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June 7, 2018

Mr. Jeff S. Jordan, Assistant General Counsel
Attn: Kathryn Ross, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

Re: Matters Under Review 7364 & 7366 (American Media, Inc., *et al.*)

Dear Mr. Jordan:

This letter responds to two complaints, separately designated as Matters Under Review ("MURs") 7364 and 7366. The Federal Election Commission ("FEC" or the "Commission") extended the deadline for responding to these complaints until today.

In MUR 7364, Common Cause and Paul S. Ryan allege that American Media, Inc. ("AMI") violated the Federal Election Campaign Act of 1971, as amended (the "FECA" or the "Act") by making an unlawful corporate contribution to the Donald J. Trump for President Committee.[1] In MUR 7366, Mr. Shripal Shah of the American Bridge 21st Century Foundation ("American Bridge"), floats the "possibility" that AMI, as well as AMI's President, David Pecker, violated the Act by making unlawful corporate contributions to the Trump campaign.[2] American Bridge also contends that AMI and Mr. Pecker are guilty of a criminal conspiracy to violate the Act under 18 U.S.C. § 371.

The central factual allegation underlying both complaints is that AMI, a leading publisher in health and fitness magazines, investigative journalism and

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[1] The Complaint also names President Donald J. Trump and Donald J. Trump for President, Inc. as respondents. It does not name David Pecker, AMI's President and CEO, or Dylan Howard, AMI's Chief Content Officer and Vice-President, as respondents, although the Commission separately notified Messrs. Pecker and Howard of the Complaint. Since Messrs. Pecker and Howard are not identified as respondents, there is no need for them to separately respond to the Complaint. *See* 11 C.F.R. §§ 111.4, 111.7 (permitting the Commission to find "reason to believe" only against a party that the complaint "clearly identif[ied] as a respondent"). To the extent that the actions of Mr. Pecker and/or Mr. Howard as officers of AMI are at issue, they are addressed in this response on behalf of the corporation.

[2] *See* American Bridge Complaint at 12. The Complaint also names President Donald J. Trump, Donald J. Trump for President, Inc., Mr. Timothy Jost, and Mr. Michael Cohen as respondents.

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celebrity news, made an unlawful campaign contribution to the Trump campaign by paying $30,000 to a prospective news source, Mr. Dino Sajudin, in 2015. The complaints allege that this payment, made for an exclusive right to a story about an alleged "love child" fathered decades ago by Donald Trump, represented a contribution to the Trump campaign because AMI ultimately chose not to publish the story.

The FECA, however, contains a broad Press Exemption that excludes from regulation the costs incurred by news media to gather, cover, and publish news, as well as the underlying editorial decisions concerning if and when a story should be published. On many previous occasions, including in recent enforcement matters involving National Public Radio, CNN, CBS and the *New York Times*, the Commission has observed the limits on its jurisdiction to investigate and second-guess the decision-making process of those involved in the news business. As one Commissioner flatly observed in a similar case involving CBS and *60 Minutes*, under the Press Exemption no "inquiry may be addressed to sources of information, research, motivation, [or] connection with the campaign" and even "investigating such allegations would intrude upon Constitutional guarantees of freedom of the press."[3] The Commission must respect those same boundaries here. Surely the Press Exemption protects the costs a news organization spends to preserve and investigate a rumor as well as its decision not to publish the rumor – for any reason, not the least of which is that the rumor is false.

Here, the facts show that after conducting a lie detector test and investigating the accuracy of Sajudin's story, AMI could not confirm the veracity of the underlying allegation. As more fully explained below and in the accompanying affidavit of Dylan Howard, an investigation by AMI concluded that although Mr. Sajudin probably heard rumors about a Trump love child while he worked as a doorman at the Trump Tower, those rumors could not be substantiated. Indeed, no media outlet has ever determined that such rumors were true, despite their own investigations. Thus, AMI's activities were wholly consistent with the Press Exemption.

But even absent application of the Press Exemption, there are many other reasons to dismiss this case. For example, AMI's payment to Mr. Sajudin was

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[3] Statement of Comm'r Ellen L. Weintraub, MUR 5540 (CBS Broadcasting, Inc.) (July 12, 2005) ("Weintraub-CBS Statement").

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compensation for the exclusive rights to his story, which potentially could have been very valuable to AMI, not "for the purpose of influencing an election" as required by the Act. Furthermore, AMI's decision to refrain from publishing the rumor – i.e., silence – is not a cognizable "thing of value" contemplated by the Act's definition of "contribution." In other words, the payment simply does not constitute regulable activity under the FECA.

More fundamentally, the complaints themselves were not filed by anyone with direct knowledge of the underlying facts. Instead, they were filed by two interest groups using second-hand press accounts that report hearsay opinions, the speculation of anonymous sources, and the authors' rhetorical conclusions about "catch and kill" journalism. But the editorial opinions of Ronan Farrow and Jeffrey Toobin do not count as evidence. Respectfully, if the Commission intends to disregard prior court decisions, start making "reason to believe" findings against media entities, and intrude upon core First Amendment activity, it should find a better record upon which to proceed.

Apart from its discussion of the Sajudin allegation, the American Bridge complaint also contains allegations regarding AMI's agreement with Karen McDougal. AMI previously addressed that issue and incorporates its response dated April 13, 2018, and a forthcoming supplemental response, submitted in MUR 7324/7332. As for the American Bridge complaint's allegation of a criminal conspiracy, it suffices to observe that the Commission does not have jurisdiction over criminal allegations under 18 U.S.C. § 371, and also that there can be no criminal conspiracy when there is no underlying violation of the Act.[4]

For these and other reasons detailed in this submission, the Commission should find no reason to believe that AMI violated the Act and close the file in this matter.

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[4] *See, e.g.*, 52 U.S.C. § 30106(b)(1) (authorizing the Commission to "administer, seek to obtain compliance with, and formulate policy with respect to, *this Act and chapter 95 and chapter 96 of title 26*. The Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.") (emphasis added); 52 U.S.C. § 30109(a)(1), (a)(2), (a)(4), (a)(5) (limiting the complaints that may be entertained and acted upon by the Commission to "a violation of *this Act or of chapter 95 or chapter 96 of title 26*") (emphasis added).

FACTUAL BACKGROUND

A. General Background on AMI and the News Industry

AMI is a national media company that has been in the publishing business since 1999.[5] AMI is not now, and never has been, owned or controlled by any political party, political committee, or political candidate.[6]

AMI owns and publishes the leading celebrity and health and fitness magazines in the country, including *Men's Journal*, *Muscle & Fitness*, *Soap Opera Digest*, *US Weekly*, *National Examiner*, *Globe*, *OK!* and *Star*.[7] The overall readership of the company's magazines– among print and digital publications – is estimated at 49.3 million readers.[8]

One of AMI's most well-known publications is the *National Enquirer* ("*Enquirer*"), which was founded in 1929 and has been published weekly by AMI since 1999.[9] In industry parlance, the *Enquirer* is a "tabloid" genre publication focusing on current events, crime, scandals and the personal lives of celebrities, the rich and famous, and political figures.[10] The circulation of the *Enquirer* print edition is approximately 250,000 per week with a readership of approximately 5.5 million.[11] The online edition has approximately 725,000 unique visitors each month.[12]

The *Enquirer* is also known for investigative journalism, including its reporting "on the O.J. Simpson case in the 1990s, [the] 2001 disclosure that Jesse Jackson had fathered an out-of-wedlock child, [and] its 2003 report that Florida

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5 *See* Affidavit of Dylan Howard, ¶ 3 ("Howard Aff.") (attached).

6 *Id.*

7 *Id.* ¶ 4.

8 *Id.* ¶ 5.

9 *Id.* ¶ 6.

10 *Id.*

11 *Id.*

12 *Id.*

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authorities were looking into prescription drug abuse by Rush Limbaugh."[13] In fact, the *Enquirer* has earned national recognition for its journalistic endeavors in this regard, including for its coverage of Senator John Edwards' affair with campaign staffer Rielle Hunter.[14]

Like many other outlets, an integral part of the *Enquirer*'s editorial and marketing strategy is to acquire and report exclusive stories.[15] Exclusive stories give the *Enquirer* an advantage over competitors – both tabloids and mainstream news publications – in reporting new and interesting news and information.[16] That in turn increases newsstand sales.[17] In recent years, however, with television news divisions joining in the bidding wars, industry competition has "spur[red] an arms race to buy big stories."[18] A "big story, with several bidders seeking exclusives, will inevitably drive up the cost."[19] News organizations that purchase exclusive rights to stories sometimes publish them and sometimes sell them to other news outlets, book publishers or filmmakers.[20]

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13 Howard Kurtz, *John Edwards's Paternity Admission Vindicates National Enquirer, its Editor Says*, Wash. Post, Jan. 22, 2010; Howard Aff. ¶ 7. *See also* Dan Weil, *From Gossip to Gospel: National Enquirer Turns Respectable; POLITICAL SCOOPS: Tabloid That Once Dug for Dirt Now Uncovers Legitimate Stories*, Cox News Service (Mar. 11, 2001).

14 *See, e.g.*, Emily Miller, *National Enquirer Officially in Running for Pulitzer Prize*, HuffingtonPost.com, May 25, 2011; Press Release, AMI, *The National Enquirer Dominates with Six Nominations for Magazine Media Awards*, May 10, 2016, available at https://www.americanmediainc.com/press-release/national-enquirer-dominates-six-nominations-magazine-media-awards.

15 *See, e.g.*, Howard Aff. ¶ 7; Jeremy Peters, *Paying for News? It's Nothing New*, N.Y. Times (Aug. 6, 2011) (noting that the paper paid a Titanic survivor "multiple times his annual salary" for his account of the disaster); Richard Harwood, *What Is This Thing Called 'News'?*, Washington Post (Mar. 12, 1994) (reporting that Tonya Harding was paid $600,000 to appear on Inside Edition).

16 Howard Aff. ¶ 7.

17 *Id.*

18 Paul Farhi, *Up for Audit: 'Checkbook Journalism' and the News Groups That Buy Big Stories*, Wash. Post, Nov. 17, 2010.

19 *Id.*

20 *See id.* It is widely acknowledged in the media industry that "bidding wars can pay off for the buyer. The British celebrity magazine Hello! often made a profit on its checkbook journalism by reselling material it had bought to other news organizations." *Id.*

Like all media enterprises, AMI's publications, including the *Enquirer*, routinely make editorial judgments about which stories to publish, when to publish, when to delay publishing to a later date, and in some cases not to publish stories. The *Enquirer*'s editorial criteria are based upon a range of factors, including, but not limited to, reader interest and reader bias, editorial stance of the publication, truth and accuracy, as well as legal considerations.[21]

As one prominent attorney has explained: "The *Enquirer* really tries to get it right. . . . It's subject to the same libel laws everybody else is."[22] To take an example, "[f]ive *Enquirer* reporters . . . spent more than a month in 2007 chasing down [rumors of a John McCain affair] but failed to uncover any documentary evidence."[23] Despite the *Enquirer*'s significant investment of staff time and financial resources, the publication's then-editor-in-chief explained: "I wouldn't have run that piece, there was nothing in it . . . . It was filled with innuendo . . . . When you're done reading it, you're like, there's no there there."[24]

For its part, Donald Trump has been the subject of *Enquirer* attention – both positive and negative – long before he became the 2016 Republican presidential nominee. For example, the *Washington Post* reported in 2010 that the *Enquirer* paid sources for "sensational . . . 'revelations' about Donald Trump by his ex-housekeeper."[25] In 2016, the *Enquirer* also published an editorial expressly supporting the election of Donald Trump.

In addition to the *Enquirer*, AMI publishes a number of other titles, with a particular focus on health and fitness publications. AMI routinely pays editors,

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21 For example, the *Enquirer* and other publications are often targets of exorbitant lawsuits for their news coverage. *See, e.g.*, Brian Freeman, *Dr. Phil Sues National Enquirer for $250 Million*, Newsmax.com, July 10, 2016; *Hulk Hogan's Legal Leg Drop Sets Precedent for Celebrity Journalism*, JD Supra Blog, June 1, 2016.

22 Gabriel Sherman, *Open Tab*, The New Republic (Sept. 10, 2008). *See also* Mary Feeney, *Tabloids Turning Mainstream*, Hartford Courant (Mar. 2, 2001) (explaining that the "*Enquirer* is often the publication that gets it right[, as] the paper has 25 people 'who fact-check stuff up the wazoo'").

23 Sherman, *supra* note 22.

24 *Id.*

25 Farhi, *supra* note 18.

journalists, columnists, writers, models, photographers, printers, sources and other professionals to produce, present and/or publish content for its publications.[26]

B. AMI's Newsgathering and Editorial Decisions.

Although AMI is not required to explain or justify its editorial decisions to the government, AMI previously has published many of the facts about its arrangement with Mr. Sajudin and therefore re-states them here.[27] AMI's published account is accurate and is supported here under oath by the *National Enquirer*'s editor, Dylan Howard. The editorialized accounts in *The New Yorker* and elsewhere, on which the complaints are based, are inaccurate or misleading and are not supported by sworn testimony or the author's personal knowledge of the underlying events.

In or about November 2015, Mr. Sajudin, a doorman for the Trump Organization at Trump World Tower between 2008 and 2014, approached the *Enquirer* about a rumor he had heard on the job involving an alleged Trump "love child."[28] On or about November 13, 2015, AMI and Mr. Sajudin entered into a standard confidentiality agreement for "confidential information," defined as "information regarding Mr. Donald Trump; and any and all documentation in Source's possession relevant to the Confidential Information including, but not limited to Mr. Trump's personal and corporate affairs."[29] On November 15, 2015, AMI and Mr. Sajudin entered into a standard Source Agreement, pursuant to which AMI agreed to pay Mr. Sajudin $30,000 upon publication of the "Exclusive," defined as information provided by Mr. Sajudin "regarding Donald Trump's illegitimate child."[30] In fact, it is customary for AMI to pay its sources for tips and

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26 Howard Aff. ¶ 9.

27 *Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child*, Radar Online, Apr. 11, 2018 (attached as Ex. A to Howard Aff.).

28 *Id.* ¶ 11.

29 *Id.* ¶ 12 & Exhibit B.

30 *Id.* ¶ 13 & Exhibit C.

exclusive rights.[31] Payments have ranged from minor to significant amounts, depending on the story.[32] *Enquirer* and other AMI publications publicize this fact.[33]

For stories that are particularly sensational, AMI typically submits the source to a polygraph, or lie detector, test.[34] So it did with Mr. Sajudin.[35] On December 9, 2015, AMI agreed to pay $500 of the $30,000 up front to Mr. Sajudin upon satisfactory completion of a polygraph test to be completed later that day.[36]

The polygraph test was completed on December 9, 2015, by Searching for the Truth Investigative Services, which is the company routinely used by AMI for such tests.[37] The results of the test indicated that Mr. Sajudin was being truthful in his responses that he did, in fact: (1) hear from employees and residents of the Trump World Towers that [another employee] had a child with Donald Trump; and (2) overhear rumors that [another employee] "got knocked up by the boss."[38] Other than hearing the rumor, however, Mr. Sajudin had no other knowledge about the truth or falsity of the existence of any actual "love child."[39]

Upon his successful completion of the polygraph test, Mr. Sajudin demanded that unless AMI pay him the entire $30,000 source fee up front, he would take the story elsewhere.[40] Because AMI wanted to pursue the allegation further, and did not want to lose the story to another publication, AMI submitted to Mr. Sajudin's demands and agreed to pay him the entire fee regardless of whether it published the story. An Amendment to the Source Agreement was executed on or about December 17, 2015, pursuant to which AMI agreed to pay Mr. Sajudin the entire $30,000 in exchange for a perpetual exclusivity period and a liquidated

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31 *Id.* ¶ 7.

32 *Id.*

33 *Id.*

34 *Id.* ¶ 14.

35 *Id.* ¶¶ 15-16.

36 *Id.* ¶ 15.

37 *Id.* ¶ 16.

38 *Id.* & Exhibit A.

39 *Id.* ¶ 17.

40 *Id.* ¶ 18.

damages penalty of $1 million should Mr. Sajudin breach the agreement.[41] That was necessary to protect AMI's investment not only in Mr. Sajudin's story but also its expenditure of resources to conduct an investigation.

Mr. Sajudin never had first-hand knowledge that Trump fathered a child with another employee. He had only heard rumors from others. Neither Mr. Sajudin nor anyone else had evidence to support or substantiate the rumors he had heard. Therefore, the *Enquirer* engaged in a four-week investigation, which included the assignment of four AMI reporters to conduct dozens of phone calls, interviews, stakeouts at the homes of the alleged mistress and love child in New York and California, and extensive background research.[42] Also, as is customary when AMI is considering publishing an incendiary story, it contacted Donald Trump's representatives for a "comment call," *i.e.*, to advise them of the storyline and to provide them with an opportunity to address the veracity of it.[43] Mr. Trump's representatives denied the rumor.[44] The investigation resulted in the conclusion that the story was ***not true***.[45]

The *Enquirer* reached the conclusion that it would not publish the story based on its standard editorial criteria which include, but are not limited to, reader interest and reader bias, editorial stance of the publication, truth and accuracy, as well as legal considerations.[46]

As time passed, other media outlets apparently approached Mr. Sajudin to discuss the story. Having decided not to publish the story, AMI released Mr. Sajudin from the exclusivity clause that had accompanied the $30,000 payment so that he could tell his story to whomever he chose.[47]

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41 *Id.* ¶ 19.

42 *Id.* ¶ 20.

43 *Id.* ¶ 21.

44 *Id.* ¶ 22.

45 *Id.* ¶ 23.

46 *Id.* ¶ 24.

47 *Id.* ¶ 25.

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C. The Complaints Misrepresent and Distort AMI's Conduct.

None of the complainants knows anything about AMI's actual conduct other than the fact that AMI did not publish the Sajudin story until the Radar Online article in April 2018.[48] The complaints rely exclusively on second-hand hearsay publications, particularly an Associated Press article and a *New Yorker* article, as the basis for all of their factual allegations and editorial conclusions about AMI's journalistic practices.[49] Most of the sources quoted are anonymous or state opinion or conjecture but not fact.[50] Likewise the editorial characterizations of the AP and *New Yorker* are not facts, they are not sworn, and they are not evidence.[51]

This type of complaint, consisting of mere regurgitation of misleading hearsay, speculation, and editorial spin about AMI by Ronan Farrow in the *New Yorker* is not an appropriate basis upon which to make a reason to believe finding. This is particularly true given how much of the complaints rest on anonymous

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48 *Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child*, Radar Online, Apr. 11, 2018. Exhibit A to Howard Aff.

49 Virtually every paragraph of the Common Cause complaint expressly states that it is "based on published reports" or cites and quotes such published reports. *See* Common Cause Complaint ¶¶ 2, 3, 4, 11, 12, 13, 14, 15, 16, 17, 18, 19, 34, 35, 36, 37, 40, 41, 42, 45, 46. Likewise, the American Bridge complaint expressly relies upon "headline after headline" and "articles [that] appear to confirm" its allegations, and it too states that its allegations are "based on publicly available published reports from reputable news agencies" and that its factual assertions are supported by citations to news reports. *See* American Bridge Complaint at 1, 2, 3, 4, 5, 6, 7, 8, 11, 12. Indeed, the concluding paragraph of American Bridge's complaint sums up its case: "[S]ince published reports have confirmed that AMI paid off two individuals for Mr. Trump just prior to the 2016 election, complainant asks that the Federal Election Commission investigate AMI . . . ." *Id.* at 12.

50 For example, the Common Cause complaint quotes the *New Yorker* for the proposition that "'[t]wo of the [anonymous] former A.M.I. employees said they *believed* that Cohen was in close contact with A.M.I. executives.'" Common Cause Complaint ¶ 17 (emphasis added). Further, "'[s]everal [anonymous sources] said that they *believed* the coverup, rather than the [false] story itself, was of public importance,'" and "sources said they *believed* that the catch-and-kill operations had cemented a partnership between Pecker and Trump.'" *Id.* ¶ 18, 19 (emphasis added). These subjective *beliefs* are hearsay, summarized in the words of Ronan Farrow, and are subjective opinions. None of this is factual or sworn evidence.

51 For example, Ronan Farrow's use of the words "catch-and-kill operations" represents his own rhetorical characterization of AMI's editorial practices. *Id.* ¶ 19.

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sources, which are a highly suspect basis for making a reason to believe finding, especially one against a media organization.

Tellingly, the American Bridge complaint wholly omits any mention that Mr. Sajudin's story (*i.e.*, Trump's "love child") has never been substantiated despite reported efforts to confirm it. At least the Common Cause complaint acknowledges the *New Yorker*'s admission that its anonymous sources "'expressed skepticism about Sajudin's claims,'"[52] but Common Cause otherwise omits from its complaint that:

- Like AMI, the *New Yorker* also devoted significant resources and costs to investigating the story;[53]
- Like AMI, the *New Yorker* also contacted a Trump representative for comment and "A spokesperson for the Trump Organization denied the allegations;"[54]
- The *New Yorker* spoke with "the father" of the rumored love child who said "Sajudin's claim was 'completely false and ridiculous;'"[55] and
- Like AMI, "The *New Yorker* has uncovered no evidence that Trump fathered the child."[56]

In fact, no media outlet – the Associated Press and *New Yorker* included – has uncovered any evidence that the Sajudin rumor is true. Both complaints omit critical facts in an effort to mislead the Commission into a reason to believe finding that AMI's editorial decision not to publish the *false* rumor violates the Act.

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52 Common Cause Complaint ¶ 18

53 Ronan Farrow, *The National Enquirer, A Trump Rumor, and Another Secret Payment to Buy Silence*, The New Yorker, Apr. 12, 2018.

54 *Id.*

55 *Id.*

56 *Id.*

THE LAW

The FECA prohibits corporations from making a "contribution" to a federal candidate.[57] The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office,"[58] and also "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election to [federal office]."[59] A payment made for a different purpose that incidentally benefits a candidate is not a "contribution."[60]

The FECA also regulates "expenditures." The term expenditure includes "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 for Federal office."[61] Expenditures that are made "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, of their agents, shall be considered to be a contribution to such candidate."[62]

However, all costs incurred by press organizations in covering or carrying news and editorials are exempt from the definition of contribution and expenditure:

> Any cost incurred in covering or carrying a news story, commentary, or editorial by any . . . newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate.[63]

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57 *See* 52 U.S.C. § 30118(a).

58 *Id.* § 30101(8)(A).

59 11 C.F.R. § 114.1(a)(1).

60 *Orloski v. FEC*, 795 F.2d 156 (D.C. Cir. 1986).

61 52 U.S.C. § 30101(9)(A)(i).

62 *Id.* § 30116(a)(7)(B)(i).

63 11 C.F.R. § 100.73; *see also* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.132.

This provision, called the Press Exemption, was meant to ensure that the FECA did not "limit or burden in any way the first amendment freedoms of the press and of association."[64]

Following the decisions in *Reader's Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981) and *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308 (D.D.C. 1981), the Commission has used "a two-step analysis to determine whether the media exemption applies."[65] The Commission first considers whether the entity in question is a media entity.[66] Second, in a two-factor analysis, the FEC considers (1) whether the press entity is owned or controlled by a political party, political committee, or candidate, and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function.").[67] This "two-stage process was mandated because the media exemption represents a fundamental limitation on the jurisdiction of this agency, and even an investigation of publishers can trespass on the First Amendment."[68]

The Press Exemption is a subject matter jurisdictional limit upon the Commission's authority to regulate and to investigate.[69] The only inquiry the Commission may lawfully undertake at this stage of the proceedings is whether it is a legitimate press function for AMI, as a media entity, to make an editorial decision whether to run a story sourced from Mr. Sajudin.[70]

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64 H.R. Rep. No. 93-1239, at 4 (1974) (discussing the statutory provision upon which the regulatory exemption is based).

65 MUR 7230, Factual & Legal Analysis at 3 (NPR). *See also* MUR 7231, Factual & Legal Analysis at 4 (CNN); MUR 7218, Factual & Legal Analysis at 3-4 (New York Times).

66 Statement of Reasons of Comm'rs Darryl R. Wold, Danny L. McDonald, David M. Mason, Karl J. Sandstrom, and Scott E. Thomas, MURs 4929, 5006, 5090, and 5117 (ABC, CBS, NBC, *New York Times*, *Los Angeles Times*, and *Wash. Post et al.*) (Dec. 20, 2000) ("*Commission Statement on Investigatory Boundaries for Media Cases*").

67 *Id.* at 2-3.

68 *Id.*

69 *See Phillips Publ'g, Inc.*, 517 F. Supp. at 1313.

70 *See Reader's Digest*, 509 F. Supp. at 1215 ("[n]o inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc."). Note that this is not the same as the Commission second-guessing the result of the editorial decision-making process.

DISCUSSION

The complaints concede that AMI, as a well-established publisher of magazines of long-standing, is a media entity, and does not contend that AMI is "owned or controlled by a political party, political committee, or candidate." Instead, the complaints make two arguments: (1) that as a threshold matter, the payment to Mr. Sajudin is not exempt because the *Enquirer* did not publish the story; and (2) that AMI was not acting in its "legitimate press function" when it paid Mr. Sajudin for a story right. The errors in these contentions are explained below, followed by the First Amendment issues at stake and other flaws in the legal theories advanced by the complaints.

I. AMI'S PUBLISHING ACTIVITIES ARE EXEMPT FROM REGULATION UNDER THE PRESS EXEMPTION.

A. The Press Exemption Protects a News Organization's Decision Not to Publish a Story.

The complaints first argue that the Press Exemption does not apply because the *Enquirer* did not "distribute" the story, and the exemption protects only the distribution of stories, not editorial decisions to hold stories. While the point is not seriously developed, complaints argue that, because Mr. Sajudin's story was not published by AMI, resources expended by a media company prior to "distribution" cannot qualify as "covering or carrying a news story."[71] This is an absurd interpretation of the Press Exemption.

The Press Exemption covers "any cost incurred in covering or carrying" news stories.[72] Covering a news story includes the newsgathering process. Press organizations frequently decide not to distribute, or carry, a story after incurring costs to gather news (*i.e.*, the coverage function).

"The press exemption applies broadly – not only to the pages of a publication or to the content of a newscast, but also to activities undertaken by a

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71 11 C.F.R. § 100.73.

72 *Id.*

press entity 'that fall broadly within the press entity's legitimate press function.'"[73] The Commission has – in no uncertain terms – made clear that reviewing the "competing claims of parties" and "choos[ing] which to feature, investigate or address in news, editorial and opinion coverage" is part of the "normal press function" exempted from regulation under 11 C.F.R. § 100.73.[74]

As discussed above, media outlets like the *Enquirer* discuss and debate whether to publish stories every day.[75] While some stories get published, media outlets hold or decline to publish stories for a variety of reasons.[76] In one particularly relevant example here, NBC News held back on publishing the now-well-known *Access Hollywood* tape involving Donald Trump.[77] In 1998, *Newsweek* decided not to publish Michael Isikoff's scoop that President Clinton had an affair with Monica Lewinsky after spending significant resources for Michael Isikoff to develop the story.[78] Many national networks have been criticized for editorial decisions not to cover allegations of serious misconduct by Bill Clinton before and

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73 Statement of Vice Chairman David M. Mason and Comm'r Hans A. von Spakovsky, MUR 5679 (Scranton Times-Tribune) (Apr. 12, 2007).

74 *Commission Statement on Investigatory Boundaries for Media Cases* at 6.

75 *See supra* at 6.

76 *See id.*

77 Jack Shafer, *Why Did NBC News Sit on the Trump Tape for So Long?*, Politico (Oct. 10, 2016).

78 Noel Sheppard, *Former Newsweek Editor on Why He Didn't Run Lewinsky Story: 'We Didn't Feel We Were on Firm Enough Ground'*, NewsBusters, Nov. 6, 2011, https://www.newsbusters.org/blogs/nb/noel-sheppard/2011/11/06/former-newsweek-editor-why-he-didnt-run-lewinsky-story-we-didnt. Reports noted *Newsweek*'s impatience with the amount of time and resources Isikoff was devoting to the President's personal life. *See, e.g.*, David Shaw, *Monica's Story: A Lesson in Restraint*, Los Angeles Times, Aug. 5, 1998 (noting that Isikoff "spent so much time on the story in 1997 – without producing anything solid enough to be published – that his editors reprimanded him and urged him to work on other stories").

during his presidency.[79] And of course there are thousands of editorial decisions not to publish political stories on a wide variety of other topics every day.[80]

AMI is no exception to these practices. It regularly exercises its editorial judgment to publish some stories and not others based upon criteria it is not required to justify to the federal government. It suffices that AMI's regular practice for decades has been to exercise its editorial discretion to decide which stories its readers want to read and which stories it desires to publish, or not to publish, as well as when and how it desires to report such stories.[81] Such decisions are a *sine qua non* of the journalistic process. The Commission cannot single out the *Enquirer* for engaging in the kind of decision-making that takes place in every newsroom in America.[82]

In fact, the Commission found no reason to believe that Sinclair Broadcasting violated the FECA in any way when it chose *not* to air a documentary film critical of presidential candidate John Kerry in the fall of 2004. The Democratic National Committee, anticipating that Sinclair was about to direct its television stations to carry the documentary, filed a complaint to enjoin the broadcasts. Sinclair apparently had paid for license rights to the documentary, but ultimately decided not to carry the film. Commissioners reasoned that the decision not to air was exempt from regulation both under the Press Exemption[83] and because there was no expenditure or contribution to regulate because Sinclair did not air the film.[84]

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79 *Sean Hannity Cites MRC Data on Stormy-Selling Networks Omitting Clinton Accusers*, NewsBusters, Mar. 23, 2018, https://www.newsbusters.org/blogs/nb/tim-graham/2018/03/23/hannity-cites-mrc-data-networks-omitting-clinton-accusers.

80 *See, e.g.*, Media Research Ctr., *The Censorship Election Special Report*, http://www.mrc.org/sites/default/files/documents/CensorshipElection.pdf.

81 Howard Aff. ¶ 8.

82 The Common Cause Complaint pejoratively makes reference to a practice called "catch and kill." While use of the term is disputed, the terminology effectively means that the newsroom has made an editorial decision not to carry, or publish, a particular story.

83 *See* Statement of Reasons of Comm'r Weintraub, MURs 5562 and 5570 (Sinclair Broadcast Group, Inc.) (July 12, 2005).

84 *See* Statement of Comm'rs David M. Mason and Bradley A. Smith, MUR 5562 (Sinclair Broadcast Group, Inc.) at 3 (July 12, 2005).

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To suggest that the regulation does not exempt the time and financial resources a press entity expends to run down leads and research stories that ultimately are not published would be inconsistent with the First Amendment, congressional intent, and Commission precedent. For example, adopting the complainants' position would mean that, if a campaign provides an ultimately unpublished news tip to the *New York Times*, every penny in salary and expense spent by the *Times* to research and confirm the facts would be a corporate contribution to the campaign. And even if the story is ultimately published but takes months to investigate, it might mean that the media organization had made a contribution to the campaign until the story had run. That simply cannot be – and is in fact not – the law. Moreover, it cannot be the law that the *Times*' decision to publish the campaign's news tip is exempt, while its decision not to publish the tip is an unlawful corporate campaign contribution.

Finally, even the Complaint acknowledges that AMI followed regular tabloid newsgathering and editorial practices.[85] The contract shows that AMI bargained for a potentially valuable news story, which is quite common in the media business.

In sum, the Press Exemption applies regardless of whether AMI published the story, and AMI's press activities are outside the Commission's subject matter jurisdiction.

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[85] *See* Common Cause Complaint ¶ 14 (calling "catch-and-kill" a regular "tabloid practice" and identifying Jerry George, who worked at AMI for decades, as one who "sometimes handled catch-and-kill contracts related to other celebrities") & ¶ 15 ("Sajudin had called the National Enquirer's tip line and then 'signed a boilerplate contract with the Enquirer, agreeing to be an anonymous source and be paid upon publication.' The Enquirer then dispatched reporters to pursue the story and sent a polygraph expert to administer a lie detection test to Sajudin.'"). Common Cause also has relied (in MUR 7324) upon Ronan Farrow's *New Yorker* article dated February 16, 2018, quoting former AMI editor Jerry George, who worked at AMI for decades, stating that AMI "routinely makes catch-and-kill arrangements like the one reached with [Karen] McDougal." Without adopting the pejorative characterization "catch-and-kill," it is nonetheless significant that Common Cause and American Bridge acknowledge that AMI's conduct here conformed to practices it has followed for decades. *See* Ronan Farrow, *Donald Trump, A Playboy Model, and A System for Concealing Infidelity*, The New Yorker, Feb. 16, 2018.

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B. The Press Exemption Protects AMI's Costs of Content Creation, Newsgathering, and Securing Exclusive Rights to a Story.

The complaints also attack AMI's payment to Mr. Sajudin as being outside the boundaries of a "legitimate press function."[86] But such claim is factually and legally baseless.

AMI paid Mr. Sajudin $30,000 for the exclusive right to his story. Without exclusivity (*i.e.*, if multiple other publications were also free to run the story), there would be no point in the payment. Mr. Sajudin granted AMI exclusive story rights on a particular rumor. The purchase of a story right is a common cost of "covering" news. So-called "checkbook journalism" – *i.e.*, paying sources for stories – "has been a persistent . . . feature of news coverage at even the most powerful and reputable news organizations, long predating the hyper-competitive 24-hour cable news cycle and the celebrity gossip boom."[87] Far "from existing at the periphery of journalism and society, the payments have reached the highest levels of politics."[88]

The *Enquirer* is no different, having "unapologetically paid for interviews and photographs since the days of its founder."[89] In fact, "the tabloid has paid anywhere from a few hundred dollars to six figures for scoops."[90] Thus, AMI's payment to Mr. Sajudin for story rights is consistent with established journalistic practices in the media industry as well as AMI's own practices over many years.[91]

Second-guessing AMI's practice of buying story rights would break with Commission precedent to the contrary. AMI's purchase of Mr. Sajudin's story rights is, for all practical purposes, no different than the funds *Reader's Digest* paid to sources to conduct a tidal analysis and computer study of Senator Kennedy's vehicle in connection with the Chappaquiddick incident, items which the court there

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86 Common Cause Complaint, ¶¶ 35, 41; American Bridge Complaint at 9.

87 Peters, *supra* at note 15.

88 *Id.*

89 Jeffrey Toobin, *The National Enquirer's Fervor for Trump*, The New Yorker, July 3, 2017.

90 *Id.*; Howard Aff. ¶ 7.

91 *See supra* at notes 31-32.

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declared were "on their face exempt functions."[92] Similarly, the Commission exempted KFI-AM radio station's expenses to stage "Fire Dreier" rallies outside the Congressman's office and broadcast interviews with his opponent.[93]

Regardless of one's views on the practice, it is not within the Commission's authority to adjudicate the ethics of news-gathering methods or declare who is a "responsible journalist."[94] Indeed the complaint against CBS specifically alleged that Dan Rather and his producer breached journalistic ethics by coordinating a false story about President Bush's national guard service between a source and Joe Lockhardt of the Kerry campaign. But the Commission concluded such conduct, even if ethically improper, did not vitiate the Press Exemption.[95]

C. The Press Exemption Protects AMI's Editorial Stance and Its Contacts with Any Campaign Representatives.

The complaints raise two additional issues, neither of which is relevant. First, the complaints challenge the *Enquirer*'s editorial decisions here because the complainants find objectionable the *Enquirer*'s favoritism toward Donald Trump, both during the 2016 election and in years before the election.[96] To be sure, AMI's publisher David Pecker is a personal friend of Donald Trump and the *Enquirer* editorialized in favor of his election.[97] Mr. Pecker was quoted in *The New Yorker* acknowledging that the *Enquirer*'s editorial stance was decidedly favorable to

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92 *Reader's Digest*, 509 F. Supp. at 1215–16. Prior to 2002, the FEC's regulatory exemption for media studies was located at 11 C.F.R. § 100.7(b)(2) and § 100.8(b)(2).

93 First General Counsel's Report, MUR 5569 (KFI-AM 640).

94 Statement of Reasons of Commissioners Michael E. Toner, David M. Mason, and Bradley A. Smith, MURs 5540 & 5545 (CBS Broadcasting, Inc.) (July 11, 2005).

95 *See* Weintraub-CBS Statement at 1 (explaining that the FEC "cannot and should not attempt to arbitrate claims of media bias or breaches of journalistic ethics").

96 *See*, Common Cause Complaint ¶ 19; American Bridge Complaint at 5-6.

97 Toobin, *supra* note 89.

Trump.[98] But these facts are irrelevant, because the Press Exemption protects editorial bias.[99]

Furthermore, the Press Exemption protects media organizations from investigation or inquiry into their editorial motives or purposes.[100] Commissioners know from personal experience that certain journalists have friends in public office aligned with their editorial positions and choose to feature these favorites above others to suit their editorial objectives. Surely it would have been as unfathomable for Rachel Maddow to feature negative information about Hillary Clinton in the run up to the 2016 presidential election as it would have been for Sean Hannity to feature negative information about Donald Trump – even if negative information was placed directly before them. Indeed, one need not skim *New Yorker* articles for more than a couple minutes to discern a clear bias favoring Democrats like President Obama and disfavoring President Trump.[101]

Second, the complaints challenge the right of AMI to discuss Mr. Sajudin's story with an "agent" of Donald Trump and/or the Trump campaign, including Michael Cohen.[102] Regardless of whether or when AMI discussed its story with any such representative – this issue is *per se* irrelevant (for the same reason that it is irrelevant that the *New Yorker* contacted the Trump Organization for comment).

"Political parties and campaigns employ platoons of advisors, handlers and spokesmen charged with attempting to shape or influence media coverage of campaigns."[103] It "is clearly a part of the normal press function to attend to the competing claims of parties, campaigns and interest groups and to choose which to feature, investigate or address in news, editorial and opinion coverage of political campaigns."[104] That is why, over a decade ago, commissioners "concluded that the presence or absence of alleged coordination between a press entity and a candidate

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98 *Id.*

99 *See, e.g., Commission Statement on Investigatory Boundaries for Media Cases* at 3; Weintraub-CBS Statement.

100 *See, e.g.*, Weintraub-CBS Statement.

101 *See, e.g., The New Yorker Endorses Hillary Clinton*, New Yorker (Oct. 31, 2016).

102 *See,* Common Cause Complaint ¶ 19; American Bridge Complaint at 5-6.

103 *Commission Statement on Investigatory Boundaries for Media Cases* at 6.

104 *Id.*

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or political party is **irrelevant** to determining whether the Act's press exemption applies."[105]

Put even more straightforwardly by a current commissioner, "it is important to emphasize that the press exemption shields press entities from investigations into alleged coordination."[106] "Whether the media entities communicated with political parties or candidates before [a story runs is] irrelevant."[107] Indeed, "it is difficult to fathom how journalists could cover campaigns if they had to worry that communicating with campaign workers could trigger a government investigation into supposed improper coordination."[108] As a result, no "inquiry may be addressed to sources of information, research, motivation, [or] connection with the campaign." *Id.* As Commissioner Weintraub's colleagues likewise elaborated, this is true even where a media entity is communicating with a source and a candidate shortly before an election.[109]

Thus, even if the *Enquirer* discussed a story with anyone speaking on behalf of Donald Trump in his capacity as a candidate or the campaign, before, during, or after making its editorial decisions, such a contact would be commonplace in journalism and of no legal significance.[110]

II. AMI'S PUBLISHING ACTIVITIES ARE PROTECTED BY THE FREE PRESS CLAUSE OF THE FIRST AMENDMENT

As demonstrated above, AMI's free press right to purchase an exclusive story right from a source and make an editorial decision whether, when, and how to publish that story is exempt from regulation under the statutory Press Exemption. Were the Commission to ignore the clear statutory limit upon its regulatory

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105 *Internet Communications*, 71 Fed. Reg. 18,589, 18,609 (Apr. 12, 2006) (emphasis added) (collecting authority).

106 *Id.* at 18,610 (quoting Weintraub-CBS Statement).

107 Weintraub-CBS Statement at 2.

108 *Id.*

109 Statement of Reasons of Commissioners Michael E. Toner, David M. Mason, and Bradley A. Smith, MURs 5540 & 5545 (CBS Broadcasting, Inc.) (July 11, 2005).

110 *See also infra* at 33-36 (discussing how Mr. Cohen was not agent of the Trump campaign).

authority, however, the Commission would unquestionably violate AMI's First Amendment rights.

A. The FEC Must Respect Basic First Amendment Principles From The Outset Of This Matter.

The freedom of the press is among this Nation's "most cherished liberties"[111] and fulfills an "essential role in our democracy."[112] Such freedom is "broad"[113] and has "contributed greatly to the development and well-being of our free society and [is] indispensable to its continued growth."[114] Indeed, the "durability of our system of self-government hinges upon the preservation of [this] freedom[]."[115]

When operating in this "highly sensitive" area, the power to conduct investigations is "narrow[]"[116] and "carefully circumscribed."[117] This is because the activities like those the FEC seeks to investigate in this case "differ profoundly in terms of constitutional significance from the activities that are generally the subject of investigation by other federal administrative agencies."[118] These limiting constraints apply with even greater force here given that neither the FEC nor any court has ever (so far as counsel is aware) investigated a media company's decision *not* to publish a story as an in-kind campaign contribution. The FEC must satisfy exacting First Amendment standards *before* any investigation or intrusion into AMI's newsgathering or publishing functions may proceed.[119]

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111 *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 381 (1973).

112 *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971)

113 *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943).

114 *Roth v. United States*, 354 U.S. 476, 488 (1957).

115 *Pittsburgh Press Co.*, 413 U.S. at 382.

116 *Id.*

117 *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957).

118 *FEC v. Fla. for Kennedy Comm.*, 681 F.2d 1281, 1284 (11th Cir. 1982) ("*Florida for Kennedy*"). *See also FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981) ("*MNPL*") (emphasis added).

119 *See Florida for Kennedy*, 681 F.2d at 1284 (investigations by the FEC receive a "higher degree of scrutiny"); *see also MNPL*, 655 F.2d at 389 ("[c]urrent first amendment jurisprudence

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B. The First Amendment Protects AMI's Editorial Decisions About Whether To Publish A Story.

The Commission is certainly familiar with the First Amendment's protections for media entities that choose to publish stories. Less commonly encountered, however – but still equally protected – are situations where editors exercise their First Amendment right not to publish a particular story.

The key case is *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), where the Court struck down a "right of reply" statute that required newspapers to provide a political candidate equal space to answer criticism in the newspaper.[120] The Court held that the "statute exacts a penalty on the basis of content" as it "operates as a command in the same sense as a statute or regulation forbidding [the newspaper] to publish specified matter."[121] Observing the well-established First Amendment-based right of editorial discretion,[122] *Miami Herald* recognized that the "clear implication has been that any such compulsion to publish that which 'reason' tells [the newspapers] should not be published is unconstitutional."[123] The Supreme Court then concluded by reaffirming the well-

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makes clear that before a state or federal body can compel disclosure of information which would trespass upon first amendment freedoms, a 'subordinating interest of the State' must be proffered, and it must be 'compelling'") (citation omitted); *Phillips Publ'g*, 517 F. Supp. at 1312 (the "most important reason for heightened scrutiny" of the FEC's desire to investigate a publisher is "the 'potential for chilling the free exercise of political speech and association guarded by the first amendment'").

120 *Id.* at 244.

121 *Id.* at 256.

122 *See id.* at 254-255 (citing *Associated Press v. United States*, 326 U.S. 1, 20 n. 18 (1945) (district court did "not compel AP or its members to permit publication of anything which their 'reason' tells them should not be published"), *Branzburg v. Hayes*, 408 U.S. 668, 681 (1972) (emphasizing that the cases then before the court "involve[d] . . . no express or implied command that the press publish what it prefers to withhold"), *Pittsburgh Press Co.*, 413 U.S. at 391 ("we reaffirm unequivocally the protection afforded to editorial judgment"), *Columbia Broad. Sys., Inc. v. DNC*, 412 U.S. 94, 117, 124 (1973) (Stewart, J., concurring) (explaining that the First Amendment "gives every newspaper the liberty to print what it chooses and reject what it chooses, free from the intrusive editorial thumb of Government"); *accord Passaic Daily News v. N.L.R.B.*, 736 F.2d 1543, 1557 (D.C. Cir. 1984) ("newspapers have *absolute* discretion to determine the contents of their newspapers") (emphasis added).

123 418 U.S. at 256.

established constitutional principle that editorial judgment for the content of newspapers should be left to editors and not the courts:

> A newspaper [or magazine] is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.[124]

Miami Herald's logic applies with equal force to FEC enforcement actions. For example, relying on *Miami Herald*, the court in *Clifton v. FEC*, 114 F.3d 1309 (1st Cir. 1997), held that it was "obnoxious," "abhorrent," and "unquestionably" a First Amendment violation to require voter guides to give "equal space" to differing views even if the publisher of the guide had contact with a candidate.[125] The *Clifton* court also concluded that a private entity could not be compelled to "express particular views" or to "provide 'balance' or equal space or an opportunity to appear."[126] Likewise, there was no suggestion in MUR 5562 that Sinclair was under any kind of legal compulsion to air the Kerry documentary.

Indeed, on April 12, 2018, POLITICO reported that other news outlets, including *The New York Times* and *The Wall Street Journal*, had "chased the [Sajudin] story" and decided not to publish it.[127] Even AP chose not to publish the story months before it ultimately did because it "did not meet AP's rigorous sourcing requirements, despite strong and persistent reporting" by its journalists.[128]

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124 *Id.* at 258.

125 *Id.* at 1311-15.

126 *Id.* at 1313-14.

127 Michael Calderone, *How a Trump 'Love Child' Rumor Roiled the Media*, Apr. 12, 2018, https://www.politico.com/story/2018/04/12/trump-love-child-rumor-media-519213.

128 *Id.*

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In short, AMI – along with other news outlets – has been well within its rights not to publish Mr. Sajudin's telling of his personal story and unsubstantiated rumors that he heard about a Trump "love child," and its decision to withhold publication cannot give rise to any investigation or liability under the First Amendment. Indeed, conversely, had AMI published the story, it is likely that it would have been sued for, *inter alia,* defamation and violation of privacy rights – infractions not protected by the First Amendment.

C. The First Amendment Also Protects All Of AMI's Alleged Newsgathering Activities.

Just as the decision *not* to publish Mr. Sajudin's story is squarely protected by the First Amendment, the two alleged predicate newsgathering acts (i.e., making an inquiry to Mr. Trump's representative and purchasing Mr. Sajudin's exclusive story rights) also enjoy protection under the First Amendment and cannot support the claim that anything AMI did was improper under federal election law.[129]

First, in *Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978), the court held that there is an "*undoubted* right to gather news 'from any source by means within the law[.]'" (Citation omitted.) Decisions in numerous other cases agree.[130] All of AMI's alleged conduct is newsgathering "within the law," and therefore constitutionally protected.

Second, press entities routinely solicit comment from the subjects of stories.[131] Thus, even if AMI had reached out to a representative of Mr. Trump or the Trump campaign, there would have been nothing untoward or unusual about

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129 *See, e.g., Branzburg*, 408 U.S. at 681. *See also Houchins v. KQED, Inc.*, 438 U.S. 1 (1978).

130 *Id.* at 11 (emphasis added) (quoting *Branzburg*, 408 U.S. at 681); *accord ACLU v. Alvarez*, 679 F.3d 583, 597-603 (7th Cir. 2012); *Glik v. Cunniffe*, 655 F.3d 78, 79-84 (1st Cir. 2011) (holding that the First Amendment right to gather information extends broadly, and citing *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995)); *Channel 10, Inc. v. Gunnarson*, 337 F. Supp. 634, 638 (D. Minn. 1972); *Connell v. Town of Hudson*, 733 F. Supp. 465, 471–72 (D.N.H. 1990)); *Davis v. E. Baton Rouge Parish Sch. Bd.*, 78 F.3d 920, 926 (5th Cir. 1996); *Seminole Tribe v. Times Publ'g Co.*, 780 So. 2d 310, 316-317 (Fla. Dist. Ct. App. 2001); *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 520-521 (1986).

131 *See, e.g., Gonzalez v. Morse*, No. 17-510, 2017 WL 4539262, at *2 (E.D. Cal. Oct. 11, 2017) (reporter's questions to politician protected under the First Amendment).

seeking comment concerning Mr. Sajudin's story – a story that no journalist has found evidence to confirm and the White House denies is true.[132] As the First Circuit explained in *Clifton*, the Commission "cannot rewrite the dictionary and classify a simple inquiry as a contribution."[133]

Third, media entities routinely decide not to run stories for all sorts of reasons – *e.g.*, the story is not sufficiently well-founded or documented, not yet finished, not "on the record," not newsworthy, or out of step with the publication's editorial stance.[134] The First Amendment squarely bars any intrusion into those decisions.[135] For example, if a publisher paid for a story about a candidate but ultimately had serious doubts about the story's veracity, the rule advanced by the complainant here would put the publisher in an intractable dilemma: publish the story and expose the publisher to a defamation claim brought by the candidate and privacy claims by the "love child" and the child's mother, or decide not to publish and stand accused of making an illegal in-kind contribution.[136] Also, under complainants' theory, once a media entity "coordinates" with a candidate, even by making a routine inquiry about the veracity of a story, the publisher faces a Hobson's choice: either publish, or stand accused of making an illegal in-kind contribution.

Fourth, even assuming AMI's editorial decision not to run the Sajudin story was animated by a desire to support the candidacy of Donald Trump, and did benefit him – which AMI does not concede – it is routine and constitutionally protected for the media to express a political view.[137] In *Pacific Gas & Electric Co.*

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132 Although seeking comment is not required of journalists, *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968) ("[f]ailure to investigate does not in itself establish bad faith"), doing so is generally practiced and endorsed as a way to avoid, for example, defamation liability. *See, e.g.*, *Newton v. NBC*, 930 F.2d 662, 686 (9th Cir. 1990) (attempts to interview plaintiff dispel accusation of actual malice and purposeful avoidance of the truth).

133 114 F.3d at 1312.

134 *See* Shafer, *supra* note 76; Howard Kurtz, "Newsweek's Melted Scoop," *Wash. Post*, Jan. 22, 1998 at C1 (explaining *Newsweek*'s decision not to run Lewinsky story concerning President Clinton).

135 *Miami Herald*, 418 U.S. at 256-58.

136 *See St. Amant*, 390 U.S. at 731 (actual malice can be shown with "sufficient evidence" that a publisher "entertained serious doubts as to the truth of his publication").

137 *Miami Herald*, 418 U.S. at 255 (the press has a right to advance their political views).

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v. Public Utilities Commission, 475 U.S. 1, 12-13 (1986), the Court struck down an order requiring a utility company to send customers third party materials critical of the utility's views. Relying extensively on *Miami Herald*, the plurality explained that, "[w]ere the government freely able to compel corporate speakers to propound political messages with which they disagree, this protection [for speech] would be empty, for the government could require speakers to affirm in one breath that which they deny in the next."[138] News publishers have helped and hurt politicians from time immemorial. Leading periodicals often endorse and excoriate individual candidates. For example, in 2016, among the 100 largest U.S. newspapers, 57 newspapers endorsed Hillary Clinton, while only two endorsed Donald Trump.[139]

Every alleged action by AMI – from "coordinating" a story, to paying a source, to not running a story for purportedly political-motivated reasons – was protected under well-established First Amendment authority. For this additional reason, there is no basis, consistent with the First Amendment, for further investigation by the Commission or a finding that AMI violated the FECA.

D. The FECA Is Unconstitutionally Vague And Overbroad As Applied To AMI's Alleged Conduct.

Any investigation or further action by the Commission on these matters would violate the First Amendment for yet another reason: the FECA, if applied in the current context, is unconstitutionally vague and overbroad.

Laws are unconstitutionally vague if they fail to provide fair notice of what the law forbids.[140] AMI did not have sufficient notice that its newsgathering and decision not to publish a *false* story before the 2016 presidential election could lead

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138 *Id.* at 16.

139 Reid Wilson, *Final Newspaper Endorsement Count: Clinton 57, Trump 2*, The Hill, Nov. 6, 2016.

140 *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (a law is unconstitutionally vague if "it 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute'") (citation omitted).

to liability for making an illegal in-kind contribution under the FECA, as the FECA has never before been interpreted in that way by a court or the Commission.[141]

Vague laws that do not make clear what conduct is prohibited or allowed are particularly suspect where they target First Amendment activities.[142] And where, as here, complainants demand criminal enforcement of the FECA, the need for clarity is heightened even further: "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[143] There is no ascertainable standard for proscribed behavior here, and there is a serious risk that certain media companies holding particular views or engaging in otherwise lawful journalistic practices will be targeted for investigation and punishment. For instance, the complaints suggest that liability should be imposed in part because of the friendship between AMI's Mr. Pecker and Mr. Trump.[144] But the First Amendment protects even partisan political reporting.[145] The FECA cannot, consistent with the First Amendment, be enforced against AMI premised on the subjective degree of longstanding friendship between Mr. Pecker and President Trump, Mr. Pecker's political leanings, or AMI's newsgathering techniques and editorial choices. None of those points support a viable, sufficiently-definite, and neutral standard for enforcement of the law.

Were the FECA applied here, that would also mean the law is unconstitutionally overbroad by restricting more First Amendment activity than the

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141 *See Clifton v. FEC*, 927 F. Supp. 493, 499 (D. Me. 1996) (FECA, "itself (section 441b) [now at 52 U.S.C. § 30118] does not make corporate expenditures, occurring after contact with a candidate, into contributions").

142 *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964) (vague laws with "uncertain" boundaries for proscribable conduct are especially dangerous in the First Amendment arena); *see also Cramp v. Bd. of Pub. Instruction*, 368 U.S. 278, 287 (1961) ("The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution").

143 *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (striking down vague law).

144 Common Cause Complaint ¶ 15; American Bridge Complaint at 5.

145 *Miami Herald*, 418 U.S. at 255; *Pittsburgh Press*, 413 U.S. at 391; *accord Readers Digest*, 509 F. Supp. at 1214-15; *Phillips Publ'g*, 517 F. Supp. at 1311-12.

law allows to be regulated.[146] Complainants' interpretation of election law is not narrowly tailored nor is it consistent with the terms "contribution" and "expenditure" as they have come to be understood over decades of jurisprudence.[147] Complainants' interpretation could be applied to punish any media organization that: paid a source for an exclusive story; sought comment from a political candidate about the story; and then decided for any reason (or no particular reason at all) not to publish the story.[148] The prospect of enforcement in such a context – where every predicate act enjoys full constitutional protection – reveals the FECA's unconstitutional overbreadth if applied here.

The First Amendment prohibits invoking any laws or regulations to stifle, affect or investigate AMI's newsgathering or editorial decisions in this context.

E. Any Inquiry Or Investigation By The Commission Would Call For An Unconstitutional Invasion Of AMI's Reporter's Privilege.

Any investigation by the Commission into AMI's newsgathering methods or editorial decisions raises profound constitutional and common law concerns. This holds true for an investigation into AMI's alleged conduct, but also for any request for evidence or testimony from AMI concerning its newsgathering and editorial decisions that implicate the First Amendment protections afforded by the reporter's privilege. In *Branzburg*, the Court recognized that newsgathering activities qualify for First Amendment protection: "Without some protection for seeking out the news, freedom of the press could be eviscerated."[149] Consistent with *Branzburg*, most federal circuit courts recognize the existence of a constitutionally-based

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146 *Broadrick v. Oklahoma*, 413 U.S. 601, 611 (1973) ("statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn").

147 *See Buckley v. Valeo*, 424 U.S. 1, 80 (1976) (holding the definition of "contribution" must be interpreted in a way that is "not impermissibly broad" to capture only payments "unambiguously related to the campaign" and, to further avoid overbreadth problems, holding that the term "expenditure" encompassed "only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate").

148 AMI has standing to challenge the law even as it would be applied to third parties. *Broadrick*, 413 U.S. at 612.

149 408 U.S. at 681.

reporter's privilege outside the grand jury context that applies, by its nature, to *unpublished* information.[150]

Such a privilege can also be found in the federal common law and the principles adhered to by other agencies. For example, the Department of Justice (DOJ) has guidelines recognizing that "freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news."[151] These guidelines provide powerful evidence of a federal policy at the highest level that favors protection of journalists' unpublished information and a balancing of competing interests to ensure a vigorous and independent press.[152]

The reporter's privilege affords a significant shield against any investigation or inquiry into AMI's newsgathering or editorial decisions. These principles apply with equal force to any inquiry by this Commission. In *Reader's Digest*, for example, the court rejected an effort to inquire into the news entity's sources, summaries, payments, and the uses, purpose and content of newsgathering materials.[153] In *Phillip's Publishing* the court found a "danger further FEC inquiry

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150 *See, e.g., United States v. La Rouche Campaign*, 841 F.2d 1176, 1182 (1st Cir. 1988); *Cusumano v. Microsoft Corp.*, 162 F.3d 708 (1st Cir. 1998); *Gonzales v. NBC*, 194 F.3d 29, 35 (2d Cir. 1999); *United States v. Burke*, 700 F.2d 70, 77 (2d. Cir 1983); *United States v. Criden*, 633 F.2d 346 (3d Cir. 1980); *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980); *Riley v. City of Chester*, 612 F.2d 708, 716 (3d Cir. 1979); *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 726, *as modified*, 628 F.2d 932 (5th Cir. 1980); *In re Selcraig*, 705 F.2d 789, 792, 799 (5th Cir. 1983); *Shoen v. Shoen*, 48 F.3d 412, 414 (9th Cir. 1995) (*"Shoen II"*); *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (*"Shoen I"*); *United States v. Pretzinger*, 542 F.2d 517, 520-521 (9th Cir. 1976); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977); *United States v. Capers*, 708 F.3d 1286, 1303 (11th Cir. 2013); *United States v. Caporale*, 806 F.2d 1487 (11th Cir. 1986); *United States v. Ahn*, 231 F.3d 26, 37 (D.C. Cir. 2000); *Zerilli v. Smith*, 656 F.2d 705, 712 (D.C. Cir. 1981).

151 28 CFR § 50.10.

152 These public policy concerns apply with equal force to the compelled disclosure of underlying resource materials. *Cuthbertson*, 630 F.2d at 147 ("the compelled production of a reporter's resource materials can constitute a significant intrusion into the newsgathering and editorial processes"); *see also La Rouche*, 841 F.2d at 1182 ("We discern a lurking and subtle threat to journalists and their employers if disclosure of outtakes, notes, and other unused information, even if nonconfidential, becomes routine and casually, if not cavalierly, compelled").

153 509 F. Supp. at 1215-16; *see also* Weintraub-CBS Statement (citing *Reader's Digest* for this point and further stating "I believe it important to emphasize that the press exemption shields press entities from investigations into alleged coordination ... Merely investigating such allegations would intrude upon Constitutional guarantees of freedom of the press").

would impinge upon First Amendment freedoms" where the Commission had "made no threshold showing that a violation may have occurred and it is extremely unlikely that a violation will be found."[154]

For these additional reasons, any further investigation or action by the Commission would be an affront to AMI's rights under the First Amendment and the common law.

III. IN ANY EVENT, AMI'S PUBLISHING ACTIVITIES DO NOT CONSTITUTE "EXPENDITURES" OR "CONTRIBUTIONS"

The Press Exemption and First Amendment principles set forth above require dismissal of both complaints. But even beyond these authorities, there are other reasons the Commission must dismiss these allegations.

The explicit legal theory advanced by both complaints is that AMI's payment to Mr. Sajudin was (a) a thing of value provided to the campaign; (b) that became an "expenditure" made for the purpose of influencing the presidential election and (c) that then became an illegal contribution because it was "coordinated" with an "agent" of the Trump campaign – Mr. Cohen.[155] These three points are rebutted in sections A (the payment was not a thing of value), sections B (the payment was not an "expenditure") and C (the payment was not "coordinated") below. Section D rebuts an alternative legal theory briefly mentioned in the American Bridge complaint.[156]

A. Past Commission Precedent Does Not Consider a Payment to Refrain from Speaking To Be a Contribution or Expenditure.

The FECA defines the terms "contribution" and "expenditure" with reference to the phrase "anything of value" used to influence an election.[157] The Commission, in turn, defines "anything of value" as "the provision of any goods or

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154 517 F. Supp. at 1314; *cf. AFL-CIO*, 333 F.3d at 177-78 (FEC inquiry into, and release of, information about a labor union's internal planning materials would violate the First Amendment).

155 Common Cause Complaint ¶¶ 2, 9, 13, 20, 21, 22, 28, 33, 36, 39; American Bridge Complaint at 4-5 & 9.

156 American Bridge Complaint at p. 9 n.46.

157 52 U.S.C. §§ 30101(8)(A) & (9)(A).

services without charge or at a charge that is less than the usual and normal charge for such goods and services."[158] Among the items listed as examples of things of value are: securities, facilities, supplies, personnel, advertising services, membership lists, and mailing lists.[159]

"Silence," however, is not included on this list. The Commission has never concluded that such a nebulous intangible as refraining from speaking publicly constitutes a "thing of value" regulated as an "expenditure" or "contribution." Nor has the Commission established a legal framework for determining that it is. The concept is of a wholly different character than the expressive communications and other activities the Commission traditionally regulates. As a result, AMI had no basis for concluding that a payment to someone for an exclusive story right, which necessarily required that person to refrain from telling his story publicly would be a regulated thing of value. Were the Commission to adopt complainants' theory, stretching the concept of "anything of value" in 52 U.S.C. §§ 30101(8)(A) & (9)(A) to include *silence*, it would render these statutes vague and overbroad. Any person who fails to speak out against a candidate with valuable information in his or her possession would be making a contribution or expenditure. That cannot be the law.

B. AMI's Payment Was for the Purpose of Procuring a Legitimate and Valuable Journalistic and Business Asset.

Even if Mr. Sajudin's silence were a "thing of value," for AMI's payment to constitute an "expenditure" or "contribution" regulated by the Commission it also must have been made "for the purpose of influencing an election."[160] Where the purpose of a payment is demonstrably for commercial value, rather than to offset a financial obligation of a campaign, there is no "contribution." And where non-election purposes are apparent, the fact that the expense incidentally benefits a candidate or campaign does not transform the disbursement's purpose to "influencing an election."[161]

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158 11 C.F.R. § 100.52(d)(1); *see also id.* § 100.111(e)(1).

159 *See id.*

160 52 U.S.C. § 30101(8)(A), (9)(A).

161 *Orloski v. FEC*, 795 F.2d 156, 160 (D.C. Cir. 1986).

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These general principles have played themselves out before the Commission in several relevant settings. For example, where magazine publishers spent money to feature political candidates favorably and unfavorably in advertisements promoting their magazines, the Commission and federal courts have ruled the requisite purpose to influence the election is not present and the advertising costs do not constitute "contributions" or "expenditures."[162] Likewise, payments to individuals for bona fide non-commercial purposes have been readily distinguishable from campaign contributions. For example, the Commission concluded that a *gift* by a candidate's family to the candidate's former mistress lacked the requisite purpose and was not a "contribution."[163] Only when the Commission was presented evidence showing that the payment was in fact a *severance* payment did the Commission conclude the payment was "for the purpose of influencing an election," because it covered a financial obligation of the campaign committee.[164]

Here, the purpose of AMI's payment to Mr. Sajudin can be drawn directly from the face of the contract. In exchange for the payment to Mr. Sajudin, AMI obtained a valuable exclusive story right. Because of the subject of that story and the fact that AMI paid Mr. Sajudin in advance of publication for that story, it was extremely valuable to AMI to have exclusive rights (the reason for the high liquidated damages penalty of $1 million for a breach). Accordingly, AMI's payment to Mr. Sajudin cannot be a "contribution" or "expenditure" under the Act.

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162 *Epstein v. FEC*, 684 F.2d 1032 (D.C. Cir. 1982) *affirming Epstein v. FEC*, Memorandum Opinion, Civ. A. No. 81-0336 (D.D.C. Sept. 24, 1981) (dismissing claim that *Readers Digest* made a "contribution" by running advertisements featuring candidates because "they have a purpose distinct from political assistance of candidates" and an "advertisement intended to sell magazines will not ordinarily be denounced under 2 U.S.C. § 441b even though it may also have political aspects"); Letter of FEC General Counsel to Penthouse Magazine, MUR 296 (Penthouse Magazine) (July 14, 1977) (dismissing complaint against Penthouse Magazine for running ad comparing Jimmy Carter to Richard Nixon because the "ad is most logically construed as an effort, albeit suggestive, to promote a commercial venture").

163 Statement of Reasons of Comm'rs Petersen, Bauerly, Hunter, McGahn, Weintraub, MUR 6200 (Ensign) (Nov. 17, 2010).

164 Factual and Legal Analysis, MUR 6718 (Ensign) (Feb. 6, 2013).

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C. The Complaints Do Not Present Any Evidence Establishing That AMI Coordinated Its Editorial Decision to Purchase Mr. Sajudin's Story with the Trump Campaign.

Even if AMI's payment to Mr. Sajudin were an "expenditure," such payment could only be converted into a "contribution" to the Trump campaign if it were "coordinated" with the campaign, a technical term with a specific meaning in the FECA and accompanying regulations. But far from substantiating any coordination claim, the complainants present no evidence that the payments were coordinated with the Trump campaign. Instead, the complaints rely solely upon the unsworn and undocumented reports of columnists and reporters, who themselves have no personal knowledge and who otherwise placed their own second-hand gloss on the circumstances. This is an inadequate basis for a Commission "reason to believe" finding.[165]

In order to substantiate an allegation that AMI made an in-kind contribution to the Trump campaign by "coordinating" the expenditure under 11 C.F.R. § 109.20, the complaints would have to present sound evidence that AMI coordinated its payment to Mr. Sajudin with an "agent" of the Trump campaign. The definition of "agent" is set forth in 11 C.F.R. § 109.3(b). That regulation requires that the person alleged to be the "agent" have "actual authority" over specific campaign communications strategy:

> For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:
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> * * *

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165 *See* Statement of Reasons of Comm'rs Mason, Sandstrom, Smith, Thomas at 1-2, MUR 4960 (Hillary Rodham Clinton for U.S. Exploratory Committee, Inc.) (Dec. 21, 2000) (dismissing complaint because "[a]bsent personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation . . . ."); Factual & Legal Analysis at 4, MUR 5866 (Conrad Burns) (June 27, 2007) (dismissing complaint because "[i]t does not provide any support for corporate facilitation through coercion other than the aforementioned [press] article, which does not identify the source or any other sources . . . . In short, the corporate facilitation theory rests wholly on speculation.").

> (b) In the case of an individual who is a Federal candidate or an individual holding Federal office, any one or more of the activities listed in paragraphs (b)(1) through (b)(6) of this section:
>
> (1) To request or suggest that a communication be created, produced, or distributed.
> (2) To make or authorize a communication that meets one or more of the content standards set forth in 11 C.F.R. § 109.21(c).
> (3) To request or suggest that any other person create, produce, or distribute any communication.
> (4) To be materially involved in decisions regarding:
> (i) The content of the communication;
> (ii) The intended audience for the communication;
> (iii) The means or mode of the communication;
> (iv) The specific media outlet used for the communication;
> (v) The timing or frequency of the communication;
> (vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.
> (5) To provide material or information to assist another person in the creation, production, or distribution of any communication.
> (6) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a different candidate.[166]

Both complaints gloss over – or misstate – the highly detailed and prescriptive definition of "agent" in 11 C.F.R. § 109.3(b).[167] And wholly absent

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[166] 11 C.F.R. § 109.3(b). In promulgating this definition of "agent" for purpose of applying the "coordination" doctrine, the Commission acted conscientiously to restrict "coordination" to only those campaign representatives with a specific role in communications strategy.

[167] The Common Cause complaint (¶ 28) abbreviates the definition of "agent" to avoid grappling with its evidentiary burden: "Commission regulations provide that 'agent' means 'any person who has actual authority, either express or implied,' to engage in campaign spending and other specified activities." Common Cause cites two regulations – 11 C.F.R. § 109.3 and 11 C.F.R. § 300.2(b). Only § 109.3 is relevant to a "coordination" allegation, and Common Cause has omitted the "specified activities" over which an "agent" must have actual authority. The American Bridge

from the complaints is any evidence, much less sworn or reliable evidence, that AMI coordinated its payment with an "agent" of the Trump campaign or of Donald Trump in his capacity as "candidate."

The Common Cause complaint alleges that Mr. Cohen "worked as a 'top attorney' at the Trump Organization 'from 2007 until after the election,' serves as Donald J. Trump's personal attorney, and referred to himself in a January 2017 interview as the 'fix-it guy.'"[168] That allegation as a matter of law does not support a finding that Mr. Cohen was an "agent" of the Trump campaign or candidate Donald Trump pursuant to the definition of 11 C.F.R. § 109.3(b). There is no allegation or evidence that Mr. Cohen had the "actual authority" over the listed communications activities.

The American Bridge complaint alleges that "Mr. Cohen, Mr. Trump's private attorney, worked for the Trump Organization from 2007 until after the election and acted as agent for Mr. Trump and the Committee throughout that period."[169] That allegation is inadequate as a matter of law to support a finding that Mr. Cohen was an "agent" under 11 C.F.R. § 109.3(b). In fact, American Bridge later quotes the *New York Times* for the proposition that Mr. Cohen "had no official role in the 2016 campaign."[170]

Because neither complainant presents any evidence of Mr. Cohen's "actual authority" over campaign communications strategy, both complaints are woefully inadequate as a matter of law to substantiate a finding of actual coordination that could give rise to an in-kind "contribution" by AMI. And any speculation beyond the evidence asserted in the sworn complaint would be improper.[171]

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complaint does not even cite the definition of "agent" or attempt to satisfy the regulatory requirements.

168 Common Cause Complaint ¶ 9 (*citing* Michael Rothfeld and Joe Palazzolo, Trump Lawyer Arranged $130,000 Payment for Adult-Film Star's Silence, Wall St. J. (Jan. 12, 2018).

169 American Bridge Complaint at 4-5.

170 *Id.* p. 7 & n.37.

171 Statement of Reasons of Chairman David M. Mason, Vice Chairman Karl J. Sandstrom, Commissioners Danny L. McDonald, Bradley A. Smith, Scott E. Thomas and Darryl R. Wold, at 2, MUR 5141 (Moran for Congress) (Mar. 11, 2002) ("unwarranted legal conclusions from asserted facts [or mere speculation] will not be accepted as true"); Factual & Legal Analysis at 6, MUR 6077 (Norm Coleman) (May 19, 2009) (dismissing coordination allegation because "[t]here is no other

D. AMI's Payment to Mr. Sajudin Was Made "Irrespective" of Trump's Candidacy and Therefore Did Not Violate the "Personal Use" Prohibition.

Finally, in a single footnote, the American Bridge complaint speculates that AMI's payment to Mr. Sajudin could represent a "personal use" of campaign funds. But this theory is inapplicable here.

In general terms, the FECA prohibits candidates from making "personal use" of their campaign funds.[172] The FEC's regulations, in turn, effectively implement this prohibition by establishing a set of rules applicable to direct spending by candidates and another rule specifically for third-party payments.[173] The candidate-specific requirements are inapplicable here, however, because (among other reasons) none of the funds at issue were "in a campaign account of a present or former candidate."[174]

The Commission's regulations further provide that, although "personal use" is a prohibited use of campaign funds, a third-party's payment of a "personal use" expense of a candidate is nonetheless a contribution to the campaign.[175] The regulations, however, exempt from this prohibition payments made "irrespective of the candidacy."[176] This theory fails for two reasons.

First, the regulation defines "personal use" as a third-party's payment to "fulfill a commitment, obligation or expense" of a candidate or officeholder.[177] The complaint has not provided any evidence that AMI's payment to Mr. Sajudin was

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support offered for the Complaint's allegation as to the coordinating conduct."); Factual & Legal Analysis at 8, MUR 6679 (Jim Renacci for Congress) (July 10, 2013) (dismissing coordination allegation because "inference . . . is not supported by any available [evidence]").

172 52 U.S.C. § 30114(b).

173 11 C.F.R. § 113.1 *et seq.*

174 *Id.* § 113.1(g).

175 *Id.* § 113.1(g)(6).

176 *Id.*

177 *Id.* § 113.1(g)

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made to satisfy an existing obligation that Mr. Trump had to pay Mr. Sajudin. Moreover, the payment here is not listed among the types of payments (e.g., mortgage payments, clothing, etc.) that are enumerated in the regulation. Therefore, AMI's payment to Mr. Sajudin did not fund a "personal use" of Donald Trump.

Second, as noted above, AMI has been in the business of paying sources for news tips, interviews and story rights for decades. AMI also has been covering stories about Donald Trump for decades. He has been a prominent businessman and well-known celebrity for a long time. AMI's interest in Donald Trump stories – those it published and those it did not – long pre-dated his presidential candidacy, and AMI would have paid Mr. Sajudin irrespective of Mr. Trump's status as a candidate.

As an empirical matter, the Commission appears to have no precedent involving a payment to a potential source of a rumor and only two cases involving the issue of third party payments to candidate paramours. The first was the John Ensign matter, where the Commission decided the issue based upon the purpose of the payment.[178] The second was the John Edwards audit, where the Commission issued an Audit Report making no finding that third-party payments to Riehle Hunter and John Edwards' child constituted an unlawful contribution received by the Edwards campaign.[179] At the time, Commissioner Donald F. McGahn III even called attention to the Commission's decision not to make such a finding, remarking that "it's odd for me to say that the transaction is a campaign transaction."[180] Although the Department of Justice took a different position and attempted to prosecute John Edwards for receiving unlawful campaign contributions under a vague theory, the government did not win that case at trial,[181] and the Department of

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178 *See supra* at 33 & nn.163-164.

179 Final Audit Report of the Commission on John Edwards for President, available at https://transition.fec.gov/audits/2008/FinalAuditReportoftheCommission1184208.pdf.

180 *John Edwards Defense: Justice Department Flip-flopped*, Politico, May 15, 2012, https://www.politico.com/blogs/under-the-radar/2012/05/john-edwards-defense-justice-department-flip-flopped-123580.

181 *See, e.g.*, Indictment in *United States v. Johnny Reid Edwards*, Case No. 1:11-cr-161-1 (M.D.N.C. filed on June 3, 2011), https://www.justice.gov/sites/default/files/opa/legacy/2011/06/03/edwards-indictment.pdf; Kim Severson and John Schwartz, *Edwards Not Guilty on One Count; Mistrial on Five Others*, N.Y. Times (May 31, 2012).

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Justice did not prosecute the third parties who paid Riehle Hunter's living expenses. Thus, to the extent the Edwards case provides any guidance, it suggests that a third party's payment to a candidate's former paramour is *not* a campaign "contribution."

Accordingly, AMI's payment is not a "contribution" under 11 C.F.R. § 113.1(g)(6).

CONCLUSION

Newsrooms and television producers invest resources in news coverage, choose their sources, and make decisions about which news to publish, and which news not to publish, every day. Fundamentally, when one looks past the high-profile names and salacious topics sensationalized in the complaints, the editorial decisions made by AMI were representative of the editorial decisions made by all newsrooms, editorial boards and television producers, not very different in kind than the decisions Dan Rather and CBS News made to air what turned out to be a false story about President George W. Bush's national guard record in 2004. Rather than undermine and intrude upon some of the most basic tenets of journalism, which have been repeatedly affirmed by the courts and a bipartisan array of commissioners, the Commission should find "no reason to believe" that AMI violated the law here and dismiss these matters.

Sincerely,

Andrew G. Woodson

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

The State of New York	)	Response of American Media, Inc. in
	)	Matters Under Review 7364 and 7366
County of New York	)	

AFFIDAVIT OF DYLAN HOWARD

I, Dylan Howard, being first duly sworn, hereby state the following:

1. I have personal knowledge of all information contained in this Affidavit.

2. I am the Chief Content Officer of American Media, Inc. ("AMI"), a publisher of celebrity news and health & fitness magazines. I have been Chief Content Officer & Vice-President since October 2017, and from 2013 to 2017 I was the Editor in Chief of the *National Enquirer* as well as the website RadarOnline, LLC, in addition to Vice-President of News of AMI.

3. AMI has been a national media company in the publishing business since 1999. AMI is not now, and never has been, owned or controlled by any political party, political committee, or political candidate.

4. AMI currently owns and publishes thirteen (13) print and online magazines. The publications are: *Men's Journal*, *Men's Fitness*, *Muscle & Fitness*, *Muscle & Fitness Hers*, *Flex*, *Star*, *US Weekly*, *Radar Online*, *OK! USA*, *Soap Opera Digest*, *Globe*, *National Examiner*, and *National Enquirer*.

5. I am advised that AMI's combined overall readership – among print and digital publications – is estimated at 49.3 million readers.

6. The *National Enquirer* is a print and online "tabloid" genre publication focusing on investigative journalism, scandals, crime, and the lives of celebrities, the rich and famous, political figures, and current events. The *Enquirer* was founded in 1929. AMI has published the *National Enquirer* weekly since 1999. I am advised that the current circulation of the *Enquirer* print edition is approximately 250,000 per weekly issue with a readership of approximately 5.5 million, the online edition has approximately 725,000 unique visitors each month and the *Enquirer*'s social media following is about 66,000 regular followers.

7. The *Enquirer* is known for investigative journalism, and an integral part of the *Enquirer*'s editorial and sales strategy is to report exclusive stories. Exclusive stories give the *Enquirer* an advantage over competitors, both tabloids and mainstream news publications, in reporting new and interesting news and information. That in turn

increases newsstand sales. Consistent with that newsgathering and reporting function, the *Enquirer*, or AMI on its behalf, often purchases from sources exclusive rights to their stories. Although criticized by some as "checkbook journalism," this has been the practice of the *Enquirer* since its founding by Generoso Pope 75 years ago, and has led to such scoops as the disclosure that Presidential candidate John Edwards fathered a "love child," and that Charlie Sheen was infected with the HIV virus and had knowingly exposed his sexual partners to it. Payments for such stories have ranged from several hundred dollars to several hundred thousand dollars, depending on the story. The *Enquirer* and other AMI publications publicize that they pay for news tips and stories, and encourage potential sources to call a "tip line" if they want to be paid.

8. AMI's publications, including the *Enquirer*, routinely make editorial judgments about which stories to publish, when to publish, when to delay publishing to a later date, and in some cases not to publish stories. The *Enquirer*'s editorial criteria are based upon a range of factors, including, but not limited to, reader interest and reader bias, the editorial stance of the publication, truth and accuracy, as well as legal considerations.

9. AMI routinely pays editors, journalists, columnists, writers, models, photographers, printers, sources and other professionals to produce, present and/or publish content for its publications.

10. AMI previously has published many of the facts about its arrangement with Dino Sajudin in *Radar Online*. A copy of that article (with linked documents) is attached to this Affidavit as Exhibit A and it can be accessed online at https://radaronline.com/exclusives/2018/04/donald-trump-love-child-rumor-scandal/.

11. In or about November 2015, Mr. Sajudin, who identified himself as a doorman for the Trump Organization at Trump World Tower between 2008 and 2014, approached the *Enquirer* through its tip line to say that he had heard on the job that Donald Trump had fathered a "love child."

12. On or about November 13, 2015, AMI and Mr. Sajudin entered into a standard Confidentiality Agreement for "confidential information," defined as "information regarding Mr. Donald Trump; and any and all documentation in Source's possession relevant to the Confidential Information including, but not limited to Mr. Trump's personal and corporate affairs." A true and correct copy of the confidentiality agreement is attached as Exhibit B.

13. On or about November 15, 2015, AMI and Mr. Sajudin entered into a standard Source Agreement, pursuant to which AMI agreed to pay Mr. Sajudin $30,000 upon publication of the "Exclusive," defined as information provided by Mr. Sajudin "regarding Donald Trump's illegitimate child." A true and correct copy of the Source Agreement is attached as Exhibit C.

14. For stories that are particularly sensational, AMI often submits the source to a polygraph, or lie detector, test.

15. On December 9, 2015, AMI agreed to pay $500 of the $30,000 up front to Mr. Sajudin upon satisfactory completion of a polygraph test to be completed later that day.

16. The polygraph test was completed on December 9, 2015, by Searching for the Truth Investigative Services, which is the company routinely used by AMI for such tests. The results of the test indicated that Mr. Sajudin was being truthful in his responses that he did, in fact: (1) hear from employees and residents of the Trump World Tower that [another employee] had a child with Donald Trump; and (2) overhear rumors that [another employee] "got knocked up by the boss."

17. Mr. Sajudin did not provide the *Enquirer* any other information or evidence about the actual existence of any such "love child."

18. Upon his successful completion of the polygraph test, Mr. Sajudin demanded that unless AMI paid him the entire $30,000 source fee up front, he would take the story elsewhere.

19. Because AMI wanted to pursue the sensational story, and did not want to lose the story to another publication, AMI submitted to Mr. Sajudin's demands and agreed to pay him the entire fee regardless of whether it published the story. An Amendment to the Source Agreement was executed on or about December 17, 2015, pursuant to which AMI agreed to pay Mr. Sajudin the entire $30,000 in exchange for a perpetual exclusivity period and liquidated damages penalty of $1 million should Mr. Sajudin breach the agreement. That clause was necessary to protect AMI's investment not only in Mr. Sajudin's story, but its expenditure of resources to conduct an investigation.

20. The *Enquirer* assigned four reporters to investigate the story over an approximately four-week period. The reporters conducted phone calls, interviews, and stakeouts at the homes of the alleged mistress and love child in New York and California, and extensive background research.

21. It is customary in most circumstances when AMI is considering publishing a story to contact the subject of the story, or a representative, for comment. This is called a "comment call." The call provides the subject an opportunity to address the veracity of the story.

22. The *Enquirer* contacted a representative of Mr. Trump. The representative denied the rumor.

23. Based on the investigation and AMI's inability to substantiate the rumor, it concluded that the story was not true.

24. The *Enquirer* decided not to publish the story based on its standard editorial criteria which include, but are not limited to, reader interest and reader bias, editorial stance of the publication, truth and accuracy, as well as legal considerations.

25. As time passed, other media outlets apparently approached Mr. Sajudin to discuss the story. Having decided not to publish the story and considering that AMI had determined that the rumor was unsubstantiated, AMI released Mr. Sajudin from the exclusivity clause that had accompanied the $30,000 payment so that he could tell his story to whomever he chose. To date, despite inquiries from the *Associated Press*, the *Wall Street Journal*, and the *New York Times*, as well as an in depth investigation by the *New Yorker*, no one has confirmed the truth of Mr. Sajudin's story.

Dylan Howard
4 New York Plaza, Level 2
New York, NY 10004

Subscribed to and sworn before me this 6 day of June, 2018

Notary Public

My Commission Expires: August 6, 2021

SARIT LEVY
Notary Public, State of New York
No. 01LE6062439
Qualified in New York County
Commission Expires August 6, 2021

Exhibit A

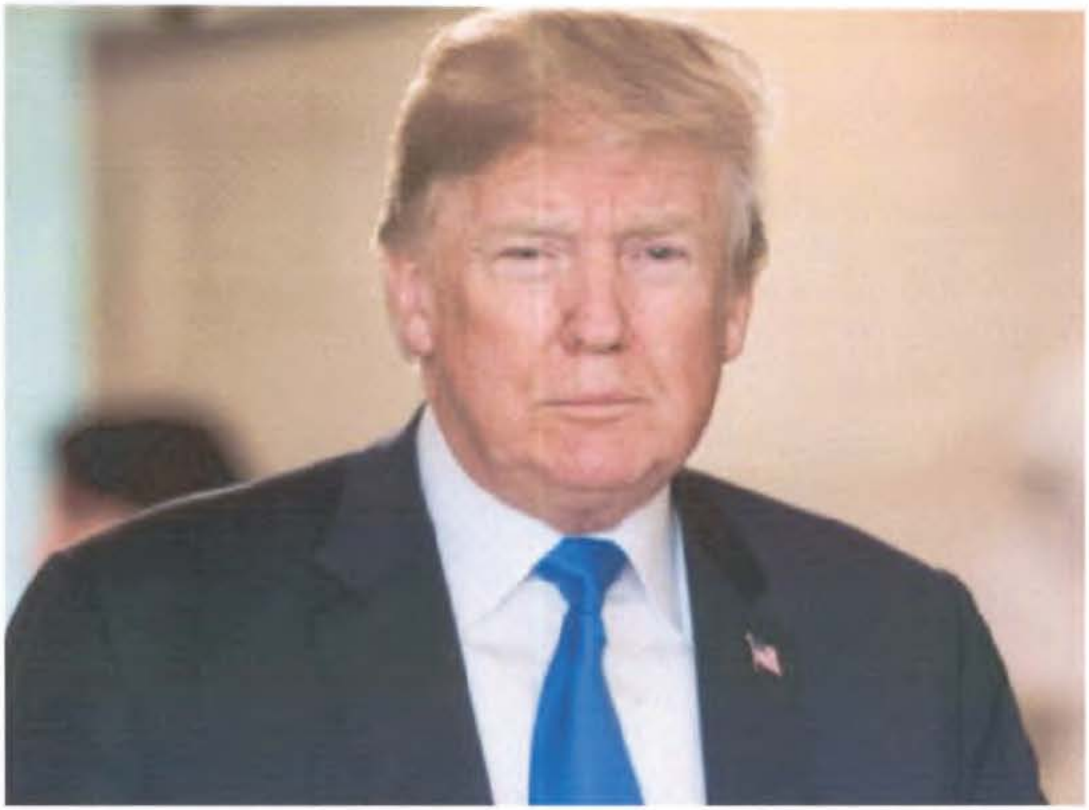
RADAR ONLINE

EXCLUSIVE

Prez Love Child Shocker! Ex-Trump Worker Peddling Rumor Donald Has Illegitimate Child

Fake news or an Oval Office bombshell? You be the judge.

By Radar Staff
Posted on Apr 11, 2018 @ 16:32PM



PRESIDENT **Donald Trump fathered a secret love child** with a Trump Organization employee — a gorgeous 29-year-old medical graduate who is currently living in California!

That's the bombshell claim of a disaffected former Trump staffer who is peddling the allegation to various media outlets, including *The National ENQUIRER*, a sister publication of RadarOnline.com.

Dino Sajudin, who worked at the Trump Organization as a doorman, first approached *The ENQUIRER* in the early stages of the 2016 campaign, Radar can reveal.

Sajudin sensationally claimed to reporters and editors at *The ENQUIRER* that he'd heard the "love child" scuttlebutt from other Trump Organization employees.

Internal emails reviewed by Radar show *The ENQUIRER* jumped to publish the story, and feared tipping off the Trump camp.

"We have not made any moves on Dino's contacts," wrote **Dylan Howard**, editor in chief of *The ENQUIRER*, "because they could go right to Trump."

READ THE MEMO HERE

On November 30, 2015, *The ENQUIRER* signed Sajudin to a $30,000 contract to be paid "upon publication" for information he had about an alleged Trump "love child," according to documents reviewed by Radar.

As is its practice, *The ENQUIRER* asked Sajudin to submit to a lie detector test. But, on December 9, 2015, Sajudin refused to take the test unless he was given an advance on his $30,000 payment!

The ENQUIRER agreed to give him $500 if he passed his polygraph.

READ THE EXPLOSIVE DOCUMENTS HERE

According to the polygrapher's written report to *The ENQUIRER'S*executive editor: "The polygraph examination was being conducted to verify whether the subject was being truthful regarding allegations that he had heard while employed at the Trump World Towers located in New York City."

"The subject alleged that he heard from other employees that Donald Trump had a child with a female employee identified as (Name Redacted)." [Radar has chosen not to identify the woman — as she is a private figure.]

He was asked:

1) "Did you hear from employees and residents of the Trump World Towers that (Name Redacted) had a child with Donald Trump?" Answer: "Yes"

2) "Did you hear from (Name Redacted) that (Name Redacted) had a child with Donald Trump?" Answer: "Yes"

3) "Did you overhear (Name Redacted) saying that (Name Redacted) got knocked up by the boss?" Answer: "Yes"

4) "Are you telling the truth regarding information that you are providing to *The National ENQUIRER*?" Answer: "Yes"

Concluded the polygrapher: "In conclusion, it is the professional opinion of this examiner based on the subject's reactions to the relevant test questions, that the subject was being truthful regarding the above-mentioned issues."

READ THE POLYGRAPH RESULTS HERE

After passing the test, Sajudin demanded he be paid his entire source fee — $30,000 — up front, or he was going to take the story elsewhere.

Faced with losing the source, or possibly losing its money, *The ENQUIRER* blinked, and agreed to pay the entire fee.
But after four weeks of investigation, and dozens of phone calls, the tabloid — **famed for proving John Edwards had fathered a "love child"** — concluded the story was ***NOT*** true.
"When we realized we would be unable to publish, and other media outlets approached the source about his tale, we released Sajudin from the exclusivity clause that had accompanied his $30,000 payment, freeing him to tell his story to whomever he wanted," said *ENQUIRER*Editor-In-Chief Dylan Howard.

"Many organizations have since tried … including *The Wall Street Journal*, *The New York Times*, and *The Associated Press*.

"The latest is **Ronan Farrow** from *The New Yorker*, who is calling our staff, and seems to think this is another example of how *The ENQUIRER*, by supposedly 'catching and killing' stories about President Trump is a threat to national security.

He added, "We're flattered by this attention, and wish that it were true. Unfortunately, however, Dino Sajudin is one fish that swam away."

https://radaronline.com/exclusives/2018/04/donald-trump-love-child-rumor-scandal/

[redacted]

Subject: Trump Memo

Date: Monday, November 30, 2015 at 6:50:56 PM Eastern Standard Time

[redacted]

We're arraigning for our whistleblower – Dino Sajudin, a former longtime Trump company employee – to come in for a poly this week.

He's already signed to an AMI source contract for $30,000 (thirty thousand) upon pub. He is not being named in the story.

He will poly to the fact that he heard from two different Trump employees tha[redacted] had a brief fling with Trump which resulted in her having Trump's child. [redacted]

Our timeline shows that at the time of the affair, Donald was ending his marriage to Ivana and had started the affair with Marla Maples.

We have not contacted her or the daughter's families – or other former Trump employees because we've been trying to obtain our own photos of [redacted]

While our stakeouts have not produced photos yet, we've obtained dozen of strong social media pictures of the married woman, who lives here in Queen, and of her daughter [redacted] who we believe lives in northern Calif.

We've established that over the years from time to time both mother and daughter have worked for the Trump organization – in addition, the husband was given a job as a driver for Trump during a period of time.

The love child earned a medical degree at a Caribbean medical school and also graduated from Syracuse Univ. She is now 27 and working for a genetics company in Calif.

While our whistleblower Dino's info is second hard from multiple sources, we have established through documents that he was an employee of Trump World Tower from 2008 to 2014.

Right now, we're arranging his poly. In addition, we are pursuing another former employee (not those he named) who may info.

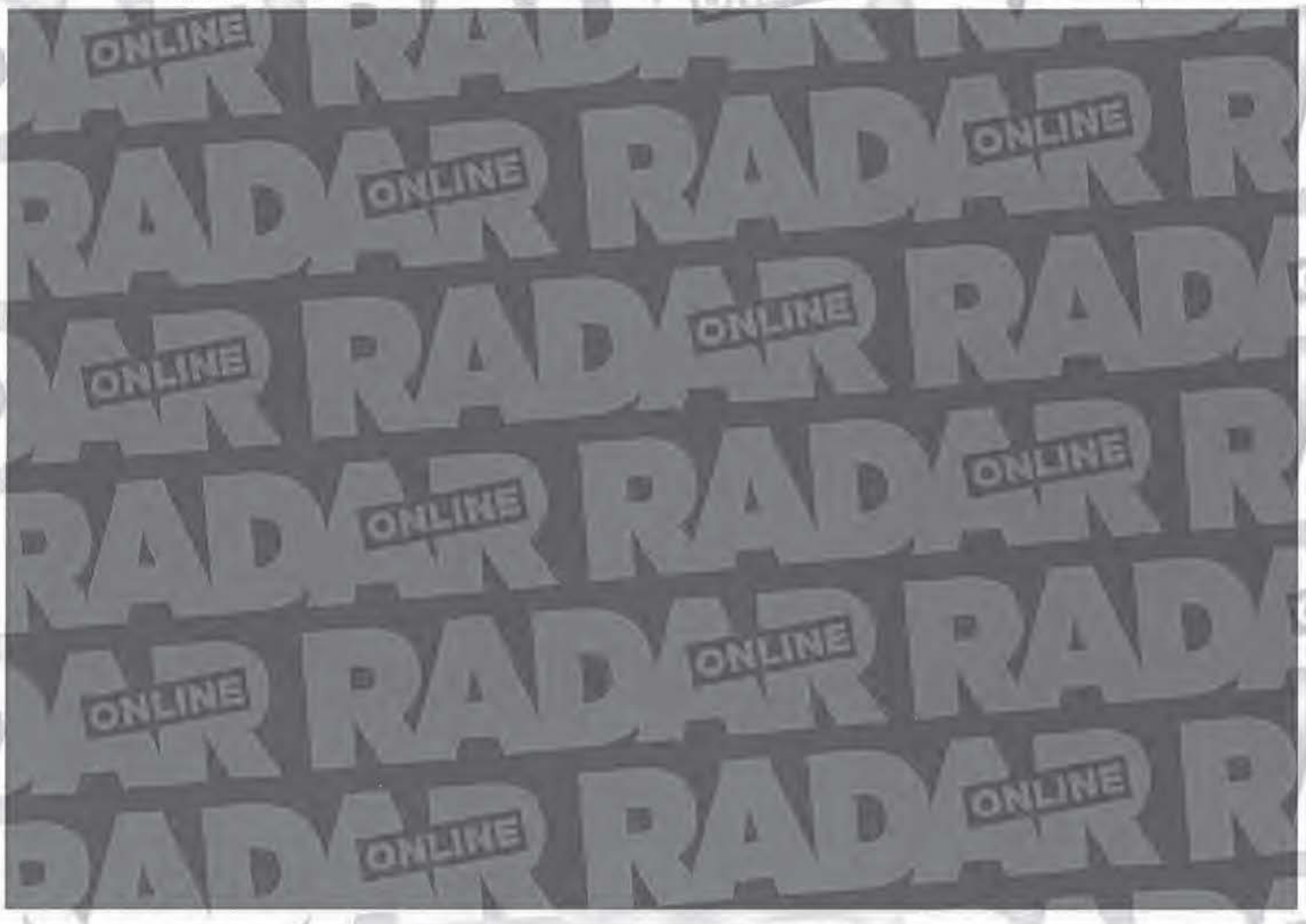
Possibly, we will use [redacted] next week here in NY with [redacted] to get photos of the woman. IN addition, we may send [redacted] to northern Calif to establish where the love child lives so we can get a photo stakeout there. There is also a boyfriend or ex boyfriend.

We have not made any moves on Dino's contacts because they could go right to Trump.

[redacted]

Subject: FW: Please confirm this wording ok re 500 payment to Trump tipster Dino Sajudin. Poly is at five pm.and he wants contract amended before will do it.
Date: December 9, 2015 at 3:55 PM

[redacted]



From [redacted]
Date: [redacted]
[redacted]
Subject: Please confirm this wording ok re 500 payment

AMI will pay you $500 by check to be issued upon satisfactory completion of a 12/9/15 polygraph. If the story is published, the $500 will be deducted from the $30,000 payment to you.

[redacted]

SEARCHING FOR THE TRUTH
INVESTIGATIVE SERVICES

Trenton, New Jersey

[redacted]

[redacted]

December 10, 2015

Polygraph Examination: 15-0260PR
Subject: Dino Sajudin

On December 9, 2015, Dino Sajudin submitted to a polygraph examination at the request of the National Enquirer. The polygraph examination was conducted at the Fairfield Inn located in Stroudsburg, Pennsylvania.

The polygraph examination was being conducted to verify whether the subject was being truthful regarding allegations that he had heard while employed at the Trump World Towers located in New York City. The subject alleged that he heard from other employees that Donald Trump had a child with a female employee identified as [redacted]

Prior to the pretest interview the subject signed the standard Polygraph Consent Form, acknowledging that he was voluntarily submitting to the polygraph examination. The polygraph examination was conducted with a Lafayette Instruments LX4000 Computerized Polygraph Instrument. The various components monitored thoracic and abdominal respiratory cycles, electro dermal responses and cardio responses of the subject during the examination process. The instrument was fully calibrated to published factory standards set forth by the Lafayette Instrument Company. During the examination process psychological data is recorded by the polygraph instrument and is later evaluated by the polygraph scoring algorithm software, at which time a conclusion is rendered regarding the subject's truthfulness to the relevant examination test questions

The Following terms were agreed upon between the subject and the examiner.....

[redacted]

No reactions indicative of deception were recorded to the following relevant test questions…

1.) "Did you hear from employees and residents of the Trump World Towers that [redacted] had a child with Donald Trump?" Answer: "Yes"

2.) "Did you hear from [redacted] that [redacted] had a child with Donald Trump?" Answer: "Yes"

3.) "Did you overhear [redacted] saying that [redacted] got knocked up by the boss?" Answer: "Yes"

4.) "Are you telling the truth regarding information that you are providing to the National Enquirer?" Answer: "Yes"

In conclusion, it is the professional opinion of this examiner based on the subject's reactions to the relevant test questions, that the subject was being truthful regarding the above-mentioned issues.

c.c.
Polygraph Case File 15-0260PR

Exhibit B

American Media, Inc.

Source: Mr. Dino Sajudin

Address:

East Stroudsberg, PA 18301

Phone:

Confidential Information: Source shall provide AMI with information regarding Mr. Donald Trump ; and any and all documentation in Source's possession relevant to the Confidential Information including, but not limited to Mr. Trump's personal and corporate affairs.

Newspaper: National Enquirer

Confidentiality Agreement

This Agreement is entered into by and between Source and American Media, Inc. (hereinafter "AMI"), publisher of Newspaper, whereby AMI agrees to refrain from publishing any Confidential Information provided by Source until Source and AMI have reached a mutually acceptable financial arrangement.

1. Nondisclosure and Nonuse Obligation. Newspaper agrees not to publish any part of the Confidential Information until it comes to a written agreement with Source concerning payment for such information. This agreement does not obligate Newspaper to publish any article concerning the Confidential Information nor does it obligate Newspaper to enter into an agreement with Source concerning payment. If Newspaper does not enter into an agreement with Source regarding payment, it may not publish any part of the Confidential Information it obtains from Source.

2. Consent. Source agrees that Newspaper shall be entitled to take such steps as it deems necessary to assure itself that any payment to Source is legal and does not violate any criminal or civil law or any person's rights in any way. If Newspaper determines that it may not make a payment to Source or that it does not desire to pursue a further agreement regarding payment, Newspaper agrees that it may not publish any part of the Confidential Information it obtains from Source.

3. Competency. Source represents and warrants that the Confidential Information is true and accurate, to the best of Source's knowledge, and will not infringe upon any rights of any individual or entity. Source further represents and warrants that Source is under no legal impediment to provide the Confidential Information to Newspaper and that the Confidential Information has been obtained by Source without violating any applicable laws or statutes.

4. Exclusivity. Neither Source nor anyone under Source's supervision or control will discuss or in any way disclose to any person other than a representative of AMI any facts relating to the Confidential Information. Source warrants and represents that neither Source nor anyone under Source's supervision or control has entered into an agreement with any other reporter or news media to provide the same or similar Confidential Information. In the event that Source or someone under Source's supervision or control does disclose any of the Confidential Information prior to the entering into a written agreement with Newspaper concerning payment for such information, this Agreement will be null and void.

1000 AMERICAN MEDIA WAY, • BOCA RATON, FLORIDA • 33464-1000
PHONE: 561.997.7733 • FAX: 561.989.1224

5. Exclusions from Nondisclosure and Nonuse Obligations. Newspaper's obligations under Paragraph 1 ("Nondisclosure and Nonuse Obligation") with respect to any portion of the Confidential Information shall terminate when: (a) it was in the public domain at or subsequent to the time it was communicated to Newspaper by Source through no fault of Newspaper; (b) it was rightfully in Newspaper's possession free of any obligation of confidence at or subsequent to the time it was communicated to Newspaper by Source; (c) it was developed by employees or agents of Newspaper independently of and without reference to any information communicated to Newspaper by Source; (d) it was communicated by Source to an unaffiliated third party free of any obligation of confidence; or (e) the communication was in response to a valid order by a court or other governmental body, was otherwise required by law, or was necessary to establish the rights of either party under this Agreement.

6. Independent Development. Source understands that Newspaper may currently or in the future be developing information internally or be receiving information from other parties that may be similar to the Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or inference that Newspaper shall not develop information, or have information developed for it, that competes with the information contemplated by the Confidential Information. The burden of proving noncompliance with this Agreement shall in all cases be on Source.

7. Governing Law and Confidential Information Venue. This Agreement shall be governed by and construed in accordance with Florida law. Source agrees that any suit to enforce any term of this Agreement shall be instituted in a state or federal court of competent jurisdiction in the State of Florida, County of Palm Beach, which court shall have Confidential Information jurisdiction over any such suit.

Editor

SHARON CHURCHER

ACCEPTED AND AGREED TO THIS
_____ day of _____, 200_

Source

Exhibit C

American Media, Inc.

DA 11/15/15
DPC 11/15/2015

Source: Dino Saiudin

East Stroudsburg, PA 18301

Payment: $30,000 (Thirty Thousand Dollars), payable upon publication as set forth below.

Exclusive: Source shall provide AMI with information regarding Donald Trump's illegitimate child; and any and all documentation, including but not limited to letters and any legal documents, and photographs in Source's possession relevant to the Exclusive. AMI agrees not to name/identify source in any published articles. DA 11/15/15 DPC 11/15/2015

Exclusivity Period: three months after AMI publishes the Exclusive.

SOURCE AGREEMENT

This Agreement is entered into, by and between Source and American Media, Inc. (AMI). Source agrees to grant worldwide rights to AMI for publication of the Exclusive. AMI and Source therefore agree to the following:

1. Consent. Source agrees to be interviewed by a representative of AMI, for an article to be published concerning the Exclusive. Source understands that some or all of what Source says during the interview may appear in the article.

2. Cooperation. Source agrees to provide AMI with a complete and accurate interview regarding Source's personal knowledge of the Exclusive. Source agrees to cooperate fully with AMI in providing corroborating information relevant to the Exclusive. Source agrees to allow AMI to tape record all discussion between Source and AMI's representative(s), such tape(s) to remain in possession of AMI. Source agrees to submit to a polygraph examination or other methods of verification concerning the Exclusive if AMI deems this to be necessary. Source agrees to be fully supportive of AMI should any legal challenge arise over the article based upon the Exclusive, including but not limited to, being identified as the source of the Exclusive and testifying in court on behalf of AMI should AMI deem this necessary.

3. Competency. Source is not a minor. Source is the owner of all rights in and to the Exclusive or is authorized by the owner of those rights to license the Exclusive to AMI. Source represents and warrants that publication by AMI of Exclusive will

not infringe upon any rights of any individual or entity. Source further represents and warrants that Source is under no legal impediment to provide the Exclusive to AMI and that the Exclusive has been obtained by Source without violating any applicable laws or statutes.

4. Release. Source shall not make or institute a lawsuit or claim liability, in law or in equity, against AMI or any of its assigns, licensees, or successors, arising out of, or in connection with, the publication of the Exclusive supplied to AMI pursuant to this Agreement.

5. Exclusivity Period. Neither Source nor anyone under Source's supervision or control will discuss or in any way disclose to any person other than a representative of AMI any facts relating to the Exclusive until after the expiration of the Exclusivity Period. Source warrants and represents that neither Source nor anyone under Source's supervision or control has entered into an agreement with any other reporter or news media to provide the same or similar Exclusive. In the event that Source or someone under Source's supervision or control does disclose any of the Exclusive prior to the expiration of the Exclusivity Period, this Agreement will be null and void and no payment will be made to Source.

6. Grant. Source hereby grants AMI the Publication Rights to the Exclusive. Source also grants AMI, its affiliates, subsidiaries, assigns and licensees, the non-exclusive right to reproduce, publish and/or digitally archive the Exclusive in any form or media in any language throughout the world.

7. Consideration. In consideration of the foregoing, AMI promises to pay Source the Payment amount, payable two weeks after the cover date of the edition containing any article or the last of a series of articles based upon the Exclusive.

8. Publication of the Exclusive. Source acknowledges that AMI shall have no obligation to publish the Exclusive and that AMI's only obligation to Source shall be the payment of the sum set forth in this Agreement, subject to the terms of this Agreement. AMI will not owe Source any compensation if AMI does not publish the Exclusive provided by Source. Nothing contained in this Agreement shall prevent AMI from publishing an article or articles relating to the Exclusive which are derived from information gathered from sources other than Source.

9. Breach of Agreement. Source acknowledges that any breach by Source of this Agreement shall constitute a material breach. If Source breaches the terms of the Agreement, AMI shall have no further payment obligations to Source and AMI may take legal action to retrieve payments AMI has made to Source.

10. Governing Law and Exclusive Venue. This agreement shall be governed by and construed in accordance with Florida law. Source agrees that any suit to enforce any term of this Agreement shall be instituted in a state or federal court of

competent jurisdiction in the State of New York, county of New York, which court shall have exclusive jurisdiction over any such suit.

ACCEPTED AND AGREED ON THIS 15 day of NOV, 2015

Source signature

Source address and phone number

Source Social Security number

AMI editor/reporter signature

SHARON CHURCHER

AMENDMENT

Reference is made to the Source Agreement (the "Agreement"), dated as of November 15, 2015, by and between Dino Sajudin ("Source") and American Media, Inc. ("AMI"). Capitalized terms not otherwise defined herein shall have the meaning set forth in such Agreement.

For good and valuable consideration, (receipt of which is hereby acknowledged), Source and AMI have agreed, and do hereby agree, that the Agreement is hereby amended as follows:

1. AMI shall pay Source the Payment set forth in the Agreement (i.e., $30,000) within 5 days of receipt of this Amendment signed by Source.

2. The Exclusivity Period set forth in the Agreement is extended in perpetuity and shall not expire.

3. Source agrees that he shall not disclose the Exclusive or the terms of the Agreement or this Amendment to any third party except as required by law or court order, provided Source gives AMI prompt written notice of such requirement or order so AMI may seek an appropriate protective order or other relief. In the event Source breaches this provision, Source shall be liable to AMI and shall pay to AMI, as liquidated damages, and not as a penalty, the sum of $1,000,000 (one million dollars), which amount represents the result of a reasonable endeavor by AMI to ascertain the fair average compensation for any damages that AMI will sustain as the result of such disclosure, and that the amount of those damages is impracticable to calculate or ascertain with certainty or specificity.

Except as otherwise specifically amended herein, all of the terms and conditions of the Agreement are hereby ratified and confirmed. In the case of a conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control.

Please sign below to indicate your acceptance of the foregoing.

DINO SAJUDIN

D Sajudin

12-17-15

AMERICAN MEDIA, INC.

Robin E Hartler