

several years, they used the filing of the final case as pretext to further delay all of the matters. After stalling on the oldest of these cases for *1,357 days*, they ultimately voted against opening an investigation or engaging in conciliation in every one of them. We twice tried to force a vote on the long-pending matters only to have all three Republican commissioners abstain on the motions.³ When they did finally agree to consider the matters earlier this year – and the Commission deadlocked on the votes along party lines – we even offered to forego all penalties in the hope of persuading them to at least acknowledge these clear violations of the law. But even that was a bridge too far for them.

Our colleagues' Statement of Reasons now introduces a *post hoc* subjective intent standard for determining whether an individual is the true source of a contribution made through an LLC: "[T]he proper focus in these matters is whether the funds used to make a contribution were *intentionally* funneled through a closely held corporation or corporate LLC *for the purpose of evading the Act's reporting requirements*, making the individual, not the corporation or corporate LLC, the true source of the funds."⁴ This fabricated standard, which places the focus on the contributor's intent to violate the Act, simply has no basis in law.⁵ And it would be virtually impossible to prove – it is plainly drafted to allow contributors to evade Commission enforcement simply by claiming publicly that they funneled contributions through a single member or closely held LLC for any reason other than evading disclosure.

But even putting aside the absurdity of this standard, we note that the very case that took our colleagues the longest to resolve was one in which the contributor *acknowledged* that he gave through a newly formed LLC solely to hide his identity and evade disclosure.⁷ Yet despite their claimed desire for "clear public guidance," our colleagues still have not been willing to plainly state whether they view this conduct as violating the law.⁸

³ Certification in MURs 6487 and 6488 (F8 LLC, et al.), dated Oct. 29, 2015; Certification in MUR 6485 (W Spann LLC, et al.), dated Oct. 29, 2015; Certification in MUR 6711 (Specialty Investment Group, Inc., et al.), dated Oct. 29, 2015; Certification in MURs 6487 and 6488 (F8 LLC, et al.), dated Nov. 17, 2015; Certification in MUR 6485 (W Spann LLC, et al.), dated Nov. 17, 2015; Certification in MUR 6711 (Specialty Investment Group, Inc., et al.), dated Nov. 17, 2016. Our colleagues abstained from voting on those motions in both instances. *Id.*

⁴ Republican Statement at 2 (emphases added).

⁵ See Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub in the Matters of MURs 6485 (W Spann LLC, et al.), 6487 & 6488 (F8, LLC, et al.), 6711 (Specialty Investments, Inc., et al.), and 6930 (SPM Holdings LLC, et al.), dated April 1, 2016.

⁷ See First General Counsel's Report in MUR 6485 (W Spann LLC, et al.), dated Aug. 28, 2012.

⁸ This posture is reminiscent of an earlier case in which Republican commissioners applied an intent-based standard in such a contorted way that even when the facts supported their professedly stringent standard, they still refused to find reason to believe the law had been violated. See Statement of Reasons of Vice Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub in the Matter of MUR 6002 (Freedom's Watch), dated Sept. 16, 2010.

