

**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

February 6, 2023

VIA EMAILLHNorton@venable.com

Lawrence H. Norton, Esq.
Venable LLP
600 Massachusetts Avenue, NW
Washington, DC 20001

RE: MURs 7668, 7669, 7685
Bloomberg News, *et al.*

Dear Mr. Norton:

On December 12 and 13, 2019, and January 29, 2020, the Federal Election Commission notified you of complaints filed indicating that your clients, Bloomberg News, John Micklethwait, Bloomberg LP, Michael Bloomberg, and Mike Bloomberg 2020 and Hayden Horowitz in his official capacity as treasurer may have violated the Federal Election Campaign Act of 1971, as amended. On January 26, 2023, the Commission, on the basis of the information provided in the complaints and information provided by your clients, found no reason to believe that: (1) Bloomberg News, Bloomberg L.P., or John Micklethwait violated 52 U.S.C. §§ 30116 or 30118 by making excessive or prohibited in-kind contributions; (2) Mike Bloomberg 2020, Inc. and Hayden Horowitz in his official capacity as treasurer or Michael R. Bloomberg violated 52 U.S.C. §§ 30116 or 30118 by accepting excessive or prohibited in-kind contributions; (3) Bloomberg News or Bloomberg L.P. violated 52 U.S.C. § 30104(c) by failing to report independent expenditures; (4) Bloomberg News violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register as a political committee or file reports as a political committee with the Commission; and (5) that the relevant Respondents violated the soft money provisions of 52 U.S.C. § 30125(e). Accordingly, the Commission closed its file in this matter. .

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

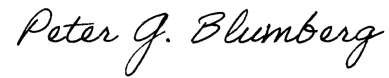
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If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650 or ddillenseger@fec.gov.

Sincerely,

A handwritten signature in black ink that reads "Peter G. Blumberg". The signature is written in a cursive, flowing style.

Peter G. Blumberg
Assistant General Counsel

Enclosure:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mike Bloomberg 2020, Inc. **MURs** 7668, 7669, and 7685
 and Hayden Horowitz, as treasurer
 Bloomberg News
 Michael R. Bloomberg
 Bloomberg L.P.
 John Micklethwait

I. INTRODUCTION

The Complaints in these matters allege that Bloomberg News and Bloomberg L.P. made prohibited in-kind contributions to Mike Bloomberg and Mike Bloomberg 2020, Inc. in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), after Bloomberg News announced that it would forgo any investigations of Bloomberg and his Democratic opponents during the 2020 Democratic presidential primary elections.¹ According to the Complaints, Bloomberg News, a global news service, is not entitled to the press exemption because it failed to provide reasonably equal coverage to all of Bloomberg’s opponents by continuing to investigate the Trump administration and by failing to cover negative stories about Bloomberg.² The MUR 7668 and MUR 7669 Complaints further allege that Bloomberg News was required to register and report as a political committee as a result of its alleged contributions to Mike Bloomberg 2020, Inc. in violation of the Act.³ The MUR 7668 Complaint alleges that Bloomberg spent soft money through Bloomberg News.⁴

¹ MUR 7668 Compl. at 4-6 (Dec. 11, 2019); MUR 7669 Compl. at 7 (Dec. 10, 2019); MUR 7685 Compl. at 1 (Jan. 27, 2020).

² MUR 7668 Compl. at 4-6; MUR 7669 Compl. at 6-7; MUR 7685 Compl. at 6-8.

³ MUR 7668 Compl. at 5; MUR 7669 Compl. at 3, 7.

⁴ MUR 7668 Compl. at 5.

1 Respondents assert that Bloomberg News's coverage of the Democratic Presidential
2 primary elections during the time that Bloomberg was a candidate is excluded from the definition
3 of a contribution or expenditure under the media exemption.⁵ Respondents further assert that
4 Bloomberg News provided reasonably equal coverage of Bloomberg's Democratic opponents as
5 required by the media exemption, and that then-President Trump did not qualify as an opposing
6 candidate during the primary elections under the Act.

7 The available information indicates that all of Bloomberg News's conduct, as alleged, is
8 protected by the press exemption. Therefore, the Commission finds no reason to believe that
9 Bloomberg News, Bloomberg L.P., and John Micklethwait made, and Bloomberg and Mike
10 Bloomberg 2020, Inc. and Hayden Horowitz in his official capacity as treasurer accepted,
11 prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116 or 30118. The Commission
12 also finds no reason to believe that Respondents spent soft money in violation of 52 U.S.C.
13 § 30125(e). Finally, it does not appear that Bloomberg News became a political committee
14 because its activities are protected by the press exemption. Accordingly, the Commission finds
15 no reason to believe that Bloomberg News failed to register and report as a political committee in
16 violation of 52 U.S.C. §§ 30102, 30103, and 30104.

17 **II. FACTUAL BACKGROUND**

18 **A. Organization of Bloomberg News**

19 Bloomberg News is a global news service with more than 2,400 journalists in over 150
20 bureaus across more than 70 countries.⁶ Bloomberg News has been in operation since at least

⁵ MURs 7668 and 7669 Resp. at 3-4; MUR 7685 Resp. at 5-6.

⁶ MURs 7668 and 7669 Resp. at 2; MUR 7685 Resp. at 2.

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1996.⁷ Respondents state that Bloomberg News delivers over 5,000 stories a day to more than 80 million consumers through an international network of print, television, radio, and digital media.⁸ Bloomberg News publishes both its own stories and those from other news organizations.⁹ Bloomberg News is owned by Bloomberg L.P., a limited partnership, whose incorporated general partner is Bloomberg, Inc.¹⁰ Michael Bloomberg is a co-founder and the majority shareholder of Bloomberg L.P.¹¹

B. Bloomberg News's Coverage of the 2020 Presidential Campaign during Bloomberg's Candidacy

On November 21, 2019, Mr. Bloomberg filed a Statement of Candidacy with the Commission,¹² and his authorized committee, Mike Bloomberg 2020, Inc. and Hayden Horowitz in his official capacity as treasurer (the "Committee"), filed its Statement of Organization that same day.¹³ On November 24, 2019, Bloomberg publicly announced his decision to run as a Democratic candidate for President,¹⁴ and on the same day, Bloomberg News's Editor-in-Chief, John Micklethwait, sent a memorandum to staff stating that Bloomberg News would be making

⁷ See Advisory Opinion 1996-16 at 1-2 (Bloomberg). Bloomberg News was known as Bloomberg Business News at that time. MURs 7668 and 7669 Resp. at 2; MUR 7685 Resp. at 2.

⁸ MURs 7668 and 7669 Resp. at 2; MUR 7685 Resp. at 2.

⁹ MURs 7668 and 7669 Resp. at 2; MUR 7685 Resp. at 2.

¹⁰ MUR 7669 Compl. at 4; MUR 7685 Resp. at 2. The exact corporate structure of Bloomberg L.P. is unclear, and it is unknown from the available information whether it should be treated as a partnership under 11 C.F.R. § 110.1(e).

¹¹ MUR 7669 Compl. at 3-4; MUR 7685 Resp. at 2. The MUR 7685 Complaint alleges that Bloomberg owns 89% of Bloomberg L.P. MUR 7685 Compl. at 1-2.

¹² Michael Bloomberg Statement of Candidacy (Nov. 21, 2019).

¹³ Mike Bloomberg 2020, Inc. Statement of Organization (Nov. 21, 2019).

¹⁴ MURs 7668 and 7669 Resp. at 2; MUR 7685 Resp. at 2; *see also* MUR 7685 Compl. at n.1 (citation omitted).

changes to its news coverage in light of Bloomberg’s candidacy.¹⁵ Specifically, the memorandum stated that Bloomberg News intended to “follow” the appropriate “electoral laws,” and, therefore, because “[t]he place where [Respondent Bloomberg] has had the most contact with Editorial is Bloomberg Opinion” whose “editorials have reflected [Mr. Bloomberg’s] view,” the opinion-side editorial board would be suspended, and accordingly, “there will be no [further] unsigned editorials.”¹⁶ Additionally, Bloomberg News would “continue [its] tradition of not investigating Mike (and his family and foundation),” and, because Bloomberg News “cannot treat Mike’s Democratic competitors differently from him,” “extend the same policy to his rivals in the Democratic primaries.”¹⁷

However, Mr. Micklethwait stated that other aspects of Bloomberg News’s operations would not change. Specifically, the company would “write about virtually all aspects of this presidential contest in much the same way as we have done so far,” and “continue to investigate the Trump administration, as the government of the day.”¹⁸

Consistent with these policies, Bloomberg News continued to cover the 2020 presidential campaign between Bloomberg’s November 24, 2019 announcement that he was running for President and Bloomberg’s March 4, 2020 announcement that he was leaving the presidential

¹⁵ See MUR 7669 Compl. at 2; MUR 7669 Compl. at 3-4.

¹⁶ Letter from John Micklethwait, Editor-in-Chief, Bloomberg News to Bloomberg News Staff (Nov. 24, 2019), cited in MUR 7685 Resp. at Ex. A (emphasis added) (hereinafter, “Letter from Micklethwait”); see also MUR 7668 Compl. at Ex. A (citing @Oliver Darcy, TWITTER (Nov. 24, 2019 11:25 a.m.), <https://twitter.com/oliverdarcy/status/1198638671374761985?lang=en>)); MUR 7685 Compl. at Ex. A; MURs 7668 and 7669 Resp. at 2.

¹⁷ Letter from Micklethwait.

¹⁸ *Id.*

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1 race.¹⁹ Bloomberg News does not appear to have published any unsigned editorials or any
2 opinion pieces from its suspended editorial board,²⁰ although it continued to publish campaign-
3 related opinion pieces written by columnists.²¹

4 The Complaints allege that Bloomberg News is not entitled to the press exemption
5 because it is owned by Bloomberg and that the Micklethwait letter is evidence of a biased
6 approach to its new coverage.²² As a result, the Complaints allege that Bloomberg News made
7 prohibited in-kind contributions to Bloomberg’s campaign and that Bloomberg spent soft money
8 through Bloomberg News.²³

9 Respondents deny the allegations and state that Bloomberg News complied with
10 Commission regulations by providing reasonably equal coverage to all candidates in *bona fide*
11 news accounts. In its Response to MUR 7685, Bloomberg News reported that it conducted a
12 “self-audit” of its coverage of the 2020 presidential campaign, entitled “*Our Election Coverage*
13 *Snapshot*,” between the time of Bloomberg’s candidacy announcement and March 2, 2020.²⁴
14 This self-audit found that Bloomberg News covered the major candidates for the Democratic
15 nomination and did not exclusively focus on the activities of Mr. Bloomberg’s campaign.²⁵

¹⁹ *Our Election Coverage Snapshot*, BLOOMBERG (Feb. 3, 2020), <https://www.bloomberg.com/features/2020-election-coverage-snapshot/> (hereinafter “*Election Coverage Snapshot*”) (cited at MUR 7685 Resp. at 3-4).

²⁰ MUR 7685 Resp. at 2.

²¹ See Appendix A (listing the 64 opinion articles).

²² MUR 7668 Compl. at 3; MUR 7669 Compl. at 5-6; MUR 7685 Compl. at 7-8.

²³ MUR 7668 Compl. at 1, 5; MUR 7669 Compl. at 7; MUR 7685 Compl. at 6-7.

²⁴ MUR 7685 Resp. at 3-4 (citing *Election Coverage Snapshot*).

²⁵ *Election Coverage Snapshot*. According to the audit, Bloomberg News published on the Bloomberg terminal and its website around 1,100 stories on the Democratic primaries and Donald Trump’s re-election

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- 1 Nor was Bloomberg News’s coverage of the Bloomberg campaign always positive.
- 2 While the MUR 7685 Complaint asserts that Bloomberg News failed to report on Bloomberg’s
- 3 business interests in China, his widely reported failure to register for the Nevada caucuses, and
- 4 his statement that he was never asked until his Presidential run about “stop-and-frisk” policing

campaign. The audit indicates that Bloomberg News published the following number of articles about each Democratic candidate:

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	-

Bloomberg News acknowledged that the audit “is a broad one and that categorizing stories is an inexact science,” that “some stories are tagged to more than one candidate,” and that “[p]assing references and standalone headlines [were] not included.” *Id.* Bloomberg News explained that the analysis did not include broadcast segments from Bloomberg TV, Radio, and QuickTake because “whenever [it] has done a significant broadcast interview, [it has] written a story about it.” *Id.*

In addition to its analysis of its coverage of the Democratic primaries, Bloomberg News’s audit identified just over 100 articles related to President Trump’s reelection campaign. *Id.* Bloomberg News’s analysis only included stories regarding his reelection campaign, and not those related to his role as President of the United States or coverage of the Trump administration. *Id.*

tactics when he was New York City’s mayor, it appears that Bloomberg News did, in fact, run such stories.²⁶

III. LEGAL ANALYSIS

A. Legal Standard

The Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations prohibit corporations from making contributions or expenditures to a candidate or their authorized committee, and prohibit candidates, political committees, and their officers and employees from knowingly accepting such a prohibited contribution.²⁷ Similarly, the Act and

²⁶ MUR 7685 Compl. at 3-4; *See* MUR 7685 Resp. at 4-5; *Election Coverage Snapshot* (identifying Michael Kranish, *Bloomberg Business in China Have Grown. That Could Create Unprecedented Entanglements if He is Elected*, Wash. Post. (Jan.1, 2020)); John Harney, *Michael Bloomberg to Skip Nevada Caucuses*, Bloomberg News (Jan. 2, 2020), <https://www.bloomberg.com/news/articles/2020-01-02/sanders-raised-34-5-million-in-fourth-quarter-campaign-update?sref=WKhMV7TW>; MUR 7685 Resp. at 4; Mark Niquette, *Bloomberg Seeks to Move Past ‘Stop and Frisk’ Controversy*, Bloomberg News (Feb. 12, 2020), <https://www.bloomberg.com/news/articles/2020-02-12/bloomberg-seeks-to-move-past-the-stop-and-frisk-controversy?sref=WKhMV7TW>; Mark Niquette, *Michael Bloomberg Audio Emerges of His Stop and Frisk Defense*, Bloomberg News (Feb. 11, 2020), <https://www.bloomberg.com/news/articles/2020-02-11/purported-bloomberg-audio-emerges-of-his-stop-and-frisk-defense?sref=WKhMV7TW>; Mark Niquette, *Michael Bloomberg Reiterates Apology for ‘Stop and Frisk’*, Bloomberg News (Dec. 3, 2019), <https://www.bloomberg.com/news/articles/2019-12-03/michael-bloomberg-reiterates-apology-for-stop-and-frisk?sref=WKhMV7TW>; *see also Election Coverage Snapshot* (identifying an article titled *Biden calls Bloomberg Stop-and-Frisk Policy ‘Abhorrent,’* which was available to Bloomberg Professional Service subscribers on the Bloomberg Terminal); Ryan Teague Beckwith, *Bloomberg Tries to Get Past Stumbles Before Super Tuesday*, Bloomberg News (Feb. 23, 2020), <https://www.bloomberg.com/news/articles/2020-02-23/bloomberg-tries-to-get-past-stumbles-before-super-tuesday?sref=WKhMV7TW>; Mark Niquette and Max Abelson, *Michael Bloomberg Will Release Some Women from NDAs if They Ask*, Bloomberg News (Feb. 21, 2020), <https://www.bloomberg.com/news/articles/2020-02-21/bloomberg-says-he-will-release-women-from-ndas-if-they-ask?sref=WKhMV7TW>; Misyrlena Egkolfopoulou, *Warren Hits Bloomberg Over NDAs for Workers: Campaign Update*, Bloomberg News (Dec. 16, 2019), <https://www.bloomberg.com/news/articles/2019-12-16/biden-sanders-top-democratic-field-in-new-poll-campaign-update?sref=WKhMV7TW>; Misyrlena Egkolfopoulou and Joe Weisenthal, *Elizabeth Warren Accuses Michael Bloomberg of ‘Buying the Election’*, Bloomberg News (Dec. 4, 2019), <https://www.bloomberg.com/news/articles/2019-12-05/warren-accuses-michael-bloomberg-of-buying-the-election?sref=WKhMV7TW>.

²⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); Advisory Opinion 2010-11 at 2-3 (Commonsense Ten). The Act and Commission regulations also prohibit any officer or director of a corporation from consenting to any contribution or expenditure by the corporation. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(e).

Commission regulations prohibit any person from making a contribution to an authorized committee that exceeded \$2,800 during the 2020 primary election cycle.²⁸

A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value”²⁹ and an “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.”³⁰ The term “anything of value” includes in-kind contributions, defined as the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services.³¹

The Act exempts from the definition of expenditure “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”³² This exclusion is generally referred to as the “press exemption” or “media exemption.”³³ Commission regulations further exclude from the definitions of “contribution” and “expenditure” the “cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical

²⁸ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). This limit does not apply to contribution made by a candidate to his authorized committee. 11 C.F.R. § 110.10.

²⁹ 52 U.S.C. § 30101(8)(A)(i).

³⁰ 52 U.S.C. § 30101(9)(A)(1).

³¹ 11 C.F.R. § 100.52(d)(1).

³² 52 U.S.C. § 30101(9)(B)(i).

³³ Advisory Opinion 2010-08 at 3 (Citizens United) (“AO 2010-08”).

publication, including any Internet or electronic publication, . . . unless the facility is owned or controlled by any political party, political committee, or candidate.”³⁴

The Commission uses a two-step analysis to determine whether the media exemption applies.³⁵ First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity regularly disseminates news stories, editorials, and/or commentary.³⁶ Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the media entity is owned or controlled by a political party, political committee, or candidate; and (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”).³⁷

Importantly for these Matters, when the media entity is owned or controlled by a political party, political committee, or candidate, Commission regulations provide that the media exemption applies to the costs for a news story that: (a) “represents a *bona fide* news account communicated in a publication of general circulation”; and (b) “is part of a general pattern of

³⁴ 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of “contribution”); 100.132 (same as to the definition of “expenditure”); *see also* 52 U.S.C. § 30101(9)(B)(i). The Act and Commission regulations also include a similar exemption from the definition of “electioneering communication” for a communication that appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station, unless such facilities are owned or controlled by any political party, political committee, or candidate. 52 U.S.C. § 30104(f)(3)(B); 11 C.F.R. § 100.29(c)(2).

³⁵ *See Fed. Election Comm’n v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) (“[T]he initial inquiry is limited to whether the press entity is owned or controlled by any political party or candidate and whether the press entity was acting as a press entity with respect to the conduct in question.”); *see also Reader’s Digest Ass’n, Inc. v. Fed. Election Comm’n*, 509 F. Supp. 1210 (S.D.N.Y. 1981).

³⁶ Factual and Legal Analysis (F&LA) at 5-6, MUR 7206 (Bonneville International Corp., *et al.*) (“Bonneville F&LA”); F&LA at 6-7, MUR 7148 (Citizens for Joe Miller, *et al.*) (“Citizens for Joe Miller F&LA”); Advisory Opinion 2019-05 (System73) at 4 (“AO 2019-05”); Advisory Opinion 2016-01 at 2 (Ethiq) (“AO 2016-01”); Advisory Opinion 2010-08 at 2 (Citizens United) (“AO 2010-08”).

³⁷ Bonneville F&LA at 5; Citizens for Joe Miller F&LA at 7; AO 2019-05 at 4; AO 2016-01 at 3; AO 2010-08 at 5; AO 2010-08 at 3.

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campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area.”³⁸

B. Bloomberg News’ Activity is Entitled to the Media Exemption

1. News Stories and News Accounts

Bloomberg News qualifies as a media entity because it has had a long history of publishing articles and commentaries on a wide range of issues, including politics.³⁹ According to Respondents, Bloomberg News employs over 2,400 journalists in over 160 bureaus around the world and delivers 5,000 stories a day to more than 80 million consumers through print, television, radio and digital media.⁴⁰ For a period of time during the 2020 Democratic primary election cycle, Bloomberg News was a media entity which was, on its face, “owned or controlled by...[a] candidate,” Michael Bloomberg.⁴¹ Under Commission regulations, *bona fide* news stories or news accounts produced by Bloomberg News, which gave reasonably equal coverage

³⁸ 11 C.F.R. §§ 100.73, 100.132; *see also* Citizens for Joe Miller F&LA at 7 (quoting *Reader’s Digest Ass’n, Inc.*, 509 F. Supp. at 1215); F&LA at 3, MUR 4064 (The Messenger, Inc.) (“Even if the publication is owned or controlled by the candidate, the cost for a news story is not a contribution so long as the news story represents a *bona fide* news account communicated in a publication of general circulation and which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation area.”).

³⁹ Indeed, as Respondent observed, “[t]he Commission has previously recognized Bloomberg News (then known as Bloomberg Business News) as a press entity within the meaning of the Act.” MUR 7668 and 7669 Resp. at 2 (citing AO 1996-16 (Bloomberg)). The MUR 7668 Complainant asserts that Bloomberg News should not be considered a media entity given its stated policy of not investigating the candidates in the Democratic primary. MUR 7668 Compl. at 5. However, the media exemption does not require that media entities owned by a candidate conduct their news coverage using any specific method, only that the media entities owned by a candidate provide reasonably equal coverage to opposing candidates as part of its general pattern of campaign-related news accounts. *See* 11 C.F.R. §§ 100.73, 100.132.

⁴⁰ MUR 7668 and 7669 Resp. at 2; MUR 7685 Resp. at 2.

⁴¹ 11 C.F.R. §§ 100.73, 100.132. As Respondents acknowledged, “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.” MUR 7668 and 7669 Resp. at 2.

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1 to all opposing candidates, are afforded the protections of the media exemption during the time
2 Bloomberg was a candidate.⁴²

3 The Complaints allege that Bloomberg News’s decision to continue its practice of not
4 investigating Mr. Bloomberg, as announced in Bloomberg News Editor-in-Chief John
5 Micklethwait’s memorandum, was a prohibited in-kind contribution to Bloomberg and the
6 Committee. Specifically, the Complaints in MURs 7668 and 7669 allege that Bloomberg
7 News’s policy of not investigating Bloomberg or his Democratic opponents while continuing to
8 investigate the Trump administration was a contribution to the Committee.⁴³ Similarly, the
9 MUR 7685 Complaint alleges that Bloomberg News made a prohibited contribution to the
10 Committee because Bloomberg News continued to publish negative stories about Bloomberg’s
11 Democratic opponents when refraining from publishing such stories about Bloomberg.⁴⁴ The
12 Complaints do not point to any particular article or editorial that they contend constitutes a
13 contribution or expenditure, but instead appear to argue that the policy articulated in
14 Micklethwait’s memorandum is itself a violation of the Act and Commission regulations.

15 The Commission has not previously addressed the media exemption in this context,
16 where a candidate-owned media company allegedly adopts a policy of declining to investigate
17 the candidate or his opponents for a party nomination.⁴⁵ However, Commission regulations
18 provide that the media exemption will apply to a candidate-owned media entity if the *bona fide*

⁴² 11 C.F.R. §§ 100.73, 100.132; *see also* F&LA at 7, MUR 7163 (Citizens for Joe Miller); Forbes F&LA at 4, MUR 4305.

⁴³ MUR 7668 Compl. at 6; MUR 7669 Compl. at 6-7.

⁴⁴ MUR 7685 Compl. at 1.

⁴⁵ “Election” is defined as the Democratic primary election and, therefore, Trump was not a candidate in the election at issue here. 52 U.S.C. § 30101(1)(A). Therefore, the Commission does not analyze Bloomberg News’s coverage of the then-incumbent administration. *Cf. Election Coverage Snapshot*.

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news stories are “part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area.”⁴⁶

The Commission determines that Bloomberg News’s decision not to investigate Mr. Bloomberg or his Democratic primary opponents does not forfeit this protection. There does not appear to be a dispute that Bloomberg News’s factual coverage of the 2020 Democratic Primary election constituted *bona fide* news accounts under the regulation. Further, Bloomberg News covered several Democratic candidates that competed with Mr. Bloomberg for the Democratic Presidential nomination—and this coverage qualified as “a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates.”⁴⁷

Accordingly, as regards its news reporting, Bloomberg News’s conduct is protected by the media exemption.⁴⁸ Therefore, the Commission finds no reason to believe that Respondents spent soft money in violation of 52 U.S.C. § 30125(e) or that Bloomberg News, Bloomberg L.P., and John Micklethwait made, and Bloomberg and Mike Bloomberg 2020, Inc. and Hayden Horowitz in his official capacity as treasurer accepted, prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116 or 30118.

2. Commentaries and Editorials

The general media exemption applies to “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial.”⁴⁹ But Commission regulations for candidate-owned

⁴⁶ 11 C.F.R. §§ 100.73, 100.132.

⁴⁷ *Id.* Furthermore, the available information does not support the allegation in the MUR 7685 Complaint that Bloomberg News failed to produce negative articles about Bloomberg—and, in fact, the record suggests that the very topics that the complainant claimed were not covered by Bloomberg News were covered by Bloomberg News. MUR 7685 Compl. at 3-4; *see supra* Part II.B.

⁴⁸ 11 C.F.R. §§ 100.73 and 100.132.

⁴⁹ 11 C.F.R. §§ 100.73, 100.132.

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media only address the applicability of that exemption to so-called “*bona fide* news account[s].”⁵⁰ Neither the Act nor Commission regulations explain how that exemption would apply to a candidate-owned entity’s “covering or carrying” of a “commentary, or editorial.”⁵¹ Nor has the Commission issued any explanatory guidance regarding the meaning of the terms “commentary” or “editorial” in this context.

The Commission has stated, however, in a 1976 advisory opinion, that, “[u]nlike news, commentaries and editorials are intended to reflect the subjective views of the publisher or broadcaster.”⁵² While the Commission has indicated that the media exemption would not apply to candidate-owned media outlets, it has only done so where it was evident that a candidate’s personal views would form the basis for the commentaries or editorials carried by the media entity.⁵³ Thus, the Commission’s interpretation of its regulation is focused on preventing a media entity from serving as a conduit to convey the personal views of its candidate owner or controller.

In the instant Matters, the evidence suggests that during the period when Michael Bloomberg was a federal candidate, Bloomberg News ceased the publication of unsigned editorials and suspended its editorial board. It did so, as Mr. Micklethwait explained, because

⁵⁰ 11 C.F.R. §§ 100.73, 100.132.

⁵¹ *Id.*

⁵² AO 1976-29 (Armstrong) at 2.

⁵³ See, e.g., AO 2005-07 at 3 (“Andy Mayberry for Congress”) (finding that candidate authored editorials did not qualify for the press exemption and that the costs of the editorials would constitute coordinated in-kind contributions); see also F&LA at 7-9, MUR 4064 (The Messenger, Inc.) (concluding that an in-kind contribution resulted when the publication was incorporated one month after the candidate filed his statement of candidacy, was distributed for free in the congressional district in which he was running, ran commentaries and editorials written by the candidate and by his campaign manager, and lacked neutrality); Conciliation Agreement ¶¶ IV.5-9, MUR 2268 (Neighbors for Epperson) (concluding that free air time provided to the candidate to broadcast editorials on his candidate-owned radio station was an in-kind contribution).

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those unsigned editorials “reflected [Mr. Bloomberg]’s view.”⁵⁴ Instead, Bloomberg News continued to publish opinion pieces written by others and appears to have firewalled Mr. Bloomberg from control of its editorial process.

Therefore, to the extent that our regulation could be read to reach these opinion pieces as “commentaries” or “editorials,” the Commission determines that Bloomberg News’s decision to disband the editorial board and divest Mr. Bloomberg himself from “control”⁵⁵ over that process was sufficient to preserve the general media exemption application to Bloomberg News.⁵⁶ Under these circumstances, the Commission finds that there is no reason to believe that the publication of such opinion pieces by Bloomberg News violated the Act or Commission regulations.⁵⁷

C. The Commission Finds No Reason to Believe With Respect to the Allegations that Bloomberg News was Required to Register and Report as a Political Committee

The Act and Commission regulations define a “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000

⁵⁴ Letter from Micklethwait.

⁵⁵ 11 C.F.R. § 100.73; 11 C.F.R. 100.32.

⁵⁶ Letter from Micklethwait (“Our columnists, who produce the majority of Bloomberg Opinion’s content, will continue to speak for themselves...”)

⁵⁷ Indeed, determining otherwise would invite a host of constitutional problems, as the Commission ultimately concluded in MUR 4305 (Forbes for President). There, the Commission initially found that the press exemption did not apply to opinion columns written by Mr. Forbes himself during his campaign for the 1996 Republican Presidential nomination. The Commission initially found probable cause to believe that the publication of these columns, shorn of the protection of the press exemption, constituted illegal corporate contributions to the Forbes campaign. Certification at 1, MUR 4305 (Feb. 11, 1998); Certification at 1 (June 3, 1998). After bringing a suit in federal court once conciliation failed, however, the Commission concluded that there was a “substantial possibility that the defendant would eventually prevail” in court and the “substantial doubt of ultimate success” was due to “both...doubtful application of the [Act’s] statutory language and because of overriding constitutional concerns.” Forbes SOR at 11.

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1 during a calendar year.”⁵⁸ In *Buckley v. Valeo*, the Supreme Court held that defining political
2 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’”
3 might be overbroad, reaching “groups engaged purely in issue discussion.”⁵⁹ To cure that
4 infirmity, the Court concluded that the term “political committee” “need only encompass
5 organizations that are under the control of a candidate or the major purpose of which is the
6 nomination or election of a candidate.”⁶⁰ Accordingly, under the statute as thus construed, an
7 organization that is not controlled by a candidate must register as a political committee only if
8 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election
9 of a federal candidate. Once an organization becomes a political committee, it is required to
10 register with the Commission, comply with organizational and recordkeeping requirements, and
11 file disclosure reports with the Commission.⁶¹

12 The MUR 7668 and the MUR 7669 Complaints allege that Bloomberg News was
13 required to register as a political committee and file reports with the Commission because it
14 made contributions and expenditures to create and publish articles about the 2020 election.⁶² The
15 Commission has determined that all relevant activities undertaken by Bloomberg News fall
16 within the Act’s press exemption. As a result, the evidence does not suggest that it has crossed
17 the \$1,000 threshold, let alone that its major purpose is the nomination or election of a federal
18 candidate.

⁵⁸ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a).

⁵⁹ 424 U.S. 1, 79 (1976) (*per curiam*).

⁶⁰ *Id.*

⁶¹ 52 U.S.C. §§ 30102, 30103, and 30104.

⁶² MUR 7668 Compl. at 5; MUR 7669 Compl. at 3, 7.

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1 Accordingly, the Commission finds no reason to believe with respect to the allegations
2 that Bloomberg News failed to register and report as a political committee in violation of 52
3 U.S.C. §§ 30102, 30103, and 30104.

APPENDIX A

ARTICLES OF OPINIONS

	Author	Article Name	Date
1	Mihir Sharma	Sanders's Green New Deal Is a Global Disaster	3/2/2020
2	Noah Smith	Bernie Sanders Is Partly Right About Cuba	2/27/2020
3	Eli Lake	Bernie Sanders Boycotts Pro-Israel Americans	2/26/2020
4	Ramesh Ponnuru	Bernie Sanders Is Built to Outlast His Opponents	2/25/2020
5	Francis Wilkinson	Democrats Need to Attack Sanders Head On	2/21/2020
6	Cass R. Sustein	Why Sanders Supporters Are So Tenacious	2/20/2020
7	Ramesh Ponnuru	Sanders Wins Again. So Does Trump.	2/20/2020
8	Nir Kaissar	Bernie Sanders Could Be the Stock Market's Best Friend	2/12/2020
9	Ramesh Ponnuru	Is It Already Too Late to Stop Bernie Sanders?	2/11/2020
10	Karl W. Smith	Sanders, Warren and the Politics of Grievance	2/10/2020
11	Ramesh Ponnuru	Bernie Can Win. So Can His Revolution	1/26/2020
12	Francis Wilkinson	Joe Biden on the Ropes	2/8/2020
13	Jonathan Bernstein	Come On, Republicans! Stop Smearing Joe Biden.	1/30/2020
14	Francis Wilkinson	Joe Biden Confronts a Demagogue and a Dilemma	12/31/2019
15	Karl W. Smith	Biden's Tax Plan Is Better Than It Looks	12/6/2019
16	Jonathan Bernstein	Warren Has a Big Night in Vegas. Is It Enough?	2/20/2020
17	Joe Nocera	Elizabeth Warren Is Right About Student Debt Relief	1/22/2020
18	Karl W. Smith	Warren's Wealth Tax Would Hurt U.S. Investors	12/22/2019
19	Tara Lachapelle	Elizabeth Warren Wants to Spoil the Megamerger Party	12/5/2019
20	Ramesh Ponnuru	Warren Isn't a Wonk and Buttigieg Isn't a Moderate	12/5/2019
21	Jonathan Bernstein	Gang Up on Pete Buttigieg? Maybe Not	2/7/2020
22	Francis Wilkinson	Is Pete Buttigieg Too Early or Too Late?	2/5/2020
23	Stephen L. Carter	Leave Pete Buttigieg's McKinsey NDA Alone	12/7/2019
24	Jonathan Bernstein	So Long, Julian Castro. It Just Wasn't Your Year.	1/3/2020
25	Jonathan Bernstein	Kamala Harris's Withdrawal Shows That Winnowing Works	12/3/2019
26	Noah Feldman	Supreme Court's Docket Is a Super Tuesday Reminder	3/2/2020
27	Jonathan Bernstein	How South Carolina May Shape the Democratic Race	2/28/2020
28	Justin Fox	Maybe a President's Age Doesn't Matter That Much	2/25/2020
29	Stephen L. Carter	Why Black Voters Keep Picking Democrats	2/23/2020
30	Jonathan Bernstein	Watch for Who Finishes Second in Nevada	2/21/2020
31	Max Nisen	Medicare for All Will Always Be a Tough Sell for Unions	2/20/2020
32	Francis Wilkinson	2020 Election Is a Choice Between Democracy and Putinism	2/14/2020
33	Karl W. Smith	Justin Amash Has an Opening in 2020, and It's Growing	2/13/2020
34	Michael R. Strain	Is Carnage Still Trump's Key to the Electoral College?	2/12/2020
35	Jonathan Bernstein	Two States Down, and the Democratic Race Is Wide Open	2/11/2020
36	Jonathan Bernstein	Early-Voting States Aren't a Problem for Democrats	2/11/2020
37	Jonathan Bernstein	In New Hampshire, a Third-Place Finish Could Still Be a 'Win'	2/10/2020
38	Jonathan Bernstein	The Big Losers of the New Hampshire Debate	2/8/2020
39	Jonathan Bernstein	Iowa Sets Up Democrats for Even More Chaos	2/5/2020
40	Francis Wilkinson	Even Democracy Is Partisan Now	2/2/2020
41	Jonathan Bernstein	Four Big Things About the Democratic Race	1/28/2020

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	Author	Article Name	Date
42	Jonathan Bernstein	Iowa Caucus History Shows Winning Isn't Everything	1/17/2020
43	Jonathan Bernstein	There's Light But No Heat at Latest Democratic Debate	1/15/2020
44	Jonathan Bernstein	Longshot Democrats' Victory Formula: Cash + Luck	1/14/2020
45	Ramesh Ponnuru	Can a Woman Win the Presidency? It's a Good Question	1/14/2020
46	Jonathan Bernstein	The Plausibles: Handicapping the Democrats' Big Five	1/13/2020
47	Jonathan Bernstein	Now Is No Time to Start Naming Running Mates	1/7/2020
48	Ramesh Ponnuru	Trump's Economy Keeps Tripping Up Democrats	12/24/2019
49	Jonathan Bernstein	That's What a Good Presidential Debate Looks Like	12/20/2019
50	Jonathan Bernstein	DNC Gets the Debate Lineups Right - Mostly	12/11/2019
51	Jonathan Bernstein	Should We Scrap the Primaries?	12/9/2019
52	Jonathan Bernstein	Two Campaign Latecomers Are a Warning to Democrats	11/26/2019
53	Francis Wilkinson	Explaining Trumps' Hispanic Support	2/25/2020
54	Eli Lake	Trump's Latest 'Russia Scandal' Is Less Than It Appears	2/21/2020
55	Francis Wilkinson	Trump Is Already Making Stuff Up About Voter Fraud	2/16/2020
56	Max Nisen	Trump Has Some Nerve to Tout Health Care	2/5/2020
57	Tyler Cowen	How the Coronavirus Could Help Trump	2/3/2020
58	Ramesh Ponnuru	Social Security Is Safe From Trump (And Whoever Succeeds Him)	1/31/2020
59	Jonathan Bernstein	What Is Trump's Approval Rating Telling Us?	1/2/2020
60	Karl W. Smith	Trump's Economy Is Looking Better for Trump's Voters	12/9/2019
61	Jonathan Bernstein	Trump's Approval Rating Should Worry Republicans	12/4/2019
62	James Gibney	The 'Never Trump' Movement's Bittersweet Anniversary	2/2/2020
63	Francis Wilkinson	Why Trump's Impeachment Trial Makes Senate Republicans Squirm	1/16/2020
64	Francis Wilkinson	William Barr Is Making It Harder to Protect the 2020 Election	12/4/2019