

**To:** CELA Docket[CELADocket@fec.gov]  
**From:** Wanda D. Brown  
**Sent:** Tue 3/5/2024 2:30:36 PM  
**Subject:** Meeting at 10:30 am

Good morning. I would like everyone to log on to the enforcement zoom meeting today at 10:30. There are going to be changes to closing procedures and while most won't affect CELA, some will and the timelines will be relevant to our work. I would like for all of us to understand the new procedures. Please ask questions if you like.

Thanks.

Wanda

Wanda D. Brown  
Assistant General Counsel | CELA  
Federal Election Commission  
(202) 694-1513

**To:** Enforcement Staff[EnforcementStaff@fec.gov]  
**Cc:** Lisa Stevenson[LStevenson@fec.gov]; Charles Kitcher[CKitcher@fec.gov]; Claudio Pavia[CPavia@fec.gov]  
**Subject:** Closing the File Procedures - Tip Sheet and Checklist  
**Received:** Wed 6/5/2024 7:35:47 PM  
[New Closing Procedures Guidelines \(6-5-24\).docx](#)

Good afternoon, Enforcement.

Attached is the comprehensive close the file guidance. Please let us know if you have any questions and thank you for your patience and feedback as we adapt to the new procedures. You will note that UPS is now available for letters that we previously sent by certified mail. The new guidance also discusses how to handle the timing of getting CA's signed.

You are all doing an incredible job balancing these new procedures with all of the other amazing work that you do. Please continue to endeavor to complete tasks that affect ALT's workflow promptly (finishing letters, handing off signed CAs as soon as Charles signs them, reviewing the file, etc...). And again, THANK YOU!

As always, please feel free to reach out with questions or feedback.

Adrienne C. Baranowicz  
Deputy Associate General Counsel for Enforcement  
(202) 694-1573

## New Closing-the-File Procedures

Effective March 12, 2024

### Timeline for Closing the File:

- Commission votes to “close the file effective 30 days from the date the certification of this vote is signed (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday).”
- **Day 0:** Commission Secretary signs the certification, starting the 30-day clock, and sends the certification to OGC (including CELA, **Attorney**, Team Lead, and Deputy/AGC)
- **Days 0-1:** Upon receiving the certification, **Attorney** reviews Law Manager to make sure all events are properly recorded, and all Respondents have been addressed in the Commission’s certification. If a notification was rescinded, **Attorney** should confirm that the rescission letter was sent and that all information associated with that Respondent has been removed from Law Manager (*e.g.*, date of notifications and responses). Then **Attorney** sends closeout email to Commissioners Office, cc’ing Enforcement Staff, CELA Docket, Administrative Law Staff, and Press Staff, which reads:
  - On [date], the Commission voted to close MUR 8787 (Swift, *et al.*) 30 days from the date the certification of this vote is signed, or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday. The certification was signed by the Commission Secretary on [date]. Accordingly, the public file will be released on [date of certification + 30 days, or the next business day if day 30 falls on a weekend or holiday], at which time the notification letters will be sent via [method of delivery]. [No Statement of Reasons is required / A Statement of Reasons is required.] The last date to circulate Statements of Reasons for guaranteed inclusion with the closing letters and in the release of the public file is [30th day minus 4 business days].
  - The attorney and team leader should set reminders that the closing letters must be sent at approximately 10am on the 30th day (this reminder should alert the team no later than the 29th day so that the team can account for any unexpected contingencies).
  - If there is a conciliation agreement to be signed, **Attorney** and team leader should set a reminder to provide the agreement to the AGC for signature approximately 7 business days prior to the file going public.
- **Days 0-29:** As before, the Administrative Law Team provides **Attorney** with the case file, which **Attorney** reviews at the earliest opportunity and returns to Administrative Law Team.
- **Days 0-5:** **Attorney** prepares closing letters which are post-dated to the date the file is scheduled to be released and sends them to CELA in electronic copy via email, copying the Administrative Law Staff and Press, no later than 5 days after the certification is

signed. Because the Administrative Law Team is now working on preparing the file at the same time as Enforcement is preparing the closing letters, teams are encouraged to draft and sign closing letters promptly. Sample closing letters are available in ECM. Please use these samples as your templates since they contain updated language that reflects the new closing procedures.

- If the **Attorney** will not be available on the 30th day to send the closing letters, they are responsible for ensuring coverage with their team leader.
- **Attorney** sends all closing letters to CELA in electronic copy, copying the Administrative Law Staff and Press.
- **Attorney** should include any attachments already available at this point, such as approved F&LAs.
- **Days 0-10:** **Attorney** provides hard copies of the letters which require a physical mailing to CELA, as necessary.
  - For letters to be sent by U.S. mail, **Attorneys** print the letters and envelope labels, and label the envelopes.
  - Letters to Complainants (which were formerly sent by certified mail), can now be sent by UPS, provided that the address is not a P.O. Box. The hard copy should be accompanied by the “UPS Service Form” available on **FECNet**. Please select “3-Day Select” for “Service Type” and “Signature Required” under “Optional Services.” **Attorneys** will not need to print envelope labels for UPS mailings but will need to include the UPS Service Form with any applicable letters.
  - Letters should be printed single-sided in color on plain paper.
  - Hard copy closing packages should be placed in the file labeled “outgoing notification letters” located on the desk to the left as you enter the CELA office suite. They should be accompanied by a completed CELA Mailing Instruction Form, available [here](#).
- **Days 21-23 (or 7 business days before the file goes public) [If matter involves conciliation agreement(s)]:** **Attorney** sends the conciliation agreement, and certification to the AGC for signature. The email should provide the following information:
  - MUR:
  - Nature of conciliated violation:
  - Opening offer & offer formula:
  - Approved opening settlement offer (\$):
  - Admission (clean/qualified):
  - Contention language (Y/N):

As soon as the Conciliation Agreement is signed, **Attorney** should email the executed agreement to CELA, Press and ALT for inclusion in the permanent file.

- **No later than Day 30-minus-4-business-days (Day ~26)**: **Attorney** should receive any Statements of Reasons that are to go public with the file and be included with the closing letters. **Attorney** reviews any Statements of Reasons that are circulated as soon as possible upon receipt.
- **Day 29 (or one business day prior to the file going public)**: **Attorney** finalizes letter packages, both hard copy and pdf, as necessary.
  - **Attorney** emails CELA (cc to ALT, Press and Public Records) stating whether there have been changes or additions since CELA received the closing package and instructing them to place the closing packages in tomorrow's mail. Do not re-attach unchanged files to this email. Examples are below:

- *Example 1: No Changes*

Good afternoon CELA.

The file in MUR 9999 ([Respondent]) is scheduled to go public tomorrow. We provided you with the letters for inclusion in the file on [date]. There have not been any changes to the materials. After the packets are sent by email tomorrow, we will let you know.

There are two (2) letters, one to [Complainant 1] and one to [Complainant 2], that will need to be sent tomorrow via UPS/mailed by certified mail, which have already been provided to CELA.

Thank you.

- *Example 2: New SOR*

Good afternoon CELA.

The file in MUR 9999 ([Respondent]) is scheduled to go public tomorrow. We provided you with the letters for inclusion in the file on [date]. Since that time, Commissioner[s] [Name/s] circulated a statement of reasons, which has been added to each of the attached letters. These are the final electronic letter packets containing the statement of reasons for inclusion in the permanent file. The letter packets are otherwise unchanged. After the packets are sent by email tomorrow, I will let you know.

There are two (2) letters, one to [Complainant 1] and one to [Complainant 2], that will need to be sent tomorrow via UPS/by certified mail, which have already been provided to CELA. Please print the attached Statement of Reasons and add it to the hard copy letters and place those letters in tomorrow's mail.

Thank you.

- *Example 3: Signed CA*  
Good afternoon CELA.

The file in MUR 9999 ([Respondent]) is scheduled to go public tomorrow. We provided you with the letters for inclusion in the file on [date]. On [date] the attached conciliation agreement was executed, which has been added to [each] of the attached letters. These are the final electronic letter packets for inclusion in the permanent file. The letter packets are otherwise unchanged. After the packets are sent by email tomorrow, I will let you know.

There are two (2) letters, one to [Complainant 1] and one to [Complainant 2], that will need to be sent tomorrow via UPS/certified mail, which have already been provided to CELA. Please print the attached conciliation agreement and add it to the hard copy letters and place those letters in tomorrow's mail.

Thank you.

- **Attorney** must also add SORs to PDF versions of closing package to be emailed on Day 30.
- **Day 30, 10:00 AM:** **Attorney** emails out closing letters and includes any available Statements of Reasons and F&LAs.
- **Day 30:** **Attorney** emails CELA stating that email closing letter packages have been sent. Do not re-attach the files to this email.
- **Post Closing:** **Attorney** reviews Law Manager one final time to confirm that the parties and other closing information (opposing counsel, stages, etc...) appear accurate.

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## Case Closing Checklist

MUR \_\_\_\_\_

<input type="checkbox"/>	Date Due (Days 0-1): _____	Send closing email to Commissioners Office, cc'ing Enforcement Staff, CELA Docket, Administrative Law Staff, and Press Staff
<input type="checkbox"/>	Date Due (Days 0-5): _____	Prepare closing letters post-dated to Day 30.
<input type="checkbox"/>	Date Due (Days 0-5): _____	Set reminder for self and team leader for Day 29 to send closing letters.  Set reminder to get CA signed by AGC approximately one week before Day 30 (if applicable).
<input type="checkbox"/>	Date Due (Days 0-7): _____	Send closing letters to CELA by email, cc'ing Administrative Law Team, and Press.
<input type="checkbox"/>	Date Due (Days 0-10): _____	Place hard-copy letters in CELA inbox with labeled envelopes, UPS Form or certified mail documentation, and CELA mailing instructions form.
<input type="checkbox"/>	Date Due (Days 0-24): _____	Review case file and return to Administrative Law Team as soon as possible upon receipt.
<input type="checkbox"/>	Date Due (Days 0-26): _____	Review Statements of Reasons, if applicable
<input type="checkbox"/>	Date Due (Day 21-24): _____	Have AGC sign the CA and provide the signed electronic CA to CELA and the Administrative Law Team.
<input type="checkbox"/>	Date Due (Day 29): _____	Finalize electronic closing packages.  Send CELA "Day 29 email" identifying changes, if any, to the closing letter packages.
<input type="checkbox"/>	Date Due (Day 30, 10 AM): _____	Send closing packages.
<input type="checkbox"/>	Date Due (Day 30): _____	Send CELA Day 30 confirmation email.

**To:** Adrienne Baranowicz[abaranowicz@fec.gov]  
**Cc:** Charles Kitcher[CKitcher@fec.gov]; Claudio Pavia[CPavia@fec.gov]  
**From:** Cynthia Myers  
**Sent:** Tue 2/27/2024 5:21:08 PM  
**Subject:** RE: Setting up an enforcement training

Sure thing!

**From:** Adrienne Baranowicz <abaranowicz@fec.gov>  
**Sent:** Tuesday, February 27, 2024 12:10 PM  
**To:** Cynthia Myers <cmyers@fec.gov>  
**Cc:** Charles Kitcher <CKitcher@fec.gov>; Claudio Pavia <CPavia@fec.gov>  
**Subject:** Setting up an enforcement training

Hi Cindy,

Could you please help us set up a zoom meeting for all of Enforcement for 10:30am March 5<sup>th</sup> titled "Enforcement-wide training regarding new case closing procedures" (this overlaps with the current scheduling for the team leader meeting but that's ok).

Thanks so much!

Adrienne C. Baranowicz  
Deputy Associate General Counsel for Enforcement  
(202) 694-1573

**To:** Lawrence Calvert[LCalvert@fec.gov]; Charles Kitcher[CKitcher@fec.gov]; Gregory Baker[gbaker@fec.gov]  
**Cc:** Adrienne Baranowicz[abaranowicz@fec.gov]; Claudio Pavia[CPavia@fec.gov];  
McClarinC[McClarinC@fecgov.onmicrosoft.com]; Neven Stipanovic[NStipanovic@fec.gov]; Jason Hamilton[jhamilton@fec.gov];  
Christopher H. Bell[chbell@fec.gov]  
**From:** Lisa Stevenson  
**Sent:** Wed 4/10/2024 2:59:51 PM  
**Subject:** FW: Case-dismissal procedures  
Shapiro-Wehle letter to FEC re Dismissal Procedures.pdf

Please see attached letter raising multiple questions regarding our new CTF procedures.

Lisa J. Stevenson  
Acting General Counsel  
Federal Election Commission  
lstevenson@fec.gov  
202-694-1613

**From:** Shapiro, Sidney <shapirsa@wfu.edu>  
**Sent:** Wednesday, April 10, 2024 10:42 AM  
**To:** Commissioners <Commissioners@fec.gov>; CommissionerBroussard (External) <CommissionerBroussard@fec.gov>;  
CommissionerCooksey (External) <CommissionerCooksey@fec.gov>; CommissionerDickerson (External)  
<CommissionerDickerson@fec.gov>; CommissionerLindenbaum (External) <CommissionerLindenbaum@fec.gov>;  
CommissionerTrainor (External) <CommissionerTrainor@fec.gov>; FEC Commissioner Ellen L. Weintraub  
<CommissionerWeintraub@fec.gov>; ebroussard@fec.gov; Sean Cooksey <scooksey@fec.gov>; Allen Dickerson  
<adickerson@fec.gov>; Dara Lindenbaum <dlindenbaum@fec.gov>; Trey Trainor <TTrainor@fec.gov>; Ellen Weintraub  
<EWeintraub@fec.gov>; commissionsecretary@fec.gov; Laura Sinram <LSinram@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>  
**Cc:** Kimberly Wehle <kwehle@ubalt.edu>  
**Subject:** Case-dismissal procedures

Dear Chairman Cooksey, Vice Chair Weintraub, and Commissioners:

Please find attached our letter respectfully asking the Commission to add a discussion of its case-dismissal procedures to the agenda for its April 18, 2024 open meeting and to stay implementation of the new procedures pending a public comment period and thorough airing of the Commission's obligations under established law.

Sincerely yours,  
Sid Shapiro

Sidney A. Shapiro  
Frank U. Fletcher Chair in Law, WFU  
Vice-President, Center for Progressive Reform (CPR)  
785-550-3053

Forthcoming June 2024

April 10, 2024

Federal Election Commission  
1050 First St., N.E.  
Washington, DC 20463

*via email*

Chairman Cooksey, Vice Chair Weintraub, Commissioners,

We write to you as professors of law who teach and write in the field of administrative law. As explained below, we are concerned that the Commission's new case-dismissal procedures, which were announced via a press release on April 3, 2024, are inconsistent with D.C. Circuit and Supreme Court precedent requiring that agencies base their decision-making on an existing administrative record so as to facilitate and enable proper judicial review. In particular, the unusual and truncated mechanism the Commission has chosen for adopting what it styles as "new procedures for public disclosure" sidesteps the importance of, and implications of, the D.C. Circuit's decision in *End Citizens United v. FEC*, 69 F.4th 916 (D.C. Cir. 2023), and the Supreme Court's landmark ruling in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 US 402 (1971). This issue is one of immense public importance. As such, it deserves more careful and open consideration before the Commission embarks upon any new procedures.

Accordingly, we respectfully ask that the Commission add discussion of its case-dismissal procedures to the agenda for its April 18, 2024 open meeting and stay implementation of the new procedures pending a public comment period and thorough airing of the Commission's obligations under established law. Any new procedures should be adopted through an on-the-record vote taken at an open Commission meeting. Our further suggestions regarding this process are explained below.

According to the Commission, the announced procedures respond to the D.C. Circuit's decision in *End Citizens United*, which found a non-contemporaneous Commissioner Statement of Reasons to constitute an improper *post-hoc* rationalization and therefore rendered the Commission's dismissal of the enforcement complaint contrary to law. The court further determined that the Commissioners who are required to explain themselves "were obligated to issue a contemporaneous statement 'explaining their votes,' which the court would treat as the Commission's reason for the dismissal." *End Citizens United*, 69 F.4th at 921.

To be sure, this holding addressed the extremely tardy release of the statement at issue in that case. However, the announced procedures appear to mistakenly interpret the decision as

requiring the Commission to issue explanatory statements contemporaneously *with its public release of the enforcement file*.

This interpretation strikes us as patently incorrect. The announced procedures create a 30-day period starting when the Commission Secretary certifies the Commission's vote to close an enforcement matter, after which "that action will be effective." Even assuming arguendo that the announced procedures require all Commissioner Statements of Reasons to be in the record within those 30 days (which is not at all certain—it is implied but not stated directly), it is not enough for these statements to be within the administrative record by the time the record reaches a court. The central judicial concern regarding such agency rationales is not whether they are released to litigants and the public at some earlier point in the future but, rather, whether the explanation existed—and was considered by—the agency *when it made its decision*. The Commission should thus adopt new procedures that mandate a Statement of Reasons at the time of its dismissal vote so as to perfect the record for judicial review and put interested parties on notice of the reasons behind the Commission's actions.

A core holding of the leading Supreme Court case in this area of law is that a document must be in the administrative record *at the time the agency makes the decision being reviewed* to be considered by a court. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 US 402, 420 (1971) (judicial review "is to be based on the full administrative record that was before the Secretary at the time he made his decision"); *see also Environmental Defense Fund, Inc. v. Costle*, 657 F.2d 275, 284 (D.C. Cir. 1981) ("It is well settled that judicial review of agency action is normally confined to the full administrative record before the agency at the time the decision was made"). The D.C. Circuit has allowed limited exceptions to this rule, but they do not allow for the addition of rationales or rationalizations that were not already in the original record. *See Costle*, 657 F.2d at 285 (new materials should be merely explanatory of the original record and should contain no new rationalizations). The Commission's new procedures appear to ignore these precedents.

As a matter of logic and common sense, it is beyond dispute that the Commission makes no decision when it publicly releases an enforcement file. In lawsuits filed pursuant to 52 U.S.C. § 30109(a)(8), the decision being reviewed is the Commission's *prior* successful vote to dismiss an enforcement complaint. The firm rule of *Overton Park* and *Costle* is that a court must disregard any document not before the Commission at the time it votes to dismiss an enforcement matter. The public release of an enforcement file is set in motion by the dismissal vote, but it is not itself a decision of the Commission. An administrative record that includes a rationale for agency action added after the vote to dismiss has occurred effectively has left the vote to dismiss *without* a rationale in the administrative record and presumptively invalid under *Overton Park*.

Nothing prevents the Commission from adopting a procedure moving forward that complies with this foundational rule of administrative law by preparing a Statement of Reasons *before* it votes to dismiss an enforcement complaint. A Statement of Reasons explains the actions of those Commissioners who voted against a motion to find reason to believe (RTB) that the respondents violated the Act. The vote on the RTB motion can be cast, the objecting Commissioners can write their statement explaining their vote on the RTB motion, and then the Commission can consider that statement and vote on a dismissal motion that incorporates it.

If the motion passes by a majority vote and the matter is dismissed, that Statement of Reasons—which is part of the “full administrative record before the agency at the time the decision was made,” *Costle*, 657 F.2d at 284—can then properly be considered by a court reviewing the dismissal.

Note that this closely parallels the procedure the Commission currently follows every time it successfully votes to find reason to believe a respondent did violate the Act. The Commission votes on an RTB motion that incorporates a factual and legal analysis that has been negotiated to garner four votes. That analysis is treated by reviewing courts as the position of the Commission. Moreover, every successful motion to issue an advisory opinion contains text in the opinion that at least four Commissioners have agreed upon. Every successful motion to promulgate a regulation includes text in the rule and the explanation and justification that has garnered the support of at least four Commissioners.

We will note that while a court should certainly require the Commission to adhere to longstanding and foundational applicable precedent, individual Commissioners can condition their support of dismissal motions on inclusion of a Statement of Reasons. Such a voting policy would avoid the kind of irrational outcome seen in [MUR 7784 \(Make America Great Again PAC\)](#). In that matter, a Commissioner who had voted unsuccessfully to pursue the complaint’s allegations voted against a motion to dismiss the complaint pursuant to prosecutorial discretion, causing that motion to fail. She then cast the controlling vote in favor of a successful motion to close the matter’s administrative file, despite its lack of an accompanying rationale. A month later, when her colleagues issued their Statement of Reasons, that Commissioner discovered that her controlling vote had indeed dismissed [a complaint alleging an almost \\$800 million violation](#) pursuant to prosecutorial discretion. It is not clear to us how the Commission’s ongoing practice, which falls so far short of basic administrative law principles and directly applicable judicial precedent, has been allowed to stand for so long.

Should the Commission choose to discuss its announced procedures at its April 18, 2024 open meeting, we encourage the Commission and its General Counsel to determine what basis exists—if any—for asserting that the procedures comply with the mandates of *Overton Park* and *Costle* as they still fail to require that the Commission’s dismissal rationale be before the

Commission at the time it votes on dismissal motions. We offer this language, which, if added to the Commission's case-dismissal procedures, would satisfy that requirement:

*The Commission will incorporate a Statement of Reasons into all motions to close enforcement matters. This statement will constitute the entirety of the administrative record reflecting the Commission's rationale for its dismissal of the complaint.*

The announced procedures, as written, leave several important questions unanswered:

- Do the announced procedures require that *all* Statements of Reasons be in a closed matter's administrative record when it is released to the public 30 days after the Commission Secretary certifies the dismissal vote?
- Under the announced procedures, if those 30 days should elapse without a controlling Statement of Reasons being placed in the record, will Commissioners be able to add them later and expect that they will be considered by a reviewing court? (If so, these new procedures are no better than the previous, judicially invalidated, Commission practice.)
- If, under the announced procedures, Commissioners are *not* allowed to add Statements of Reasons to closed administrative records, when an administrative record lacking an SOR comes before a reviewing court, will the Commission represent to the court that there is no rationale for the dismissal it is reviewing?

Thank you for your consideration.

Sincerely,



Sidney Shapiro  
Frank U. Fletcher Chair in Administrative Law  
Professor of Law  
Wake Forest Law



Kimberly Wehle  
Professor of Law  
University of Baltimore School of Law

**To:** Jason Bucelato[jbucelato@fec.gov]  
**From:** Judith Ingram  
**Sent:** Thur 4/11/2024 1:24:06 PM  
**Subject:** RE: Thursday

Acccck!

Judith Ingram  
Press Officer  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

202/694-1219 (o)  
202/531-2882 (m)

**FEC Notify: Want to be notified by email when campaign finance reports are received by the agency? Sign up here:**  
<https://fecnotify.fec.gov/fecnotify/login/>.

*This correspondence provides information about generally applicable provisions of federal campaign finance law, including the Federal Election Campaign Act (FECA), its amendments and Commission regulations. The Commission's application of these laws in previous enforcement actions or advisory opinions may also be discussed. However, the Federal Election Commission (FEC) Press Office cannot comment on the application of these laws to the activities of specific candidates or committees. FECA prohibits the Press Office from discussing any complaints that are pending before the FEC.*

**From:** Jason Bucelato <jbucelato@fec.gov>  
**Sent:** Thursday, April 11, 2024 9:23 AM  
**To:** Judith Ingram <JIngram@fec.gov>  
**Subject:** RE: Thursday

Thanks!  
Happy New MUR Closing Procedure Publishing Day!

**From:** Judith Ingram <JIngram@fec.gov>  
**Sent:** Thursday, April 11, 2024 9:22 AM  
**To:** Jason Bucelato <jbucelato@fec.gov>  
**Subject:** RE: Thursday

(b) (6)

Judith Ingram  
Press Officer  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

202/694-1219 (o)  
202/531-2882 (m)

**From:** Jason Bucelato <jbucelato@fec.gov>  
**Sent:** Thursday, April 11, 2024 7:14 AM  
**To:** Eileen Leamon <eleamon@fec.gov>; Julie Kinzer <JKinzer@fec.gov>; Latonya Prescott <lprescott@fec.gov>; Heidi Wangelin <hwangelin@fec.gov>  
**Cc:** Judith Ingram <JIngram@fec.gov>  
**Subject:** Thursday

Good morning!

Hope everyone had a great evening.

(b) (6)

Hope everyone has a wonderful day!

Jason

Jason Bucelato  
Senior Public Affairs Specialist  
Public Records Office  
Federal Election Commission

## **Work schedule**

*In-person:*

Tuesday and Thursday

7am to 3:30pm

*Telework:* 8:30am to 5pm

**To:** Enforcement Staff Attorneys[EnforceCirc@fec.gov]  
**Cc:** Claudio Pavia[CPavia@fec.gov]; Wanda D. Brown[WBrown@fec.gov]; Ana Pena-Wallace[APena-Wallace@fec.gov]; Mark Shonkwiler[mshonkwiler@fec.gov]; Aaron Rabinowitz[arabinowitz@fec.gov]; Anne Robinson[ARobinson@fec.gov]  
**Sent:** Thur 5/15/2025 1:51:58 PM  
**Subject:** Updated Enforcement Forms and Guides

Good morning, Enforcement!

We updated two Enforcement documents in ECM today. Please update whatever copies you keep of these. The changes are summarized below.

1. FGCR template for Externally Generated Matters- the document has been updated so that the sample recommendations now reflect the updated “close the file” recommendations. It also removes Charles’s name from the signature block and contains a formatting fix. Please use this document as your template to avoid carrying formatting errors into future reports.
2. Closing Procedures Guidelines – the portion of this document that discusses finalizing an approved CA has been updated. Going forward, when you email Lisa to get her signature on a document, you will want to “cc” CELA docket. You will continue to provide answers to the form tracking questions that accompany our CA’s and will also note the date a file is expected to close. When you obtain the CA, you will want to forward the executed copy to CELA Docket, Press, Public Records and ALT. Because our CA’s are signed so close to the file’s release, handing the signed CA off to every division who handles file closing tasks will help move things along.

(b) (7)(E)

**To:** Enforcement Staff[EnforcementStaff@fec.gov]  
**Cc:** Charles Kitcher[CKitcher@fec.gov]; Adrienne Baranowicz[abaranowicz@fec.gov]  
**From:** Claudio Pavia  
**Sent:** Thur 4/11/2024 7:14:44 PM  
**Subject:** Case Closing Procedures

Team,

For your convenience, we've uploaded the emailed guidance on the new case closing procedures to ECM, specifically, (b) (7)(E) (b) (7)(E) Case Closing Procedures. As new guidance is issued, we'll continue to upload. After the first few mailings that are happening right now, we'll have a better sense as to how everything works and can update accordingly.

Best,

CJ

**To:** Dara Lindenbaum[dlindenbaum@fec.gov]; Sean Cooksey[scooksey@fec.gov]  
**Cc:** Commissioners Office[CommissionersOffice@fec.gov]; Lisa Stevenson[LStevenson@fec.gov]; Alec Palmer[APalmer@fec.gov]; Charles Kitcher[CKitcher@fec.gov]; Claudio Pavia[CPavia@fec.gov]; Christine McClarin[cmccclarin@fec.gov]; Judith Ingram[JIngram@fec.gov]; Eileen Leamon[eleamon@fec.gov]; Jason Bucelato[jbucelato@fec.gov]; Candace Salley[csalley@fec.gov]; Roy Luckett[rluckett@fec.gov]  
**From:** Gregory Baker  
**Sent:** Thur 3/23/2023 6:53:08 PM  
**Subject:** RE: Revised Case Closing Procedures -- Updates Jan. 20022 Guidance

I am happy to discuss and answer any questions you may have. Thank you.

---

**From:** Dara Lindenbaum <dlindenbaum@fec.gov>  
**Sent:** Thursday, March 23, 2023 2:08 PM  
**To:** Gregory Baker <gbaker@fec.gov>; Sean Cooksey <scooksey@fec.gov>  
**Cc:** Commissioners Office <CommissionersOffice@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Alec Palmer <APalmer@fec.gov>; Charles Kitcher <CKitcher@fec.gov>; Claudio Pavia <CPavia@fec.gov>; Christine McClarin <cmccclarin@fec.gov>; Judith Ingram <JIngram@fec.gov>; Eileen Leamon <eleamon@fec.gov>; Jason Bucelato <jbucelato@fec.gov>; Candace Salley <csalley@fec.gov>; Roy Luckett <rluckett@fec.gov>  
**Subject:** RE: Revised Case Closing Procedures -- Updates Jan. 20022 Guidance

Thank you. I'm confused about some of the language so we are adding it to the chair/vice chair agenda on Monday.

---

**From:** Gregory Baker <gbaker@fec.gov>  
**Sent:** Thursday, March 23, 2023 2:05 PM  
**To:** Dara Lindenbaum <dlindenbaum@fec.gov>; Sean Cooksey <scooksey@fec.gov>  
**Cc:** Commissioners Office <CommissionersOffice@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Alec Palmer <APalmer@fec.gov>; Charles Kitcher <CKitcher@fec.gov>; Claudio Pavia <CPavia@fec.gov>; Christine McClarin <cmccclarin@fec.gov>; Judith Ingram <JIngram@fec.gov>; Eileen Leamon <eleamon@fec.gov>; Jason Bucelato <jbucelato@fec.gov>; Candace Salley <csalley@fec.gov>; Roy Luckett <rluckett@fec.gov>  
**Subject:** Revised Case Closing Procedures -- Updates Jan. 20022 Guidance

Commissioners,

In order to address some of the confusion that has arisen over the case closing procedures, we have made a couple of adjustments to the procedures moving forward. Notably, we have made two additions to the procedures we originally sent to the Commission in January 2022 which we believe will lead to greater transparency: (1) when the Administrative Law Team sends its notification to the Commission, it will now include the language that the file will go public in five business days; and (2) the Press Office will now be providing the Commission with a list of matters scheduled for publication every Friday (typically listing matters scheduled for publication for the next three weeks). Like before, the due date will be calculated applying 30 days from the date of the *last* closing letter, as indicated in the "case closed" email. If the due date should fall on a weekend or holiday, we will use the *prior* Friday or business day. We remind the Commission that all draft SORs should be sent to the Administrative Law Team at least two working days before the file is scheduled to be made public. Also, to clarify our previous guidance, the public file will *not* be released prior to the 30-day window, even if it is ready to go earlier. Please let us know if you have any questions regarding these adjustments to the process. Thank you.

#### Timeline

- Case closes pursuant to Commission vote
- OCS sends vote certification to Enforcement/CELA
- OGC sends "case closed" email (*template below*) with anticipated release date
- Notification Letters Sent – *Day 1*
- Administrative Law Team Prepares File – *Day 1 to Day 24*
- File sent to Press and Public Disclosure Offices – *by Day 25*
- Administrative Law Team notifies Commission the case will be released in five business days – *by Day 25*
- The Press Office notifies Commission of the status of all recently closed cases (listing matters for the next three weeks) – *every Friday*
- Draft SORs to the Administrative Law Team – *Day 28*
- File Made Public – *Day 30*

Template:

MUR XXXX (Smith, *et al.*) is now closed. The notification letters will be sent by close of business on (insert date). We anticipate that the public file will be released on or about [date = 30 days from the date of the last closing letter]. No Statement of Reasons is required. [or] A Statement of Reasons is required.

**Gregory R. Baker**

*Deputy General Counsel*

*(202)694-1612*

*Office Hours Tues/Thurs both weeks 8:30-5:00*

**To:** Dara Lindenbaum[dlindenbaum@fec.gov]; Sean Cooksey[scooksey@fec.gov]  
**Cc:** Commissioners Office[CommissionersOffice@fec.gov]; Lisa Stevenson[LStevenson@fec.gov]; Alec Palmer[APalmer@fec.gov]; Charles Kitcher[CKitcher@fec.gov]; Claudio Pavia[CPavia@fec.gov]; Christine McClarin[cmccclarin@fec.gov]; Judith Ingram[JIngram@fec.gov]; Eileen Leamon[eleamon@fec.gov]; Jason Bucelato[jbucelato@fec.gov]; Candace Salley[csalley@fec.gov]; Roy Lockett[rlockett@fec.gov]  
**From:** Gregory Baker  
**Sent:** Mon 3/27/2023 4:26:53 PM  
**Subject:** RE: Revised Case Closing Procedures -- Updates Jan. 2022 Guidance

Based on my discussion with the Chair and Vice Chairman this morning, we are adding some clarifying information to the procedures originally sent *Thursday, March 23<sup>rd</sup>*. The email that is sent by the Administrative Law Team, no earlier than the 25<sup>th</sup> day, will include the date the file will be made public. Also, if the publication date should fall on a weekend, the date provided to the Commissioners will be the actual date of publication – usually Friday. Please see the revised language below, Thank you.

#### Timeline

- Case closes pursuant to Commission vote
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- Administrative Law Team notifies Commission the case will be released in five business days and includes the date of publication – *no earlier than Day 25*
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- Draft SORs to the Administrative Law Team – *Day 28*
- File Made Public – *Day 30 (If date falls on a weekend, the prior business day – Friday - will be used)*

Template:  
MUR XXXX (Smith, *et al.*) is now closed. The notification letters will be sent by close of business on (insert date). We anticipate that the public file will be released on or about [date = 30 days from the date of the last closing letter]. No Statement of Reasons is required. [or] A Statement of Reasons is required.

---

**From:** Gregory Baker

**Sent:** Thursday, March 23, 2023 2:05 PM

**To:** Dara Lindenbaum <dlindenbaum@fec.gov>; Sean Cooksey <scooksey@fec.gov>

**Cc:** Commissioners Office <CommissionersOffice@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; Alec Palmer <APalmer@fec.gov>; Charles Kitcher <CKitcher@fec.gov>; Claudio Pavia <CPavia@fec.gov>; Christine McClarin <cmccclarin@fec.gov>; Judith Ingram <JIngram@fec.gov>; Eileen Leamon <eleamon@fec.gov>; Jason Bucelato <jbucelato@fec.gov>; Candace Salley <csalley@fec.gov>; Roy Lockett <rlockett@fec.gov>

**Subject:** Revised Case Closing Procedures -- Updates Jan. 2022 Guidance

Commissioners,

In order to address some of the confusion that has arisen over the case closing procedures, we have made a couple of adjustments to the procedures moving forward. Notably, we have made two additions to the procedures we originally sent to the Commission in January 2022 which we believe will lead to greater transparency: (1) when the Administrative Law Team sends its notification to the Commission, it will now include the language that the file will go public in five business days; and (2) the Press Office will now be providing the Commission with a list of matters scheduled for publication every Friday (typically listing matters scheduled for publication for the next three weeks). Like before, the due date will be calculated applying 30 days from the date of the *last* closing letter, as indicated in the “case closed” email. If the due date should fall on a weekend or holiday, we will use the *prior* Friday or business day. We remind the Commission that all draft SORs should be sent to the Administrative Law Team at least two working days before the file is scheduled to be made public. Also, to clarify our previous guidance, the public file will *not* be released prior to the 30-day window, even if it is ready to go earlier. Please let us know if you have any questions regarding these adjustments to the process. Thank you.

## Timeline

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## Template:

MUR XXXX (Smith, *et al.*) is now closed. The notification letters will be sent by close of business on (insert date). We anticipate that the public file will be released on or about [date = 30 days from the date of the last closing letter]. No Statement of Reasons is required. [or] A Statement of Reasons is required.

### **Gregory R. Baker**

*Deputy General Counsel*

*(202)694-1612*

*Office Hours Tues/Thurs both weeks 8:30-5:00*

**To:** Adrienne Baranowicz[abaranowicz@fec.gov]  
**From:** Microsoft Outlook Reactions  
**Sent:** Thur 3/14/2024 6:17:57 AM  
**Subject:** Reaction Daily Digest - Thursday, March 14, 2024



  **Jason Bucelato reacted to your message** Wed 03/13/2024 14:30

**RE: New File Closing Procedures**

Would Tuesday 11am work? I'll get a calendar invite and zoom link out. From: Judith Ingram <JIngram@fec.gov>  
Sent: Wednesday, March 13, 2024 1:56 PM To: Lawrence Calvert <LCalvert@fec.gov>; Laura Sinram  
<LSinram@fec.gov>; Jason Bucelato <jbucelato@f

[Go to message](#)

[Unsubscribe](#) • [Privacy statement](#)

Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

**To:** Judith Ingram[JIngram@fec.gov]  
**From:** Myles G. Martin  
**Sent:** Tue 4/2/2024 7:32:44 PM  
**Subject:** RE: Have a wonderful evening, Myles! I'll do N&V tomorrow and set up the new case closing procedures email in Wagtail.

Thanks, Judy! A great b-day "gift" was actually the relief that comes with getting the statistical release out the door.

Have a great evening and "see" you tomorrow.

Myles Martin  
Public Affairs Specialist  
Press Office, Federal Election Commission  
(202) 694-1221 (o)  
[mmartin@fec.gov](mailto:mmartin@fec.gov)

This correspondence provides information about generally applicable provisions of federal campaign finance law, including the Federal Election Campaign Act (FECA), its amendments and Commission regulations. The Commission's application of these laws in previous enforcement actions or advisory opinions may also be discussed. However, the Federal Election Commission (FEC) Press Office cannot comment on the application of these laws to the activities of specific candidates or committees. FECA prohibits the Press Office from discussing any complaints that are pending before the FEC.

**From:** Judith Ingram <JIngram@fec.gov>  
**Sent:** Tuesday, April 2, 2024 3:31 PM  
**To:** Myles G. Martin <MMartin@fec.gov>  
**Subject:** Have a wonderful evening, Myles! I'll do N&V tomorrow and set up the new case closing procedures email in Wagtail.

Judith Ingram  
Press Officer  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463

202/694-1219 (o)  
202/531-2882 (m)

**To:** Zachary Morgan[zmorgan@fec.gov]  
**From:** Christopher Curran  
**Sent:** Tue 4/9/2024 6:20:59 PM  
**Subject:** Voice Mail (58 seconds)  
[audio.mp3](#)

Hey, Zach, Chris Curran, I'm getting back to you with your in response to your e-mail. So the language in our closing case, closing emails is kind of derived and given to us by the folks who are kind of leading the effort to kind of rejigger the case closing procedures within OG. That's definitely not me. So I would direct your question to probably either probably Adrian Brenowitz is probably the lead person. See who's kind of the point person on the new case closing procedures and what we all have to do to make sure things get out in time. But also maybe Wanda, the head of the head of Cela, She, those are probably the two best people to talk to, kind of about the new closing procedures and the language in our closing emails. I'll be doing well. Talk to you later. Bye.

You received a voice mail from Christopher Curran at [CCurran@fec.gov](mailto:CCurran@fec.gov).

Work: [+1 202-694-1362](tel:+12026941362)  
Email: [CCurran@fec.gov](mailto:CCurran@fec.gov)

**Thank you for using Transcription! If you don't see a transcript above, it's because the audio quality was not clear enough to transcribe.**

[Set Up Voice Mail](#)

**RECEIVED**

By Office of the Commission Secretary at 4:56 pm, Aug 15, 2023

**SENSITIVE**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

AGENDA DOCUMENT NO. X23-33  
AGENDA ITEM  
For meeting of **August 29, 2023**

August 15, 2023

**MEMORANDUM**

**PRIVILEGED AND CONFIDENTIAL**  
**PREDECISIONAL AND DELIBERATIVE**

**TO:** The Commission

**FROM:** Lisa J. Stevenson *LJS*  
Acting General Counsel

Gregory R. Baker *GRB*  
Deputy General Counsel for Administration

Kevin Deeley *KD*  
Associate General Counsel for Litigation

Charles Kitcher *CK*  
Associate General Counsel for Enforcement

Neven Stipanovic  
Associate General Counsel for Policy

Lawrence L. Calvert *LLC*  
Special Counsel to the General Counsel

**RE:** Procedural Options for the Commission in the Wake of *End Citizens United* (b) (5)

(b) (5)  
Page 2

Two recent court decisions are likely to have a significant effect on Commission procedures surrounding voting and statements of reasons (SORs) in enforcement matters.

First, on June 9, in *End Citizens United PAC v. FEC*, 69 F.4<sup>th</sup> 916 (D.C. Cir. 2023), a panel of the U.S. Court of Appeals for the District of Columbia Circuit held that a statement of reasons issued 66 days after a Commission vote to close the file and four days after the dismissal suit was filed was *post hoc*, rather than contemporaneous. The court found this contrary to the controlling commissioners' obligation to issue a statement "at the time when a deadlock vote results in an order of dismissal," 69 F.4<sup>th</sup> at 921 (quoting *Common Cause v. FEC*, 842 F.2d 436, 449 (D.C. Cir. 1988)). The court did not provide clear guidance on whether the statements need to be placed into the file on the day of the dismissal vote or whether some period after the vote, such as within 15-30 days, would likely be in advance of litigation and sufficient.

(b) (5)



(b) (5)

And *End Citizens United* provides that statements of reasons – which are required whenever the Commission, including by deadlocked vote, fails to go forward contrary to OGC's recommendation – must be issued at least roughly "at the time" of the vote.

The D.C. Circuit issued its mandate in *End Citizens United* on August 1, 2023, and the Commission awaits an order from the District Court remanding the underlying MUR (MUR 7609, Trump). (b) (5)

(b) (5)

Page 3

(b) (5)

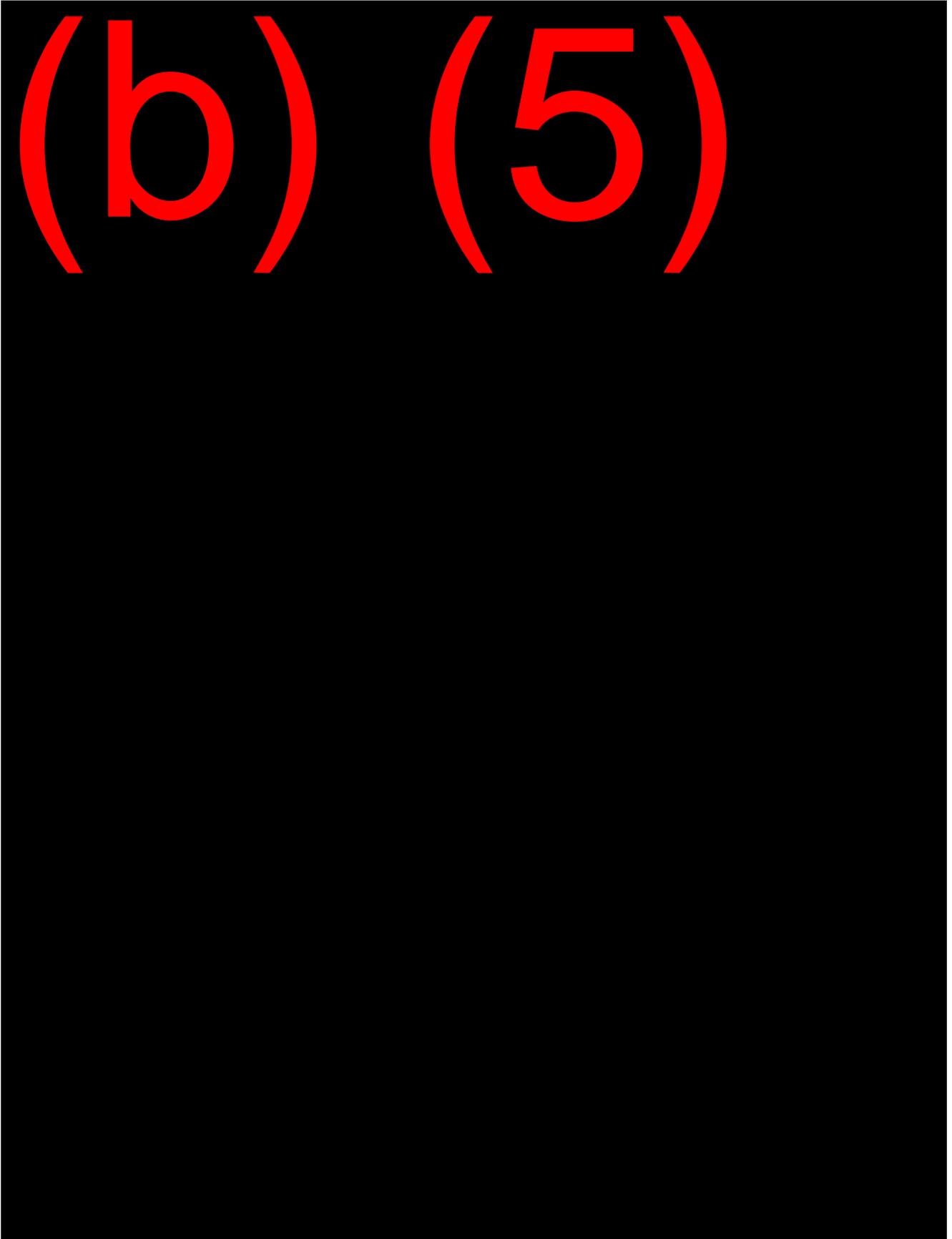
But given the possibility that both cases will stand, and in light of discussion at the Commission's executive session of July 11, we have been considering options for changes to the Commission's procedures around voting, statements of reasons, and file closing that conform generally to the opinions while preserving Commission flexibilities to the maximum extent possible.

The balance of this memorandum presents a number of options we have considered, along with the pros and cons we have identified for each. They are not presented in any particular order. Additionally, while it sets forth those options that we have currently identified, there could be others. But of those we have identified, OGC recommends that the Commission pursue the option listed below as Option 4A, for the reasons set forth at the end of the memorandum.

(b) (5)

(b) (5)

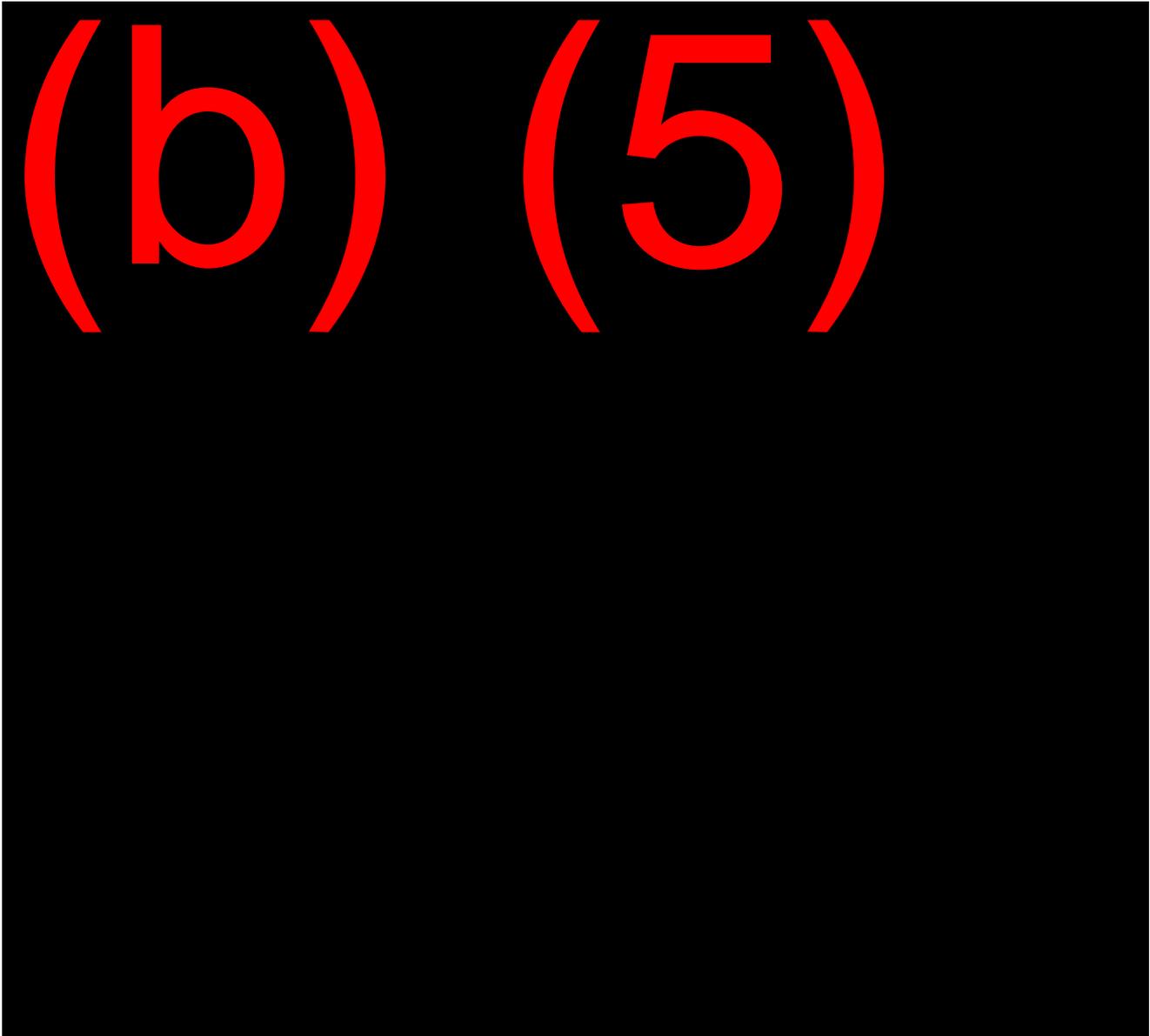
Page 4



(b) (5)

(b) (5)

Page 5



**OPTION 4A: VARIATION ON OPTION 3**

HOW IT WOULD WORK: (b) (5), the Commission would vote to “close the file effective 30 days after certification of the vote to do so,” and commissioners would use the 30 days to complete any required SORs. Notifications – with SORs, if they were ready – would go out at 30 days. The difference is that ALT would begin preparation of the file immediately upon completion of the vote, rather than waiting for notifications to go out and for the 30-day clock to start under the regulation. Thus, (b) (5), at 30 days the file would close and notifications would go out; but the file would be publicly released at that time as well.

(b) (5)  
Page 6

PROS:

\*(b) (5), there would be some flexibility for the Commission to continue to seek consensus after an initial split vote, but not as much (b) (5). Here, too, there would be ample space for any necessary votes to correct errors without the need to reopen the file.

\*As noted, voting to close the file effective on a particular date certain in the future is not unprecedented

\*Because all documents would go public at the same time, only 30 days after the final vote, there would be greater incentive for Commissioners to have statements ready to release with the rest of the public file at the 30-day mark.

\*The release of SORs would be both reasonably soon after final substantive action and contemporaneous with the actual closing of the file, which in combination might go much of the way to addressing the *End Citizens United* court's concerns.

\*Public release of the case outcome is in the hands of the Commission, not in the hands of prior-notified complainants/respondents – eliminating the awkwardness of Commissioners being asked by the press to discuss cases that are closed but not public.

CONS:

\*This option would require modification of ALT procedures for starting, and timing, release of the public record based on something other than the vote to close the file and/or mailing of notification letters.

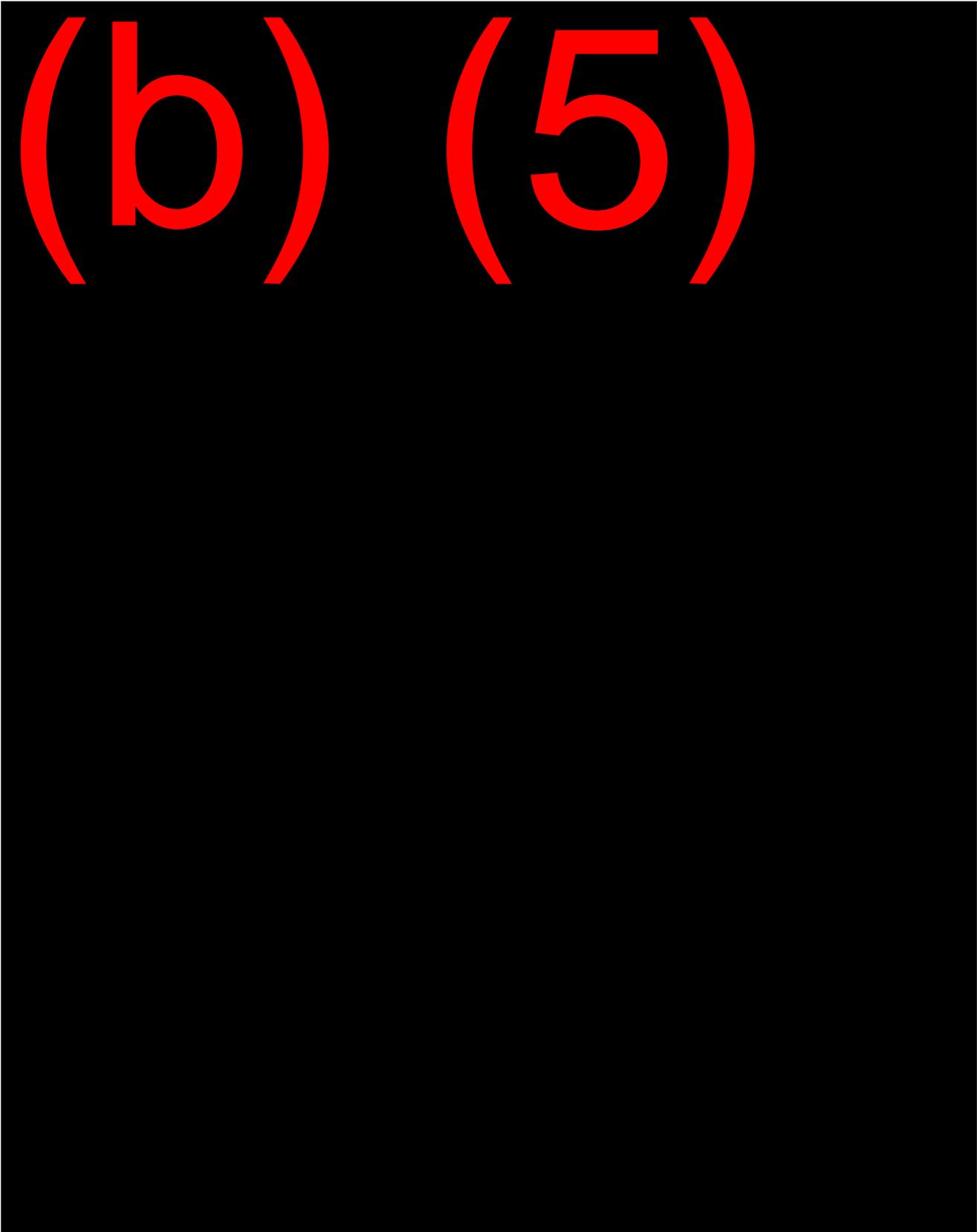
\*The simultaneous release of notifications to complainants/respondents and of the whole file to the public would mean that some complainants/respondents will first hear of the outcome of their case from the press, rather than the agency. When this has happened in the past, some have been quite upset.

(b) (5)

(b) (5)

(b) (5)

Page 7



(b) (5)

Page 8

(b) (5)

WHY WE ENDORSE OPTION 4A

As noted, option 4A would substantially address the D.C. Circuit's concerns by ensuring the completion and release of Commissioners' statements of reasons both reasonably soon after

(b) (5)  
Page 9

final Commission action and contemporaneously with the formal closing of the file. Assuming notifications were made at that time, complainants would have a full 60 days with the SORs to consider whether to file suit. To the extent that the *End Citizens United* court was concerned with any perceived “jamming” of potential plaintiffs, that concern would be completely addressed.

Option 4A would also provide room, but not unlimited room, for genuine attempts to reach consensus after a split vote. It does leave open the question of what happens if a vote to close the file fails (b) (5)

However, statements by commissioners indicate that is not likely to happen again in the near future. Setting aside what is likely, for now at least, a hypothetical problem seems to us preferable to some of the other solutions that would require either a rulemaking or for the Commission to ignore part of one of its regulations (b) (5)

Also as noted, option 4A would eliminate the problem of complainants or respondents discussing their outcomes with the press 30 days prior to the release of the public file. In the view of the Press Office, with which we consulted, simultaneous notification to the parties and the public would be fairer to all and would promote confidence in the Commission’s enforcement process as a whole by enabling informed public consideration of the disposition at the time any party is notified of it.

Finally, option 4A would require no additional formal action by the Commission other than accepting this recommendation. Implementation could be accomplished almost entirely at the staff level. OGC Enforcement would simply incorporate the delayed effective date into its recommendations. Enforcement, ALT and Public Records would have to develop procedures to coordinate simultaneous release of notification letters and the public file, but we believe that could be accomplished without great difficulty. We further recommend that implementation take place “at the appropriate time” because immediate implementation may or may not be appropriate (b) (5)

## RECOMMENDATION

Direct the Office of General Counsel and the Public Records Office to proceed, at the appropriate time, to implement Option 4A of this memorandum.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
)  
Procedural Options for the Commission ) Agenda Documents No. X23-33 and  
in the Wake of End Citizens United (b) (5) ) No. X23-33-B  
[REDACTED] )

CERTIFICATION

I, Vicktoria J. Allen, recording secretary of the Federal Election Commission executive session, do hereby certify that on January 09, 2024, the Commission took the following actions in the above-captioned matter:



2. Passed by a vote of 4-2 to:

Direct the Office of General Counsel and the Public Records Office to proceed to implement option 4A of the Office of General Counsel's memorandum dated August 15, 2023 (Agenda Document No. X23-33).

Commissioners Broussard, Cooksey, Lindenbaum, and Weintraub voted affirmatively for the decision. Commissioners Dickerson and Trainor dissented.

Federal Election Commission  
Certification for Procedural Options for the Commission in the Wake of  
End Citizens United (b) (5)  
January 9, 2024

Page 2

Attest:



January 11, 2024

Date

Vicktoria J Allen

Digitally signed by Vicktoria J  
Allen  
Date: 2024.01.11 13:31:05  
-05'00'

Vicktoria J. Allen

Deputy Secretary of the Commission