

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7870

DATE COMPLAINT FILED: January 12, 2021
DATE OF NOTIFICATIONS: January 14, 2021
LAST RESPONSE RECEIVED: March 26, 2021
DATE ACTIVATED: November 17, 2021
EXPIRATION OF SOL: August 18, 2025-
November 3, 2025
ELECTION CYCLE: 2020

COMPLAINANT: Tony McDonald

RESPONDENTS: Google LLC
Biden for President and Andrea Wise in her
official capacity as treasurer

RELEVANT STATUTE AND REGULATIONS:	52 U.S.C. § 30118(a) 11 C.F.R. § 114.2 11 C.F.R. § 109.20
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INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

29 The Complaint in this matter alleges that Google LLC (“Google”) made prohibited in-
30 kind corporate contributions to Biden for President and Andrea Wise in her official capacity as
31 treasurer (the “Biden Committee”) by coordinating with the Biden Committee to support 2020
32 presidential candidate Joe Biden. Specifically, the Complaint alleges that Google deliberately
33 altered its algorithms and protocols to depress internet traffic to some content and determined
34 whether Google users could see news articles. The Complaint further alleges that these actions
35 were intentionally calculated to influence the 2020 election based on the company’s alleged goal
36 of aiding Biden’s campaign and that Google coordinated these activities with the Biden

1 Committee through an unspecified number of Google employees serving as advisors to the Biden
2 Committee. The Responses from Google and the Biden Committee deny the allegations, with
3 Google arguing primarily that its operations are motivated by commercial considerations and the
4 Biden Committee arguing that the Complaint does not credibly allege any coordination.

5 As explained below, the Complaint lacks specific facts to support the allegations that
6 Google altered its algorithms or displayed certain content for the purpose of influencing an
7 election. Moreover, the Response from Google sets forth a credible explanation that it operated
8 its technologies for *bona fide* commercial reasons. Further, there is no information indicating
9 that Google's alleged actions were coordinated with Biden or the Biden Committee within the
10 meaning of the Act. For these reasons, we recommend that the Commission find no reason to
11 believe that Google LLC made, or that the Biden Committee knowingly accepted, prohibited in-
12 kind corporate contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2.

13 **II. FACTUAL BACKGROUND**

14 Google operates both the Google internet search engine ("Search") and the YouTube
15 internet video streaming platform ("YouTube"), and has more than one billion users across the
16 world.¹ Both Search and YouTube generate revenue by selling paid advertising and other
17 sponsored content on their platforms so that consumers can use the products for free.² Biden for
18 President was the authorized campaign committee for Joseph Biden during the 2020 presidential
19 election and Andrea Wise is its current treasurer.³

¹ Google Resp. at 3 (Mar. 26, 2021).

² *Id.* at 3.

³ Biden for President, Am. Statement of Organization at 1 (May 18, 2021).

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1 The Complaint alleges that Google influenced the 2020 Presidential election by altering
 2 its search results in a way that favored Biden, including “altering its algorithms to suppress
 3 conservative and pro-Trump podcasts, YouTube channels, and videos.”⁴ The Complaint also
 4 alleges that Google used “demonetization and Restricted Mode,”⁵ but does not explain how. In
 5 addition, the Complaint alleges that Google “[d]etermined whether a news source is credible or
 6 hate speech in order to further Democratic aims and elect Joe Biden.”⁶ The Complaint argues
 7 that these actions were coordinated with the Biden Committee because “at least eight people
 8 who work for Facebook, Amazon, Google and Apple” sat on Biden’s Innovation Policy
 9 Committee.⁷ The Complaint also alleges that Google is biased against Donald Trump, Biden’s
 10 2020 general election opponent, citing to an undercover video of a Google executive allegedly
 11 saying that Google was working to “prevent[] the next Trump situation.”⁸

12 In its Response, Google denies that it made prohibited contributions to the Biden
 13 Committee because the Complaint describes purely commercial activity that does not meet the
 14 statutory definition of a contribution.⁹ Google states that it “operates, and its products function,
 15 in a completely apolitical manner. . . . Search and YouTube display content from, and sell
 16 advertising to, billions of users, including among them political users of all forms and beliefs.”¹⁰

⁴ Compl. at 2 (Jan. 12, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1 (citing David McCabe and Kenneth P. Vogel, “Big Tech Makes Inroads With the Biden Campaign,” N.Y. TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/technology/big-tech-biden-campaign.html>).

⁸ “Insider Blows Whistle & Exec Reveals Google Plan to Prevent ‘Trump situation’ in 2020 on Hidden Cam,” Project Veritas (June 24, 2019), <https://www.projectveritas.com/news/insider-blows-whistle-exec-reveals-google-plan-to-prevent-trump-situation-in-2020-on-hidden-cam/> (cited by Complaint at 2 n.7).

⁹ Google Resp. at 8.

¹⁰ *Id.* at 3.

1 Google argues that for commercial reasons, it has chosen to analyze and filter content to improve
 2 the user experience.¹¹ Google states that its policies seek to “distinguish between providing
 3 access to a diversity of voices and limiting harmful content and behaviors” and to protect its
 4 brand reputation by prohibiting content that could mislead users, including “misinformation
 5 about election processes or results.”¹² Google asserts that, at the scale of its operation,
 6 enforcement of its policies requires both manual and automated efforts.¹³ For example, Google
 7 states that in 2019 it blocked and removed roughly 2,700,000,000 advertisements for violating its
 8 policies.¹⁴ Google uses input on its services from human “raters” recruited from across the
 9 United States without regard to political orientation.¹⁵ These raters flag content that is
 10 misleading or offensive, but Google uses this information only to evaluate the effectiveness of its
 11 algorithms.¹⁶ Google states that, with very narrow exceptions, it “does not manually intervene in
 12 any particular Search result.”¹⁷

13 In addition, Google explains that Search will display “fact checks” in connection with
 14 certain search results.¹⁸ The company argues, however, that these fact checks are merely created
 15 by third parties, “similar to the summaries of websites and pages that are displayed for any
 16 search” and that “Google does not create, endorse, or influence any of these fact checks.”¹⁹ The

11 *Id.*

12 *Id.* at 3, 8-9.

13 *Id.*

14 *Id.* at 3.

15 *Id.* at 4.

16 *Id.*

17 *Id.* at 5 (“Content is removed from organic Search results only in very limited circumstances, such as a court order, valid Digital Millennium Copyright Act takedown notice, or violation of Google’s webspam policies.”).

18 *Id.*

19 *Id.*

1 Response asserts that Search will automatically show a summary of that fact check if the
 2 publisher in question satisfies certain criteria, such as being a “trusted source of information” as
 3 determined by Google’s algorithms.²⁰

4 In response to the Complaint’s allegation that Google used its tool of “demonetization”
 5 on YouTube to influence the 2020 presidential election, Google asserts that it merely applied
 6 generally applicable terms of services.²¹ Google states that Creators that seek to generate
 7 income through advertising and monetize their content on YouTube must adhere to the
 8 platform’s generally applicable monetization policies.²² Violations of those such policies will
 9 result in “demonetization,” where creators no longer have the ability to earn income through paid
 10 ads in their videos.²³ Google states that these policies are apolitical and apply to all creators, and
 11 the enforcement of such policies concerning monetization taken in the ordinary course of
 12 business are not contributions.²⁴

13 Finally, the Complaint argues that Google used its tool of “Restricted Mode” to influence
 14 the election.²⁵ Google explains, however, that “Restricted Mode is an optional feature that
 15 individual YouTube users may choose to enable to help screen out potentially mature content
 16 and that “political affiliation is not factored into the Restricted Mode filter.”²⁶ Google also states
 17 that only “a small subset” of YouTube users have enabled Restricted Mode.²⁷

²⁰ *Id.*

²¹ *Id.* at 9.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 9.

²⁵ Compl. at 2.

²⁶ Google Resp. at 6.

²⁷ *Id.* at 14.

1 The Biden Committee likewise denies the allegations and argues that the Complaint
 2 alleges no facts that would tend to show any coordination.²⁸ Specifically, in response to the
 3 Complaint's allegation about Google employees serving on Biden's Innovation Policy
 4 Committee, the Biden Committee's Response states that this handful of employees were part of a
 5 nearly 700-member volunteer advisory group for Biden.²⁹

6 **III. LEGAL ANALYSIS**

7 **A. Relevant Law**

8 The Act prohibits corporations from making contributions to federal candidates, and
 9 likewise bars candidates, political committees (other than independent expenditure-only political
 10 committees and committees with hybrid accounts), and other persons, from knowingly accepting
 11 or receiving corporate contributions.³⁰

12 Under the Act, a "contribution" includes "any gift, subscription, loan, advance, or deposit
 13 of money or anything of value made by any person for the purpose of influencing any election
 14 for Federal office.³¹ The term "anything of value" includes "all in-kind contributions."³² In-
 15 kind contributions include "coordinated expenditures," that is, expenditures "made by any person
 16 in cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate,
 17 his [or her] authorized committees, or their agents."³³ Under Commission regulations, a
 18 communication is coordinated and thus treated as an in-kind contribution when it is: (1) paid for

²⁸ Resp. of Biden Committee at 2-5 (Mar. 1, 2021).

²⁹ *Id.* at 2.

³⁰ 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).

³¹ 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

³² 11 C.F.R. § 100.52(d).

³³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

1 by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of five conduct
 2 standards.³⁴ In-kind contributions also include “provision of any goods or services without
 3 charge or at a charge that is less than the usual and normal charge for such goods or services.”³⁵

4 The Commission has concluded that a commercial vendor providing services to political
 5 committees will not make a contribution for the purpose of influencing an election when its
 6 business activity “reflects commercial considerations and does not reflect considerations outside
 7 of a business relationship.”³⁶ A commercial vendor need not make its services available to
 8 committees representing all political ideologies, but rather may establish objective business
 9 criteria to protect commercial viability of its business without making contributions to the
 10 committees that meet those criteria.³⁷

11 The Commission has long considered activity engaged in for *bona fide* commercial
 12 reasons not to be “for the purpose of influencing an election,” and thus, not a contribution or

³⁴ 11 C.F.R. § 109.21(a).

³⁵ *Id.* § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

³⁶ Advisory Opinion (“AO”) 2012-31 (AT&T) at 4.

³⁷ AO 2004-06 (Meetup) at 1 (explaining that a corporation may provide goods and services to political committees without being considered to have made an in-kind contribution so long as it does so “on the same terms and conditions available to all similarly situated persons in the general public”); AO 2012-26 (Cooper for Congress, *et al.*) at 10 (concluding that no contribution to committee resulted where its participation in a text message fundraising program was subject to “objective and commercially reasonable” criteria).

1 expenditure under section 30118(a).³⁸ This is true even if a candidate benefitted from the
 2 commercial activity.³⁹

3 **B. The Commission Should Find No Reason to Believe That Google Made, or the**
 4 **Biden Committee Accepted, a Prohibited Contribution**

5 The Complaint alleges that Google made prohibited in-kind corporate contributions to
 6 Biden and the Biden Committee by altering its algorithms and protocols to depress internet
 7 traffic to some content and determining whether Google users could see news articles.⁴⁰ Yet, the
 8 Complaint's allegations are vague and speculative, and Google's Response suggests a more
 9 likely, non-political explanation of its actions. Google's actions at issue in this matter appear to
 10 constitute *bona fide* commercial activity and not contributions. In recent matters involving large
 11 technology companies, the Commission has considered whether the company's actions were
 12 intended to improve the user experience and protect advertising revenue rather than influence an
 13 election.⁴¹ Here, the Response from Google provides a thorough explanation of the ways in

³⁸ See, e.g., Factual & Legal Analysis at 4, MUR 6586 (World Wrestling Entertainment, Inc.) (finding that the WWE acted with the “sole intent to defend its business reputation” and not for the purpose of influencing an election when the WWE’s senior vice president sent a letter to a newspaper seeking a retraction of a negative article about Senate candidate Linda McMahon, who owned and served as CEO of the WWE); First Gen. Counsel’s Rpt. at 13, MUR 5474 (Dog Eat Dog Films, *et al.*) (determining that distributors and marketers of *Fahrenheit 9/11* film did so “in connection with *bona fide* commercial activity and not for the purpose of influencing an election”) (Commission voted to approve no reason to believe recommendations); AO 2012-11 (Microsoft Corp.) (concluding that commercially reasonable efforts “to protect [Microsoft’s] brand reputation” by providing election-sensitive customers with free account security services are not an in-kind contribution).

³⁹ See First Gen. Counsel’s Rpt. at 16, MUR 3622 (The Clinton/Gore ‘92 Committee) (“[T]he fact that any of these candidates . . . may have received an indirect benefit (dissemination of their political positions) as a result of the sale of these tapes does not convert commercial activity into a corporate contribution.”) (Commission voted to approve no reason to believe recommendation); Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*) (opining that the “question under the Act is whether the legal services were provided for the purpose of influencing a federal election, not whether they provided a benefit to Van Hollen’s campaign,” and concluding there was no contribution given the “absence of any objective or subjective indication” respondents acted for the purpose of influencing the election).

⁴⁰ See Compl. at 1-2.

⁴¹ See, e.g., Factual and Legal Analysis at 8-10, MUR 7807 (Snap Inc., *et al.*) (finding enforcement of respondent’s Community Guidelines constituted *bona fide* commercial activity); Factual and Legal Analysis at 14, MURs 7821, 7827 & 7868 (Twitter, Inc., *et al.*) (finding that respondent’s policy of removing misinformation was

1 which Google operates its technologies for filtering content on the Internet to provide a more
2 attractive service to users.⁴² Google has presented a credible argument that it acted at all relevant
3 times with a commercial purpose, and nothing in the Complaint provides a reasonable inference
4 to conclude otherwise.

5 The Complaint appears to argue that Google's updates to its algorithms, its display of
6 "fact-checks," and policies regarding monetization amounted to a prohibited contribution to the
7 Biden Committee.⁴³ The Complaint does not, however, provide specific information or cite
8 sources that credibly support these general allegations. Therefore, as explained below, the
9 information before the Commission does not provide a reasonable basis to conclude that
10 Google's alleged actions were made for the purpose of influencing a federal election. Neither
11 the Complaint nor other available information indicate that Google's actions, as alleged, was
12 motivated by something other than a commercial interest.

13 As an initial matter, there is nothing in the current record to indicate that Google deviated
14 from its normal protocols for updating its algorithms and the asserted commercial purposes. As
15 described above, Google states that it seeks to combat "material that is excessively violent,
16 unlawful, deceptive, or obscene" for the purpose of protecting and enhancing the user
17 experience.⁴⁴ Moreover, its Response provides extensive information about how Google
18 implements these policies in a broadly applicable manner without regard to political affiliation.⁴⁵

for commercial purposes); Factual and Legal Analysis at 14, (MURs 7812, 7825 & 7869 (Facebook, Inc., *et al.*) (finding respondent's application of fact checking program was consistent with its commercial purpose).

⁴² Google Resp. at 3-7.

⁴³ Compl. at 2 ("Google also, on information and belief, determined whether a news source is credible or hate speech in order to further Democratic aims and elect Joe Biden.").

⁴⁴ Google Resp. at 3.

⁴⁵ *Id.* at 3-6.

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1 The Complaint argues that Google's purpose was electoral, apparently based on a video
 2 of a Google executive reportedly implying that Google was working to "prevent[] the next
 3 Trump situation."⁴⁶ It is not clear, however, what the executive meant by "Trump situation" and,
 4 in context, the statement is insufficient evidence of a company-wide mission to influence the
 5 election. The Complaint also cites a news article alleging that Google made manual adjustments
 6 to its algorithms, which in turn influenced Search results.⁴⁷ That article, however, only describes
 7 "internal discussions and lists related to how Google determines whether news sources are
 8 credible or contain hate speech" and a technology for ranking recommendations,⁴⁸ neither of
 9 which supports an inference that Google used these technologies for the purpose of aiding the
 10 Biden Committee. Moreover, as described above, Google's Response explains in detail how the
 11 company routinely makes these kinds of updates, and nothing in the article appears inconsistent
 12 with Google's explanation of its commercial purpose. Accordingly, without more, this
 13 information appears to be of limited value and does not provide indication of a political purpose
 14 underlying Google's algorithm updates or its display of fact checks in Search results.

15 Google's policies regarding monetization and Restricted Mode also appear to constitute
 16 *bona fide* commercial activity because Google appears to have articulated a credible commercial
 17 purpose behind these policies — that is, to "to protect and enhance the user experience" by
 18 ensuring content creators abide by Google's generally applicable terms of service and offering

⁴⁶ "Insider Blows Whistle & Exec Reveals Google Plan to Prevent 'Trump situation' in 2020 on Hidden Cam," Project Veritas (June 24, 2019), <https://www.projectveritas.com/news/insider-blows-whistle-exec-reveals-google-plan-to-prevent-trump-situation-in-2020-on-hidden-cam/>.

⁴⁷ Compl. at 2 (citing Lauren Feiner, "Trump Tweets Without Evidence that Google 'Manipulated' Votes in the 2016 Election and 'Should Be Sued,'" CNBC (Aug. 19, 2019), <https://www.cnbc.com/2019/08/19/trump-claims-google-manipulated-votes-after-internal-docs-leak.html> [hereinafter CNBC Article]).

⁴⁸ CNBC Article.

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1 users a way to screen out potentially mature content.⁴⁹ This is similar to commercial
 2 explanations the Commission has accepted from other technology companies for broadly
 3 applicable policies aimed at enhancing the user experience.⁵⁰ In these matters, the Commission
 4 did not find reason to believe that companies violated the Act when they enforced commercially
 5 motivated policies. In this case, the Complaint does not support an inference that Google did
 6 anything more than enforce preexisting, apolitical policies. Accordingly, there is no basis in the
 7 record to doubt Google's commercial motives.

8 Finally, there is no indication that Google coordinated its activities with Biden or his
 9 campaign. The Complaint points to Biden's Innovation Policy Committee including "at least
 10 eight people who work for Facebook, Amazon, Google and Apple."⁵¹ But there is no specific
 11 information as to how any of those individuals, who are unidentified, enabled Google to use its
 12 company resources to support the Biden Committee. Accordingly, this information does not
 13 provide a reasonable basis to infer that the Biden Committee coordinated with Google regarding
 14 the specific activities alleged in the Complaint.⁵²

15 In conclusion, the available information indicates that the actions taken by Google to
 16 reduce the distribution of potential misinformation appear to reflect commercial considerations,
 17 rather than an effort to influence a federal election. Moreover, there is no basis to reasonably
 18 conclude that Google coordinated its activities with the Biden Committee. Therefore, we

⁴⁹ Google Resp. at 3, 6.

⁵⁰ *See supra* note 41.

⁵¹ Compl. at 1. *But see* Resp. of Biden Committee at 4 (noting that the Innovation Policy Committee included nearly 700 members and was a "volunteer advisory group").

⁵² *See* Factual and Legal Analysis at 17, MUR 7812, 7825 & 7869 (Facebook, Inc., *et al.*) (rejecting identical argument that technology company employees serving on Biden's Innovation Policy Committee could raise a reasonable inference of coordination).

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1 recommend that the Commission find no reason to believe that Google violated 52 U.S.C.
2 § 30118(a) and 11 C.F.R. § 114.2(b) by making a prohibited in-kind contribution to the Biden
3 Committee and find no reason to believe that the Biden Committee violated 52 U.S.C.
4 § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting or receiving such a contribution.

5 **IV. RECOMMENDATIONS**

6 1. Find no reason to believe that Google LLC violated 52 U.S.C. §30118(a) and
7 11 C.F.R. § 114.2(b) by making prohibited in-kind contributions;
8 2. Find no reason to believe that Biden for President and Andrea Wise in her official
9 capacity as treasurer violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by
10 knowingly accepting or receiving prohibited in-kind corporate contributions;
11 3. Approve the attached Factual and Legal Analysis;
12 4. Approve the appropriate letters; and
13 5. Close the file.

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15 Lisa J. Stevenson
16 Acting General Counsel
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