

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7789

COMPLAINT FILED: Sept. 3, 2020

NOTIFICATION DATE: Sept. 10, 2020

LAST RESPONSE: Oct. 30, 2020

ACTIVATION DATE: Jan. 20, 2021

STATUTE OF LIMITATIONS: 2025 (estimated)

ELECTION CYCLE: 2020

COMPLAINANTS: Americans for Public Trust
Caitlin Sutherland

RESPONDENTS: Courier Newsroom, Inc.
Acronym
Tara McGowan

RELEVANT AUTHORITIES: 52 U.S.C. § 30101(9)(B)(i)
52 U.S.C. §§ 30102, 30103, and 30104
11 C.F.R. §§ 100.73, 100.132

INTERNAL REPORTS CHECKED: None

20 FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

22 The Complaint in this matter alleges that Courier Newsroom, Inc. (“Courier”) violated
23 the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
24 regulations by failing to register and report as a political committee, despite meeting the legal
25 requirements for political committee status, based on the Complaint’s primary allegation that
26 Courier is not a press entity subject to the Act’s “press exemption,” but is instead a nonconnected
27 committee supporting the Democratic Party’s candidates for federal office. Respondents deny
28 these allegations and contend that Courier is a press entity whose activities fall within the scope
29 of the press exemption, and that it therefore did not violate the Act by not registering and
30 reporting as a political committee.

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1 The available record indicates that Courier may have been formed at least partly to
2 support the campaigns of certain federal candidates, and that some of its activities during the
3 2020 election cycle appear to have advanced that electoral purpose. Nevertheless, the record
4 also indicates that Courier regularly engages in activities characteristic of a press entity,
5 including hiring experienced journalists and disseminating media content reporting on both
6 political and nonpolitical topics. Overall, the record thus indicates that despite the potential
7 electoral motivations underlying Courier's formation and activities, under the Commission's
8 historical approach to analyzing such questions, Courier is a press entity whose activities at issue
9 in this matter fell within the scope of the Act's press exemption. Therefore, because it does not
10 appear that Courier received aggregate contributions or made aggregate expenditures sufficient
11 to satisfy the statutory threshold for political committee status, we recommend dismissing the
12 allegation that Courier violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register,
13 organize, and report as a political committee.

14 **II. FACTUAL BACKGROUND**

15 Courier represents that it is a for-profit media company that is majority owned by
16 Acronym, a 501(c)(4) nonprofit organization.¹ Public records indicate that it was organized in
17 Delaware on March 21, 2019, and is a C corporation for federal tax purposes.² Courier asserts
18 that it is not owned or controlled by any candidate, political party, or political committee, and

¹ Resp. of Acronym, Courier Newsroom, Inc., and Tara McGowan at 1-2 (Oct. 30, 2020) ("Resp.").

² A Delaware public records search indicates that Courier's date of organization is March 21, 2019, and its registered agent is the Corporation Trust Company. *See* "Courier Newsroom, Inc.," Del. Dep't of State, Div. of Corps. Entity Search, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx>. Acronym's tax filing for fiscal year 2018-2019 — which extends from May 1, 2018, to April 30, 2019 — lists Courier, under "Related Organization Taxable as a Corporation or Trust," as a C corporation legally domiciled in Delaware. *See* Acronym 2018-2019 Form 990 at 36 (Mar. 16, 2020) (cited in Compl. at 2 n.1) ("Acronym 990").

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1 there is no information to the contrary.³ Courier's Chief Executive Officer (CEO), Tara
 2 McGowan, is also Acronym's CEO, but Respondents represent that there is a "clear 'church and
 3 state' firewall" between the two entities.⁴ Courier currently appears to publish all of its content
 4 online, and represents that each of its publications, including its national website and affiliated
 5 state websites, "covers both electoral and non-electoral content," and that its reporters are hired
 6 from well-known national and local news outlets.⁵ Respondents acknowledge that Courier is
 7 "progressive in its viewpoint and its decisions about what topics to cover and how to cover them
 8 are shaped by that progressive worldview."⁶

9 The Complaint alleges that Courier violated the Act and Commission regulations by not
 10 registering and organizing as a political committee, and by failing to file periodic disclosure
 11 reports regarding its contributions and expenditures, as required under the Act.⁷ The Complaint
 12 primarily bases these allegations on a contention that Courier "is a news outlet in name only"
 13 whose "fundamental purpose since its inception" has been to help elect Democratic candidates,
 14 and that its news distribution is "not widespread but strategically selected" to have an electoral
 15 impact.⁸ According to the Complaint, Courier operates "digital newspapers" that "pose as local

³ Resp. at 1; *see* Acronym 990 at 36 (listing Acronym as the 100% owner of Courier).

⁴ Resp. at 2; *see* "About Courier Newsroom," <https://couriernewsroom.com/about-courier-newsroom> (cited in Resp. at note 1) (listing McGowan as Courier's CEO); Acronym 990 at 7 (listing McGowan as Acronym's President and CEO).

⁵ Resp. at 2.

⁶ *Id.* at 3.

⁷ Compl. ¶¶ 4-5 (Sept. 3, 2020). The Complaint also alleges that Courier, by not registering and operating as a political committee, may have violated the Act by failing to implement safeguards that ensure it does not accept prohibited contributions. *Id.* ¶ 28.

⁸ *Id.* ¶ 22.

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1 newspapers and use nondescript names,” but which actually produce “political advertisements
2 purporting to be news articles.”⁹

3 Attached to the Complaint is a June 20, 2019, memorandum from McGowan (as “CEO of
4 ACRONYM”) to “Interested Parties” regarding “ACRONYM News Corp. 2019-2020 Rapid
5 Build Plan” (the “McGowan memo”).¹⁰ This document expresses a view that the Democratic
6 Party’s voter persuasion efforts focus on less-effective political ads distributed through
7 traditional media channels, while the Republican Party has focused on using news content
8 distributed through digital channels to more effectively persuade voters, and that the “Acronym
9 News Corp” would work to reverse this trend.¹¹ Numerous statements in the McGowan memo
10 indicate that Courier would seek to advance the specific goal of electing Democratic candidates
11 to federal office: At various points, the document refers to persuading targeted voters;¹²

⁹ Id. ¶¶ 15, 22; *see* Joshua Green, *The Left’s Plan to Slip Vote-Swaying News Into Facebook Feeds*, Bloomberg Businessweek (Nov. 25, 2019), <https://www.bloomberg.com/news/features/2019-11-25/acronym-s-newsrooms-are-a-liberal-digital-spin-on-local-news> (cited in Compl. at 1 n.4) (“Bloomberg Article”) (“[N]othing alerts readers that Courier publications aren’t actually traditional hometown newspapers but political instruments designed to get them to vote for Democrats. And although the articles are made to resemble ordinary news, their purpose isn’t primarily to build a readership for the website: It’s for the pieces to travel individually through social media, amplifying their influence with persuadable voters.”).

¹⁰ Compl., Ex. A (“McGowan Memo”). The document is marked “DRAFT NOT FOR DISTRIBUTION” and it is unclear how the Complainants acquired it; Respondents do not, however, contest the accuracy or authenticity of the document, nor do they raise an argument that the document was misappropriated or doctored.

¹¹ *See, e.g.*, McGowan Memo at 1 (“The Democratic Party, long reliant on television and radio, is losing the media war.”) (emphasis in original); *id.* at 2-3 (“In 2016, the Hillary Clinton for President campaign raised an estimated \$800 million online — and spent a large majority of it on television and radio advertisements. Meanwhile, Trump and the Republican Party spent overwhelmingly on digital channels The 2020 cycle is shaping up to follow the contours of the 2016 race.”) (emphases in original); *id.* at 3 (“The Democratic message and persuasion machine has long been focused on traditional media — channels that are least likely to reach core constituencies in the Democratic Party, namely minority audiences and millennials. . . . This is why ACRONYM is setting in motion a ‘moonshot’ plan to build critical digital media infrastructure in key states to reach, persuade, and mobilize these voters.”).

¹² *See, e.g.*, McGowan Memo at 4 (“Each property will pair original reporting and aggregated content with our ad placement and political targeting expertise to distribute these stories to strategic segments of voters before, during and between election cycles. Content designed to drive strategic narratives to key audiences will be delivered on a drip over time, reaching voters through targeted ads and boosted posts across Facebook, Instagram,

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1 “engag[ing] Democratic campaigns and organizations to understand potential stories”;¹³

2 “elevat[ing] Democratic candidates and issues important to core audiences”;¹⁴ and disseminating

3 content in geographic areas based on their perceived electoral importance.¹⁵ Indeed, the

4 McGowan memo concludes, “We believe deeply that this model will not only have a direct

5 impact on the 2020 elections but that this infrastructure will be critical to the long term success

6 of the progressive movement.”¹⁶

7 The McGowan memo further indicates that Courier intends to deliver local news content

8 to better inform its readers, particularly noting:

9 “We report on the news + stories that matter most to people’s day-

10 to-day lives; We cover local, state and national politics + current

11 events through a local and values-driven lens; We reach people

12 where they are — both geographically and technologically — to

13 fill the growing local news + information gap; We are a news

14 company with an honest point of view; [and] We believe that a

15 strong and healthy democracy is only possible when there is an

16 informed + engaged electorate.”¹⁷

Google, YouTube, Twitter and other online properties. . . . One of the biggest lessons we learned through [digital ad] programs was how much more effective boosting and targeting owned media and news content online was over pre-produced ‘ads’ at influencing a voter’s support for or against a candidate or issue.”).

¹³ McGowan Memo at 6.

¹⁴ *Id.* at 5; *see also id.* (“Building this media content network . . . [will] [e]nable Democrats to compete with Republican echo chambers online; Build nimble communications infrastructure for Dems in critical states; Reach voters with strategic narratives + information year-round.”).

¹⁵ *See, e.g.*, McGowan Memo at 6 (“Our initial targets of Virginia, Arizona, North Carolina, Pennsylvania, Michigan, Wisconsin and Florida have been selected because of their importance politically — not only in national elections but in gubernatorial and state legislative elections”); *see also* Bloomberg Article (“[McGowan is] raising \$25 million from a host of wealthy liberals to establish a for-profit media company, Courier Newsroom, that has already started rolling out digital newspapers with local reporters and editors in six key swing states — Arizona, Michigan, North Carolina, Pennsylvania, Virginia, and Wisconsin.”).

¹⁶ McGowan Memo at 13.

¹⁷ *Id.* at 7.

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1 McGowan, Acronym, and Courier filed a joint Response contending that Courier did not
 2 violate the Act as alleged because Courier does not satisfy the legal requirements for political
 3 committee status.¹⁸ Specifically, the Response argues that Courier did not receive any
 4 contributions or make any expenditures; that Courier did not have the requisite major purpose of
 5 nominating or electing federal candidates; and, moreover, that Courier's activities — “the regular
 6 distribution of news stories, commentary, and editorials” — are covered by the press exemption
 7 because Courier is a press entity acting within the scope of the exemption, *i.e.*, in a legitimate
 8 press function.¹⁹ Addressing Courier's practice of placing paid Facebook ads to promote its
 9 content, Respondents assert that “the revenue model for quality local journalism is in jeopardy”
 10 and thus, “[b]y necessity,” Courier “invests in paid advertising to deliver its news stories to
 11 target audiences.”²⁰ Respondents also assert that the McGowan memo provided “a proposal for
 12 an ‘ACRONYM Newsroom’ . . . [that] was never established and, therefore, the statements in the
 13 memorandum cannot reasonably be attributed to Courier Newsroom, which operates under a
 14 different set of principles.”²¹

15 On its website, Courier and its affiliated state websites appear to publish a wide variety of
 16 content on both political and nonpolitical topics, as well as content focused on both national and

¹⁸ Resp. at 4.

¹⁹ *Id.* at 5-8.

²⁰ *Id.* at 3. The Response also cites to an essay by Courier's Chief Operating Officer Rithesh Menon, in which Menon writes: “In the past decade, more than one in five local newspapers have shut down, and many others have been bought up by holding companies focused more on squeezing profits than producing quality reporting. . . . This is why Courier Newsroom exists. . . . In order to meet audiences where they increasingly get their information and to counter the large-scale distribution network of misinformation, [Courier is] forced to advertise heavily on platforms like Facebook.” *Id.* at 2 n.13, 3 n.18 and associated text (quoting from Rithesh Menon, *Why Courier Newsroom Is Needed At This Moment in Time*, MEDIUM (Oct. 7, 2020), <https://medium.com/@ritsmenon/why-courier-newsroom-is-needed-at-this-moment-in-time-e4e9693fe7c4>).

²¹ *Id.* at 4.

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1 local issues.²² That also appears to have been the case shortly before the 2020 general election.²³

2 On the “About Us” page of its website, Courier states that it “is a national news organization

3 dedicated to helping people better understand what’s happening in our local and national

4 governments,” and describes itself as “a civic media company.”²⁴

5 **III. LEGAL ANALYSIS**

6 **A. Press Exemption**

7 **1. Applicable Law**

8 In order to undertake an analysis of an organization that is alleged to be a political

9 committee, as here, it is necessary to determine, among other things, whether the organization

10 received contributions or made expenditures.²⁵ Under the Act, a “contribution” includes “any

11 gift, subscription, loan, advance, or deposit of money or anything of value made by any person

12 for the purpose of influencing any election for Federal office,”²⁶ and an “expenditure” includes

13 “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of

²² See, e.g., Pat Kreitlow, *Biden Administration Adding New Connections to Education, Training, and Aid*, COURIER NEWSROOM, UP NORTH NEWS (Aug. 19, 2021), <https://couriernewsroom.com/2021/08/19/biden-administration-adding-new-connections-to-education-training-and-aid/>; Katelyn Kivel, *Michigan Moms Call on Leaders to Restore Paid Sick Leave With the Stroke of a Pen*, Courier Newsroom, The Gander (Aug. 23, 2021), <https://couriernewsroom.com/2021/08/23/michigan-moms-call-on-leaders-to-restore-paid-sick-leave-with-the-stroke-of-a-pen/>.

²³ See, e.g., Patrick Abdalla, *Young Black Voters Could Be the Key to Biden Winning It All*, COURIER NEWSROOM (Oct. 30, 2020), <https://couriernewsroom.com/2020/10/30/young-black-voters-could-swing-election/>; Elle Meyers, *Free College Isn’t a Radical Idea. It’s Already Happening Across the US*, COURIER NEWSROOM (Oct. 29, 2020), <https://couriernewsroom.com/2020/10/29/free-college-isnt-a-radical-idea-its-already-happening-across-the-us/>.

²⁴ “About Us,” COURIER NEWSROOM, <https://couriernewsroom.com/about-us/>; see also “Ethics & Standards,” COURIER NEWSROOM, <https://couriernewsroom.com/ethics-standards/> (“Our coverage is not determined by our funders, some of whom have specific interests that may or may not align with ours. We also prohibit funders from reaching out to reporters in attempts to influence coverage.”).

²⁵ 52 U.S.C. § 30101(4)(A).

²⁶ *Id.* § 30101(8)(A).

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1 value, made by any person for the purpose of influencing any election for Federal office.”²⁷
 2 However, the Act specifically exempts from the definition of expenditure “any news story,
 3 commentary, or editorial distributed through the facilities of any broadcasting station, newspaper
 4 magazine, or other periodical publication, unless such facilities are owned or controlled by any
 5 political party, political committee, or candidate.”²⁸ This exemption is called the “press
 6 exemption” or “media exemption.”²⁹ Costs covered by the exemption are also exempt from the
 7 Act’s disclosure and reporting requirements.³⁰ The Act’s legislative history indicates that
 8 Congress did not intend to “limit or burden in any way the First Amendment freedoms of the
 9 press and of association. [The exemption] assures the unfettered right of the newspapers, TV
 10 networks, and other media to cover and comment on political campaigns.”³¹

11 To assess whether the press exemption applies, the Commission uses a two-part test.³²
 12 First, the Commission determines whether the entity engaging in the activity is a “press entity.”³³
 13 Second, the Commission determines the scope of the exemption by applying the two-part
 14 analysis presented in *Reader’s Digest Association v. FEC*: (1) whether the entity is owned or

²⁷ *Id.* § 30101(9)(A).

²⁸ *Id.* § 30101(9)(B)(i). Commission regulations further provide that neither a “contribution” nor an “expenditure” results from “[a]ny 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 publication, including any Internet, or electronic publication” unless the facility is “owned or controlled by any political party, political committee, or candidate.” 11 C.F.R. §§ 100.73, 100.132.

²⁹ Advisory Opinion 2011-11 at 6 (Colbert); Advisory Opinion 2008-14 at 3 (Melothé).

³⁰ Advisory Opinion 2011-11 at 6, 8–10 (discussing costs that are within this exemption and costs that are not).

³¹ H.R. REP. NO. 93-1239 at 4 (1974).

³² Advisory Opinion 2005-16 at 4 (Fired Up!).

³³ *Id.*

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1 controlled by a political party, political committee, or candidate; and (2) whether the entity is
 2 acting within its “legitimate press function” in conducting the activity.³⁴

3 With regard to the first part of the press-exemption test, the Act and Commission
 4 regulations do not define the terms “press entity” or “media entity.”³⁵ As such, in determining
 5 whether either term applies, the Commission has focused on whether the entity “is in the
 6 business of producing on a regular basis a program that disseminates news stories, commentary,
 7 and/or editorials.”³⁶ The determination of “[w]hether an entity is a press entity does not
 8 necessarily turn on the presence or absence of any one particular fact.”³⁷ However, the
 9 Commission “does not investigate an entity’s viewpoints in determining whether it qualifies as a
 10 ‘press entity’ under the press exemption,”³⁸ and an entity otherwise eligible for the press
 11 exemption “would not lose its eligibility merely because of a lack of objectivity in a news story,
 12 commentary, or editorial, even if the news story, commentary, or editorial expressly advocates
 13 the election or defeat of a clearly identified candidate for Federal office.”³⁹

³⁴ See *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); Advisory Opinion 2011-11 at 6-7 (Colbert). When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity’s materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. See *Reader's Digest Ass'n*, 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN); Advisory Opinion 2016-01 at 3 (Ethiq).

³⁵ See Advisory Opinion 2010-08 at 5 (Citizens United) (“Neither the Act nor Commission regulations use or define the term ‘press entity.’”).

³⁶ Advisory Opinion 2008-14 at 4 (citing Advisory Opinions 2005-16 (Fired Up!); 2004-07 (MTV); and 2000-13 (iNEXTV)).

³⁷ Advisory Opinion 2007-20 at 4 (XM Radio) (citing Advisory Opinion 2005-19 (The Inside Track)).

³⁸ Advisory Opinion 2008-14 at 4.

³⁹ Factual & Legal Analysis at 5, MUR 7206 (Bonneville Int'l Corp.) (quotation marks omitted) (quoting Advisory Opinion 2005-16 at 6); Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.).

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1 With regard to the second part of the press-exemption test, courts have made clear that

2 not all actions taken by press entities fall within the exemption.⁴⁰ The court in *Reader's Digest*

3 *Association* reasoned that:

4 [T]he statute would seem to exempt only those kinds of
 5 distribution that fall broadly within the press entity's legitimate
 6 press function. It would not seem to exempt any dissemination or
 7 distribution using the press entity's personnel or equipment, no
 8 matter how unrelated to its press function. If, for example, on
 9 Election Day a partisan newspaper hired an army of incognito
 10 propaganda distributors to stand on street corners denouncing
 11 allegedly illegal acts of a candidate and sent sound trucks through
 12 the streets blaring the same denunciations, all in a manner
 13 unrelated to the sale of its newspapers, this activity would not
 14 come within the press exemption.⁴¹

15 The Commission has determined that “[e]ven seemingly biased stories or commentary by

16 a press entity can fall within the media exemption.”⁴² Nonetheless, “the Commission is also

17 mindful that a press entity's press function is ‘distinguishable from active participation in core

18 campaign or electioneering functions.’”⁴³ Put differently, “the press exemption covers press

19 activity, not campaign activity by a press entity.”⁴⁴

⁴⁰ See *McConnell v. FEC*, 540 U.S. 93, 208 (2003) (commenting that the press exemption “does not afford *carte blanche* to media companies generally to ignore FECA’s provisions”).

⁴¹ *Reader's Digest Ass'n*, 509 F. Supp. at 1214; *see also McConnell*, 540 U.S. at 208 (noting that the press exemption “does not afford *carte blanche* to media companies generally to ignore FECA’s provisions”); Advisory Opinion 2011-11 at 8 (“While the press exemption covers press activity, it does not cover campaign activity, even if the campaign activity is conducted by a press entity”).

⁴² First Gen. Counsel's Report at 5, MURs 5540 and 5545 (CBS Broadcasting, *et al.*) (adopted as dispositive).

⁴³ Advisory Opinion 2011-11 at 8 (quoting Advisory Opinion 2008-14).

⁴⁴ *Id.* at 9.

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1 In evaluating whether a press entity was acting in its legitimate press function, the
 2 Commission has considered “whether the material at issue is available to the general public,”⁴⁵ and
 3 applied the “considerations of form” analysis set forth by the U.S. Supreme Court in *FEC v.*
 4 *Massachusetts Citizens for Life* (“MCFL”), which examines whether the activity in question is
 5 comparable in form to the press entity’s regular activities, considering whether the complained-
 6 of activities and content are produced in the same manner, using the same people, and subject to
 7 the same review and distribution as the press entity’s general activities.⁴⁶

8 2. The Overall Record Indicates that Courier is a Press Entity,
 9 Notwithstanding its Ideological Perspective or Electoral Purpose

10 The overall record in this matter indicates that Courier is a press entity, notwithstanding
 11 its acknowledged ideological viewpoint or that aspects of the record indicate an electoral purpose
 12 animating its creation and certain of its activities. The Act and Commission regulations do not
 13 define the term “press entity,” and in prior matters, the Commission’s evaluation of whether an
 14 organization is a press entity has focused on the entity’s usual and normal activity — *i.e.*,
 15 whether the entity “is in the business of producing on a regular basis a program that disseminates
 16 news stories, commentary, and/or editorials.”⁴⁷ For instance, in Advisory Opinion 2005-16
 17 (Fired Up!), the Commission determined that a for-profit company intending to establish
 18 multiple state-specific websites to produce “unabashedly progressive” content, including
 19 commentaries and news reporting, was a press entity.⁴⁸ Similarly, in Advisory Opinion 2008-14

⁴⁵ Advisory Opinion 2016-01 at 3 (citing *FEC v. Mass. Citizens for Life* (“MCFL”), 479 U.S. 238, 251 (1986)).

⁴⁶ Advisory Opinion 2011-11 at 8 (citing *MCFL*).

⁴⁷ Advisory Opinion 2008-14 at 4 (citing Advisory Opinions 2005-16 (Fired Up!); 2004-07 (MTV); and 2000-13 (iNEXTV)).

⁴⁸ Advisory Opinion 2005-16 at 5.

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1 (Melothé), which featured a for-profit internet TV station with content that “likely would feature
 2 and be supportive of Democratic candidates only, and it would be of particular interest to those
 3 Democratic candidates’ campaign supporters and volunteers,”⁴⁹ the Commission concluded that
 4 this proposed content “falls within the broad ambit of the normal press-business of covering and
 5 commenting on political campaigns.”⁵⁰ The Commission has reached the same conclusion in
 6 cases involving a satellite radio company,⁵¹ a nonprofit organization producing documentary
 7 films,⁵² and a company operating online streaming channels live-streaming campaign events.⁵³

8 Viewed in light of these prior decisions, the record in this matter supports the conclusion
 9 that Courier is a “press entity” under the first part of the press exemption test. Courier’s
 10 contention that it regularly produces and distributes “both electoral and non-electoral content”⁵⁴
 11 appears to be supported by the content on its website, even immediately before the 2020
 12 election.⁵⁵ Moreover, Courier represents that it hires experienced journalists from well-known
 13 press outlets, including, *e.g.*, *Vice*, *The Daily Beast*, and *The New York Times*, indicating that its
 14 content producers have a track record of providing bona fide news coverage and commentary.⁵⁶
 15 As such, the record appears to support Courier’s assertion that “the *content* of [its] news and

⁴⁹ Advisory Opinion 2008-14 at 2.

⁵⁰ *Id.* at 4.

⁵¹ Advisory Opinion 2007-20 at 4 (XM Radio).

⁵² Advisory Opinion 2010-08 at 5 (Citizens United).

⁵³ Advisory Opinion 2019-05 at 5 (System73).

⁵⁴ Resp. at 2.

⁵⁵ *See supra* nn. 22–23.

⁵⁶ Resp. at 2; *see* Advisory Opinion 2016-01 at 3 (“Ethiq will employ journalists to produce original content and will retain editorial control of that content, similar to the way in which traditional magazine and newspaper editors generate and manage the content of their publications.”).

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1 commentary is squarely within the journalistic mainstream.”⁵⁷ Based on its day-to-day
 2 operations, Courier thus appears to be a press entity because it “is in the business of producing
 3 on a regular basis a program that disseminates news stories, commentary, and/or editorials.”⁵⁸

4 That conclusion is not undermined by Courier’s acknowledged ideological perspective
 5 with respect to how it selects, produces, and distributes its content. Like the entities at issue in
 6 prior Commission advisory opinions, Courier disseminates media content aimed at furthering a
 7 specific ideological perspective: Much like the network of a national and several state-specific
 8 websites presenting “unabashedly progressive” content that the company in Advisory Opinion
 9 2005-16 operated,⁵⁹ Courier operates a national and multiple state-centric websites presenting
 10 content that is “progressive in its viewpoint.”⁶⁰ But because the Commission “does not
 11 investigate an entity’s viewpoints in determining whether it qualifies as a ‘press entity’ under the
 12 press exemption,”⁶¹ Courier’s “progressive” perspective does not undermine its status as a press
 13 entity.

14 Courier is a press entity even though the McGowan memo appears to indicate that
 15 Courier may have been formed to advance not just a progressive viewpoint, but a specific
 16 electoral purpose — *i.e.*, to help elect the Democratic Party’s candidates for federal office. The

⁵⁷ Resp. at 4 (emphasis in original).

⁵⁸ Advisory Opinion 2008-14 at 4 (citing Advisory Opinions 2005-16 (Fired Up!); 2004-07 (MTV); and 2000-13 (iNEXTV)).

⁵⁹ Advisory Opinion 2005-16 at 2.

⁶⁰ Resp. at 3; *see* Advisory Opinion 2005-16 at 2 (“The content on Fired Up’s websites . . . which you describe as “unabashedly progressive,” generally consists of commentary on, quotes from, and summaries of, news articles.”); Advisory Opinion 2008-14 at 2 (“The content of the campaign-TV Web site likely would feature and be supportive of Democratic candidates only, and it would be of particular interest to those Democratic candidate’s campaign supporters and volunteers.”).

⁶¹ Advisory Opinion 2008-14 at 4.

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1 McGowan memo contains numerous statements indicating that the “ACRONYM News Corp,”
 2 which resembles Courier, would help to elect Democratic Party candidates in federal elections.⁶²
 3 Taken at face value, these statements indicate that Courier was founded and operates for the
 4 purpose of influencing federal elections, arguably rendering all of its operating costs
 5 “expenditures” under the Act. Moreover, the Respondents do not challenge the authenticity or
 6 contents of the McGowan memo, and their argument that “the statements in the memorandum
 7 cannot reasonably be attributed to Courier Newsroom, which operates under a different set of
 8 principles” — based on the premise that the “ACRONYM Newsroom” discussed in the
 9 McGowan memo was “never established”⁶³ — is undermined by specific aspects of the memo
 10 itself,⁶⁴ as well as the fact that Courier appears to have followed the state-level expansion plan
 11 described therein.⁶⁵

12 Nonetheless, while the McGowan memo is supportive of a conclusion that Courier was
 13 formed to advance an electoral purpose — a conclusion seemingly at odds with the “press entity”
 14 designation — in its day-to-day operations, Courier appears to have conducted itself like a

⁶² See *supra* nn. 10–17 and associated text.

⁶³ Resp. at 4.

⁶⁴ The memo is dated June 20, 2019, which is three months *after* Courier was organized on March 21, 2019. See *supra* n. 2. Moreover, using the past tense, the McGowan memo states, “In 2019, ACRONYM launched ACRONYM News Corp, a for-profit digital media company building out online news properties in seven 2020 battleground states,” and that “[t]he first of these properties has already launched in Virginia – ‘The Dogwood,’” which is a publication that Courier still operates. See “Dogwood: About Us,” <https://vadogwood.com/about-us/> (“Dogwood is owned and operated by Courier Newsroom, a progressive media company owned in part by the nonprofit organization ACRONYM.”).

⁶⁵ Courier currently operates seven state-centric websites — The Dogwood (VA), Copper Courier (AZ), Cardinal & Pine (NC), The Keystone (PA), The Gander (MI), UpNorthNews (WI), and The Americano (“[T]he only U.S. news site created by Latinas for Latinas. We cover all that matters to our communities, particularly local issues in Florida, Georgia, North Carolina, Arizona, Texas, and Puerto Rico”) — corresponding exactly with the McGowan memo’s list of “initial targets” that were “selected because of their importance politically.” See McGowan memo at 6; Resp. at 2 n.9 (listing Courier’s main website and seven state websites).

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1 typical press entity, particularly by hiring experienced reporters and providing content focusing
 2 on both electoral and non-electoral issues. In prior matters involving the press exemption, the
 3 Commission has focused its inquiry on an entity's usual and normal activities, not its founding
 4 organizational purpose.⁶⁶ In other words, the Commission has looked at *what* an entity regularly
 5 does, not *why* it does it, to decide whether it is a press entity.⁶⁷ As such, regardless of the
 6 information indicating an overarching electoral purpose that appears to be Courier's *raison
 7 d'être*, because it produces "news stories, commentary, and/or editorials" on a "regular basis,"
 8 Courier satisfies the Commission's existing standard for a "press entity."⁶⁸ While the
 9 Commission's authority to interpret and enforce the Act necessarily must confront and as
 10 necessary adapt to changes in patterns of behavior and technology,⁶⁹ as well as developments in
 11 the law, a purpose-based analysis of media organizations, such as that advocated by the
 12 Complaint, would be in tension with the Commission's historical approach in evaluating putative
 13 press entities and imply far-reaching consequences.

⁶⁶ See *supra* nn. 47–53.

⁶⁷ In fact, the Commission does not appear to have ever previously determined, in either the enforcement or advisory opinion context, that an entity was *not* a press entity; in the rare instances in which the Commission determined that the press exemption did not apply to the activity in question, it based that determination on the second part of the press-exemption test, *i.e.*, whether the press entity had acted in a legitimate press function. See, *e.g.*, Advisory Opinion 2004-30 at 6-7 (Citizens United).

⁶⁸ Advisory Opinion 2008-14 at 4. Whether to examine the electoral purpose behind an organization disseminating media content that focuses on federal candidates is, of course, the Commission's prerogative to determine — particularly since the Act does not define a "press entity."

⁶⁹ See, *e.g.*, MUR 7273 (Robert James Ritchie) (addressing claims that a purported U.S. Senate candidacy that involved the sale of yard signs and merchandise labeled "Kid Rock for U.S. Senate," was an artistic and commercial endeavor to promote a recording artist's brand and music, rather than a bona fide candidacy); MURs 7812, 7825, & 7869 (Facebook, Inc., *et al.*) (addressing allegations that a social media company made excessive and prohibited contributions by "fact-checking" and curtailing the distribution of certain user posts on its platform).

1 3. The Overall Record Indicates that Courier was Acting in a Legitimate
 2 Press Function, Notwithstanding That Some of its Activities Appear to
 3 Have Advanced its Apparent Electoral Purpose

4 In light of the foregoing analysis concerning Courier's press entity status, the remaining

5 question, therefore, is whether Courier's activity was within the scope of the press exemption.

6 The overall record supports the conclusion that Courier was acting in a "legitimate press

7 function," thereby indicating that its activities were within the scope of the press exemption,

8 even if those activities also advanced an electoral purpose. As noted above, the Commission

9 determines the scope of the press exemption by applying the two-part analysis presented in

10 *Reader's Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political

11 party, political committee, or candidate; and (2) whether the entity is acting within its "legitimate

12 press function" in conducting the activity.⁷⁰

13 On the first part of the analysis, Courier is not owned or controlled by a political party,

14 political committee, or candidate; it is a for-profit media company that is majority owned by

15 Acronym, a 501(c)(4) nonprofit organization.⁷¹ The Complaint alleges that Acronym "is

16 'focused on advancing progressive causes' through leveraging millions of dollars in campaign

17 contributions to work to elect progressive candidates,"⁷² and even if, *arguendo*, this statement

18 captures Acronym's mission, it does not establish that Acronym is "a political party, political

19 committee, or candidate." As such, whether Courier's activities are within the scope of the press

20 exemption turns on whether those activities were within a "legitimate press function."

⁷⁰ See *Reader's Digest Ass'n*, 509 F. Supp. at 1214-15; Advisory Opinion 2011-11 at 6-7.

⁷¹ Resp. at 1-2.

⁷² Compl. ¶ 23.

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1 The overall record indicates that Courier was acting in a legitimate press function through
 2 the production and distribution of both electoral and non-electoral articles, even if some of its
 3 content appears to advance its electoral goals.

4 The Complaint raises an allegation that Courier's "stories are one-sided political
 5 advertisements purporting to be news articles,"⁷³ and some of its activities indeed appear to have
 6 directly promoted federal candidates: During the 2020 election cycle, Courier produced
 7 numerous laudatory articles (some of which mimicked campaign communications) featuring
 8 Democratic candidates for federal office, which it paid to promote in the targeted geographic
 9 areas corresponding to those candidates' voting constituencies.⁷⁴ For instance, Courier produced
 10 an April 17, 2020, article about Max Rose, a 2020 candidate in New York's 11th congressional
 11 district, that was nearly a word-for-word facsimile of his campaign's press release from the
 12 previous day.⁷⁵ Courier similarly produced and paid to promote content highlighting the
 13 accomplishments of Abigail Spanberger, a federal candidate in Virginia — one of the states the
 14 McGowan memo identified as "initial targets . . . selected because of their importance

⁷³ *Id.* ¶ 22.

⁷⁴ See Bloomberg Article ("McGowan is doing something else small newspapers don't: she's using her sizable war chest and digital advertising savvy to pay to have her articles placed into the Facebook feeds of swing-state users she's identified as most likely to respond to them.").

⁷⁵ Compare Elle Meyers, *Rep. Max Rose Deploys With National Guard to Get Hospital Ready For Coronavirus Patients*, COURIER NEWSROOM (Apr. 17, 2020), <https://couriernewsroom.com/2020/04/17/rep-max-rose-deploys-with-national-guard-to-get-hospital-ready-for-coronavirus-patients, with Press Release, Rose Returns from National Guard Deployment> (Apr. 16, 2020), <https://web.archive.org/web/20200528232434/https://maxrose.house.gov/news/documentsingle.aspx?DocumentID=2596>; see Facebook Ad Library, <https://www.facebook.com/ads/library/?id=519519628957430> (providing placement details for the April 17, 2020, Courier Newsroom article about Rose, which was promoted from April 23, 2020, through May 20, 2020, at a cost of between \$9,000 and \$10,500, and shown 99% to users in New York).

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1 politically”⁷⁶ — including issues on which Spanberger campaigned,⁷⁷ such as, *e.g.*, lowering
2 healthcare costs.⁷⁸

76 McGowan Memo at 6.

⁷⁷ See “Healthcare and Prescription Drug Costs,” Abigail Spanberger for Congress, <https://abigailspanberger.com/issues/healthcare> (“I support measures that would help lower the cost of prescription drugs for Central Virginia seniors and families, such as giving Medicare the power to negotiate drug prices.”).

⁷⁸ See, e.g., Facebook Ad Library, <https://www.facebook.com/ads/library/?id=526494034658886> (providing placement details of a Courier Newsroom article that was promoted from February 3, 2020, through February 26, 2020, at a cost of between \$7,500 and \$9,000; see Keya Vakil, *The Fight to Lower Prescription Drug Costs*, COURIER NEWSROOM (Nov. 4, 2019), <https://couriernewsroom.com/2019/11/04/the-fight-to-lower-prescription-drug-costs/>); Facebook Ad Library, <https://www.facebook.com/ads/library/?id=270941304015340> (providing placement details of a Courier Newsroom article that was promoted from October 9, 2020, through November 3, 2020, at a cost of between \$16,000 and \$18,000; see Elle Meyers, *Rep. Spanberger Announces \$100,000 in Telehealth Funding for Central Virginia*, COURIER NEWSROOM (Sept. 24, 2020), <https://couriernewsroom.com/2020/09/24/rep-spanberger-announces-100000-in-telehealth-funding-for-central-virginia>)).

⁷⁹ Facebook Ad Library, <https://www.facebook.com/ads/library/?id=820385935444116> (providing placement details of an article in “The Copper Courier,” a Courier-affiliate website, which was promoted from October 21, 2020, through November 3, 2020, at a cost of between \$13,000 and \$15,000).

⁸⁰ Jessica Swarner, *What Would Dr. Hiral Tipirneni Do if Elected to Congress?*, COPPER COURIER (Oct. 19, 2020), <https://coppercourier.com/story/hiral-tipirneni-congress-arizona> (linking to Dr. Hiral Tipirneni for Congress, <https://hiralforcongress.com/#issues>).

⁸¹ Jessica Swarner, *From Climate to Immigration, Here's Where Mark Kelly Stands on Six Important Policies*, COPPER COURIER (Oct. 12, 2020), <https://coppercourier.com/story/from-climate-to-immigration-heres-where-mark-kelly-stands-on-six-important-policies> (linking to Kelly's campaign website, <https://markkelly.com/>); Facebook Ad Library, <https://www.facebook.com/ads/library/?id=358900548776123> (providing placement details of an article in "The Copper Courier," a Courier-affiliate website, which was promoted from October 19, 2020, through November 3, 2020, at a cost of between \$5,000 and \$6,000).

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1 With respect to the targeted promotion of these articles, Respondents assert that because
 2 “the revenue model for quality local journalism is in jeopardy[, b]y necessity, therefore, Courier
 3 Newsroom invests in paid advertising to deliver its news stories to target audiences.”⁸² The
 4 Facebook advertising data appears to show that the overwhelming majority of content that
 5 Courier paid to promote during the 2020 election cycle explicitly mentioned either a Democratic
 6 federal candidate or their opponent.⁸³ By contrast, the Facebook advertising data shows virtually
 7 no paid promotion of articles not about the 2020 election.

8 Although it is true that Courier appears to have selectively promoted its electoral content,
 9 it also appears to be the case that Courier produced a significant number of non-electoral articles.
 10 Moreover, even Courier’s election-focused articles would qualify as a “legitimate press
 11 function,” since they are all available to the general public and, under the “considerations of
 12 form” analysis in *MCFL*, there is no indication that those articles were not produced in the same
 13 manner, using the same people, and subject to the same review and distribution as its other
 14 articles.⁸⁴

⁸² Resp. at 3.

⁸³ See Facebook Ad Library, “Ads from Courier,” [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=110749446963570&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&start_date\[min\]=2018-05-07&start_date\[max\]=2020-11-04](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=110749446963570&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&start_date[min]=2018-05-07&start_date[max]=2020-11-04). The search parameters encompassed both ads “about social issues, elections, or politics” as well as all other types of ads that resulted in any impressions on or before November 3, 2020, the date of the 2020 general election.

⁸⁴ Although Courier selectively promoted election-focused articles and its content generally catered to a specific political perspective, it does not appear to have engaged in what could be described as misinformation efforts.

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The Commission has also historically interpreted “legitimate press function” broadly, reflecting Congress’s expressed intent that the Act not “limit or burden in any way the First Amendment freedoms of the press and of association.”⁸⁵ In light of the legislative guidance that the press exemption “assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns,” and the Commission’s own prior determination that “[e]ven seemingly biased stories or commentary by a press entity can fall within the media exemption,”⁸⁶ the current record reflects that Courier’s activities — even its political targeting and targeted promotion of stories that extol certain federal candidates based on their political party — fall within the broad ambit of “legitimate press function.”

10 * * *

11 In light of the Congressional directive that the Act must not constrain the press's ability
12 to cover and comment on elections, as well as the Commission's historical focus on an entity's
13 regular and normal activities, the activity at issue in this matter qualifies for the press exemption
14 because Courier is a press entity engaged in a legitimate press function. Accordingly, the
15 operating expenses of Courier's activities are exempt from the Act.

B. Political Committee Status

17 The Act defines a political committee as “any committee, club, association, or other
18 group of persons” that receives aggregate contributions or makes aggregate expenditures in
19 excess of \$1,000 during a calendar year.⁸⁷ Notwithstanding the threshold for contributions and

attempt to appeal to other conservative voters, divide Republicans, support write-in candidates, undermine Republican candidate Roy Moore, and help Democratic candidate Doug Jones.”)

85 H.R. REP. NO. 93-1239 at 4 (1974).

⁸⁶ First Gen. Counsel's Report at 5, MURs 5540 and 5545 (CBS Broadcasting, *et al.*) (adopted as dispositive).

87 52 U.S.C. § 30101(4)(A).

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1 expenditures, an organization will be considered a political committee only if its “major purpose
 2 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁸⁸ Political
 3 committees are required to register with the Commission, meet organizational and recordkeeping
 4 requirements, and file periodic disclosure reports.⁸⁹

5 The overall record indicates, for the reasons discussed in the preceding section, that
 6 Courier made no expenditures, as its operating costs are exempt from the Act. Moreover, there
 7 is no indication that any of the funds Courier received would meet the statutory definition for
 8 “contributions,” as there is no basis to conclude that any funds were given to Courier for the
 9 purpose of influencing a federal election (as opposed to funding the operations of a press entity
 10 covering and commenting on a variety of issues, including elections). Accordingly, the record
 11 indicates that Courier did not satisfy the statutory threshold for political committee status.

12 Moreover, even if, *arguendo*, Courier had made sufficient aggregate contributions or
 13 expenditures to satisfy the statutory threshold, it is not clear that it had the requisite “major
 14 purpose” of nominating or electing federal candidates. For the same reasons that the record
 15 supports finding that Courier is a press entity, it also supports the conclusion that Courier’s major
 16 purpose is not the nomination or election of federal candidates, but rather the producing and
 17 distributing of news coverage and commentary on both electoral and non-electoral topics.⁹⁰

18 The overall record therefore indicates that, by virtue of its press entity status, Courier
 19 received no contributions and made no expenditures, and, moreover, may not have the major

⁸⁸ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. at 262.

⁸⁹ *See* 52 U.S.C. §§ 30102, 30103, 30104.

⁹⁰ Resp. at 6.

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1 purpose of nominating or electing federal candidates. Accordingly, we recommend that the
 2 Commission dismiss the allegation that Courier violated 52 U.S.C. §§ 30102, 30103, and 30104
 3 by failing to register, organize, and report as a political committee.

4 **C. The Commission Should Find No Reason to Believe With Respect to the**
 5 **Allegations as to Acronym and McGowan**

6 The available information does not indicate that Acronym, as Courier's owner, or
 7 McGowan, in her capacity as Courier's CEO, violated the Act or Commission regulations. As
 8 discussed above, we recommend dismissing the allegations as to Courier, and, in any event, the
 9 Complaint does not allege a cognizable violation by Acronym or Courier because the provisions
 10 of the Act that Courier is alleged to have violated do not appear to contemplate liability for an
 11 entity's owners or officers.⁹¹ We therefore recommend that the Commission find no reason to
 12 believe with respect to the allegations as to Acronym and McGowan.

13 **IV. RECOMMENDATIONS**

14 1. Dismiss the allegations that Courier Newsroom, Inc., violated 52 U.S.C. §§ 30102,
 15 30103, and 30104 by not registering, organizing, and reporting as a political
 16 committee;

17 2. Find no reason to believe that Acronym and Tara McGowan violated 52 U.S.C.
 18 §§ 30102, 30103, and 30104;

19 3. Approve the attached Factual and Legal Analysis;

20 4. Approve the appropriate letters; and

⁹¹ See 52 U.S.C. § 30102 (prescribing organizational requirements for political committees and recordkeeping duties for committee treasurers); *id.* § 30103 (prescribing registration and termination requirements for political committees); *id.* § 30104 (prescribing reporting requirements for political committees and other persons that make qualifying independent expenditures and electioneering communications, and filing requirements for committee treasurers); *see also* First Gen. Counsel's Report at 33, MUR 7153 (Hillary for America, *et al.*), (recommending dismissal of allegations for which the Complaint "does not appear to allege a cognizable violation"); Certification ¶ 1.i, MUR 7153 (May 20, 2021) (dismissing those allegations); First Gen. Counsel's Report at 13, MUR 7893 (Wachtel) (recommending dismissal of certain allegations that do "not appear to state a cognizable violation of the Act or Commission regulations.")

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1 5. Close the file.

Lisa J. Stevenson
Acting General Counsel

January 20, 2022

Date

Charles Kitcher

Charles Kitcher

Associate General Counsel for Enforcement

Mark Allen

Mark Allen

Assistant General Counsel

Saurav Ghosh
Saurav Ghosh

Saurav Ghosh

Acting Assistant General Counsel

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