

less than the usual and normal charge for such goods or services.”³ These regulations provide a non-exhaustive list of examples of goods and services that qualify as a “thing of value,” which includes “[s]ecurities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”⁴ In other words, our regulations clearly govern only those products that are freely available for purchase or sale in the stream of commerce.

This approach reinforces the Supreme Court’s observation, in *Buckley v. Valeo*, that the Act should not be interpreted to reach *anything* of *any* conceivable value to a campaign, but instead should be subject to the “limiting connotation created by the general understanding of what constitutes a political contribution.”⁵ And the Court took care to explain what that “general understanding” included: “funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary” and “dollars given to another person or organization that are earmarked for political purposes.”⁶ Consequently, it is clear that an expansive view of the term “thing of value” poses clear prudential and constitutional issues.⁷

The Complaint contends, and Twitter does not deny, that verification has “numerous and significant benefits,” which “*can* [emphasis added] lead to more followers and a higher social media profile.”⁸ Such benefits may confer a certain level of public relevance, cachet, and clout upon the account that has been verified.

But while it is true that social media followers and account and tweet views can be purchased, and therefore reliably valued,⁹ a so-called “blue check mark”—the public-facing indicator showing that a Twitter account is verified—cannot be purchased or transferred from account to account. It is not sold by Twitter or on a secondary market. It does not guarantee that the verified account will acquire a certain number of followers or views, nor does it guarantee that the account can be monetized by the user. In other words, it does not have a market price and is not a “contribution” as contemplated by our regulations.¹⁰ And although social media users commonly leverage clout to make money, Twitter’s decision to grant a blue check mark to an account is about signaling identity, newsworthiness, and

³ 11 C.F.R. § 100.52(d).

⁴ *Id.* at (d)(1).

⁵ 424 U.S. 1, 23 n.24 (1976).

⁶ *Id.*

⁷ *See, e.g.*, MUR 7271 (DNC, *et al.*), Statement of Reasons of Vice Chair Allen Dickerson and Comm’rs Sean J. Cooksey and James E. “Trey” Trainor III (concluding that an unpaid statement at a press conference was not a “thing of value”); MUR 7265 (Donald J. Trump for President, *et al.*), Statement of Reasons of Vice Chair Allen Dickerson and Comm’rs Sean J. Cooksey and James E. “Trey” Trainor III (noting the tenuousness of OGC’s legal theory that a campaign’s solicitation of negative information about an opponent is a “thing of value”); MUR 6958 (Senator Claire McCaskill, *et al.*), Statement of Reasons of Vice Chair Caroline C. Hunter and Comm’rs Lee E. Goodman and Matthew S. Petersen (concluding that general advice from polling was not a “thing of value”).

⁸ MUR 7832 (Twitter, Inc.), Compl. at 5.

⁹ *See, e.g., id.* at 2 (describing the cost of promoting an account or tweet on Twitter).

¹⁰ 11 C.F.R. § 100.52(a); *see supra* n.7 and accompanying text.

legitimacy to other Twitter users—subject to that account’s compliance with Twitter’s terms of use. It is not, itself, a revenue-raising Twitter product.

In light of these considerations, Twitter’s decision to notate (or not notate) a user’s account with a “blue check” does not fall within the “general understanding” of what constitutes a contribution. Whether newsworthiness and legitimacy have “value,” and what that value might be in dollar terms, is a fundamentally subjective determination—especially when those definitions and determinations exist within the framework of the terms of use Twitter has credibly explained are intended to further its own commercial aims and prevent misuse of its platform.¹¹

The Commission is compelled “to avoid the shoals of vagueness,”¹² exercise restraint when interpreting questions of constitutional import, and interpret the Act precisely, objectively, and through the lens of the definitions of “contribution” and “expenditure.”¹³ And we have an obligation to follow our own regulations. To do otherwise risks outstripping our expertise and statutory mandate, and would inevitably lead to complicated and protracted litigation where, in our view, the Commission would not prevail.

Accordingly, in addition to the reasons set forth in our other Statement in this matter, we voted to find no reason to believe a violation of the Act occurred.

October 26, 2021

Date



Allen Dickerson
Vice Chair

October 26, 2021

Date



James E. “Trey” Trainor III
Commissioner

¹¹ MUR 7832, Resp. at 4–8 (describing Twitter’s verification process and guidelines).

¹² *Buckley*, 424 U.S. at 78.

¹³ *Id.*