

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

_____)	
CAMPAIGN)	
LEGAL CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-0809 (ABJ)
)	
FEDERAL ELECTION)	
COMMISSION,)	
)	
Defendant.)	
_____)	

ORDER

On March 24, 2020, plaintiff Campaign Legal Center (“CLC”) sued to compel the Federal Election Commission (“FEC”) to respond to an administrative complaint plaintiff had filed more than eighteen months earlier. *See* Compl. [Dkt. # 1] at 1–2. Defendant did not appear in court or otherwise respond to the suit, and after providing the FEC more time to respond, *see* Order [Dkt. # 17] at 3–4, the Court entered default judgment on November 8, 2021. *See* Order [Dkt. # 25]. The November 8 Order gave the FEC thirty days to act on the administrative complaint. *Id.* at 1. The FEC has not responded to the Order, and it has not taken any action on the complaint in the ensuing five months.

On December 9, 2021, plaintiff filed a motion seeking an order from the Court declaring that the FEC had failed to comply with its November 8 Order. Pl.’s Mot. for Order Declaring Failure to Conform to Default J. [Dkt. # 26] (“Pl.’s Mot.”). For the following reasons, plaintiff’s motion is **GRANTED**.

LEGAL FRAMEWORK

Plaintiff brought its claim pursuant to the Federal Election Campaign Act (“FECA”), which establishes a private right of action for “[a]ny party aggrieved” by the FEC’s failure to act on a complaint within 120 days of its filing. *See* 52 U.S.C. § 30109(a)(8)(A); Compl. ¶ 1. The judicial review provision of FECA provides that the U.S. District Court for the District of Columbia may “declare that the dismissal of [a] complaint or the failure to act is contrary to law,” and, if the Commission fails to correct the illegality on remand, the “complainant may bring” a civil action directly against the alleged violator “to remedy the violation involved in the original [administrative] complaint.” 52 U.S.C. § 30109(a)(8)(C); *see also Citizens for Responsibility and Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 101 (D.D.C. 2018).

While “the Federal Election Commission . . . ha[s] unreviewable prosecutorial discretion to determine whether to bring an enforcement action,” *Citizens for Resp. and Ethics in Wash. v. FEC*, 892 F.3d 434, 438 (D.C. Cir. 2018) (“CREW”), citing *FEC v. Akins*, 524 U.S. 11, 25 (1998), the agency must act on a complaint by holding a vote to decide whether it “has reason to believe that a person has committed, or is about to commit” a FECA violation. 52 U.S.C. § 30109(a)(2). If it votes to dismiss the complaint, “it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.” 11 C.F.R. § 111.20(a); *Common Cause v. FEC*, 842 F.2d 436, 449 (D.C. Cir. 1988) (requiring that Commissioners who voted for dismissal provide a statement explaining their votes). The public explanation provided by the dismissing Commissioners is necessary for a reviewing court to determine if the dismissal was “contrary to law.” 52 U.S.C. § 30109(a)(8)(C); *CREW*, 892 F.3d at 440 (reviewing statement of Commissioners who voted against enforcement proceeding and finding the dismissal unreviewable because they were based “squarely on the

grounds of prosecutorial discretion”); *Citizens for Resp. and Ethics in Wash. v. Am. Action Network*, No. 18-cv-945, 2022 WL 612655, at *6 (D.D.C. Mar. 2, 2022) (the legality of “a nonenforcement decision . . . depend[s] on the reasons given by the controlling Commissioners”).

BACKGROUND

The factual and procedural history of this case were detailed in the Court’s previous Memorandum Opinion. *See generally* Mem. Op. [Dkt. # 24]. In that opinion, the Court found that the FEC’s failure to act on plaintiff’s administrative complaint was “contrary to law” and ordered the agency to act on the complaint within thirty days. Mem. Op. at 18. The deadline for the FEC to act was December 8, 2021. *See id.*; Pl.’s Mot. at 2. In the time since then, the agency has not responded to the order or taken any action on the complaint. *See* Pl.’s Mot.

On December 8, 2021, the deadline for the FEC to comply with the court order, plaintiff notified the FEC’s General Counsel of its intention to file the present motion but received no response. Pl.’s Mot. at 3. On the following day, plaintiff filed this motion alleging that the agency’s continued inaction “indicated that the FEC has failed to conform to the mandate in the Default Judgment Order.” *Id.* at 4. Since that time, this Court granted leave for 45Committee, the entity against which plaintiff seeks FEC enforcement, to file an amicus brief. *See* Min. Order (Jan. 24, 2022). The amicus brief discusses documents that it obtained from the FEC through a Freedom of Information Act (“FOIA”) request, claiming that the documents show that “the FEC voted on the underlying administrative complaint at issue in this case.” Amicus Br. [Dkt. # 31] at 1.

ANALYSIS

45Committee argues that the newly obtained FOIA documents show that the FEC “reviewed, considered, and took action” on the initial administrative complaint nearly two years ago and therefore this Court’s November 8 Order should be vacated, and this case dismissed as

moot. Amicus Br. at 1–2. Alternatively, 45Committee asks that the case be held in abeyance pending the Court’s review of an unredacted version of the document. *Id.* at 2.

The document 45Committee has attached to its brief reports a vote cast by the FEC on June 23, 2020; the vote was whether to authorize the Office of General Counsel to defend the Commission in this lawsuit. Ex. 2 to Amicus Br. [Dkt. # 31-1] at 4. The vote deadlocked, resulting in a failure to authorize an appearance to defend itself in this court. *See id.* 45Committee alleges that the agency’s vote on whether to defend itself in court indicates that the FEC “took action” on the underlying complaint and “likely voted against enforcement action.” Amicus Br. at 1. But that is pure speculation on the part of 45Committee, and the Court will not draw an inference that has no basis in the material it has received. The vote revealed the ongoing stalemate at the agency, and it led to the default judgment in this case, but it said nothing about what action was taken on the underlying administrative complaint. Amicus Br. at 4.

45Committee points out that its FOIA request was for:

Any vote certifications reflecting votes taken by the Federal Election Commission on the complaint against 45Committee in MUR 7486; and

Any Statements of Reasons or other Commissioner opinions concerning the complaint against 45Committee in MUR 7486.

Ex. 1 to Amicus Br. [Dkt. # 31-1] at 1. Therefore, it posits that document would only have been responsive to its request if the redacted portions of the document relate to votes on the underlying administrative request.

Once again, 45Committee is speculating: it is equally possible that the agency construed the request for records “concerning” the complaint in MUR 7486 broadly, and produced records that reflected the Commissioner’s vote on defending this lawsuit “concerning” the complaint in MUR 7486.

The documents 45Committee received in response to its request provide no evidence that the FEC ever “took action” on the initial administrative complaint, much less that it voted to dismiss the complaint. The document makes no mention of taking action on the underlying administrative complaint. And though some portions of the document are redacted, the assumption that the redacted portions must therefore “reflect[] votes taken by the Federal Election Commission on the complaint against 45Committee,” Amicus Br. at 4, is unwarranted when one considers the statutory framework. When the FEC takes a vote on an administrative complaint, the results are publicly announced; it does not take a FOIA request to learn what transpired. If the agency decides to proceed with a complaint, it must “notify the person of the alleged violation” before initiating an investigation. 52 U.S.C. § 30109(a)(2). When the agency votes to dismiss a complaint, “it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.” 11 C.F.R. § 111.20(a). Each commissioner voting in favor of dismissal must provide a statement explaining their rationale for dismissal, which then becomes the basis for a reviewing court to determine whether dismissal was “contrary to law” in the event of a citizen suit challenging dismissal. *See e.g., Common Cause v. FEC*, 842 F.2d at 449; *CREW*, 892 F.3d at 440. Neither 45Committee nor CLC has claimed to have received the notification that would accompany a dismissal, nor has the FEC made its vote and rationale for the vote public. Thus, there is no reason for the Court to assume that the redacted portions of an otherwise unrelated document could report a vote that should have been publicly reported but was not.

CONCLUSION

The FEC, consistent with its ongoing failure to defend this action, has not opposed plaintiff’s motion, and the objections contained in the brief submitted by 45Committee are not

convincing and do not justify further delay. As the agency has not complied with the Court's November 8, 2021 Order within the time specified, it is hereby **ORDERED** that plaintiff may bring an action to enforce the FECA against the alleged violator pursuant to 52 U.S.C. § 30109(a)(8)(C).

SO ORDERED.

A handwritten signature in black ink that reads "Amy B. Jackson". The signature is written in a cursive style and is positioned above a horizontal line.

AMY BERMAN JACKSON
United States District Judge

DATE: April 21, 2022