



FEDERAL ELECTION COMMISSION  
1050 FIRST STREET, N.E.  
WASHINGTON, D.C. 20463

## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	:	
	:	MURs 8117/8118
Fox Corporation, <i>et al.</i>	:	
	:	

### STATEMENT OF REASONS OF COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. “TREY” TRAINOR, III

The complaints in these Matters alleged, in relevant part, that during the 2020 election Rupert Murdoch, the chairman of the Fox Corporation, “conveyed material, non-public information concerning a political rival’s advertising and messaging strategy – specifically, the actual advertisements that Mr. Biden placed with Fox News before they aired publicly – to Mr. Trump’s son-in law,” Jared Kushner, “a senior advisor in the Trump campaign responsible for candidate messaging and advertising strategy.”<sup>1</sup>

The responses demonstrated that this allegation was false. Mr. Murdoch did email Mr. Kushner, opining that an ad that the Biden campaign expected to air during an upcoming professional football game was “extremely good.”<sup>2</sup> But “the specific advertisement shared by Murdoch was already publicly available, as it had aired several hours” before the relevant email exchange “on a local Fox station in Marquette, Michigan” and, moreover, “was viewable on the Biden [c]ampaign’s YouTube channel since September 24, 2020, a day prior.”<sup>3</sup>

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<sup>1</sup> MUR 8117 Complaint at 4 (emphasis in original). *Cf.* MUR 8118 Complaint at 3 (“Specifically, Murdoch allegedly conveyed the actual advertisements that the Biden campaign paid Fox Corporation to air on its television outlets to the Committee before the advertisements aired”). The complaints also alleged that Fox, through Murdoch, illicitly provided debate strategy—an allegation that the agency’s Office of General Counsel recommended the Commission reject. First Gen’l Counsel’s Report (“FGCR”) at 15, MURs 8117/8118 (Fox Corp.), June 10, 2024

<sup>2</sup> *Id.* at 6 (quotation marks omitted). Murdoch also noted that the Trump campaign’s ad scheduled for that game was an “improvement” over past Trump messaging. *Id.* (quotation marks omitted).

<sup>3</sup> *Id.* at 7.

Nonetheless, the Commission’s Office of General Counsel (“OGC”) recommended that we find reason-to-believe that Fox, Murdoch, and the Trump campaign, through Kushner,<sup>4</sup> violated the Federal Election Campaign Act’s (“FECA” or “Act”) prohibitions against making and receiving corporate contributions, as well as additional reporting violations contingent on finding such a violation.<sup>5</sup> OGC contended that the knowledge of “the planned airing of a specific campaign advertisement” during “the upcoming football game on Fox stations two days later” constituted the illegal donation.<sup>6</sup>

We voted to dismiss,<sup>7</sup> and provide this Statement of Reasons to explain why.<sup>8</sup>

## I. Standard of Review

“The Commission will find reason-to-believe when a complaint (1) fairly invokes its jurisdiction, (2) is credible, and not merely a bare accusation of wrongdoing, (3) the response has not sufficiently answered the complaint, and (4) it determines that enforcement is a judicious use of the Commission’s scarce resources.”<sup>9</sup> Here, given the narrow refashioning of the complaint’s allegations, we concluded that it would be a poor use of Commission resources to enforce against what we considered to be, at most, a *de minimis* transfer of ad placement information.

## II. Relevant Law

FECA prohibits “any corporation whatever” from contributing to a candidate committee.<sup>10</sup> “This ban encompasses so-called in-kind contributions, such as ‘the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services,’ including ‘[s]ecurities,

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<sup>4</sup> OGC nevertheless recommended dismissal of the allegations against Mr. Kusher personally. *Id.* at 26, ¶ 5; 23 (suggesting Kusher’s “liability is coterminous with the” campaign’s and his “role was the passive accepting of a prohibited in-kind contribution”).

<sup>5</sup> *Id.* at 25-26.

<sup>6</sup> *Id.* at 10.

<sup>7</sup> Certification at 1-2; *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>8</sup> *Democratic Cong. Campaign Comm. v. Fed. Election Comm’n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987).

<sup>9</sup> Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 2, MUR 8110 (Am. Coal. for Conservative Priorities), July 29, 2024.

<sup>10</sup> 52 U.S.C. § 30118(a). The Supreme Court has upheld this ban. *Fed. Election Comm’n v. Beaumont*, 539 U.S. 146 (2003).

facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”<sup>11</sup> This list of “things of value”<sup>12</sup> confirms that in-kind contributions “are limited to goods and services ‘given in-kind that hold a specific monetary value and are available on the market.’”<sup>13</sup>

### III. We Voted To Dismiss Pursuant to the Commission’s Prosecutorial Discretion

Assuming *arguendo* that the particulars of these Matters are as OGC’s FGCR stated them to be,<sup>14</sup> we concluded that it would be a poor use of Commission resources to find reason-to-believe and proceed with enforcement.

OGC correctly notes that “[i]nformation about the planned airing of a specific campaign advertisement does not appear to have a commercial market precisely because it is confidential information that is not intended to be shared, let alone sold.”<sup>15</sup> But this is not the end of the analysis—markets plainly exist for goods and services which are not intended to be commercially sold. Black markets are still markets.

More to the point, OGC’s Report argues that this particular information had significant value, theorizing about the “heightened value” of “[i]nside information” to campaigns.<sup>16</sup> But this is pure speculation, and, conversely, there is no indication that the Trump campaign made any use of the timing information communicated to Mr. Kushner.<sup>17</sup> This strongly suggests that the value of any non-public information

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<sup>11</sup> Statement of Reasons of Comm’s Dickerson and Trainor at 3, MUR 8056 (Bob Healey for Congress), Aug. 17, 2023 (“Healey Statement”) (quoting 11 C.F.R. § 100.52(d)(1)) (cleaned up).

<sup>12</sup> “The term ‘contribution’ includes...anything of value.” 52 U.S.C. § 30101(9); *Buckley v. Valeo*, 424 U.S. 1, 23, n.24 (1976) (*per curiam*) (limiting that term to “the limiting connotation created by the general understanding of what constitutes a political contribution”).

<sup>13</sup> Healey Statement at 4 (quoting Statement of Reasons of Chairman Dickerson and Comm’s Cooksey and Trainor at 6, MURs 7645/7663/7705 (Donald J. Trump), Aug. 31, 2022.).

<sup>14</sup> For a countervailing view, see Statement of Reasons of Chairman Cooksey at 5, MURs 8117/8118 (Fox Corp.), Nov. 8, 2024.

<sup>15</sup> FGCR at 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 10-11; MUR 8117 MAGA PAC Resp. at 2 (“Notably, End Citizens United does not allege, nor does the Dominion record indicate, that: (a) Mr. Kushner shared any of Mr. Murdoch’s emails or observations with campaign officials; (b) MAGAPAC took any action or made any changes to their strategy based upon information provided by Mr. Murdoch to Mr. Kushner”).

communicated to Mr. Kushner was, in fact, comparatively minor. If it had been especially valuable, that value would have been in proportion to its utility. After all, material information is material precisely because it is likely to spur the recipient to action.<sup>18</sup>

We also question OGC's conclusion that the purpose of Mr. Murdoch's email was to give information about the placement of this particular advertisement. Rather, in context, Mr. Murdoch was generally complaining to Mr. Kushner about how badly the Trump campaign was communicating relative to its opponent and used the relevant Biden ad merely as an example.<sup>19</sup> There is no indication that this communication was part of a larger pattern whereby Mr. Murdoch leaked non-public information to Mr. Kushner, nor is a general statement that Mr. Murdoch "was trying to help Mr. Kushner" sufficient, on this record, to elevate the allegations to the level of seriousness justifying federal enforcement efforts.<sup>20</sup>

We understand that the original complaint was filed based upon the belief that Mr. Murdoch was providing non-public advertisements to one side of a political contest. That allegation would raise a significant question if it were true. But it was not. The alleged "thing of value" that remains is but a small portion of the original: not the ad itself, but merely the fact of a single placement.

Given the ongoing press of Commission business, we did not believe that this truncated allegation merited the further expenditure of Commission resources.

## CONCLUSION

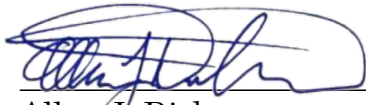
For the foregoing reasons, we voted to dismiss these complaints pursuant to the agency's prosecutorial discretion.

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<sup>18</sup> See, e.g., *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (a "fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote").

<sup>19</sup> FGCR at 5 (quoting Murdoch as saying that his "people tell me his [Biden's] advs are a lot better creatively than" Trump's).

<sup>20</sup> MUR 8117 MAGA PAC Resp., Ex. A at 1. In our view, OGC overreads the brief deposition transcript upon which it principally relies. Mr. Murdoch had no independent memory of the email exchange, and merely stated "right" and "I guess so" in response to a leading question from counsel. *Id.* The fact that he (erroneously) testified that the email involved a campaign ad "before it was public" further cuts against OGC's maximalist reading of this very short exchange. *Id.*



Allen J. Dickerson  
Commissioner

November 8, 2024

Date



James E. "Trey" Trainor, III  
Commissioner

November 8, 2024

Date