



FEDERAL ELECTION COMMISSION
 1050 FIRST STREET, N.E.
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7800
Kanye 2020, <i>et al.</i>)	
)	

**STATEMENT OF REASONS OF
 COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. “TREY” TRAINOR, III**

The Federal Election Commission is prohibited from taking any enforcement action, including an investigation, unless four members vote to find reason-to-believe (“RTB”) “that a person has committed, or is about to commit, a violation of” the Federal Election Campaign Act (“FECA” or “Act”).¹ This inevitably means that “the Commission makes...[its RTB] determination on a limited record—consisting only of the complaint, any response, and a report of the Office of General Counsel” (“OGC”).²

There is a temptation to search for publicly available information that supplements or backfills a complaint. The vast sea of political news and editorial content offers near limitless opportunities for these efforts, but they pose serious risks to the Commission’s processes.

First, searching for media reporting outside the four corners of a complaint violates the statute’s injunction against pre-RTB investigations. Second, even if permitted by the Act, these efforts risk leading the Commission down blind alleys. Mere publication in a media platform does not mean the contents of that reporting passes “any test of truth,”³ particularly when—as here—the relevant reporting relies entirely on anonymous sources. Rumor, in short, is not RTB.

¹ 52 U.S.C. § 30109(a)(1)-(2); *see also* Fed. Election Comm’n, “Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process,” 89 Fed. Reg. 19729, 19730, Mar. 20, 2024 (“‘Reason to believe’ findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred”).

² Policy Statement of Chairman Dickerson Regarding the Commission’s Use of Anonymous Sources Reported in the Press at 1, Oct. 5, 2022 (“Anonymous Sources Statement”).

³ *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964).

In this Matter, OGC conceded that its RTB recommendation hinged on the reporting of anonymous sources in a *Daily Beast* article published after the complaint was filed (and after it had circulated a report recommending dismissal). The “Commission’s practice” does “not support RTB where the inculpatory information in the record before [it] consists solely of anonymously sourced press reports.”⁴ We voted accordingly,⁵ and provide this Statement to explain our reasoning.⁶

I. Standard of Review

“At the initial stage of enforcement, the Act provides that the Commission must either dismiss a complaint or find reason-to-believe.”⁷ Dismissal ends the Matter, while an RTB finding compels “the Commission [to] either authorize an investigation or engage in efforts to negotiate an end to the Matter through conciliation.”⁸

We will only “find reason-to-believe when a complaint (1) fairly invokes its jurisdiction, (2) is credible, and not merely a bare accusation of wrongdoing, (3) the response has not sufficiently answered the complaint, and (4) it determines that enforcement is a judicious use of the Commission’s scarce resources.”⁹ This standard prevents the Commission “from merely providing a rubber stamp to a complaint’s allegations, or proceeding on an RTB-of-the-gaps approach to law enforcement.”¹⁰

⁴ Anonymous Sources Statement at 10; *cf.* Statement of Reasons of Chairman Dickerson and Comm’rs Cooksey and Trainor at 1, MUR 7784 (Make Am. Great Again PAC), June 9, 2022 (“But the legal support for enforcement here is remarkably thin, and the only arguable factual support comes from inferences based upon media reports citing anonymous sources. We will not pursue enforcement-by-rumor”) (“MAGA PAC Statement”).

⁵ Certification at 1, MUR 7800 (Kanye 2020), Aug. 16, 2024.

⁶ *Democratic Cong. Campaign Comm. v. Fed. Election Comm’n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987).

⁷ Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 1, MUR 8167 (Detroit Int’l Bridge Co.), Aug. 6, 2024.

⁸ Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 2, MUR 8110 (Am. Coal. for Conservative Policies), July 29, 2024 (“ACCP Statement”).

⁹ *Id.*

¹⁰ *Id.* (punctuation altered for clarity, internal citations and quotation marks omitted); *cf.* Statement of Reasons of Comm’rs Mason, Sandstrom, Smith, and Thomas at 2, MUR 4960 (Clinton for U.S. Senate Exploratory Comm.), Dec. 21, 2000 (“Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true”) (internal citations omitted).

II. Facts of the Matter

In 2020, Kanye West ran for President of the United States,¹¹ and his official campaign committee was named “Kanye 2020.”¹² The West campaign committee paid a consulting firm, Millennial Strategies, just under \$2.7 million¹³ “to provide a variety of campaign services, including campaign management consulting, get out the vote consulting, polling, ballot access services, and campaign website development.”¹⁴ The complaint contended that these payments were a sham, and the funds given to Millennial were, in truth, designed to directly hire Mercury Public Affairs.¹⁵ Consequently, the complaint alleged that the Kanye 2020 committee violated the Act by “fail[ing] to report at least \$1.6 million in disbursements to Mercury.”¹⁶

The complaint in this Matter was filed in September 2020. OGC initially reviewed the complaint and circulated a Report for review in February 2021. That Report recommended that the Commission dismiss the complaint. However, the Commission did not act on that FGCR because [REDACTED] requested that we abate any action on that complaint while it pursued its own review.¹⁷

Meanwhile, OGC became aware of a 2022 article in *The Daily Beast* regarding the Kanye 2020 committee.¹⁸ This article post-dated the complaint and was based,

¹¹ Kanye West, Statement of Candidacy, Fed. Election Comm’n, July 16, 2020. Mr. West legally changed his name after the 2020 election to “Ye.” For consistency, we will refer to Mr. Ye as Mr. West throughout this Statement. Cf. Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 1, n. 1, MURs 8123/8182 (Biden for President), Sept. 6, 2024 (noting similar use of “former name”).

¹² Kanye 2020, Statement of Org., Fed. Election Comm’n, July 15, 2020.

¹³ First Gen’l Counsel’s Report (“FGCR”) at 4, MUR 7800 (Kanye 2020), July 30, 2024.

¹⁴ Resp. at 1 (internal acronym omitted for clarity).

¹⁵ Complaint at 1-2.

¹⁶ FGCR at 1.

¹⁷ The Commission abated this matter for 782 days at the request of [REDACTED].

¹⁸ OGC did not become aware of this article due to an amended complaint. Only one complaint was ever filed in this Matter. See Statement of Reasons of Vice Chairman Petersen and Comm’rs Hunter and McGahn at 1, MUR 6056 (Protect Colo. Jobs), June 1, 2009 (rejecting RTB recommendation where “[t]he basis for OGC’s position that coordination may have occurred is one newspaper article, which was not referenced in the complaint, in which anonymous sources from the Complainant’s campaign alleged that [Respondents]...coordinated the content and distribution of the mailer through an

substantively, on anonymous sources.¹⁹ As a result, following the conclusion of abatement, OGC withdrew its initial First General Counsel's Report and circulated a replacement recommending RTB.²⁰

III. Relevant Law

OGC recommended "that the Commission find reason to believe that the [Kanye 2020] Committee violated 52 U.S.C. § 30104(b)(6) and 11 C.F.R. § 104.3(b)(4) by failing to accurately report disbursements."²¹ As relevant here, those provisions require an authorized committee such as Kanye 2020 to file a form listing "the name and address of each person who has received any disbursement...in an aggregate amount or value in excess of \$200 within the...election cycle, together with the date and amount of any disbursement."²²

IV. The Commission Dismissed The Complaint

a. The complaint in this Matter was speculative and sufficiently answered by the Respondent.

The complaint filed in this Matter alleged actions which, if proven true, would constitute a violation of FECA.²³ But the complaint and responses, read together, did not permit a reason-to-believe finding. The complaint, which was not filed by anyone

intermediary. OGC discovered the article after searching publicly available information...the newspaper article functioned essentially as a second, unsworn complaint..." ("Protect Colorado Statement").

¹⁹ FGCR at 5-6.

²⁰ *Id.* at 5-6, 9-12 (discussing *Daily Beast* article).

²¹ *Id.* at 2, 13-14.

²² 52 U.S.C. § 30104(b)(6)(A); 11 C.F.R. § 104.3(b)(4).

²³ 52 U.S.C. § 30104(b)(6).

with personal knowledge of the allegations,²⁴ was speculative, little more than a “bare accusation of wrongdoing.”²⁵

Furthermore, the complaint’s allegations were satisfactorily answered by the respondents, who explained that “[t]here were no payments to Mercury included in the disclosure report because Mercury was not a direct vendor to the Committee.”²⁶ Specifically, the Response stated that the West campaign hired Millennial to perform a suite of services and Millennial, in turn, as part of its agreement to “provid[e] a host of bona fide campaign-related services to the Committee over the course of two months, entered into an entirely conventional and entirely legitimate sub-contract with Mercury to assist with ballot access activities.”²⁷ Absent credible evidence that this sub-vendor relationship was a ruse, there is no indication of wrongdoing by Respondents.

Thus, OGC initially determined, correctly, that “the available information d[id] not provide a reasonable basis to conclude that the [Kanye 2020] Committee was required to report Millennial’s disbursements to Mercury” and urged us to dismiss the complaint.²⁸

b. We will not use news articles based entirely on anonymous sources to supplement deficient complaints.

As the Commission has long noted, anonymous sources are unreliable and have not served as the basis for RTB findings.²⁹ Relying on anonymously sourced media reporting merely allows favored news organizations to supplant the Commission’s

²⁴ The complaint was filed by a concerned citizen who read a *New York Times* article concerning Mercury’s involvement in the West campaign. That report characterized a Mercury partner as being unable to “say why Mercury was not included in the companies that received disbursements in the West campaign’s recent filing to the Federal Election Commission.” Complaint App’x. A, Danny Hakim and Maggie Haberman, “Kanye West’s Perplexing Run as a Potential 2020 Spoiler,” *N.Y. Times*, Sept. 16, 2020. The Response answered that question.

²⁵ ACCP Statement at 2.

²⁶ Resp. at 2.

²⁷ *Id.* at 4.

²⁸ Initial FGCR at 6, MUR 7800 (Kanye 2020), Feb. 10, 2021; *id.* at 8.

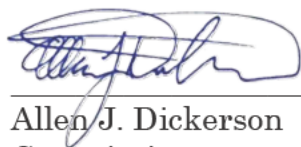
²⁹ Anonymous Sources Statement at 3, nn. 11-13 (citing to Factual & Legal Analysis at 5, MUR 5845 (Citizens for Truth); Statement of Reasons of Vice Chair Hunter and Comm’rs McGahn and Petersen at 2, 5, MUR 6279 (U.S. Dry Cleaning), Jan. 28, 2011; Protect Colorado Statement at 8).

obligation to make credibility assessments.³⁰ It “is antithetical to due process” for the Commission “to set the machinery of government in motion against respondents based upon...commissioners’ subjective views of particular publications and journalists.”³¹

We decline to play this game. We will not shadowbox with unnamed individuals in *The Daily Beast* or any other publication when making our enforcement decisions. “We will not pursue enforcement-by-rumor.”³²

CONCLUSION

For the foregoing reasons, we agree with OGC’s initial recommendation and voted accordingly.



Allen J. Dickerson
Commissioner

September 10, 2024

Date



James E. “Trey” Trainor, III
Commissioner

September 10, 2024

Date

³⁰ *Id.* at 5 (“We cannot, as a federal agency, take at face value every anonymous source cited by every publication—particularly in the constitutionally sensitive area we are charged with regulating. Efforts to distinguish among publications based upon our subjective sense of their ‘trustworthiness’ would fare no better, inevitably raising concerns that the Commission is acting capriciously”).

³¹ *Id.* at 8. *Cf.* Statement of Comm’rs Dickerson and Trainor Regarding the Commission’s Newly Adopted Directive Concerning Investigations, Nov. 2, 2023, at 4-5 (“In MUR 7271, the Commission unanimously voted to find RTB based on a complaint which relied exclusively upon a January 11, 2017 *Politico* article alleging that the DNC and Ms. Alexandra Chalupa sought and received political opposition research from Ukrainian government officials, knowing that it would be of value to the Democratic National Committee and Hillary Clinton’s presidential campaign. The Commission approved an investigation” which “quickly revealed that *Politico* was not only mistaken but, in fact, most likely the recipient of literal Russian disinformation.”) (internal citations, quotation marks, and brackets omitted).

³² MAGA PAC Statement at 1.