BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
 )
Americans Elect, et al. )
 ) MUR 6660

CONCURRING STATEMENT OF REASONS OF COMMISSIONER LEE E. GOODMAN

The Commission voted unanimously to find no reason to believe that Americans Elect was a political committee. I write separately to highlight that in doing so the Commission unanimously affirmed that many ostensible "federal campaign activities" do not trigger federal political committee status.

Americans Elect was a 501(c)(4) organization that spent over $1.3 million in 2012 on independent expenditures expressly advocating the election of now-Senator Angus King and opposing his Republican opponent, Charles Summers, in the Maine Senate election. The Commission’s Factual and Legal Analysis concludes that although Americans Elect spent about $35 million to gain ballot access for, nominate, and elect unspecified independent candidates for federal office, such electoral activity does not count toward the requisite major purpose of nominating or electing federal candidates because it "does not constitute the nomination or election of a clearly identified candidate."  

In so concluding, the Commission abides by the holding in Unity08 v. FEC. In 2010, Unity08 held that establishing a nominating system for unspecified candidates is not activity that counts toward the major purpose of electing federal candidates. Yet, in 2007, when the Commission issued its Supplemental Explanation & Justification on Political Committee Status, the Commission believed it could count such activities as evidence that a group’s major purpose is electing federal candidates. Thus, the Commission’s dismissal here confirms that we must apply the 2007 E&J in conformity with subsequent court decisions.

1 MUR 6660, Factual & Legal Analysis at 5; see also Buckley v. Valeo, 424 U.S. 1, 79 (1976) (holding that "political committee" regulations "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate"); accord, FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 252-53 (1986).

2 596 F.3d 861, 868-69 (D.C. Cir. 2010).

3 See Advisory Opinion 2006-20 (Unity08) (concluding that a group seeking ballot access for a as-yet undetermined candidate qualified as a political committee); see also Supplemental Explanation and Justification, Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007) (“2007 E&J”).
This limiting principle is significant. As adopted, the 2007 E&J vaguely referred to “federal campaign activity” that would count toward an organization’s major purpose. It is now clear that this phrase is not an “anything political counts” analysis. Many political activities that may appear to be “campaign activity,” broadly defined, are nonetheless beyond the Commission’s regulatory jurisdiction. As Unity08 reminded us, such political activities cannot be invoked to bootstrap Commission regulatory jurisdiction under the major purpose test. This is precisely the point made in the Commission’s controlling Statements of Reasons in MUR 6396 (Crossroads GPS), MUR 6538 (Americans for Job Security), MUR 6589 (American Action Network), and MUR 6402 (American Future Fund), where we adhered to judicial limits on counting an organization’s issue advocacy toward the major purpose of electing federal candidates.

In this matter, the Commission unanimously affirmed that many ostensible “federal campaign activities” do not establish that an organization’s major purpose is electing federal candidates and thus do not trigger federal political committee status. All organizations facing political committee analyses must be judged according to the same standards.

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\(^4\) See also FEC v. GOPAC, Inc., 917 F. Supp. 851 (D.D.C. 1996) (building a “farm team” of potential future federal candidates and sending fundraising letters that did not expressly advocate the election or defeat of a particular identified federal candidate are activities that do not count as electing candidates in determining an organization’s major purpose).

\(^5\) See MUR 6396 (Crossroads GPS), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen; MUR 6538 (Americans for Job Security), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen; MUR 6589 (American Action Network), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen; MUR 6402 (American Future Fund), Statement of Reasons of Commissioners Caroline C. Hunter and Matthew S. Petersen. I was recused from MUR 6402.