



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 06 2020

VIA EXPRESS MAIL AND EMAIL

Derek Utley

Washington, DC 20002
backup@xstrats.com

RE: MUR 7280

Dear Mr. Utley:

The Federal Election Commission ("Commission") is the regulatory agency that administers and enforces the Federal Election Campaign Act of 1971, as amended ("the Act"). Based on a complaint filed by Common Cause and Karen Hobert Flynn, the Commission on July 25, 2019, found reason to believe that an Unknown Respondent violated the Act by failing to report independent expenditures and failing to include disclaimers on Facebook advertisements. *See* 52 U.S.C. §§ 30104(b)(4)(H)(iii) and (c), 30120(a).¹ The Complaint and the Factual and Legal Analysis, which formed the basis for the Commission's finding, is attached for your information.

The Commission authorized the Office of the General Counsel to conduct an investigation concerning the source and cost of the Facebook advertisements in question. During our investigation, we obtained information indicating that you made payments on behalf of the "Trump 2020" Facebook Page to place advertisements, and that you may be the Unknown Respondent as to which the Commission made findings. We are now preparing to make a recommendation to the Commission in connection with that information. Prior to making our recommendation, we offer you an opportunity to provide in writing a response to the Complaint and the Commission's Factual and Legal Analysis. Should you choose to respond, you may also submit any materials — including documents or affidavits from persons with relevant knowledge — that you believe may be relevant or useful to the Commission's consideration of this matter.

Your submission, if you choose to make one, must be submitted within 30 days of receipt of this letter. You should address any response to the Office of the General Counsel, and the

¹ A "reason to believe" finding is not a finding that any person violated the Act. Rather, it means that the Commission believes a violation may have occurred. *See* 52 U.S.C. § 30109(a)(2).

response should reference MUR 7280. After 30 days, we will prepare recommendations to the Commission, taking into account any response you submit in making our recommendations.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.²

For your information, enforcement procedures and options are discussed in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Amanda Andrade, the attorney handling this matter, at (202) 694-1650.

Sincerely,



Charles Kitcher
Acting Associate General Counsel for
Enforcement

Enclosures:
Complaint

² The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMON CAUSE

805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

KAREN HOBERT FLYNN

805 Fifteenth Street, NW, Suite 800
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(202) 833-1200

v.

MUR No. 7280

UNKNOWN OWNER OF "TRUMP 2020" FACEBOOK PAGE

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1), based on information and belief that an unknown person made undisclosed independent expenditures in connection with the 2020 presidential election and failed to identify the funding and authorizing source of the public communication independent expenditures, in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.* and Commission regulations.
2. Specifically, based on publicly available data and published reports, complainants have reason to believe the owner of the Facebook page "Trump 2020" made approximately \$34,000 in undisclosed independent expenditures in connection with the 2020 presidential election in the form of public communications—specifically, communications placed for a fee on Facebook—expressly advocating the election of Donald Trump, in violation of 52 U.S.C. § 30104(c), and failed to identify the funding and authorizing source of the public communications, in violation of 52 U.S.C. § 30120.

OFFICE OF GENERAL

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3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

4. The “Trump 2020” Facebook page is a self-described “political organization” and community dedicated to supporting President Donald Trump’s reelection in the 2020 presidential election.¹ The page regularly posts messages, images, and videos in support of President Trump’s policies and candidacy or in opposition to his detractors. Currently, it claims 358,837 subscribers.² The “Trump 2020” Facebook page does not identify its funding and authorizing sources.
5. On September 25, 2017, a *VICE News* report revealed that the page’s anonymous owner has created nine other similar pro-Trump Facebook pages, with a combined total of 1,758,173 “likes” from Facebook users for the ten pages.³ According to receipts shown by the Facebook page owner to *VICE News*, the owner has paid Facebook at least \$34,100 to promote the pages on the site.⁴ “The owner of the Trump 2020 page told *VICE News* that he did not report the spending to the FEC”⁵

¹ https://www.facebook.com/pg/ElectTrump2020/about/?ref=page_internal.

² *Id.*

³ Alex Thompson and Noah Kulwin, “No one is tracking the illegal political ads in your Facebook feed,” *VICE NEWS*, September 25, 2017, *available at* <https://news.vice.com/story/facebook-political-ads>.

⁴ *Id.*

⁵ *Id.*

SUMMARY OF THE LAW

6. FECA requires that every person who “makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year” shall file a statement with the Commission containing information about the expenditure. 52 U.S.C. § 30104(c)(1).
7. That statement must include information indicating whether the expenditure is in support of or opposition to the candidate involved, certifying whether or not it was made in cooperation with any candidate, and identifying any person who contributed in excess of \$200 to further the expenditure. 52 U.S.C. § 30104(c)(2).
8. FECA defines “expenditure” to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election[.]” 52 U.S.C. § 30101(9)(A)(i).
9. FECA defines “independent expenditure” to mean an expenditure by a person “expressly advocating the election or defeat of a clearly identified candidate; and . . . that is not made in concert or cooperation with or at the request or suggestion” of a candidate or party committee. 52 U.S.C. § 30101(17).
10. Commission regulation defines “expressly advocating” to include any communication that uses phrases such as “support the Democratic nominee,” “Smith for Congress,” “defeat” accompanied by a picture of a candidate, or communications that “in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say ‘Nixon’s the One,’ ‘Carter ‘76,’ ‘Reagan/Bush’ or ‘Mondale!’” 11 C.F.R. § 100.22(a). Commission regulation further defines “expressly advocating” to include any communication when:

[T]aken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because . . . [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and . . . [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

Id. at § 100.22(b).

11. Commission regulation defines “disbursement” to include “any purchase or payment” made by any person that is subject to FECA. 11 C.F.R. § 300.2(d).
12. FECA requires that when any person “makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate,” and the communication is not authorized by a candidate or authorized candidate committee, that person “shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate’s committee.” 52 U.S.C. § 30120.
13. Commission regulation requires public communications by any person that expressly advocate the election or defeat of a clearly identified candidate to include disclaimers. 11 C.F.R. § 110.11.
14. Commission regulation defines “public communication” as:

[C]ommunication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.

11 C.F.R. § 100.26 (emphasis added).

CAUSES OF ACTION

COUNT I:

THE OWNER OF THE "TRUMP 2020" FACEBOOK PAGE FAILED TO DISCLOSE INDEPENDENT EXPENDITURES IN CONNECTION WITH THE 2020 PRESIDENTIAL ELECTION IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

15. Federal law requires every person who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year to file a disclosure statement with the Commission including information regarding contributions received by such person, information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved and a certification whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate. 52 U.S.C. § 30104(c).
16. Based on publicly available data and published reports, there is reason to believe that the owner of the "Trump 2020" Facebook page made independent expenditures by paying Facebook at least \$34,000 to distribute its public communications expressly advocating the election of 2020 presidential candidate Donald Trump, and did not file required disclosure statements for such independent expenditures, in violation of 52 U.S.C. § 30104(c).

COUNT II:

THE OWNER OF THE "TRUMP 2020" FACEBOOK PAGE FAILED TO IDENTIFY THE FUNDING AND AUTHORIZING SOURCE OF HIS EXPRESS ADVOCACY PUBLIC COMMUNICATIONS IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

17. Federal law requires that when any public communication expressly advocating the election or defeat of a clearly identified candidate and not authorized by a candidate or authorized candidate committee must be accompanied by a disclaimer that "shall clearly state the name and permanent street address, telephone number, or World Wide Web

address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee." 52 U.S.C. § 30120.

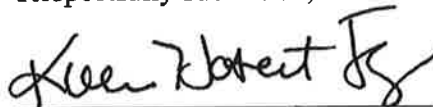
18. Based on published reports and the available evidence, there is reason to believe the "Trump 2020" Facebook page failed to include a disclaimer in its express advocacy public communications identifying its funding and authorizing sources, in violation of 52 U.S.C. § 30120.

PRAYER FOR RELIEF

19. Wherefore, the Commission should find reason to believe that the owner of the "Trump 2020" Facebook page violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30104(c) and 30120, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin respondent(s) from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

September 26, 2017

Respectfully submitted,



Common Cause, by
Karen Hobert Flynn
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

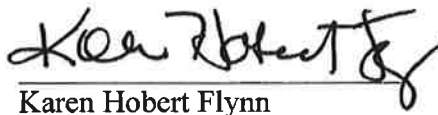


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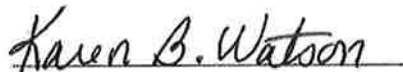
VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

**For Complainants Common Cause and Karen
Hobert Flynn**


Karen Hobert Flynn

Sworn to and subscribed before me this 26th day of September 2017.


Notary Public



FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Unknown Owner of “Trump 2020” Facebook Page **MUR 7280**

I. INTRODUCTION

The Complaint alleges that the unknown owner of a Facebook page named “Elect Trump 2020” (“Trump 2020”) made at least \$34,100 in independent expenditures in support of President Trump’s 2020 reelection campaign by paying to place communications containing express advocacy on Facebook.¹ The Complaint therefore asserts that the unknown respondent violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by failing to report these independent expenditures and failing to include proper disclaimers in the communications.²

As discussed below, the unknown respondent appears to have made independent expenditures by spending funds for Facebook advertisements that advocated the election of Trump without reporting those expenditures to the Commission or including disclaimers on those paid advertisements. Accordingly, the Commission finds reason to believe that the unknown respondent violated 52 U.S.C. §§ 30104(b)(4)(H)(iii) or (c) and 30120.

II. FACTS

Relying on a *Vice News* report, the Complaint asserts that, since November 2016, the unknown respondent made at least \$34,100 in payments to Facebook to promote content on

¹ Compl. at 1 (Sep. 26, 2017); *see also id.* at 2 n. 1 (noting URL for Respondent’s page as <https://www.facebook.com/ElectTrump2020>).

² *Id.* at 2.

Trump 2020 and nine other unidentified “pro-Trump” Facebook pages.³ According to the *Vice News* article, the unknown respondent did not report any of the spending to the Commission.⁴

The unknown respondent publishes Trump 2020 under the anonymous Facebook username “@ElectTrump2020,” and the page currently has more than 500,000 followers.⁵ While the Complaint notes that Trump 2020 describes itself as “a political organization,” the Complaint alleges that the page has a single “owner” who is identified as “a Wisconsin businessman” in the article.⁶ Neither the Complaint nor the article identifies which Trump 2020 posts were placed for a fee or might otherwise constitute independent expenditures advocating the election of Trump.

The Commission’s review of the Trump 2020 page shows that since Trump filed his Statement of Candidacy for the 2020 election on January 20, 2017,⁷ the unknown respondent has uploaded and posted hundreds of videos and images, none of which include disclaimers. The Trump 2020 page’s posts include content shared from other Facebook accounts and the page’s own content. The original content includes posts with slogans such as, “TRUMP MAKE AMERICA GREAT AGAIN!” “MAKE AMERICA EVEN GREATER TRUMP 2020,” “TRUMP PENCE 2020,” “2020 TRUMP FOR PRESIDENT,” and “RE-ELECT TRUMP 2020.”⁸ Although the Complaint and the underlying article do not specify which of Trump

³ Compl. at 2 (citing Alex Thompson and Noah Kulwin, *No one is tracking the illegal political ads in your Facebook feed*, VICE NEWS (Sep. 25, 2017), <https://news.vice.com/story/facebook-political-ads>).

⁴ *Id.*

⁵ <https://www.facebook.com/ElectTrump2020>.

⁶ *See supra* note 3.

⁷ *See* Donald J. Trump Statement of Candidacy (Jan. 20, 2017).

⁸ *See* Attachment 1.

2020's posts were placed for a fee or might otherwise correspond to the alleged independent expenditures in question, every Trump 2020 post by the unknown respondent appears underneath a message header, reproduced below, bearing a photograph of Trump in front of an American flag and the profile name "Trump 2020."



Figure 1: Trump 2020 message header

III. LEGAL ANALYSIS

A. There is Reason to Believe that Respondent Made and Failed to Report Independent Expenditures

An "independent expenditure" is an expenditure expressly advocating the election or defeat of a clearly identified federal candidate that is not coordinated with a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.⁹ The Act and Commission regulations require political committees that make independent expenditures to file reports disclosing their independent expenditures.¹⁰ Persons who are not political committees who make independent expenditures aggregating more than \$250 in a calendar year must also file reports of independent expenditures.¹¹

In determining whether a communication contains express advocacy about a clearly identified candidate, the Commission analyzes the message under 11 C.F.R. § 100.22. A

⁹ 52 U.S.C. § 10101(17); 11 C.F.R. § 100.16.

¹⁰ See 52 U.S.C. § 30104(b)(4)(H)(iii) (requiring political committees other than authorized political committees to disclose all disbursements made in connection with independent expenditures).

¹¹ 52 U.S.C. § 30104(c)(1) (requiring every person, other than a political committee, who makes independent expenditures aggregating over \$250 during a calendar year to file reports of such expenditures); see also 11 C.F.R. §§ 104.4, 109.10.

1 communication expressly advocates the election or defeat of a clearly identified candidate under
 2 11 C.F.R. § 100.22(a) when it uses phrases such as those specifically enumerated in the text of
 3 the regulation (*e.g.*, "vote for the President," "re-elect your Congressman," "support the
 4 Democratic nominee") or contains campaign slogans or individual words that "in context can
 5 have no other reasonable meaning than to urge the election or defeat of one or more clearly
 6 identified candidate(s) such as posters or bumper stickers which say 'Nixon's the One,' 'Carter
 7 '76,' 'Reagan/Bush,' or 'Mondale!'"¹²

8 All Trump 2020 posts are accompanied by the message header, reproduced above,
 9 bearing a photograph of Trump and phrase "Trump 2020," which is identical to the "Carter '76"
 10 example provided in 11 C.F.R. § 100.22(a) and has no other reasonable meaning in this context
 11 than to urge the election of Trump. All of the Trump 2020 posts, therefore, contain express
 12 advocacy under section 100.22(a). Additionally, the content of each post reproduced in
 13 Attachment 1 constitutes express advocacy independent of the language in the message header.
 14 Several posts contain the phrases "TRUMP PENCE 2020," "2020 TRUMP FOR PRESIDENT,"
 15 and "RE-ELECT TRUMP 2020"¹³ which clearly and unambiguously call for the re-election of
 16 Trump in 2020 and are phrases included among and analogous to those that 11 C.F.R.
 17 § 100.22(a) defines as "having no other reasonable meaning" than advocating for the election of
 18 Trump, a clearly identified candidate. Further, other posts contain the official campaign slogan

¹² 11 C.F.R. § 100.22(a); *see also* *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 249 (1986).

¹³ *See* Attachment 1.

1 of the Trump campaign, "MAKE AMERICA GREAT AGAIN!" or a close variation thereof,
2 such as "MAKE AMERICA EVEN GREATER TRUMP 2020."¹⁴

3 Because the available information indicates that all of Trump 2020's posts expressly
4 advocated the re-election of Trump in 2020, and the Commission is unaware of facts suggesting
5 that the unknown respondent coordinated with the Trump campaign to produce or distribute
6 them, the costs for promoting Trump 2020's posts on Facebook appear to have constituted
7 independent expenditures. If a political committee made those independent expenditures, it was
8 required to report the expenditures in reports filed with the Commission.¹⁵ If a person other than
9 a committee made the independent expenditures, the person should have filed a report with the
10 Commission disclosing those expenditures.¹⁶

11 In past matters involving allegations that unknown respondents failed to report
12 independent expenditures, the Commission has found reason to believe and conducted
13 investigations to determine the identity of the respondent and the cost of the communications.¹⁷
14 Here, the complaint includes information about the amount reportedly spent on the Facebook
15 posts, but does not identify particular communications that correspond to the expenditures. As in

¹⁴ See <http://www.donaldjtrump.com/> (last visited Mar. 30, 2018) (showing "MAKE AMERICA GREAT AGAIN" slogan in logo at top and in two other locations on homepage); see also 11 C.F.R. § 100.22(a) (including campaign slogans in express advocacy definition).

¹⁵ See 52 U.S.C. § 30104(b)(4)(H)(iii).

¹⁶ See 52 U.S.C. § 30104(c)(1).

¹⁷ See MUR 6838 (Joseph Aossey) (where the Commission found RTB and authorized an investigation based on postcard mailers containing express advocacy bearing a noncompliant disclaimer where the respondent and costs of the mailer were unknown); MUR 6642 (Christopher Kauffman) (where the Commission found RTB and authorized an investigation based on a billboard containing express advocacy and a noncompliant disclaimer where the respondent and costs of the billboard were unknown); MURs 6486 and 6491 (Mark Hicks) (where the Commission found RTB and authorized an investigation based into independent expenditures related to two billboards that expressly advocated for the defeat of President Obama where the respondent and the costs of the billboards were both unknown).

previous cases, the identity and amount of the apparent independent expenditures are easily ascertainable.¹⁸ Given that the entire Trump 2020 page itself appears to expressly advocate Trump’s re-election, there is sufficient information for a reason to believe finding as to the respondent’s failure to report independent expenditures and to conduct an investigation.¹⁹ Accordingly, the Commission finds reason to believe that unknown respondent violated 52 U.S.C. § 30104(b)(4)(H)(iii) or (c) by failing to report independent expenditures.

B. There is Reason to Believe that Respondent Failed to Include Required Disclaimers on Paid Facebook Advertisements

A “disclaimer” is a statement that must appear on certain communications to identify who paid for the communication and whether a communication was authorized by a candidate.²⁰ With some exceptions,²¹ the Act and Commission regulations require disclaimers for “public communications” that expressly advocate the election or defeat of a clearly identified federal candidate.²² The term “public communication” includes “communications placed for a fee on another person’s Web site.”²³ Thus, disclaimer requirements apply to “all potential forms of

¹⁸ In MUR 6838, the Commission was able to identify the respondent by tracing the bulk mail permit used to distribute the mailers. In MURs 6642 and 6486/6491, the Commission was able to identify the respondents by contacting the company who managed the leases for the billboards at issue. Here, the Commission can easily ascertain the respondent’s identity through Facebook.

¹⁹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007).

²⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11.

²¹ Commission regulations set forth several exceptions to the general disclaimer requirements, including the “small items exception,” which exempts communications placed on “[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed,” 11 C.F.R. § 110.11(f)(1)(i), and the “impracticable exception,” which exempts “[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.” 11 C.F.R. § 110.11(f)(1)(ii).

²² 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); see also 11 C.F.R. § 100.22 (defining “expressly advocating”).

²³ 11 C.F.R. § 100.26.

1 advertising” placed for a fee online, including “banner advertisements, streaming video, popup
 2 advertisements, and directed search results.”²⁴ A communication that is not paid for or
 3 authorized by a candidate must “clearly state the full name and permanent street address,
 4 telephone number, or World Wide Web address of the person who paid for the communication,
 5 and that the communication is not authorized by any candidate or candidate’s committee.”²⁵

6 In Advisory Opinion 2017-12 (Take Back Action Fund) (“AO 2017-12”), which was
 7 issued recently on December 15, 2017, the Commission determined that the requester was
 8 required to include all of the disclaimer information required by 52 U.S.C. § 30120(a) on its paid
 9 Facebook Image and Video advertising.²⁶ Prior to that opinion, the Commission had been asked
 10 on several occasions whether small, character-limited internet advertisements could be exempt
 11 from the disclaimer requirements under the small items exception at 11 C.F.R. § 110.11(f)(1)(i)
 12 or the impracticable exception at 11 C.F.R. § 110.11(f)(1)(ii); the Commission has not, in
 13 response to any advisory opinion request, been able to agree by the required four affirmative
 14 votes that either exception applied.²⁷ Facebook has noted that they have expanded their
 15 advertising platform beyond what was offered at the time of its advisory opinion request in 2011,

²⁴ See Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006).

²⁵ 11 C.F.R. § 110.11(b)(3); *see also* 52 U.S.C. § 30120(a)(3).

²⁶ See Advisory Op. 2017-12 (Take Back Action Fund); *see also* Concurrence of Comm’r. Weintraub at 1, Concurrence of Comm’rs. Hunter, Goodman & Petersen at 1-2. Because the Commission could not agree on the underlying rationale for the decision, the advisory opinion itself merely concluded that disclaimers would be required on Facebook Image and Video ads in cases where the specific circumstances were substantially similar to those laid out in the request, but did not discuss the reasoning behind that conclusion.

²⁷ See Advisory Op. Req. at 1, AO 2011-09 (Facebook) (concerning application of exceptions to zero-to-160 text character ads with thumbnail size images); Advisory Op. Req., AO 2013-18 (Revolution Messaging) (concerning application of exceptions to mobile banner ads); *see also* Advisory Op. 2010-19 (Google) (concluding that Google’s proposed AdWords program, in which 95-character ads would link to a page with a full disclaimer, “under the circumstances described . . . [was] not in violation of the Act or Commission regulations,” but not answering whether Google AdWords ads would qualify for the small items or impracticable exception).

1 allowing users to create advertisements with larger images and more text.²⁸ Because the
2 Commission has never determined that one of the exceptions applied to Facebook
3 advertisements, even those created under Facebook's previous and more restrictive size and
4 character count parameters,²⁹ the paid advertisements in this matter appear to require
5 disclaimers.³⁰

6 Here, the available information indicates that the unknown respondent spent at least
7 \$34,100 for paid placement of content on Facebook, at least some of which was for advertising
8 by Trump 2020, all of which expressly advocated for Trump's re-election. As discussed above,
9 all of Trump 2020's posts expressly advocated Trump's election and, therefore, all of Trump
10 2020's paid Facebook advertisements constituted public communications that required a
11 compliant disclaimer, though no such disclaimers were included. As discussed above,
12 identifying the Trump 2020 posts that correspond to the known expenditures is easily
13 ascertainable.³¹ Accordingly, the Commission finds reason to believe that Respondent violated
14 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include disclaimers on its paid
15 express advocacy advertisements.

²⁸ See Internet Communication Disclaimers and Definition of "Public Communication," 83 Fed. Reg. 12,864, 12,868 (Mar. 26, 2018) (quoting comment from Facebook on the rulemaking).

²⁹ See Advisory Op. Req., AO 2011-09 (Facebook).

³⁰ See 11 C.F.R. § 100.26 (defining public communications to include "communications placed for a fee on another person's Web site.").

³¹ See *supra* note 18.