

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**KEAN FOR CONGRESS COMMITTEE**

**Plaintiff,**

**v.**

**FEDERAL ELECTION COMMISSION**

**Defendant.**

**Civil Action No. 04-0007 (JDB)**

**ORDER**

Defendant Federal Election Commission ("FEC" or "Commission") moves to voluntarily remand this case, and to hold the summary judgment briefing schedule in abeyance, so that it may apply the Supreme Court decision in McConnell v. FEC, 540 U.S. 93 (2003), to the facts of the Kean for Congress Committee's ("Kean Committee") administrative complaint. FEC asks for 60 days to reconsider its dismissal of Kean Committee's complaint. Kean Committee opposes the motion on the grounds that FEC already had an opportunity to consider the McConnell decision prior to issuing its Statement of Reasons ("SOR").

On November 4, 2003, the Commission was divided 3 to 3 on whether to proceed with Kean Committee's administrative complaint. Def. Mot., Ex. 1. Without the necessary four votes, the Commission voted unanimously to dismiss the complaint and close the case. Id. On December 10, 2003 the Supreme Court issued its decision in McConnell, which addressed the constitutionality of certain provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA").

On December 16, 2003, the three Commission members who voted to proceed with Kean

Committee's administrative complaint issued their SOR, which provided an explanation of why they believed CRG violated federal election laws. See Pl. Summ. J. Mot., Ex. 3. Then, on January 13, 2004, the three members who found that there was not reason to believe CRG violated federal election laws issued their SOR. See Def. Mot., Ex. 2. Both SOR's acknowledged the existence of the decision in McConnell, but neither considered that decision in justifying action with regard to the Kean Committee's administrative complaint. The FEC now moves for a remand so that it can consider the impact of McConnell on Kean Committee's complaint.

The decision to grant a motion to remand is contingent upon the circumstances in which a motion for remand is requested. A remand is generally granted if an intervening event "affect[s] the validity of the agency action." SKF USA Inc. v. United States, 254 F.3d 1022, 1028 (Fed. Cir. 2001) (citing Ethyl Corp. v. Browner, 989 F.2d 522, 524 (D.C. Cir. 1993)). Additionally, when an agency seeks a remand because it now believes its earlier decision was wrong, remand is generally appropriate. See SKF USA, 254 F.3d at 1029. However, when an agency wants merely to reconsider an earlier decision, it is a closer call whether remand is appropriate. See Southwestern Bell Tel. Co. v. FCC, 10 F.3d 892, 896 (D.C. Cir. 1993) (discussing an earlier grant of remand to FCC to reconsider its decision).

In the present action, FEC describes its motion for remand as arising from an intervening judicial decision. However, the intervening decision, McConnell, actually occurred prior to the Commission members issuing their SORs, and hence could have been considered then. Notwithstanding FEC's failure to apply McConnell in the first instance, however, this Court will grant FEC's motion for remand so that the FEC can apply the McConnell decision to the facts of the Kean Committee's complaint.

This Court is well aware of the significant time -- almost five years -- that has passed since the Kean Committee first filed its administrative complaint with the FEC. The Court will not permit this matter to languish unduly with the FEC in light of that history. Therefore, this matter will be remanded for the sole purpose of permitting the FEC to apply McConnell to the facts of the Kean Committee's administrative complaint; the remand is for a period not to exceed 60 days from the date of this Order.

Accordingly, it is hereby

**ORDERED** that defendant's motion to remand is **GRANTED**; it is further

**ORDERED** that MUR 5024 is remanded for a period ending April 15, 2005 to permit the FEC to reconsider its decision to dismiss Kean Committee's administrative complaint in light of the Supreme Court decision in McConnell v. FEC, 540 U.S. 93 (2003); it is further

**ORDERED** that defendant's motion to hold summary judgment in abeyance is **GRANTED**, and the summary judgment briefing schedule shall be suspended pending disposition of the remand; and it is further

**ORDERED** that a status conference is scheduled for April 15, 2005 at 9:15 a.m.

/s/ John D. Bates

JOHN D. BATES  
United States District Judge

Dated: February 15, 2005

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