

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7867

DATE COMPLAINT FILED: Dec. 18, 2020

DATE OF NOTIFICATIONS: Dec. 23, 2020

LAST RESPONSE RECEIVED: Feb. 1, 2021

DATE ACTIVATED: July 14, 2021

ELECTION CYCLE: 2020

EXPIRATION OF SOL: Oct. 23, 2025

COMPLAINANTS:

Campaign Legal Center
Margaret Christ

RESPONDENTS:

Our American Century PAC and Cabell Hobbs in
his official capacity as treasurer
Make America Great Again PAC and Bradley T.
Crate in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)(1)(A), (a)(7)(B)(iii), (f)

52 U.S.C. § 30120(a)

11 C.F.R. § 104.3(a), (b)

11 C.F.R. § 109.23

11 C.F.R. § 110.1(b)

11 C.F.R. § 110.9

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Our American Century PAC and Cabell Hobbs in his official capacity as treasurer (“Our American Century”) made an excessive and unreported in-kind contribution to Make America Great Again PAC f/k/a Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”) by republishing in full a video created by the Trump Committee, which at the time was the

1 authorized committee of 2020 presidential candidate Donald J. Trump. Further, the Complaint
2 alleges that, as a result, Our American Century lost its status as an independent expenditure-only
3 political committee and therefore accepted excessive contributions. These factual allegations
4 also raise questions regarding whether the Trump Committee knowingly accepted and failed to
5 report the in-kind contribution from Our American Century. Our American Century does not
6 dispute that it paid to republish the video or that the Trump Committee created the video but
7 contends that it did not contribute to the Trump Committee because the republication was not
8 coordinated. The Trump Committee likewise argues that it did not accept a contribution from
9 Our American Century because of the lack of coordination.

10 As set forth below, the available information indicates that, on October 23, 2020, Trump
11 tweeted a link to a video the Trump Committee posted on YouTube titled, “As per your request,
12 Joe” The 50-second video consisted of clips of Trump and Biden and concluded with a
13 Trump Committee logo and slogan as well as a disclaimer stating that the video was “[p]aid for
14 by Donald J. Trump for President, Inc.” Within hours, Our American Century purchased Google
15 advertisements republishing in full the same Trump Committee video, including the original
16 disclaimer. The advertisements purchased by Our American Century ran from October 23, 2020,
17 to October 30, 2020, and were shown to Google users in Arizona, Michigan, Ohio, and
18 Pennsylvania. Google’s Transparency Reports website indicates that Our American Century
19 paid between \$5,100 and \$251,000 for these advertisements.

20 Accordingly, we recommend that the Commission find reason to believe that Our
21 American Century violated 52 U.S.C. §§ 30104(b) and 30116(a) and 11 C.F.R. §§ 104.3(b) and
22 110.1(b) by making and failing to report prohibited and excessive contributions to the Trump
23 Committee. We further recommend that the Commission find reason to believe that Our

American Century failed to include necessary disclaimers in violation of 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11. And we recommend that the Commission authorize an investigation to determine the amount that Our American Century spent to disseminate the advertisements. We further recommend that the Commission dismiss the allegation that Our American Century lost its status as an independent expenditure-only political committee and therefore accepted excessive contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9.

There is no available information indicating that the Trump Committee coordinated with Our American Century regarding the republication, and both the Trump Committee and Our American Century dispute any such allegation. As such, we recommend that the Commission dismiss the allegation that the Trump Committee violated 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 104.3(a) and 110.9 by knowingly accepting and failing to report an excessive in-kind contribution.

II. FACTUAL BACKGROUND

Our American Century is an independent expenditure-only political committee (“IEOPC”) that first registered with the Commission in 2012.¹ During the 2020 election cycle, Our American Century made \$5.5 million in independent expenditures, all between September 18 and October 30, 2020, to Old Town Digital Agency LLC for “digital media” in support of Trump or in opposition to his opponent, Joseph R. Biden.² Make America Great Again PAC is a nonconnected political action committee; Bradley T. Crate is its treasurer.³ During the 2020

¹ Geaux PAC, Statement of Org. (Oct. 17, 2012). Geaux PAC changed its name to Our American Century in 2017. Our American Century, Am. Statement of Org. (Feb. 15, 2017).

² Our American Century, October 2020 Report at 8-9 (Oct. 20, 2020); Our American Century, 2020 Post-General Report at 11-13 (Dec. 3, 2020).

³ Trump Committee, Amended Statement of Org. (Feb. 27, 2021).

election, the committee operated with the name Donald J. Trump for President and served as the authorized committee of Trump's 2020 presidential campaign.⁴

On October 23, 2020, Trump tweeted a link to a video on his YouTube page, titled "As per your request, Joe..."⁵ The 50-second video, which was created by the Trump Committee, consists of a clip from one of the presidential debates between Trump and Biden and various clips featuring Biden, and it concludes with a Trump 2020 campaign logo and slogan, "Keep America Great," as well as the disclaimer: "Paid for by Donald J. Trump for President, Inc."⁶ There is also a red banner across the top of screen with the words "Text TRUMP To 88022" that runs throughout the video.⁷

Shortly after Trump's tweet, Our American Century made six ad buys from Google to display the full "As per your request, Joe ..." video created by the Trump Committee.⁸ The ads were visible to Google users in Arizona, Ohio, Pennsylvania, and Michigan between October 23

⁴ Trump Committee, Amended Statement of Organization (Mar. 4, 2020).

⁵ Internet Archive, WAYBACK MACHINE, <https://archive.org/details/twitter-1319491234042269696> (October 23, 2020, post by Donald J. Trump (@realdonaldtrump) on Twitter at 3:15PM).

⁶ Donald J. Trump, *As per your request, Joe...*, YOUTUBE (Oct. 23, 2020) https://www.youtube.com/watch?v=NnrEh9_5_9I.

⁷ *Id.*

⁸ Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR357180131854254080> (first ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR498269463930470400> (second ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR371102148085153792> (third ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR502843432302018560> (ad purchase in Michigan); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR45376226403024896> (ad purchase in Pennsylvania); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR330228902834208768> (ad purchase in Ohio) (collectively, "Google Transparency Reports"). Google's Transparency Report does not indicate on what platform or website the ads were distributed.

and 30, and cost between \$5,100 and \$251,000.⁹ Specifically, according to the information available from Google's Transparency Reports website, five of the six purchases cost between \$1,000 and \$50,000, while the sixth cost between \$100 and \$1,000.¹⁰ The ads, which duplicated in full the video posted on Trump's YouTube page and link back to Trump's YouTube page, contained the disclaimer for the Trump Committee originally in the video and did not contain a disclaimer specific to Our American Century.

The Complaint argues that Our American Century republished campaign materials created by the Trump Committee, thereby making an unreported and excessive in-kind contribution of up to \$251,000 dollars to the Trump Committee — or more if Our American Century republished the advertisement through other platforms that do not provide similar public information as does Google.¹¹ The Complaint further contends that Our American Century failed to include the required disclaimer when it disseminated the Trump Committee video.¹² And it argues that Our American Century lost its status as an IEOPC by making the alleged contributions to a candidate committee and, therefore, accepted excessive contributions from two individuals who contributed \$7 million and \$500,000.¹³

⁹ Google Transparency Reports.

¹⁰ Google's Transparency Report website shows that Our American Century spent \$271,500 in total to purchase 353 ads through Google in 2020. Google Transparency Reports, https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520?advertiser_spend_over_time=start:1577836800000:end:1609459199999&lu=advertiser_spend_over_time (showing all advertisements purchased by Our American Century during 2020). The majority of these ad purchases were for banner ads. *Id.*

¹¹ Compl. ¶ 21. We also checked publicly-available Facebook ad reports and but did not find any instances where Our American Century ran the Trump Committee video. However, it is possible that Our American Century purchased video ads on digital platforms other than Google and Facebook.

¹² *Id.* ¶ 28.

¹³ *Id.* ¶¶ 23-25; *see also* *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00532630 (last visited August 25, 2021) (Our American Century receipts).

Our American Century's Response contends that it "had no contact with the [Trump] campaign prior to nor after any projects," and therefore did not make an in-kind contribution to the Trump Committee.¹⁴ Our American Century also counters that the advertisement had a sufficient disclaimer because "the particular clip has a 'Transparency Report' associated with it that prominently indicates that OAC is responsible for the advertisement."¹⁵ And its Response further represents that it "republished the publicly available clip as a very minor part of a larger communication expenditure which was properly conducted and reported."¹⁶

The Trump Committee's Response contends that the Complaint neither alleges that it coordinated with Our American Century nor contains factual information suggesting that it had.¹⁷ It further represents that "the Campaign and its personnel understand and have been trained on the rules governing improper 'coordination' with outside groups, and the Campaign takes its compliance with those requirements seriously."¹⁸

III. LEGAL ANALYSIS

A. The Commission Should Find Reason to Believe that Our American Century Made Prohibited and Excessive In-Kind Contributions to the Trump Committee

Under the Act, "the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized

¹⁴ Our American Century Resp. at 1 (Feb. 1, 2021) (citing 11 C.F.R. 109.23(a)). The Response further states that Our American Century never "employed any common vendors, former employees or independent contractors." *Id.* at 2.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ Trump Committee Resp. at 1-2 (Jan. 7, 2021).

¹⁸ *Id.* at 1.

agents shall be considered to be an expenditure.”¹⁹ The Commission has previously concluded that “campaign materials” include any material belonging to or emanating from a campaign, including video footage.²⁰ Commission regulations further provide that the republication of campaign materials “shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.”²¹ However, the candidate who prepared the materials is not considered to have received an in-kind contribution and the candidate’s authorized committee is not required to report an expenditure unless the dissemination, distribution, or republication of campaign materials is a coordinated communication or a party coordinated communication.²² The Act prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.²³

There is no dispute regarding the operative facts of this matter. As reflected in the Google Transparency Reports cited by the Complaint, Our American Century paid between \$5,100 and \$251,000 to Google to distribute, in full, a video titled “As per your request, Joe...”, hosted on Trump’s YouTube page and created by the Trump Committee.²⁴ It contained the

¹⁹ 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

²⁰ *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 6, MUR 6535 (Restore Our Future, Inc.) (determining that video footage from an ad produced and distributed by Mitt Romney’s 2008 presidential campaign committee was “campaign materials” for the purpose of republication); F&LA at 4-6, MUR 6783 (Indian Americans for Freedom) (text from candidate’s mailer reproduced in nonprofit’s mailer).

²¹ 11 C.F.R. § 109.23(a).

²² 11 C.F.R. § 109.23(a); *see also id.* § 109.21 (coordinated communications); § 109.37 (party coordinated communications); F&LA at 6, MUR 6535 (Romney for President, Inc.) (finding no reason to believe that authorized committee of presidential campaign accepted an in-kind contribution where IEOPC republished campaign materials but there was no indication of coordination).

²³ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9. For the 2020 election cycle, contributions by persons other than multicandidate committees to any candidate and his or her authorized political committees were limited to \$2,800 per election. 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 84 Fed. Reg. 2,504, 2,506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. *See* 52 U.S.C. § 30116(a)(2).

²⁴ *Supra* notes 5, 8 and accompanying text.

Trump Committee logo and slogan, and provided a method for viewers to contact the Trump campaign. The advertisements ran from October 23 to October 30, 2020, on the Google platform and targeted users from four states.²⁵ Our American Century's Response acknowledges that it "republished the publicly available clip."²⁶ Therefore, Our American Century, an IEOPC that is barred from making any contributions to candidate and their authorized committees, made prohibited and excessive in-kind contributions to the Trump Committee.²⁷ The contributions, which Our American Century treated as independent expenditures, were not properly reported as in-kind contributions.

Our American Century's sole argument, that it did not make a contribution, is premised on a misreading of the applicable regulation. It contends that there was no violation because it did not coordinate with the Trump Committee in republishing the advertisement, citing section 109.23(a) of the Commission's regulations.²⁸ This provision, however, only provides that the *campaign* that originally created the advertisement is not considered to have *accepted* an in-kind contribution unless the republication was coordinated.²⁹ As the immediately preceding sentence

²⁵ Google Transparency Reports.

²⁶ Our American Century Resp. at 2.

²⁷ See F&LA at 6, MUR 6535 (Restore Our Future) (finding reason to believe that independent-expenditure only political committee made "prohibited and excessive in-kind contributions" when it republished campaign materials of a federal candidate); *see also* 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b); Advisory Opinion 2017-10 (Citizens Against Plutocracy) at 2 ("An independent expenditure-only political committee 'may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.'" (quoting Advisory Opinion 2016-21 (Great America PAC) at 3-4)).

²⁸ Our American Century Resp. at 1.

²⁹ 11 C.F.R. § 109.23(a) ("The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. *The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.*") (emphasis added).

of the regulation makes clear, the entity that republished the advertisement is considered to have made an in-kind contribution regardless of whether the republication was coordinated.³⁰ And the Commission has enforced the republication provision against respondents where there was no showing of coordination with the recipient campaign.³¹

Accordingly, we recommend that the Commission find reason to believe that Our American Century violated 52 U.S.C. §§ 30104(b) and 30116(a) and 11 C.F.R. §§ 104.3(b) and 110.1(b) by making and failing to report prohibited and excessive contributions to the Trump Committee.

B. The Commission Should Dismiss the Allegation that the Trump Committee Accepted Excessive In-Kind Contributions from Our American Century

A candidate, candidate's authorized committee, or agent who prepared campaign materials does not accept an in-kind contribution from a person who republishes those materials unless the republication is a "coordinated communication."³² If a candidate's authorized committee accepts such an in-kind contribution, then its treasurer must disclose the identification of the contributor so long as their aggregate contributions exceed \$200 for the election cycle, together with the date and amount of any such contribution.³³ For a communication to be a "coordinated communication," Commission regulations require that it: (1) be paid for by a third party; (2) satisfy one of five "content" standards; and (3) satisfy one of five "conduct" standards.³⁴

³⁰ *Id.*

³¹ F&LA at 4-7, MUR 6535 (Restore Our Future).

³² 11 C.F.R. § 109.23(a) (citing 11 C.F.R. § 109.21).

³³ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

³⁴ 11 C.F.R. § 109.21(a) (referencing content and conduct standards at 11 C.F.R. § 109.21(c) and (d), respectively)). In addition, for republication of campaign materials, three of the conduct prong standards must

Here, there is no basis to infer that the conduct prong was satisfied. The Complaint does not allege any specific facts to suggest coordination, and both Respondents dispute that any coordination occurred.³⁵ Our American Century purchased the ads just two hours after Trump tweeted the video, but this alone is insufficient to infer coordination with the Trump Committee given the ease with which Our American Century presumably could republish a video that was already available on Google's website, YouTube.

Given the lack of information suggesting coordination, we recommend that the Commission dismiss the allegation that the Trump Committee violated 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 104.3(a) and 110.9 by accepting and failing to report excessive contributions from Our American Century.

C. The Commission Should Find Reason to Believe that Our American Century Failed to Include Required Disclaimers

The Act requires that all public communications made by a political committee include a disclaimer.³⁶ "Public communications" include "communications placed for a fee on another person's Web site."³⁷ Thus, disclaimer requirements apply to "all potential forms of advertising" placed for a fee online, including "banner advertisements, streaming video, popup advertisements, and directed search results."³⁸ Where required, disclaimers must be "presented

involve conduct "that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished." *Id.* § 109.21(d)(6).

³⁵ *Supra* notes 11-18 and accompanying text.

³⁶ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

³⁷ 11 C.F.R. § 100.26.

³⁸ *See* Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006); *see also* F&LA at 7-8, MUR 7280 (Unknown Owner of "Trump 2020" Facebook Page) (finding reason to believe that the unknown owner of a Facebook page named "Elect Trump 2020" failed to report over \$31,400 in independent expenditures on Facebook to the Commission, and failed to include required disclaimers on these Facebook advertisements); Advisory Opinion 2017-12 (Take Back Action Fund) ("The Commission concludes that, under the circumstances described in the

1 in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the
 2 identity of the person or political committee that paid for, and where required, that authorized the
 3 communication.”³⁹ If a communication is not authorized by a candidate or candidate’s
 4 authorized committee, it must clearly state the name and permanent street address, telephone
 5 number, or website address of the person who paid for the communication and state that the
 6 communication is not authorized by any candidate or candidate’s committee.⁴⁰

7 Our American Century does not dispute that the republished advertisement did not
 8 contain a proper disclaimer but instead contends that it satisfied the disclaimer requirement
 9 because of the Google Transparency Report page, which identifies Our American Century as the
 10 purchaser.⁴¹ This, however, does not meet the disclaimer requirements of the Act and
 11 Commission regulations, as it does not include all required information — it only states that Our
 12 American Century paid for the advertisement, but does not state whether the distribution was
 13 authorized by any candidate or candidate’s committee and does not provide an address, phone
 14 number, or website for Our American Century — and is not made in a “clear and conspicuous”
 15 manner that cannot be “easily overlooked.”⁴² To find the Google Transparency Report, one must
 16 independently search for a list of advertisements by Our American Century on Google, scroll
 17 down until screen captures of the particular advertisement purchases become visible, and then

request, TBAF must include all of the disclaimer information specified by 52 U.S.C. § 30120(a) on its proposed paid Facebook Image and Video advertising.”).

³⁹ 11 C.F.R. § 110.11(c).

⁴⁰ *Id.* § 110.11(b)(3).

⁴¹ Our American Century Resp. at 2.

⁴² 11 C.F.R. § 110.11(c).

click on the particular reports to view the advertisement in its entirety.⁴³ In addition, the lack of a disclaimer in this case is likely to cause additional confusion to the public because the advertisement retained the Trump Committee's original disclaimer, leading viewers to believe that the Trump Committee, rather than Our American Century, paid for the republication.

Therefore, we recommend that the Commission find reason to believe that Our American Century violated 52 U.S.C § 30120(a) and 11 C.F.R. § 110.11 by failing to include a valid disclaimer.

D. The Commission Should Dismiss the Allegation that Our American Century Lost Its IEOPC Status and Therefore Accepted Excessive Contributions

“An [IEOPC] may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.”⁴⁴ IEOPCs are permitted to solicit and accept unlimited contributions from individuals, political committees, corporations, or labor organizations *contingent* on not making monetary or in-kind contributions (including coordinated communications) to any other political committee or organization.⁴⁵ Absent IEOPC status and associated benefit of accepting unlimited contributions, unauthorized committees are otherwise prohibited from knowingly accepting contributions in excess of \$5,000 per person in a calendar year.⁴⁶

Our American Century declared in its initial Statement of Organization that it intended “to make independent expenditures and, consistent with the U.S. Court of Appeals for the

⁴³ See *supra* note 8.

⁴⁴ Advisory Opinion 2017-10 at 2 (Citizens Against Plutocracy) (internal quotations removed) (citing Advisory Opinion 2016-21 at 3-4 (Great America PAC)).

⁴⁵ See Advisory Opinion 2010-11 at 2 (Commonsense Ten).

⁴⁶ 52 U.S.C. § 30116(a)(1)(C), (f).

1 District of Columbia Circuit decision in *SpeechNow v. SEC*, . . . to raise funds in unlimited
2 amounts from individuals and corporations.”⁴⁷ It further represented that it “will not use those
3 funds to make contributions, whether direct, in-kind, or via coordinated communications, to
4 federal candidates or committees.”⁴⁸

5 As explained above, Our American Century made an in-kind contribution to the Trump
6 Committee by republishing “As per your request, Joe...” The Complaint alleges that because
7 Our American Century made contributions to a candidate’s campaign committee, it was not
8 entitled to raise funds in unlimited amounts and that, as a result, Our American Century violated
9 the excessive contribution prohibition when it accepted contributions in excess of \$5,000 during
10 the 2020 election cycle.⁴⁹ In its Response, Our American Century contends that it “never
11 engaged in any activity that even resembles either direct or indirect contributions to any federal
12 (or otherwise) candidate committees,” and that it was permitted to pay for the republication of
13 these materials without making a contribution to the Trump Committee.⁵⁰ As noted above, we
14 are not aware of any information suggesting that Our American Century coordinated or
15 otherwise communicated with the Trump Committee about republishing the video, and Our
16 American Century maintains that it believed it was not making a contribution to the Trump
17 Committee when it republished the video. Under circumstances similar to these, we have

⁴⁷ Our American Century, Statement of Organization (Oct. 11, 2012).

⁴⁸ *Id.*

⁴⁹ Compl. ¶¶ 23-25.

⁵⁰ *See* Our American Century Resp. at 1-2.

recommended that the Commission dismiss as a matter of prosecutorial discretion allegations that a Committee has lost its IEOPC status and thereby received excessive contributions.⁵¹

Accordingly, we recommend that the Commission dismiss as a matter of prosecutorial discretion⁵² the allegation that Our American Century accepted excessive contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9.

IV. PROPOSED INVESTIGATION

We propose a targeted investigation to determine the total amount Our American Century spent to republish the Trump Committee video. This includes determining what portion of the total \$271,500 Our American Century spent on all its Google advertisements in 2020 went to the republication of the Trump Committee video, given that the Google Transparency Reports only provide a range of between \$51,000 and \$251,000. We also propose investigating to determine whether Our American Century paid to republish the Trump Committee video by any means other than Google. We plan to begin by seeking relevant information on an informal basis, but we recommend that the Commission authorize the use of compulsory process, as necessary, to complete the investigation.

V. RECOMMENDATIONS

1. Find reason to believe that Our American Century PAC and Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 30116(a) and 11 C.F.R. §§ 104.3(b) and 110.1(b) by making and failing to report prohibited and excessive contributions;

⁵¹ See First Gen. Counsel's Report at 12-13, MUR 6357 (Am. Crossroads) (Aug. 31, 2011) (recommending dismissal of allegation that IEOPC accepted excessive and prohibited contributions once it had made in-kind contributions by republishing campaign materials because the committee appeared to have believed it was making an independent expenditure and had done so without the knowledge or involvement of the campaign committee); see also F&LA, MUR 6535 (Restore Our Future) (finding that an IEOPC had made an in-kind contribution to presidential campaign by republishing advertisement but declining to find that the IEOPC had accepted excessive contributions as a result). The Commission ultimately split 3-3 on OGC's recommendation in MUR 6357. Amended Cert., MUR 6357 (Jan. 26, 2012).


⁵² *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

2. Find reason to believe that Our American Century PAC and Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C § 30120(a) and 11 C.F.R. § 110.11 by failing to include valid disclaimers;
3. Dismiss the allegation that Make America Great Again PAC and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 104.3(a) and 110.9 by knowingly accepting and failing to report excessive contributions;
4. Dismiss as a matter of prosecutorial discretion the allegation that Our American Century PAC and Cabell Hobbs in his official capacity as treasurer accepted excessive contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9;
5. Authorize the use of compulsory process;
6. Approve the attached Factual and Legal Analyses; and
7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel
for Enforcement

Date: October 27, 2021



Claudio J. Pavia
Acting Deputy Associate General
Counsel for Enforcement

MUR 7867 (Our American Century PAC, *et al.*)

First General Counsel's Report

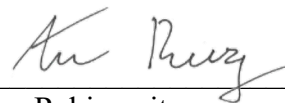
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Jin Lee

Acting Assistant General Counsel



Aaron Rabinowitz

Attorney

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Our American Century PAC and Cabell Hobbs MUR 7867
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”), which alleges violations of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint in this matter alleges that Our American Century PAC and Cabell Hobbs in his official capacity as treasurer (“Our American Century”) made an excessive and unreported in-kind contribution to Make America Great Again PAC f/k/a Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”) by republishing in full a video created by the Trump Committee, which at the time was the authorized committee of 2020 presidential candidate Donald J. Trump. Further, the Complaint alleges that, as a result, Our American Century lost its status as an independent expenditure-only political committee and therefore accepted excessive contributions. Our American Century does not dispute that it paid to republish the video or that the Trump Committee created the video but contends that it did not contribute to the Trump Committee because the republication was not coordinated.

As set forth below, the available information indicates that, on October 23, 2020, Trump tweeted a link to a video the Trump Committee posted on YouTube titled, “As per your request, Joe” The 50-second video consisted of clips of Trump and Biden and concluded with a Trump Committee logo and slogan as well as a disclaimer stating that the video was “[p]aid for by Donald J. Trump for President, Inc.” Within hours, Our American Century purchased Google

1 advertisements republishing in full the same Trump Committee video, including the original
 2 disclaimer. The advertisements purchased by Our American Century ran from October 23, 2020,
 3 to October 30, 2020, and were shown to Google users in Arizona, Michigan, Ohio, and
 4 Pennsylvania. Google's Transparency Reports website indicates that Our American Century
 5 paid between \$5,100 and \$251,000 for these advertisements.

6 Accordingly, the Commission finds reasons to believe that Our American Century
 7 violated 52 U.S.C. §§ 30104(b) and 30116(a) and 11 C.F.R. §§ 104.3(b) and 110.1(b) by making
 8 and failing to report prohibited and excessive contributions to the Trump Committee. The
 9 Commission further finds reason to believe that Our American Century failed to include
 10 necessary disclaimers in violation of 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11. The
 11 Commission also dismisses the allegation that Our American Century lost its status as an
 12 independent expenditure-only political committee and therefore accepted excessive contributions
 13 in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9.

14 **II. FACTUAL BACKGROUND**

15 Our American Century is an independent expenditure-only political committee
 16 ("IEOPC") that first registered with the Commission in 2012.¹ During the 2020 election cycle,
 17 Our American Century made \$5.5 million in independent expenditures, all between September
 18 18 and October 30, 2020, to Old Town Digital Agency LLC for "digital media" in support of
 19 Trump or in opposition to his opponent, Joseph R. Biden.² Make America Great Again PAC is a

¹ Geaux PAC, Statement of Org. (Oct. 17, 2012). Geaux PAC changed its name to Our American Century in 2017. Our American Century, Am. Statement of Org. (Feb. 15, 2017).

² Our American Century, October 2020 Report at 8-9 (Oct. 20, 2020); Our American Century, 2020 Post-General Report at 11-13 (Dec. 3, 2020).

nonconnected political action committee; Bradley T. Crate is its treasurer.³ During the 2020 election, the committee operated with the name Donald J. Trump for President and served as the authorized committee of Trump's 2020 presidential campaign.⁴

On October 23, 2020, Trump tweeted a link to a video on his YouTube page, titled "As per your request, Joe..."⁵ The 50-second video, which was created by the Trump Committee, consists of a clip from one of the presidential debates between Trump and Biden and various clips featuring Biden, and it concludes with a Trump 2020 campaign logo and slogan, "Keep America Great," as well as the disclaimer: "Paid for by Donald J. Trump for President, Inc."⁶ There is also a red banner across the top of screen with the words "Text TRUMP To 88022" that runs throughout the video.⁷

Shortly after Trump's tweet, Our American Century made six ad buys from Google to display the full "As per your request, Joe ..." video created by the Trump Committee.⁸ The ads

³ Trump Committee, Amended Statement of Org. (Feb. 27, 2021).

⁴ Trump Committee, Amended Statement of Organization (Mar. 4, 2020).

⁵ *Internet Archive*, WAYBACK MACHINE, <https://archive.org/details/twitter-1319491234042269696> (October 23, 2020, post by Donald J. Trump (@realdonaldtrump) on Twitter at 3:15PM).

⁶ Donald J. Trump, *As per your request, Joe...*, YOUTUBE (Oct. 23, 2020) https://www.youtube.com/watch?v=NnrEh9_5_9I.

⁷ *Id.*

⁸ Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR357180131854254080> (first ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR498269463930470400> (second ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR371102148085153792> (third ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR502843432302018560> (ad purchase in Michigan); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR45376226403024896> (ad purchase in Pennsylvania); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR330228902834208768> (ad purchase in Ohio) (collectively, "Google Transparency Reports"). Google's Transparency Report does not indicate on what platform or website the ads were distributed.

were visible to Google users in Arizona, Ohio, Pennsylvania, and Michigan between October 23 and 30, and cost between \$5,100 and \$251,000.⁹ Specifically, according to the information available from Google's Transparency Reports website, five of the six purchases cost between \$1,000 and \$50,000, while the sixth cost between \$100 and \$1,000.¹⁰ The ads, which duplicated in full the video posted on Trump's YouTube page and link back to Trump's YouTube page, contained the disclaimer for the Trump Committee originally in the video and did not contain a disclaimer specific to Our American Century.

The Complaint argues that Our American Century republished campaign materials created by the Trump Committee, thereby making an unreported and excessive in-kind contribution of up to \$251,000 dollars to the Trump Committee — or more if Our American Century republished the advertisement through other platforms that do not provide similar public information as does Google.¹¹ The Complaint further contends that Our American Century failed to include the required disclaimer when it disseminated the Trump Committee video.¹² And it argues that Our American Century lost its status as an IEOPC by making the alleged contributions to a candidate committee and, therefore, accepted excessive contributions from two individuals who contributed \$7 million and \$500,000.¹³

⁹ Google Transparency Reports.

¹⁰ Google's Transparency Report website shows that Our American Century spent \$271,500 in total to purchase 353 ads through Google in 2020. Google Transparency Reports, https://transparencyreport.google.com/political-ads/advertiser/AR30969772208747520?advertiser_spend_over_time=start:1577836800000:end:1609459199999&lu=advertiser_spend_over_time (showing all advertisements purchased by Our American Century during 2020). The majority of these ad purchases were for banner ads. *Id.*

¹¹ Compl. ¶ 21.

¹² *Id.* ¶ 28.

¹³ *Id.* ¶¶ 23-25; see also *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00532630 (last visited August 25, 2021) (Our American Century receipts).

Our American Century’s Response contends that it “had no contact with the [Trump] campaign prior to nor after any projects,” and therefore did not make an in-kind contribution to the Trump Committee.¹⁴ Our American Century also counters that the advertisement had a sufficient disclaimer because “the particular clip has a ‘Transparency Report’ associated with it that prominently indicates that OAC is responsible for the advertisement.”¹⁵ And its Response further represents that it “republished the publicly available clip as a very minor part of a larger communication expenditure which was properly conducted and reported.”¹⁶

III. LEGAL ANALYSIS

A. The Commission Finds Reason to Believe that Our American Century Made Prohibited and Excessive In-Kind Contributions to the Trump Committee

Under the Act, “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure.”¹⁷ The Commission has previously concluded that “campaign materials” include any material belonging to or emanating from a campaign, including video footage.¹⁸ Commission regulations further provide that the republication of campaign materials “shall be considered a contribution for the purposes of contribution

¹⁴ Resp. at 1 (Feb. 1, 2021) (citing 11 C.F.R. 109.23(a)). The Response further states that Our American Century never “employed any common vendors, former employees or independent contractors.” *Id.* at 2.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

¹⁸ *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 6, MUR 6535 (Restore Our Future, Inc.) (determining that video footage from an ad produced and distributed by Mitt Romney’s 2008 presidential campaign committee was “campaign materials” for the purpose of republication); F&LA at 4-6, MUR 6783 (Indian Americans for Freedom) (text from candidate’s mailer reproduced in nonprofit’s mailer).

limitations and reporting responsibilities of the person making the expenditure.”¹⁹ However, the candidate who prepared the materials is not considered to have received an in-kind contribution and the candidate’s authorized committee is not required to report an expenditure unless the dissemination, distribution, or republication of campaign materials is a coordinated communication or a party coordinated communication.²⁰ The Act prohibits any person from making, and any candidate or committee from knowingly accepting, an excessive contribution.²¹

There is no dispute regarding the operative facts of this matter. As reflected in the Google Transparency Reports cited by the Complaint, Our American Century paid between \$5,100 and \$251,000 to Google to distribute, in full, a video titled “As per your request, Joe...”, hosted on Trump’s YouTube page and created by the Trump Committee.²² It contained the Trump Committee logo and slogan, and provided a method for viewers to contact the Trump campaign. The advertisements ran from October 23 to October 30, 2020, on the Google platform and targeted users from four states.²³ Our American Century’s Response acknowledges that it “republished the publicly available clip.”²⁴ Therefore, Our American Century, an IEOPC that is

¹⁹ 11 C.F.R. § 109.23(a).

²⁰ 11 C.F.R. § 109.23(a); *see also id.* § 109.21 (coordinated communications); § 109.37 (party coordinated communications); F&LA at 6, MUR 6535 (Romney for President, Inc.) (finding no reason to believe that authorized committee of presidential campaign accepted an in-kind contribution where IEOPC republished campaign materials but there was no indication of coordination).

²¹ 52 U.S.C. § 30116(a), (f); 11 C.F.R. §§ 110.1(b)(1), 110.9. For the 2020 election cycle, contributions by persons other than multicandidate committees to any candidate and his or her authorized political committees were limited to \$2,800 per election. 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)(i); *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 84 Fed. Reg. 2,504, 2,506 (Feb. 7, 2019). Multicandidate committees are subject to separate limits. *See* 52 U.S.C. § 30116(a)(2).

²² *Supra* notes 5, 8 and accompanying text.

²³ Google Transparency Reports.

²⁴ Resp. at 2.

1 barred from making any contributions to candidate and their authorized committees, made
 2 prohibited and excessive in-kind contributions to the Trump Committee.²⁵ The contributions,
 3 which Our American Century treated as independent expenditures, were not properly reported as
 4 in-kind contributions.

5 Our American Century's sole argument, that it did not make a contribution, is premised
 6 on a misreading of the applicable regulation. It contends that there was no violation because it
 7 did not coordinate with the Trump Committee in republishing the advertisement, citing section
 8 109.23(a) of the Commission's regulations.²⁶ This provision, however, only provides that the
 9 campaign that originally created the advertisement is not considered to have *accepted* an in-kind
 10 contribution unless the republication was coordinated.²⁷ As the immediately preceding sentence
 11 of the regulation makes clear, the entity that republished the advertisement is considered to have
 12 made an in-kind contribution regardless of whether the republication was coordinated.²⁸ And the

²⁵ See F&LA at 6, MUR 6535 (Restore Our Future) (finding reason to believe that independent-expenditure only political committee made "prohibited and excessive in-kind contributions" when it republished campaign materials of a federal candidate); see also 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b); Advisory Opinion 2017-10 (Citizens Against Plutocracy) at 2 ("An independent expenditure-only political committee 'may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.'" (quoting Advisory Opinion 2016-21 (Great America PAC) at 3-4)).

²⁶ Resp. at 1.

²⁷ 11 C.F.R. § 109.23(a) ("The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. *The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.*") (emphasis added).

²⁸ *Id.*

Commission has enforced the republication provision against respondents where there was no showing of coordination with the recipient campaign.²⁹

Accordingly, the Commission finds reason to believe that Our American Century violated 52 U.S.C. §§ 30104(b) and 30116(a) and 11 C.F.R. §§ 104.3(b) and 110.1(b) by making and failing to report prohibited and excessive contributions to the Trump Committee.

B. The Commission Finds Reason to Believe that Our American Century Failed to Include Required Disclaimers

The Act requires that all public communications made by a political committee include a disclaimer.³⁰ “Public communications” include “communications placed for a fee on another person’s Web site.”³¹ Thus, disclaimer requirements apply to “all potential forms of advertising” placed for a fee online, including “banner advertisements, streaming video, popup advertisements, and directed search results.”³² Where required, disclaimers must be “presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for, and where required, that authorized the communication.”³³ If a communication is not authorized by a candidate or candidate’s authorized committee, it must clearly state the name and permanent street address, telephone

²⁹ F&LA at 4-7, MUR 6535 (Restore Our Future).

³⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

³¹ 11 C.F.R. § 100.26.

³² See Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006); see also F&LA at 7-8, MUR 7280 (Unknown Owner of “Trump 2020” Facebook Page) (finding reason to believe that the unknown owner of a Facebook page named “Elect Trump 2020” failed to report over \$31,400 in independent expenditures on Facebook to the Commission, and failed to include required disclaimers on these Facebook advertisements); Advisory Opinion 2017-12 (Take Back Action Fund) (“The Commission concludes that, under the circumstances described in the request, TBAF must include all of the disclaimer information specified by 52 U.S.C. § 30120(a) on its proposed paid Facebook Image and Video advertising.”).

³³ 11 C.F.R. § 110.11(c).

1 number, or website address of the person who paid for the communication and state that the
2 communication is not authorized by any candidate or candidate's committee.³⁴

3 Our American Century does not dispute that the republished advertisement did not
4 contain a proper disclaimer but instead contends that it satisfied the disclaimer requirement
5 because of the Google Transparency Report page, which identifies Our American Century as the
6 purchaser.³⁵ This, however, does not meet the disclaimer requirements of the Act and
7 Commission regulations, as it does not include all required information — it only states that Our
8 American Century paid for the advertisement, but does not state whether the distribution was
9 authorized by any candidate or candidate's committee and does not provide an address, phone
10 number, or website for Our American Century — and is not made in a “clear and conspicuous”
11 manner that cannot be “easily overlooked.”³⁶ To find the Google Transparency Report, one must
12 independently search for a list of advertisements by Our American Century on Google, scroll
13 down until screen captures of the particular advertisement purchases become visible, and then
14 click on the particular reports to view the advertisement in its entirety.³⁷ In addition, the lack of
15 a disclaimer in this case is likely to cause additional confusion to the public because the
16 advertisement retained the Trump Committee's original disclaimer, leading viewers to believe
17 that the Trump Committee, rather than Our American Century, paid for the republication.

18 Therefore, the Commission finds reason to believe that Our American Century violated
19 52 U.S.C § 30120(a) and 11 C.F.R. § 110.11 by failing to include a valid disclaimer.

³⁴ *Id.* § 110.11(b)(3).

³⁵ Resp. at 2.

³⁶ 11 C.F.R. § 110.11(c).

³⁷ *See supra* note 8.

C. The Commission Dismisses the Allegation that Our American Century Lost Its IEOPC Status and Therefore Accepted Excessive Contributions

“An [IEOPC] may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.”³⁸ IEOPCs are permitted to solicit and accept unlimited contributions from individuals, political committees, corporations, or labor organizations *contingent* on not making monetary or in-kind contributions (including coordinated communications) to any other political committee or organization.³⁹ Absent IEOPC status and associated benefit of accepting unlimited contributions, unauthorized committees are otherwise prohibited from knowingly accepting contributions in excess of \$5,000 per person in a calendar year.⁴⁰

Our American Century declared in its initial Statement of Organization that it intended “to make independent expenditures and, consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. SEC*, . . . to raise funds in unlimited amounts from individuals and corporations.”⁴¹ It further represented that it “will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.”⁴²

As explained above, Our American Century made an in-kind contribution to the Trump Committee by republishing “As per your request, Joe...” The Complaint alleges that because

³⁸ Advisory Opinion 2017-10 at 2 (Citizens Against Plutocracy) (internal quotations removed) (citing Advisory Opinion 2016-21 at 3-4 (Great America PAC)).

³⁹ See Advisory Opinion 2010-11 at 2 (Commonsense Ten).

⁴⁰ 52 U.S.C. § 30116(a)(1)(C), (f).

⁴¹ Our American Century, Statement of Organization (Oct. 11, 2012).

⁴² *Id.*

1 Our American Century made contributions to a candidate’s campaign committee, it was not
2 entitled to raise funds in unlimited amounts and that, as a result, Our American Century violated
3 the excessive contribution prohibition when it accepted contributions in excess of \$5,000 during
4 the 2020 election cycle.⁴³ In its Response, Our American Century contends that it “never
5 engaged in any activity that even resembles either direct or indirect contributions to any federal
6 (or otherwise) candidate committees,” and that it was permitted to pay for the republication of
7 these materials without making a contribution to the Trump Committee.⁴⁴ As noted above, the
8 available information does not suggest that Our American Century coordinated or otherwise
9 communicated with the Trump Committee about republishing the video, and Our American
10 Century maintains that it believed it was not making a contribution to the Trump Committee
11 when it republished the video.

12 The Commission dismisses as a matter of prosecutorial discretion⁴⁵ the allegation that
13 Our American Century accepted excessive contributions in violation of 52 U.S.C. § 30116(f) and
14 11 C.F.R. § 110.9.

⁴³ Compl. ¶¶ 23-25.

⁴⁴ See Resp. at 1-2.

⁴⁵ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Make America Great Again PAC and Bradley T. MUR 7867
Crate in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”), which alleges violations of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint in this matter alleges that Our American Century PAC and Cabell Hobbs in his official capacity as treasurer (“Our American Century”) made an excessive and unreported in-kind contribution to Make America Great Again PAC f/k/a Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”) by republishing in full a video created by the Trump Committee, which at the time was the authorized committee of 2020 presidential candidate Donald J. Trump. These factual allegations also raise questions regarding whether the Trump Committee knowingly accepted and failed to report the in-kind contribution from Our American Century. The Trump Committee argues that it did not accept a contribution from Our American Century because of the lack of any coordination.

As set forth below, the available information indicates that, on October 23, 2020, Trump tweeted a link to a video the Trump Committee posted on YouTube titled, “As per your request, Joe” The 50-second video consisted of clips of Trump and Biden and concluded with a Trump Committee logo and slogan as well as a disclaimer stating that the video was “[p]aid for by Donald J. Trump for President, Inc.” Within hours, Our American Century purchased Google advertisements republishing in full the same Trump Committee video, including the original

1 disclaimer. The advertisements purchased by Our American Century ran from October 23, 2020,
2 to October 30, 2020, and were shown to Google users in Arizona, Michigan, Ohio, and
3 Pennsylvania. Google's Transparency Reports website indicates that Our American Century
4 paid between \$5,100 and \$251,000 for these advertisements.

5 There is no available information indicating that the Trump Committee coordinated with
6 Our American Century regarding the republication, and Trump Committee disputes any such
7 allegation. As such, the Commission dismisses the allegation that the Trump Committee
8 violated 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 104.3(a) and 110.9 by knowingly
9 accepting and failing to report an excessive in-kind contribution.

10 **II. FACTUAL BACKGROUND**

11 Our American Century is an independent expenditure-only political committee
12 ("IEOPC") that first registered with the Commission in 2012.¹ During the 2020 election cycle,
13 Our American Century made \$5.5 million in independent expenditures, all between September
14 18 and October 30, 2020, to Old Town Digital Agency LLC for "digital media" in support of
15 Trump or in opposition to his opponent, Joseph R. Biden.² Make America Great Again PAC is a
16 nonconnected political action committee; Bradley T. Crate is its treasurer.³ During the 2020
17 election, the committee operated with the name Donald J. Trump for President and served as the
18 authorized committee of Trump's 2020 presidential campaign.⁴

¹ Geaux PAC, Statement of Org. (Oct. 17, 2012). Geaux PAC changed its name to Our American Century in 2017. Our American Century, Am. Statement of Org. (Feb. 15, 2017).

² Our American Century, October 2020 Report at 8-9 (Oct. 20, 2020); Our American Century, 2020 Post-General Report at 11-13 (Dec. 3, 2020).

³ Trump Committee, Amended Statement of Org. (Feb. 27, 2021).

⁴ Trump Committee, Amended Statement of Organization (Mar. 4, 2020).

On October 23, 2020, Trump tweeted a link to a video on his YouTube page, titled “As per your request, Joe...”⁵ The 50-second video, which was created by the Trump Committee, consists of a clip from one of the presidential debates between Trump and Biden and various clips featuring Biden, and it concludes with a Trump 2020 campaign logo and slogan, “Keep America Great,” as well as the disclaimer: “Paid for by Donald J. Trump for President, Inc.”⁶ There is also a red banner across the top of screen with the words “Text TRUMP To 88022” that runs throughout the video.⁷

Shortly after Trump’s tweet, Our American Century made six ad buys from Google to display the full “As per your request, Joe ...” video created by the Trump Committee.⁸ The ads were visible to Google users in Arizona, Ohio, Pennsylvania, and Michigan between October 23 and 30, and cost between \$5,100 and \$251,000.⁹ Specifically, according to the information available from Google’s Transparency Reports website, five of the six purchases cost between

⁵ Internet Archive, WAYBACK MACHINE, <https://archive.org/details/twitter-1319491234042269696> (October 23, 2020, post by Donald J. Trump (@realdonaldtrump) on Twitter at 3:15PM).

⁶ Donald J. Trump, *As per your request, Joe...*, YOUTUBE (Oct. 23, 2020) https://www.youtube.com/watch?v=NnrEh9_5_9I.

⁷ *Id.*

⁸ Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR357180131854254080> (first ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR498269463930470400> (second ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR371102148085153792> (third ad purchase in Arizona); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR502843432302018560> (ad purchase in Michigan); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR45376226403024896> (ad purchase in Pennsylvania); Google Transparency Report, <https://transparencyreport.google.com/political-ads/advertiser/AR309697722208747520/creative/CR330228902834208768> (ad purchase in Ohio) (collectively, “Google Transparency Reports”). Google’s Transparency Report does not indicate on what platform or website the ads were distributed.

⁹ Google Transparency Reports.

\$1,000 and \$50,000, while the sixth cost between \$100 and \$1,000.¹⁰ The ads, which duplicated in full the video posted on Trump’s YouTube page and link back to Trump’s YouTube page, contained the disclaimer for the Trump Committee originally in the video and did not contain a disclaimer specific to Our American Century.

The Complaint argues that Our American Century republished campaign materials created by the Trump Committee, thereby making an unreported and excessive in-kind contribution of up to \$251,000 dollars to the Trump Committee—or more if Our American Century republished the advertisement through other platforms that do not provide similar public information as does Google.¹¹

The Trump Committee’s Response contends that the Complaint neither alleges that it coordinated with Our American Century nor contains factual information suggesting that it had.¹² It further represents that “the Campaign and its personnel understand and have been trained on the rules governing improper ‘coordination’ with outside groups, and the Campaign takes its compliance with those requirements seriously.”¹³

III. LEGAL ANALYSIS

A candidate, candidate’s authorized committee, or agent who prepared campaign materials does not accept an in-kind contribution from a person who republishes those materials

¹⁰ Google’s Transparency Report website shows that Our American Century spent \$271,500 in total to purchase 353 ads through Google in 2020. Google Transparency Reports, https://transparencyreport.google.com/political-ads/advertiser/AR30969772208747520?advertiser_spend_over_time=start:1577836800000;end:1609459199999&lu=advertiser_spend_over_time (showing all advertisements purchased by Our American Century during 2020). The majority of these ad purchases were for banner ads. *Id.*

¹¹ Compl. ¶ 21.

¹² Resp. at 1-2 (Jan. 7, 2021).

¹³ *Id.* at 1.

unless the republication is a “coordinated communication.”¹⁴ If a candidate’s authorized committee accepts such an in-kind contribution, then its treasurer must disclose the identification of the contributor so long as their aggregate contributions exceed \$200 for the election cycle, together with the date and amount of any such contribution.¹⁵ Under Commission regulations, a communication is a “coordinated communication” when it: (1) is paid for by a third party; (2) satisfies one of five “content” standards; and (3) satisfies one of five “conduct” standards.¹⁶

Here, there is no basis to infer that the conduct prong was satisfied. The Complaint does not allege any specific facts to suggest coordination, and both Respondents dispute that any coordination occurred.¹⁷ Our American Century purchased the ads just two hours after Trump tweeted the video, but this alone is insufficient to infer coordination with the Trump Committee given the ease with which Our American Century presumably could republish a video that was already available on Google’s website, YouTube.

Given the lack of information suggesting coordination, the Commission dismisses the allegation that the Trump Committee violated 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 104.3(a) and 110.9 by accepting and failing to report excessive contributions from Our American Century.

¹⁴ 11 C.F.R. § 109.23(a) (citing 11 C.F.R. § 109.21).

¹⁵ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

¹⁶ 11 C.F.R. § 109.21(a) (referencing content and conduct standards at 11 C.F.R. § 109.21(c) and (d), respectively)). In addition, for republication of campaign materials, three of the conduct prong standards must involve conduct “that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished.” *Id.* § 109.21(d)(6).

¹⁷ *Supra* notes 11-13 and accompanying text.