



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Tim Sheehy for Montana *et al.*)

) MUR 8149
)
)

**STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY AND
COMMISSIONER JAMES E. “TREY” TRAINOR**

This matter arose from a Complaint alleging that Tim Sheehy, a candidate for U.S. Senate in Montana and his principal campaign committee Tim Sheehy for Montana (the “Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations by failing to file a 2023 July Quarterly Report for the Committee, which the Complaint claims was its first report due after its Sheehy’s candidacy began and the Committee was formed.¹

Respondents argue that the Complaint misunderstands and misapplies the Act and Commission regulations on what event triggers a new committee’s first reporting obligation.² They maintain that the Committee followed the Act and Commission regulations and guidance because it planned to file a 2023 October Quarterly Report as its first report following the committee’s organization date—the candidate’s filing of a Statement of Organization (“FEC Form 1”).³ Therefore, Respondents requested that the Commission find no reason to believe and dismiss the Complaint.⁴

The Office of General Counsel’s (“OGC”) First General Counsel’s Report (“FGCR”) adopted the Complaint’s theory of the law and concluded that the Committee failed to file its first disclosure report.⁵ According to OGC, the Committee should have filed its first disclosure report as part of the 2023 July Quarterly Report as opposed to the 2023 October Quarterly Report.⁶ As

¹ Complaint at 1 (July 24, 2023), MUR 8149 (Tim Sheehy for Montana *et al.*).

² Response of Tim Sheehy, Tim Sheehy for Montana, and Katie Wenetta at 1 (Sept. 20, 2023), (MUR 8149 (Tim Sheehy for Montana, *et al.*)).

³ *Id.*

⁴ *Id.*

⁵ First General Counsel’s Report at 11 (Apr. 5, 2024), MUR 8149 (Tim Sheehy for Montana, *et al.*).

⁶ *Id.* at 3.

such, OGC recommended that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(a) and 11 C.F.R. § 104.5(a) by failing to file its 2023 July Quarterly Report.⁷

We disagreed. While the Complaint raises a significant ambiguity in the Act and Commission rules and guidance in committee’s reporting obligations when their creation straddles reporting periods, we believe Respondents have the better reading of the law. And because we decline to have the Commission engage in rulemaking-by-enforcement without providing due process or fair notice to the regulated community, we rejected OGC’s recommendations further because enforcement actions are not the appropriate mechanism for the Commission to resolve uncertainties in the law.⁸ This statement explains the reasons for our vote.

I. Factual Background

The underlying facts of this matter are undisputed. Tim Sheehy publicly announced his candidacy for U.S. Senate in Montana on June 27, 2023.⁹ Within at least 24 hours of his announcement, Sheehy raised over \$5,000 in contributions.¹⁰ On July 1, 2023, Sheehy filed a Statement of Candidacy (“FEC Form 2”) with the Commission and designated Tim Sheehy for Montana as his principal campaign committee.¹¹ On July 1, 2023, the Committee filed FEC Form 1 with the Commission.¹² The Complaint in this matter was filed on July 24, 2023.¹³ The Committee filed its first disclosure report—the 2023 October Quarterly Report—covering the period of July 1 through September 30 and included activity before July 1, 2023.¹⁴

II. Legal Framework

The Act requires that the following sequential steps are taken once an individual becomes a candidate¹⁵:

⁷ *Id.*

⁸ Certification (July 11, 2024), MUR 8149 (Tim Sheehy for Montana, *et al.*).

⁹ Response of Tim Sheehy, Tim Sheehy for Montana, and Katie Wenetta at 1 (Sept. 20, 2023), MUR 8149 (Tim Sheehy for Montana, *et al.*).

¹⁰ Complaint at 3 & n.8 (July 24, 2023), MUR 8149 (Tim Sheehy for Montana, *et al.*).

¹¹ Response of Tim Sheehy, Tim Sheehy for Montana, and Katie Wenetta at 1 (Sept. 20, 2023), MUR 8149 (Tim Sheehy for Montana, *et al.*).

¹² Response of Tim Sheehy, Tim Sheehy for Montana, and Katie Wenetta at 2 (Sept. 20, 2023), MUR 8149 (Tim Sheehy for Montana, *et al.*).

¹³ Complaint (July 24, 2023), MUR 8149 (Tim Sheehy for Montana, *et al.*).

¹⁴ First General Counsel’s Report at 2 (Apr. 5, 2024), MUR 8149 (Tim Sheehy for Montana, *et al.*).

¹⁵ 52 U.S.C. § 30101(2); 11 C.F.R. §§ 100.3, 100.72, 100.131 (defining “candidate” and the scope of the Commission’s testing-the-waters exemption). Generally, an individual becomes a candidate pursuant to the Act when they have received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000.

- (1) The candidate must designate a principal campaign committee no later than 15 days after becoming a candidate by filing the FEC Form 2 with the Commission;¹⁶
- (2) The candidate’s principal campaign committee must register with the Commission and designate a treasurer by filing the FEC Form 1 with the Commission no later than 10 days after the candidate filed with FEC Form 2 with the Commission;¹⁷ and
- (3) Once the principal campaign committee files FEC Form 1 with the Commission designating its treasurer, the committee must file periodic disclosure reports with the Commission.¹⁸

Additionally, the Commission’s published guidance summarizes the overall framework of the Act and Commission regulations regarding registering as a campaign committee and filing disclosure reports. For example, the Commission’s Campaign Guide for Congressional Candidates and Committees states:

When filing the first report *due after registering* as a political committee, the principal campaign committee ... must disclose all financial activity that occurred *before registration* and before the individual became a candidate (including any testing the waters activity), beginning with the first date of activity through the end of the current reporting period.¹⁹

Finally, once a committee is established “[e]ach treasurer of a political committee shall file reports of receipts and disbursements” according to the appropriate schedules.²⁰ For committees filing quarterly reports—like the Committee here—reports “shall be filed no later than the 15th day after the last day of each calendar quarter.”²¹ The first report must include all amounts received prior to becoming a political committee under 11 C.F.R. § 100.5, even if such amounts were not received during the covered reporting period.²²

¹⁶ 52 U.S.C. § 30102(e)(1); 11 C.F.R. §§ 101.1(a), 102.12(a).

¹⁷ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

¹⁸ 52 U.S.C. § 30104(a)(2); 11 C.F.R. § 104.5(a).

¹⁹ FEC, *Campaign Guide for Congressional Candidates and Committees*, at 98 (Oct. 2021), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf>. See also FEC, *Quarterly reports, First report*, <https://www.fec.gov/help-candidates-and-committees/filing-reports/quarterly-reports/> (“When a committee files its first report, it must include all “receipts” and “disbursements” that occurred before registration. This includes any receipts and disbursements made during the “testing the waters” (or exploratory) period. The coverage period of the first report should be adjusted to date back to the beginning of the committee’s financial activity.”).

²⁰ 52 U.S.C. § 30104(a)(1).

²¹ 52 U.S.C. § 30104(a)(2)(iii).

²² 11 C.F.R. § 104.3.

III. Legal Analysis

A. OGC is wrong on the merits.

Read together, the Commission’s statutes, regulations, and guidance create a grey area in situations where committee activity and registration break across multiple reporting periods. After reviewing the Act and the Commission’s regulations and public resources, some in the regulated community reasonably reached the same conclusion that we do: a political committee must file its first disclosure report covering the period in which it registers with the Commission, and that report must include reportable activity that pre-dates its registration. And while reasonable minds might disagree with that interpretation, at a minimum, then, the law and regulations are ambiguous.

OGC asserts that “a plain reading of the Act and the Commission’s regulations indicates that because Sheehy became a candidate on June 27, the Committee became a political committee that was required as of that date to file scheduled reports, including the July Quarterly Report.”²³ But this interpretation of the Act and Commission’s regulations leads to a patently absurd consequence: a principal campaign committee could be legally required to file its first disclosure report *before* it has appointed a treasurer—the individual who is legally required to file and sign the disclosure reports—or even before it has been created.²⁴ This discrepancy is due to the registration deadlines set by the Act and Commission regulations.

Suppose an individual publicly declares himself as a federal candidate and receives over \$100,000 in contributions on June 27. By raising those contributions, he is considered a federal candidate pursuant to the Act and regulations that same day.²⁵ Under the Act and regulations, he has 15 days from June 27 to file FEC Form 2 with the Commission—meaning up to July 12—on which he will designate a principal campaign committee.²⁶ From there, the campaign committee has 10 additional days to file FEC Form 1—up to July 22—to register with the Commission and designate its treasurer.²⁷

But under OGC’s theory, this hypothetical committee would be legally obligated to file its first quarterly report on July 15—before it had registered or designated a treasurer—because the candidate declared in the previous reporting period ending on June 30. This can’t be right. As the United States Supreme Court has long held, “[n]o rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences.”²⁸ What this suggests, then, is that the better understanding of the rules is the one set out by Respondents—that the first report due

²³ First General Counsel’s Report at 11 (Apr. 5, 2024), MUR 8149 (Tim Sheehy for Montana, *et al.*).

²⁴ 52 U.S.C. § 30104(a)(1).

²⁵ 52 U.S.C. § 30101(2); 11 C.F.R. §§ 100.3, 100.72, 100.131.

²⁶ 52 U.S.C. § 30102(e)(1); 11 C.F.R. §§ 101.1(a), 102.12(a).

²⁷ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a). Notably, the principal campaign committee’s FEC Form 2 must include the name and address of the treasurer of the committee. 52 U.S.C. § 30103(b)(4).

²⁸ *United States v. Brown*, 68 S. Ct. 376, 381 (1948). *See also Haggard Co. Helvering, Com’r of Internal Revenue*, 60 S. Ct. 337, 339–40 (1940) (“All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose.”).

for a committee is for the coverage period in which the committee registers, by filing its FEC Form 1, and that first report must include all pre-registration reportable activity as well. This reading coheres best with the statute, the regulations, and the Commission’s public guidance—that the “first report” is “due after registering as a political committee.”²⁹

OGC or others might argue that, even if such a hypothetical were correct, it needn’t apply to this particular matter because the Committee did not wait until after July 15 to file its Form 1, but instead filed on July 1. Therefore, they would argue, the Committee did have an obligation to file the July Quarterly Report. Such a rule, however, would only create a different kind of inconsistency in the law, whereby committees that register earlier than the regulatory deadlines are treated differently than those who wait until their filing deadlines. Again, the Commission should avoid interpretations of its own regulations that lead to such arbitrary and inconsistent consequences for regulated entities.

For these reasons, we agreed with the Respondents’ interpretation of the law and concluded that no violation occurred. Consequently, we voted to dismiss the Complaint.

B. This matter warrants prosecutorial discretion.

Regardless of who has the better reading of the law, however, dismissal in this matter was nonetheless appropriate because it is apparent that the Commission’s interpretation of the Act and rules on this issue are unclear. The Commission’s failure to issue explicit guidance on the correct application of the Act and Commission regulations as applied to the specific set of facts, the lack of informational harm, and other prudential considerations, warrant the exercise of prosecutorial discretion. In assessing whether to exercise such discretion under *Hecker v. Chaney*, the Commission must “not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies,”³⁰ among other factors. We concluded that those consideration weighed in favor of dismissal.

First, the Complaint asks the Commission to apply a legal interpretation of the Act, Commission’s regulations and published resources that it has neither clearly articulated nor previously enforced against.³¹ The Commission has not issued explicit interpretive guidance or regulations to the regulated community distinctly articulating what quarterly reporting period a committee must file its first report in. As discussed above, despite the lack of clear guidance, the regulated community, including the Committee, reasonably interpreted the framework of the Act and Commission’s regulations and official online published resources to conclude that the Committee’s first disclosure report was the 2023 October Quarterly Report.

²⁹ FEC, *Campaign Guide for Congressional Candidates and Committees*, at 98 (Oct. 2021), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf>.

³⁰ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

³¹ In fact, the Commission has dismissed complaints alleging technical or minor violations related to a candidate or committee’s first filings. See MUR 7381, (Nov. 5, 2018) (Rick Scott for Florida).

Second, to disregard and enforce against Respondents’ reasonable interpretation, particularly when the Commission has contributed to ambiguity by publishing resources that support the Committee’s view, would be rule-making-by-enforcement and inconsistent with notions of due process and fair notice.³² Enforcement here risks inconsistent and arbitrary treatment of similarly situated parties based on a novel theory of law.

Finally, we considered the public interest in enforcement and the other prudential risks to the Commission. The Committee in this matter timely filed its first disclosure report—the 2023 October Quarterly Report—which included all financial activity from July 1 through September 30 and included activity before July 1, 2023.³³ Therefore, the public’s informational interest was served when the Committee’s timely filed 2023 October Quarterly Report, and further enforcement would not be a prudent use of limited Commission resources.³⁴

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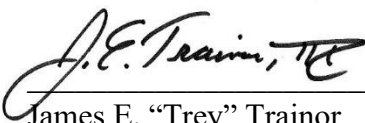
Accordingly, for the foregoing reasons, we voted to dismiss this matter as an exercise of prosecutorial discretion under *Heckler v. Chaney*.³⁵



 Sean J. Cooksey
 Chairman

August 7, 2024

 Date



 James E. “Trey” Trainor
 Commissioner

August 7, 2024

 Date

³² See, e.g., Statement of Reasons of Vice Chairman Sean J. Cooksey and Commissioners Allen J. Dickerson and James E. “Trey” Trainor, III at 6, n. 3 (Mar. 1, 2023), MUR 7912 (Senate Leadership Fund, *et al.*) (citing Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 2–3 & n.3, 13 (Apr. 1, 2016), MURs 6485, 6487, 6488, 6711, & 6930 (W Spann LLC, *et al.*); Statement of Reasons of Chairman Petersen and Commissioners Hunter and McGahn at 2 & n.4 (Jan. 13, 2010), MUR 6206 (BASF Corp., *et al.*) (declining “to engage in rulemaking via MUR;” collecting MURs); Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 6 (Apr. 1, 2021), MUR 7243 (CITGO Petroleum Corp., *et al.*) (“A fundamental value of due process is fair notice. If the regulated community cannot look to our regulations for clear guidance as to what it may and may not do, then this agency is failing in its mission and undermining the rule of law.”).

³³ First General Counsel’s Report at 4 (Apr. 5, 2024), MUR 8149 (Tim Sheehy for Montana, *et al.*).

³⁴ Tim Sheehy for Montana, Amended 2023 October Quarterly Report (Feb. 15, 2024), <https://docquery.fec.gov/cgi-bin/forms/C00844159/1755884>.

³⁵ 470 U.S. 821 (1985).