



FEDERAL ELECTION COMMISSION  
 1050 FIRST STREET, N.E.  
 WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 Oklahomans for T.R.U.M.P., *et al.* ) MUR 7920  
 )

**STATEMENT OF REASONS OF CHAIRMAN ALLEN DICKERSON**

The complaint in this Matter alleged that Oklahomans for Truth, Responsibility, Unity, Markets, & Prosperity (T.R.U.M.P.) and James Tackett, in his official capacity as treasurer (“the Committee”) accepted \$94,000 in excessive and prohibited contributions from two corporations controlled by its treasurer, James Tackett: Conservatives for a Great Broken Arrow d/b/a Vote Safe (“Vote Safe”) and Init2 LLC d/b/a Win Mail & Design (“Init2 LLC”). Our Office of General Counsel (“OGC”) recommended that the Commission find no reason to believe (“RTB”) that the Committee violated 52 U.S.C. §§ 30116(f) or 30118 by knowingly accepting excessive or prohibited contributions, and also find no RTB that Vote Safe or Init2 LLC violated 52 U.S.C. §§ 30116(a)(1)(C) or 30118 by making excessive or prohibited contributions because the record indicates that the Committee had intended to file as an independent expenditure only committee (“IEOPC”).

While OGC reaches the correct conclusion in this Matter, I write separately to clarify that the law does not require a committee to register as an IEOPC in order to be one.

**I. FACTUAL BACKGROUND**

On June 15, 2020, the Committee registered with the Commission as a nonconnected committee and listed Benjamin Minor as its treasurer and custodian of records.<sup>1</sup> One day later, the Committee filed an amendment designating James David Tackett as its treasurer and custodian of records.<sup>2</sup> Neither the original nor amended Statement of Organization (FEC Form 1) “included a letter expressing an intent to

<sup>1</sup> FEC Form 1, Oklahomans for T.R.U.M.P. Statement of Organization (June 15, 2020), <https://docquery.fec.gov/pdf/658/202006159239784658/202006159239784658.pdf>.

<sup>2</sup> FEC Form 1, Oklahomans for T.R.U.M.P. Amended Statement of Org. (June 16, 2020), <https://docquery.fec.gov/pdf/537/202006169239794537/202006169239794537.pdf>.

MUR 7920 (Oklahomans for T.R.U.M.P., *et al.*)

Statement of Reasons

Page 2 of 5

accept unlimited contributions for the purpose of making only independent expenditures.”<sup>3</sup>

During the Committee’s existence it received \$94,000 in total contributions—all of which came from Vote Safe and Init2 LLC.<sup>4</sup> The Committee’s reports show that it disbursed all the funds it received in 2020 to Init2 LLC for communications supporting or opposing state candidates.<sup>5</sup>

After the Committee’s disclosure of apparent corporate contributions, the Commission’s Reports Analysis Division (“RAD”) sent a Request for Additional Information (“RAFI”) to the Committee.<sup>6</sup> In response, the treasurer informed RAD that the Committee had intended to register as an IEOPC.<sup>7</sup> RAD replied that the Committee could file a Miscellaneous Report (Form 99) stating that it was an IEOPC,<sup>8</sup> and the treasurer did so that day.<sup>9</sup>

Approximately one year later, the Committee filed a termination report disclosing zero financial activity, zero cash on hand, and zero debts from January 1, 2021 through July 31, 2021.<sup>10</sup> Two days later, RAD approved the termination.<sup>11</sup>

That same day, a complaint was filed arguing that the Committee’s claim in its Form 99 that it intended to be an IEOPC should not be accepted, and therefore that the Committee violated 52 U.S.C. §§ 30116 and 30118 by accepting excessive and prohibited contributions.<sup>12</sup>

<sup>3</sup> First Gen. Counsel’s Rpt. at 2.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.*

<sup>6</sup> Oklahomans for T.R.U.M.P., RAFI (Aug. 5, 2020), <https://docquery.fec.gov/pdf/710/202008050300081710/202008050300081710.pdf>

<sup>7</sup> Oklahomans for T.R.U.M.P., RAD Communications Log (Aug. 26, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> FEC Form 99, Oklahomans for T.R.U.M.P. Miscellaneous Report (August 26, 2020), <https://docquery.fec.gov/pdf/192/202008269267005192/202008269267005192.pdf>.

<sup>10</sup> Oklahomans for T.R.U.M.P., Termination Report (Aug. 2, 2021), <https://docquery.fec.gov/pdf/664/202108029465820664/202108029465820664.pdf>.

<sup>11</sup> Termination Approval, RAD (Aug. 4, 2021), <https://docquery.fec.gov/pdf/452/202108040300122452/202108040300122452.pdf>.

<sup>12</sup> *See generally* Compl. at 3.

MUR 7920 (Oklahomans for T.R.U.M.P., *et al.*)

Statement of Reasons

Page 3 of 5

## II. LEGAL ANALYSIS

A nonconnected committee is “a political committee that is not a party committee, an authorized committee of a candidate or a separate segregated fund established by a corporation or labor organization.”<sup>13</sup> While an IEOPC is a nonconnected committee, it differs from traditional nonconnected committees in that it may solicit and raise unlimited contributions, as well as contributions from corporations and labor unions.<sup>14</sup>

Although IEOPCs were blessed by the courts more than a decade ago, neither the Act nor Commission regulations distinguish between a traditional nonconnected committee’s Statement of Organization and that of an IEOPC. This has long been noteworthy. In Advisory Opinion 2010-11 (Commonsense Ten), the Commission acknowledged that, “as a result of [then-]recent court decisions, the Commission may need to update its registration and reporting forms to account for IEOPCs.”<sup>15</sup> It did not do so, instead stating that “in the meantime, [an IEOPC] may include a letter with its Form 1 Statement of Organization clarifying that it intends to accept unlimited contributions for the purpose of making independent expenditures.”<sup>16</sup>

This temporary solution was noted on the Commission’s website, which formerly advised that an organization registering as an IEOPC include with its Statement of Organization the following language in an accompanying letter:

The committee intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees [the “*SpeechNow* statement”].<sup>17</sup>

It is important to note that filers were never required, merely requested, to include such an accompanying letter. It was only on March 10, 2022—a dozen years after the en banc D.C. Circuit unanimously declared that an IEOPC’s activities are protected by the First Amendment, and well after the conduct at issue here—that the Commission approved revisions to Form 1 giving filers the option to register with the

<sup>13</sup> First Gen. Counsel’s Rpt. at 5 (citing 11 C.F.R. §§ 100.5(a), 106.6(a)).

<sup>14</sup> See *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc); Advisory Op. 2010-11 (Commonsense Ten).

<sup>15</sup> First Gen. Counsel’s Rpt. at 6 (citing Advisory Opinion 2010-11 (Commonsense Ten) at 3 n.3).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 7.

MUR 7920 (Oklahomans for T.R.U.M.P., *et al.*)

Statement of Reasons

Page 4 of 5

Commission as an IEOPC.<sup>18</sup> This was a small administrative change with no effect on the substantive law governing IEOPCs, but it reflected the first significant effort to regularize and streamline the filing process for IEOPC seeking to register with the Commission.

OGC did not recount this history, and instead recommended that the Commission find no RTB against the Committee because the record indicates that the Committee intended to register as an IEOPC. OGC first points to the fact that “the source and amount that was contributed immediately after the Committee’s registration suggests a belief that the Committee was operating as an IEOPC.”<sup>19</sup> Second, the Committee “engaged in none of the activities permitted for traditional nonconnected committees, but prohibited for IEOPCs.”<sup>20</sup> Third, the facts that the treasurer contacted the Committee’s RAD analyst after receiving the Commission’s RFAI and filed a Form 99 the same day “support[] his assertion that the Committee was intended as an IEOPC.”<sup>21</sup> Finally, OGC argues that the Commission “ha[s] no direct evidence calling into question the Committee’s claim that, at the time it registered, it intended to participate in federal elections.”<sup>22</sup>

Contrary to OGC’s analysis, however, a record indicating that the Committee intended to register as an IEOPC is not required. As mentioned above, registration as an IEOPC is only requested as a matter of administrative convenience to the Commission; there is no regulatory provision with the force of law governing precisely how an IEOPC, as opposed to any other nonconnected committee, must register. Accordingly, if a committee engages in permissible activities for an IEOPC, namely by limiting itself to independent spending, it is an IEOPC regardless of whether it registers as one.<sup>23</sup>

As I have noted elsewhere, an IEOPC is not a new form of political committee, but rather “simply a committee, created and regulated pursuant to FECA, that has chosen to exercise certain First Amendment rights acknowledged by the courts.”<sup>24</sup> While the Commission was correct to adopt revisions to Form 1 giving filers the option to register with the Commission as an IEOPC, and while that option will doubtless

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<sup>18</sup> See Commission Open Meeting (Mar. 10, 2022) (approving Agenda Document No. 22-06-A).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> The same is true for Hybrid PACs organized to avail themselves of *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

<sup>24</sup> Statement of Reasons of Chairman Allen Dickerson, MUR 7454 (Blue Magnolia, LLC, *et al.*) (April 14, 2022).

MUR 7920 (Oklahomans for T.R.U.M.P., *et al.*)

Statement of Reasons

Page 5 of 5

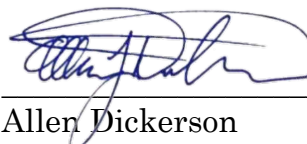
make it easier for both filers and the Commission to undertake their respective roles in the reporting process, until the Commission adopts relevant regulations to the contrary an IEOPC is known by its actions, including its reports to this Commission, and not solely by its initiating paperwork.<sup>25</sup>

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For the reasons discussed above, I voted to find no RTB that the Committee violated 52 U.S.C. §§ 30116(f) or 30118 by knowingly accepting excessive or prohibited contributions, and also find no RTB that Vote Safe or Init2 LLC violated 52 U.S.C. §§ 30116(a)(1)(C) or 30118 by making excessive or prohibited contributions.

June 29, 2022

Date



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Allen Dickerson  
Chairman