions exercising Commission duties or powers be made by a vote supported by at least a majority of commissioners. 52 U.S.C. § 30106(c). Dismissal votes are such a vote. *See* 52 U.S.C. §§ 30109(a)(1) (referring to "a vote to dismiss"); 30109(a)(8)(A) (referring to "an order of the Commission dismissing a complaint").

[62] 52 U.S.C. § 30107(a)(8)(A) ("Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.")

[63] 52 U.S.C. § 30107(a) ("The Commission has the power…(6) to … defend (in the case of any civil action brought under section 30109(a)(8) of this title) … any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26, through its general counsel"). Such defense requires "the affirmative vote of 4 members of the Commission." 52 U.S.C. §30106(c).

[64] 52 U.S.C. § 30107(a)(8)(C) ("In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law").

[65] *Id.* (court "may direct the Commission to conform with such declaration within 30 days").

dismiss the matter nor four votes to pursue it, the complainant was authorized to sue the respondent directly in federal court, which is exactly the path specified by the Act.[66]

Simply put, under the Act, if three commissioners vote No on a litigation-defense motion, their votes control. And unlike failed RTB votes and any attendant successful dismissal votes, this outcome is unreviewable.

The four-votes-to-defend-lawsuits standard requires just as much bipartisanship as the four-votes-to-pursue-complaints standard. In the era when commissioners worked to avoid 3-3 splits, it was easy to find four votes to defend the agency's position in litigation. After all, the easiest way to ensure there are four votes to *defend* the Commission's position is to ensure there are four votes that *support* the Commission's position. The Commission fails so often to garner the requisite four or more commissioners to vote to find RTB on enforcement complaints that it is taken as a given that the requirement was designed to be difficult to meet. No one should be surprised, then, that a sharply divided Commission that splits on many RTB votes would also sometimes split on its litigation-defense votes.

CONCLUSION

The fundamental duty conferred upon every commissioner of the United States Federal Election Commission is to exercise our best judgment in every vote we take. No decision that I make in that capacity is thoughtless or automatic.

Some motions require four affirmative votes to succeed. Sometimes it takes a simple majority. But under the Federal Election Campaign Act, the Commission only acts when more commissioners vote for a motion than vote against it.

Commissioners who want majority support for their dismissal motions or want their litigation-defense motions to get four votes have a simple task: Craft a motion that enough commissioners will vote for.

Instead, the Republican commissioners complain that they somehow deserve the votes of their colleagues to provide majority support for lawless dismissals. They complain that they are owed all their colleagues' votes to defend those lawless dismissals in federal court. They are making a weak attempt to convince the public and, presumably, the courts, of these alternative facts. But what they describe is simply not how Congress built the Commission to work.

Oct. 4, 2022

Ellen L. Weintraub
Commissioner

[66] *Id.* ("failing which [conformance] the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint").

ATTACHMENT A: @EllenLWeintraub Tweets

Sent Sept. 30, 2022 beginning at 6:49 pm, *found at:* https://twitter.com/EllenLWeintraub/status/1575981087427379202

Ellen L. Weintraub @EllenLWeintraub 3d
Sad to report: @FEC announced today the dismissal of a slew of important cases on key issues like dark money, soft money & coordination. Several of us had worked hard over the past few years to keep these matters alive in the face of obstructionist colleagues and bad caselaw. 🧵

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC These efforts involved a activating a previously unused, alternative enforcement path that Congress wrote into our governing statute.

There is still hope that the American people's interests can be vindicated, at least in these matters.

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC This path allows those who file complaints to sue those they allege have violated the law when @FEC fails to act. The strategy was working. Today's dismissals should not affect those existing lawsuits – the dismissals have not cured the injury that allowed those suits to proceed.

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC It's not surprising that this alternative enforcement strategy bugged the heck outta some of my colleagues, who thought they held all the cards.

I make zero apologies for using every tool I can find to get the law enforced.

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC The matters that have been shut down are: MUR 6589R (American Action Network); MURs 6915 and 6927 (John Ellis Bush); MURs 7427, 7497, 7524, and 7553 (National Rifle Association of America Political Victory Fund, et al.); ...

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC ... MURs 7558, 7560, and 7621 (Donald J. Trump, MAGA PAC, et al.); MUR 7486 (45Committee); MURs 7654 and 7660 (America First Action), MURs 7672, 7674, and 7732 (Iowa Values), and MUR 7726 (David Brock, et al.).

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC My statements on many of these closed matters are also being released today.

Two with @ShanaMBroussard:

Iowa Values: fec.gov/files/legal/mu...
45 Committee: fec.gov/files/legal/mu...

Two regular statements on my own:

NRA: eqs.fec.gov/eqsdocsMUR/742...
Brock: fec.gov/files/legal/mu...

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC @ShanaMBroussard Two more statements are worthy of special note:

Jeb Bush: fec.gov/files/legal/mu...
AAN: fec.gov/files/legal/mu...

D.C. Circuit distortions of the @FEC's enforcement process have actually resulted in *my* being the "controlling" commissioner to explain these dismissals.

Ellen L. Weintraub @EllenLWeintraub 3d
@FEC They should be an intriguing read for election-law and administrative-law nerds everywhere. For the first time *ever*, the controlling rationale in two @FEC dismissals is that those dismissals *are* contrary to law, which should make the next round of lawsuits quite interesting.