

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM

DISMISSAL REPORT

MUR: 8139

Respondents: Cable News Network
Donald J. Trump for President 2024,
Inc. and Bradley T. Crate in his
official capacity as treasurer

Complaint Receipt Date: May 12, 2023

Last Response Date: June 20, 2023



**Alleged Statutory/
Regulatory Violations:**

52 U.S.C. §§ 30118(a)
11 C.F.R. §§ 114.2(b), (d)

The Complaint alleges that Cable News Network (“CNN”), a news corporation, made, and Donald J. Trump for President 2024, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Committee”), the principal campaign committee of 2024 presidential candidate Donald J. Trump, knowingly accepted, a prohibited in-kind corporate contribution, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint alleges that the in-kind contribution occurred when CNN broadcast a “town hall” event on May 10, 2023, during which Trump appeared and answered questions from audience members.² The Complaint, citing a *Salon* news report, contends that CNN coordinated with the Committee to ensure positive coverage of Trump by selecting audience members supportive of Trump or who previously voted for Trump and

¹ Compl. at 1 (May 12, 2023); Donald J. Trump, Amended Statement of Candidacy at 1 (Dec. 11, 2023) <https://docquery.fec.gov/pdf/958/202312119599436958/202312119599436958.pdf>; Donald J. Trump for President 2024, Inc., Amended Statement of Organization at 2 (Dec. 11, 2023) <https://docquery.fec.gov/pdf/945/202312119599436945/202312119599436945.pdf>.

² Compl. at 1.

1 instructing attendees not to “boo” the candidate.³ According to the Complaint, CNN staged and
2 produced the town hall to benefit Trump’s campaign free of charge and potentially without
3 providing the same free services to other presidential candidates, and therefore made an in-kind
4 corporate contribution to the Committee.⁴

5 In response, the Committee argues that the town hall falls within the “press exemption” in
6 the definition of “contribution” and “expenditure” in the Act and Commission regulations.⁵ The
7 Committee states that the Commission has previously found CNN to be a legitimate press entity that
8 is not owned or controlled by a political party or candidate.⁶ The Committee further states that
9 CNN has, in the past, previously staged single-candidate town halls with other candidates for
10 federal office, during which the candidates received questions from attendees.⁷ The Committee
11 asserts that the town hall at issue was available to the public via television and online streaming.⁸
12 Finally, the Committee argues that even a lack of objectivity in news coverage or express advocacy
13 of a candidate would not preclude a news entity’s eligibility to qualify for the press exemption.⁹
14 CNN did not respond to the Complaint.

15 The Act and Commission regulations exclude from the definitions of “contribution” and
16 “expenditure” the costs incurred in covering or carrying a news story, commentary, or editorial by
17 any broadcasting station, newspaper, website, magazine, or other periodical publication, including

³ *Id.* at 2 (asserting that the label “town hall” is misleading because the event was not generally open to members of the public with diverse political beliefs and that requiring an audience react in a certain way is not news).

⁴ *Id.* at 1, 3.

⁵ Committee Resp. at 1 (June 20, 2023).

⁶ *Id.* at 2 (citing MUR 7231 (CNN) and MUR 7515 (CNN Broadcasting Inc.)).

⁷ *Id.* at 1-2 (listing examples).

⁸ *Id.*

⁹ *Id.* at 3.

an internet or electronic publication, unless the facility is owned or controlled by any political party, political committee, or candidate.¹⁰ Costs covered by this “press exemption” are also exempt from the Act’s disclaimer, disclosure, and reporting requirements.¹¹

To assess whether the press exemption applies, the Commission uses a two-part test.¹² The first inquiry is whether the entity engaging in the activity is a “press entity.”¹³ Next, the Commission determines the scope of the exemption using the two-part analysis from *Reader’s Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its “legitimate press function” in conducting the activity.¹⁴ When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity’s materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity.¹⁵ “The Commission has long recognized that an entity otherwise eligible for the exemption would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office.”¹⁶

¹⁰ 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.73 (excluding *bona fide* news coverage from the definition of “contribution”); *id.* § 100.132 (excluding the same from the definition of “expenditure”).

¹¹ Advisory Opinion 2011-11 at 6 (Colbert) (“AO 2011-11”); Factual & Legal Analysis (“F&LA”) at 5, MUR 7206 (Bonneville Int’l Corp.).

¹² Advisory Opinion 2005-16 at 4 (Fired Up!) (“AO 2005-16”); Advisory Opinion 2008-14 at 4 (Melothe, Inc.) (“AO 2008-14”); F&LA at 5-6, MUR 7515 (CNN Broadcasting, Inc., *et al.*).

¹³ AO 2005-16 at 4; AO 2008-14 at 4.

¹⁴ *See Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7.

¹⁵ F&LA at 4, MUR 7231 (CNN); Advisory Opinion 2016-01 at 3 (Ethiq).

¹⁶ F&LA at 5, MUR 7206 (Bonneville Int’l Corp.) (quotation marks omitted) (quoting AO 2005-16 at 6); F&LA at 3, MUR 6579 (ABC News, Inc.).

1 The record indicates that CNN, an online and cable television platform that produces news
2 stories on a regular basis, is a press entity and is not owned by a political party, political committee,
3 or candidate.¹⁷ Further, by staging a town hall featuring a presidential candidate available to the
4 general public and comparable in form to prior town halls broadcast by the press entity, CNN
5 appears to have been acting within its legitimate press function.¹⁸ The alleged lack of objectivity in
6 staging the town hall does not disqualify CNN from the exemption.¹⁹

7 Based on its experience and expertise, the Commission has established an Enforcement
8 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
9 assess whether particular matters warrant further administrative enforcement proceedings. These
10 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
11 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
12 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
13 potential violations and other developments in the law. This matter is rated as low priority for
14 Commission action after application of these pre-established criteria. Given that low rating and the
15 apparent applicability of the press exemption, we recommend that the Commission dismiss the
16 Complaint, consistent with the Commission's prosecutorial discretion to determine the proper
17 ordering of its priorities and use of agency resources.²⁰ We also recommend that the Commission

¹⁷ F&LA at 4, MUR 7231 (CNN); F&LA at 7, MUR 7515 (CNN Broadcasting, Inc., *et al.*); Committee Resp. at 1 (stating that "CNN is a multinational television, digital media, and news corporation owned by Warner Bros. Discovery, Inc."); *see* Advisory Opinion 2010-08 at 5 (Citizens United) (stating that to determine whether an entity is a "press entity" the Commission looks to "whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials").

¹⁸ *See* F&LA at 7, MUR 7515 (CNN Broadcasting, Inc., *et al.*) (finding that CNN was covered by the press exemption when it aired a town hall with a single candidate for U.S. Senate).

¹⁹ *See* F&LA at 5, MUR 7206 (Bonneville Int'l Corp.); AO 2005-16 at 6; F&LA at 3, MUR 6579 (ABC News, Inc.).

²⁰ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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close the file effective 30 days from the date of certification of this vote (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday) and send the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel

April 8, 2024

Date

BY:



Claudio J. Pavia
Deputy Associate General Counsel



Wanda D. Brown
Assistant General Counsel



Gordon King
Attorney