



FEDERAL ELECTION COMMISSION
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 7943
 Common Good Virginia and Lillie Louise Lucas,)
 in her official capacity as treasurer, *et al.*)
)

**SUPPLEMENTAL STATEMENT OF REASONS OF
 VICE CHAIRMAN SEAN J. COOKSEY**

I voted to find no reason to believe that the Respondents in this matter made prohibited in-kind contributions through coordinated email communications or violated federal limits on soft-money solicitations.¹ And I joined the principal Statement of Reasons with my colleagues explaining the Commission’s reasoning for that result, which provided, in part:

While the Commission has found that a mailing list is a valuable asset, nothing in the record suggests that Common Good transferred its mailing list to the Committee. ... Further, assuming *arguendo* that the Committee received a small value from Common Good, the Committee provided Common Good a similarly small value by allowing Common Good to use Demings’s name recognition and reputation in an effort to bolster the effectiveness of the solicitations. Under these circumstances, we do not believe that Demings’s participation in the email solicitation constituted an in-kind contribution from Common Good to the Committee, and even if there was a small value, we would find that Common Good received adequate consideration from the Committee by way of Demings’s participation in the solicitation.²

That is correct, as far as it goes. But I would go further.

Under the Commission’s internet exemption, the emails at issue are exempt from the definitions of “electioneering communication” and “public communication,” and as a result, they cannot be coordinated communications.³ For the internet exemption to be effective, however, it must encompass more than the discrete act and *de minimis* cost of sending the emails themselves.


¹ Certification (June 22, 2023), MUR 7943 (Common Good Virginia, *et al.*).

² Statement of Reasons of Chair Lindenbaum, Vice Chairman Cooksey, Commissioner Dickerson, and Commissioner Trainor at 3–4 (July 21, 2023), MUR 7943 (Common Good Virginia, *et al.*).

³ See 11 C.F.R. §§ 100.26, 100.29, 109.21(c).

Related expenses—the computer equipment and services, the drafting and design of the content, the maintenance or use of a list of email recipients, and so on—must also be exempted from treatment as in-kind contributions or expenditures if the communications they support are themselves exempted.⁴

As a result, while I agree with the principal Statement of Reasons’ analysis, I also believe it should be broader. I would adopt the reasoning past Commissioners have set out concerning the internet exemption’s scope.⁵ Even if Common Good Virginia had incurred significant input costs to produce and send the coordinated emails—and even if Demings had provided no offsetting value—those costs would still not constitute an in-kind contribution because they were incurred in support of exempted email communications.



 Sean J. Cooksey
 Vice Chairman

July 24, 2023
 Date

⁴ See, e.g., Factual & Legal Analysis at 4–6 (Sept. 17, 2013), MUR 6657 (Akin for Senate) (concluding that coordinated internet communications were not in-kind contributions despite “significant related expenses”); Factual & Legal Analysis at 3, 7–8 (July 17, 2012), MUR 6477 (Turn Right USA) (finding no coordinated communication because the video uploaded to internet for free was not a “public communication,” despite costing \$5,800 to produce). See also Advisory Op. 2008-10 (VoterVoter.com) at 7 (“The costs incurred by an individual in creating an ad will be covered by the Internet exemption from the definition of ‘expenditure’ as long as the creator is not also purchasing TV airtime for the ad he or she created.”).

⁵ See Statement of Reasons of Vice Chairman Petersen and Commissioner Hunter at 12–18 (Aug. 21, 2019), MURs 6940, 7097, 7146, 7160, & 7193 (Correct the Record, *et al.*).