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**DELIVERED VIA ELECTRONIC MAIL**Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463**Re: MUR 7685 (Bloomberg L.P., Bloomberg News, John Micklethwait, Michael R. Bloomberg, and Mike Bloomberg 2020, Inc. and Hayden Horowitz in his official capacity as treasurer)**

Dear Mr. Jordan:

This letter is submitted on behalf of the above-named respondents in response to a complaint filed with the Federal Election Commission (“Commission”) by Mark Green (“Complainant”).

Complainant alleges that the costs incurred by Bloomberg News in covering the 2020 presidential election are prohibited in-kind contributions to its majority stakeholder and former Democratic candidate for president, Michael R. Bloomberg, and that the exemption for candidate-owned media does not apply because Bloomberg News did not give “reasonably equal coverage to all opposing candidate.”

To support his allegation, Complainant references nine articles about Mr. Bloomberg’s former Democratic opponents. On this slim reed, Complainant accuses Bloomberg News of a “biased coverage scheme,” which entailed publishing “negative stories” about Mr. Bloomberg’s rivals while leaving Mr. Bloomberg “unblemished.” In fact, Complainant’s cherry-picked selection of stories fundamentally misrepresents the nature of Bloomberg News’s campaign coverage and fails to establish a pattern of unequal coverage.

In applying the media exemption, the Commission has consistently avoided making content-based distinctions or intruding into editorial decision-making. Complainant would have the Commission subvert this practice, subjecting Bloomberg News to regulation simply because of the manner it has chosen to report on candidates in the 2020 presidential election. Such an application of the media exemption would plainly be unconstitutional.

For these reasons, the complaint should be dismissed.

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## I. Factual Background

Bloomberg News is a fully-accredited global news service with more than 2,400 journalists in over 150 bureaus across more than 70 countries.<sup>1</sup> It delivers over 5,000 stories a day to more than 80 million consumers through an international network of print, television, radio, and digital media.<sup>2</sup> Bloomberg News publishes both its own stories as well as those from other news organizations. The Commission has previously recognized Bloomberg News (then known as Bloomberg Business News) as a press entity within the meaning of the Federal Election Campaign Act (the “Act”).<sup>3</sup> Bloomberg News is a division of Bloomberg L.P., a limited partnership, whose incorporated general partner is Bloomberg, Inc. Bloomberg L.P. was co-founded by Mr. Bloomberg, who owns a majority stake in the company.

On November 21, 2019, Mr. Bloomberg filed a Statement of Candidacy with the Commission as a Democratic candidate for president. Following the formal announcement of his candidacy three days later, Bloomberg News Editor-in-Chief John Micklethwait sent a memo to staff announcing “basic principles” for covering the campaign and the Trump Administration and certain organizational changes. Specifically, Mr. Micklethwait announced that Bloomberg News would suspend the editorial board of Bloomberg Opinion, the institution’s editorial division, and publish no unsigned editorials. On the news side, the organization would continue to write about “virtually all aspects of this presidential contest in much the same way as we have done so far,” carrying polls, interviewing candidates, tracking who is winning and losing, and analyzing the candidates’ policies.<sup>4</sup> The memo noted that these changes “cover[] the vast majority of what this newsroom does.”<sup>5</sup> At the same time, Mr. Micklethwait acknowledged that Bloomberg News “cannot treat Mike’s Democratic competitors different from him” so would extend to them and their families its long-standing policy of not investigating Mr. Bloomberg or his family. Bloomberg News would still summarize or publish investigative pieces on the candidates – including Mr. Bloomberg – conducted by other media organizations. The memo added that Bloomberg News would “continue to investigate the Trump administration, as the government of the day,” a policy the organization would reassess if Mr. Bloomberg became the Democratic nominee.

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<sup>1</sup> News, BLOOMBERG.COM, bloomberg.com/distribution/products/news.

<sup>2</sup> *Bloomberg Impact Report 2018*, BLOOMBERG L.P. (2019), <https://data.bloomberglp.com/company/sites/48/2019/04/Impact-Report-WEB.pdf>.

<sup>3</sup> FEC Advisory Op. 1996-16 (Bloomberg).

<sup>4</sup> See Ex. A, Letter from John Micklethwait, Editor-in-Chief, Bloomberg News to Bloomberg News Staff (Nov. 24, 2019) (“We will describe who is winning and who is losing. We will look at policies and their consequences. We will carry polls, we will interview candidates and we will track their campaigns”) (*hereinafter* “Micklethwait Memo”).

<sup>5</sup> *Id.*



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## II. Bloomberg News's Coverage of the 2020 Presidential Election Falls Squarely within the Media Exemption

Under the Act and Commission regulations, any spending for the purpose of influencing a federal election is considered an "expenditure."<sup>6</sup> Further, anything of value given to a candidate for the purpose of influencing an election, including any expenditure made in coordination with a candidate, is considered a "contribution" to the candidate.<sup>7</sup> Corporations and limited partnerships with an incorporated general partner are prohibited from making any contribution to a federal candidate.<sup>8</sup>

Notwithstanding this general rule, the Act and Commission regulations provide that costs incurred to cover or carry any news story, commentary, or editorial are not contributions or expenditures for media outlets that are not owned or controlled by a political party, political committee, or candidate.<sup>9</sup> For media outlets owned or controlled by a candidate, Commission regulations provide that the costs of "bona fide news" coverage are not expenditures or contributions so long as they are part of a "general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates".<sup>10</sup>

Complainant does not challenge any reporting by Bloomberg News on the basis that it is not "bona fide news," and instead cites nine articles about Democratic presidential candidates that he believes are indicative of a lack of "reasonably equal coverage to all opposing candidates." This small sample, however, demonstrates no such thing. According to a self-audit conducted by Bloomberg News of its coverage of the 2020 presidential campaign during Mr. Bloomberg's candidacy, Mr. Bloomberg was neither underrepresented nor overrepresented in Bloomberg News and Bloomberg Opinion's stories about the Democratic primaries:

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<sup>6</sup> 52 U.S.C. § 30101(9).

<sup>7</sup> 52 U.S.C. § 30101(8); 11 C.F.R. §§ 109.20(b), 109.21(b).

<sup>8</sup> 52 U.S.C. § 30118.

<sup>9</sup> 52 U.S.C. §§ 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

<sup>10</sup> 11 C.F.R. §§ 100.73(a)-(b); 100.132(a)-(b). *See also* Advisory Op. 2005-07 (Mayberry) at 5-6.

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Candidate	Story Count	Percent
Sanders	189	17
Biden	159	14
Warren	144	13
Bloomberg	124	11
Buttigieg	99	9
Klobuchar	38	3
Other	32	3
Yang	17	2
Steyer	12	1
General	311	28
Total	1,125	-

Source: Bloomberg News<sup>11</sup>

In fact, the above story count shows a pattern similar to the Democratic Party's delegate count following Mr. Bloomberg's departure from the race after "Super Tuesday."<sup>12</sup>

Moreover, contrary to Complainant's assertions, Bloomberg News's coverage did not "ignore[] important stories" critical of Mr. Bloomberg while covering criticisms of his opponents. For example, Complainant alleges that Bloomberg News neglected to publish a story about "Mr. Bloomberg's widely reported failure to register for the Nevada Caucuses."<sup>13</sup> But on January 2, 2020, Bloomberg News in fact published an original story entitled "Michael Bloomberg to Skip Nevada Caucuses: Campaign Update" and an Associated Press newswire titled "Bloomberg Fails to File for Nevada Democratic Caucuses".<sup>14</sup> Similarly, Complainant alleges that "Bloomberg News has yet to publish a single article about Mr. Bloomberg's entrenched business interests in China, which the Washington Post reported 'could create unprecedented entanglements if he is elected president.'" In fact, Bloomberg News published that very article on the home page of the Bloomberg Terminal (known as "TOP").<sup>15</sup> The same is

<sup>11</sup> *Our Election Coverage Snapshot*, BLOOMBERG (Feb. 3, 2020, 4:53 PM; updated Mar. 5, 2020, 10:15 AM), <https://www.bloomberg.com/features/2020-election-coverage-snapshot/> (hereinafter "*Election Coverage Snapshot*").

<sup>12</sup> See, Lauren Leatherby and Sarah Almukhtar, *Democratic Delegate Count and Primary Election Results*, N.Y. TIMES (updated March 6, 2020), available through INTERNET ARCHIVE: WAYBACK MACHINE, <https://web.archive.org/web/20200308194447/https://www.nytimes.com/interactive/2020/us/elections/delegate-count-primary-results.html>. As of March 6, 2020, the Democratic candidates had earned the following delegates: Biden (664), Sanders (573), Warren (64), Bloomberg (61), Buttigieg (26), Klobuchar (7), Others (2).

<sup>13</sup> Compl. at 3.

<sup>14</sup> See *Election Coverage Snapshot* (citing *Michael Bloomberg to Skip Nevada Caucuses: Campaign Update*, BLOOMBERG (Jan. 2, 2020 2:28PM), <https://www.bloomberg.com/news/articles/2020-01-02/sanders-raised-34-5-million-in-fourth-quarter-campaign-update>; *Bloomberg to Skip Nevada Democratic Caucuses*, AP (Jan. 2, 2020), <https://apnews.com/28ac9dbf99e8d47944552506a3acd488>).

<sup>15</sup> *Election Coverage Snapshot* (citing Michael Kranish, *Bloomberg's Business in China Has Grown. That Could Create Unprecedented Entanglements If He Is Elected President*, WASH. POST (Jan. 1, 2020),



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true of the publication's debate coverage, which could hardly be considered "skewed" in favor of Mr. Bloomberg, as Complainant suggests.<sup>16</sup>

Complainant's flimsy showing thus paints an inaccurate picture of Bloomberg News's coverage of the 2020 elections and provides no factual basis on which to find reason to believe Bloomberg News violated the Act.<sup>17</sup>

### **III. It would be Unconstitutional to Apply the Media Exemption in the Manner Urged by Complainant**

The Commission has consistently applied the media exemption to preserve the full protections of the First Amendment for bona fide press entities. As the legislative history makes clear:

... it is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus, [the Act] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.<sup>18</sup>

It follows that the Commission should take special care to avoid substituting its judgment for the editorial decisions of media organizations concerning the manner and content of news coverage. As the Supreme Court unanimously ruled in striking down a state law compelling newspapers to give candidates a right of reply when their records or character are criticized:

A newspaper 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

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[https://www.washingtonpost.com/politics/bloombergs-business-in-china-has-grown-that-could-create-unprecedented-entanglements-if-he-is-elected-president/2020/01/01/71536318-1cfd-11ea-9ddd-3e0321c180e7\\_story.html](https://www.washingtonpost.com/politics/bloombergs-business-in-china-has-grown-that-could-create-unprecedented-entanglements-if-he-is-elected-president/2020/01/01/71536318-1cfd-11ea-9ddd-3e0321c180e7_story.html)).

<sup>16</sup> Craig Gordon and Gregory Korte, *Bloomberg Hammered, Warren Shines and Sanders Dodges Trouble*, BLOOMBERG (February 19, 2020), <https://www.bloomberg.com/news/articles/2020-02-20/bloomberg-catches-flak-warren-shines-and-sanders-dodges-trouble>.

<sup>17</sup> Statement of Reasons of Cmsrs. David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas, MUR 4960 (Clinton) at 1 ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Federal Election Campaign Act]. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . . Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true.") (some citations omitted).

<sup>18</sup> H.R. Rep. No. 93-1239 (1974) at 4.

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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.<sup>19</sup>

Complainant makes no effort to hide that this is exactly what he is asking the Commission to do. Rather than defer to editorial decisions concerning what it means for coverage to be “reasonably equal,” Complainant imposes his own amateur assessment, and asks the Commission to adopt it. It is far outside the bounds of the Commission’s authority to pass judgment on journalistic values and priorities, or specify how a major news organization should cover a presidential election.

It is no surprise, then, that our research uncovered only one enforcement matter in the forty years since the media exemption was codified where the Commission found that a candidate-owned publication was not entitled to the exemption because it failed to give reasonably equal coverage to opposing candidates. In that matter, a newsletter was established contemporaneously with the launch of the candidate’s campaign, the candidate’s wife authored many articles in support of her husband, and one-third of the newsletter’s advertising was for a Honda dealer owned by the candidate.<sup>20</sup> That case, itself over 20 years old, presents a very different situation than a global news organization that has been covering presidential elections for many years. Indeed, while there is no legislative history explaining the exemption for candidate-owned media, “[i]t may be that the statutory exclusion . . . was intended to exclude only those publications whose essential purpose is political, and which could readily be used to circumvent the purposes of the Act if the full, unfettered freedom of the press to discuss candidates were extended to them.”<sup>21</sup>

By contrast, denying Bloomberg News the media exemption would usurp the constitutionally-protected speech of one of the world’s leading media organizations on the most pressing subjects of the day. As Commissioner David Mason observed in a prior media exemption matter, “[i]t is difficult to imagine an assertion more contrary to the First Amendment than the claim that the FEC, a federal agency, has the authority to control the news media’s choice of formats, hosts, commentators, and editorial policies in addressing public policy issues.”<sup>22</sup>

#### IV. Conclusion

Complainant’s characterization of Bloomberg News’s reporting on the 2020 Democratic presidential campaign is grossly inaccurate and fails to establish a pattern of unequal coverage.

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<sup>19</sup> *Miami Herald Publishing v. Tornillo*, 418 U.S. 241 (1974).

<sup>20</sup> Factual & Legal Analysis at 7-9, MUR 4064 (Sherrill Morgan).

<sup>21</sup> *Forbes SOR* at 5 (Cmrs. Wold, Elliott, and Mason).

<sup>22</sup> Statement of Reasons of Cmr. David M. Mason at 5, MUR 4689 (Dornan).



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In addition, it would violate core First Amendment principles for the Commission to apply the media exemption in the manner Complainant urges. The complaint is meritless and should be dismissed as to each of the respondents.

Respectfully submitted,



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## EXHIBIT A

Subject line: The Newsroom and Mike's Campaign

So Mike is running.

There is no point in trying to claim that covering this presidential campaign will be easy for a newsroom that has built up its reputation for independence in part by not writing about ourselves (and very rarely about our direct competitors). No previous presidential candidate has owned a journalistic organization of this size. We have electoral laws to follow - to do with both balance and opinion. We will certainly obey them, but I think we need to do more than just that - and I believe we can. So this is how we will proceed.

We are not going to follow an exhaustive rulebook. That is partly because I believe that in journalism you "show" your virtue, you don't "tell" it. You prove your independence by what you write and broadcast, rather than by proclaiming the details in advance. And I am loath to tie our hands at this stage. We cannot predict every detail of the future: we will have to make some decisions on a case-by-case basis. But we can follow some basic principles, and we will make a few organizational changes.

The place where Mike has had the most contact with Editorial is Bloomberg Opinion: our editorials have reflected his views. David Shipley, Tim O'Brien and some members of the Board responsible for those editorials will take a leave of absence to join Mike's campaign. We will suspend the Board, so there will be no unsigned editorials. Our columnists, who produce the majority of Bloomberg Opinion's content, will continue to speak for themselves, and we will continue to take some op-ed articles from outsiders (although not op-eds on the election), Bloomberg Opinion will be led by Bob Burgess, with Reto being the main overseer on the Editorial Management Committee.

On News, we will write about virtually all aspects of this presidential contest in much the same way as we have done so far. We will describe who is winning and who is losing. We will look at policies and their consequences. We will carry polls, we will interview candidates and we will track their campaigns, including Mike's. We have already assigned a reporter to follow his campaign (just as we did when Mike was in City Hall). And in the stories we write on the presidential contest, we will make clear that our owner is now a candidate.

That covers the vast majority of what this newsroom does. We will continue our tradition of not investigating Mike (and his family and foundation) and we will extend the same policy to his rivals in the Democratic primaries. We cannot treat Mike's Democratic competitors differently from him. If other credible journalistic institutions publish investigative work on Mike or the other Democratic candidates, we will either publish those articles in full, or summarize them for our readers - and we will not hide them. For the moment, our P&I team will continue to investigate the Trump administration, as the government of the day. If Mike is chosen as the Democratic presidential candidate (and Donald Trump emerges as the Republican one), we will reassess how we do that.

To those who would rather that we did not write about Mike at all, I would reply that Bloomberg News has handled these conflicts before - and proved our independence. We are following the same policy that we have applied to Bloomberg LP and our direct rivals in the financial markets and media: we report on but do not investigate Reuters and CNBC. When Mike ran for mayor, we reported on the facts of his campaign and summarized other articles.



So those are the principles that we will follow. They are broad - and so there will be decisions to be made at the margin. That is what editors are for. And that leads to an organizational change, designed to add even more managerial clout.

Our news coverage of the 2020 race will be run on a day-to-day basis by Wes Kosova, Craig Gordon and our team in Washington, DC. If questions arise, we have Laura Zelenko's Standards team to call on. But I have asked Marty Schenker, our Chief Content Officer who works alongside Reto and myself on the Editorial Management Committee, to take special responsibility for overseeing our news coverage of Mike and his rivals (and the questions that may occur about this election all the way round the world), in the same way that Reto will oversee Opinion. We may well have to make quick decisions across many platforms. Marty has covered every election since Watergate; we need his experience and judgment, even if responsibility for any mistakes we make ultimately rests with me.

Given the workload this will involve, I have asked Heather Harris to take on Marty's responsibilities as Chief Content Officer for EMEA and APAC — and she will join Reto, Marty and me on our management committee.

I think this is a structure that can cope with many eventualities. No doubt, many of you are already thinking of possible complexities that may arise. My response is: let's get back to work. We can spend a long time debating "what ifs". I would rather that we got on with the journalism and let that speak for itself. So write, bldg, broadcast - and the rest will take care of itself.

John