



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**BY EMAIL ONLY**

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February 15, 2022

Caleb P. Burns  
Andrew G. Woodson  
Wiley Rein LLP  
2050 M St NW,  
Washington, DC 20036

Re: MUR 7998  
Fox News Network, LLC

Dear Messrs. Burns and Woodson:

On May 18, 2022, the Federal Election Commission ("Commission") notified your client, Fox News Network, LLC of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 7, 2023, based on the information provided in the complaint, and information provided by you, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations as to Protect Ohio Values PAC and Vicki J. Hoffman in her official capacity as treasurer. The Commission then closed its file in this matter. A copy of the General Counsel's Report, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). If you have any questions, please contact Roy Q. Luckett at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

*Roy Q. Luckett*

BY: Roy Q. Luckett  
Acting Assistant General Counsel

Enclosure:  
General Counsel's Report

**BEFORE THE FEDERAL ELECTION COMMISSION**

**ENFORCEMENT PRIORITY SYSTEM**

**DISMISSAL REPORT**

**MUR 7998**

**Respondents:** Fox News Network, LLC  
 JD Vance for Senate Inc. and  
 Lisa Lisker in her official  
 capacity as treasurer  
 Protect Ohio Values PAC (POV  
 PAC) and Vicki J. Hoffmann in  
 her official capacity as treasurer  
 Ohioans for JD and Lisa Lisker in  
 her official capacity as treasurer

**Complaint Receipt Date:** May 16, 2022

**Response Dates:** June 10, 2022; July 1, 2022; July 15, 2022

**Alleged Statutory and  
 Regulatory Violations:**

52 U.S.C. § 30118(a)  
 11 C.F.R. § 114.2(b), (d)

The Complaint suggests that Fox News Network, LLC (“Fox News”) made and JD Vance for Senate Inc. and Lisa Lisker in her official capacity as treasurer (the “Committee”) knowingly accepted or received prohibited in-kind corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaint focuses on a Fox News online article on the fundraising of JD Vance, the Committee’s authorizing candidate, during his 2022 race for U.S. Senate in Ohio.<sup>1</sup> The Complaint contends that the story inflated the amount of money Vance raised, and that the incorrect number likely resulted from communications between Vance and Fox News and was ultimately published without independent verification.<sup>2</sup> As a result,

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<sup>1</sup> JD Vance for Senate Inc., Amended Statement of Organization at 2 (Nov. 28, 2022); see Compl. at 1, 6-9 (May 16, 2022); see Paul Steinhauser, *Ohio Senate Candidate JD Vance Hauls in \$1.75 Million During First 3 Months of his GOP Campaign*, FOX NEWS (Oct. 14, 2021), <https://www.foxnews.com/politics/jd-vance-ohio-senate-campaign-fundraising> (cited by Compl. at 6).

<sup>2</sup> Compl. at 6-7, 9.

1 the Complaint alleges that Vance controlled Fox News.<sup>3</sup> Accordingly, the Complaint argues that  
2 Fox News could not exempt its costs related to covering or carrying the story, and potentially its  
3 coverage of Vance more generally, from regulation as contributions or expenditures under the Act  
4 and the Commission’s regulations.<sup>4</sup> The Complaint also suggests, without elaboration, that Protect  
5 Ohio Values PAC (POV PAC) and Vicki J. Hoffmann in her official capacity as treasurer (“POV”),  
6 a hybrid PAC, and Ohioans for JD and Lisa Lisker in her official capacity as treasurer (“Ohioans for  
7 JD”), a joint fundraising committee, may have had a role in controlling distribution of stories on  
8 Fox News.<sup>5</sup>

9 In response, Fox News contends that it is not owned or controlled by any political party,  
10 committee, or candidate, and that its news stories are covered by the media exemption to the  
11 regulation of contributions and expenditures.<sup>6</sup> Fox News further contends that, even if its reporter  
12 communicated with the Committee about a story, talking with campaign representatives is a  
13 “common journalistic practice and entirely consistent with the [Act’s] media exemption.”<sup>7</sup> The  
14 Committee also contends that Vance did not control Fox News and, further, that the Complaint  
15 offers no evidence indicating that the fundraising story would qualify as a coordinated  
16 communication under the Act.<sup>8</sup> Finally, POV and Ohioans for JD argue that the Complaint  
17 provides no specific information on how they are alleged to have violated the Act.<sup>9</sup>

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<sup>3</sup> *Id.* at 9.

<sup>4</sup> *See id.* at 1, 6-9.

<sup>5</sup> *Id.* at 1; Protect Ohio Values PAC (POV PAC), Amended Statement of Organization at 5 (Nov. 15, 2021); Ohioans for JD, Statement of Organization at 2 (July 1, 2021).

<sup>6</sup> Fox News Resp. at 5-7 (July 15, 2022).

<sup>7</sup> *Id.* at 7. Fox News also argues that the Complaint is insufficient on its face because the allegations it makes are purely speculative. *Id.* at 5.

<sup>8</sup> Committee Resp. at 2-4 (July 1, 2022).

<sup>9</sup> POV Resp. at 1 (June 10, 2022); Ohioans for JD Resp. at 1 (July 1, 2022).

The Act and Commission regulations exclude from the definitions of “contribution” and “expenditure” the costs incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, web site, magazine, or other periodical publication, including an internet or electronic publication, unless the facility is owned or controlled by any political party, political committee, or candidate.<sup>10</sup> Costs covered by this so-called press or media exemption are also exempt from the Act’s disclosure and reporting requirements.<sup>11</sup>

To assess whether the press exemption applies, the Commission uses a two-part test.<sup>12</sup> The first inquiry is whether the entity engaging in the activity is a press or media entity.<sup>13</sup> Next, the Commission determines the scope of the exemption using the two-part analysis from *Reader’s Digest Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the entity is acting within its “legitimate press function” in conducting the activity.<sup>14</sup> An entity otherwise eligible for the press exemption “would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office.”<sup>15</sup>

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<sup>10</sup> 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.73 (excluding *bona fide* news coverage from the definition of “contribution”); *id.* § 100.132 (same as to the definition of “expenditure”).

<sup>11</sup> Advisory Opinion 2011-11 at 6 (Colbert) (“AO 2011-11”); Factual & Legal Analysis (“F&LA”) at 5, MUR 7206 (Bonneville Int’l Corp.).

<sup>12</sup> Advisory Opinion 2008-14 at 4 (Melothe, Inc.) (“AO 2008-14”); F&LA at 5-6, MUR 7515 (CNN Broadcasting, Inc., *et al.*).

<sup>13</sup> AO 2008-14 at 4.

<sup>14</sup> See *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7. When determining whether the entity was acting within the scope of a legitimate press function at the time of the alleged violation, the Commission considers two factors: (1) whether the entity’s materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. F&LA at 4, MUR 7231 (CNN); Advisory Opinion 2016-01 at 3 (Ethiq).

<sup>15</sup> F&LA at 5, MUR 7206 (Bonneville Int’l Corp.) (quotation marks omitted) (quoting Advisory Opinion 2005-16 at 6 (Fired Up)); F&LA at 3, MUR 6579 (ABC News, Inc.).

1           The record indicates that Fox News is a press entity and is not owned by a political party,  
2 political committee, or candidate.<sup>16</sup> As to whether Vance controlled Fox News, the allegation  
3 appears to rest on the Complaint’s premise that Fox News received and published an incorrect  
4 fundraising figure from Vance. But the Complaint offers no information suggesting that Vance, the  
5 Committee, POV, or Ohioans for JD had any role in Fox News’s decision to use that information, or  
6 in any other decisions or operations of Fox News, and a candidate does not control a press entity  
7 merely because it publishes statements the candidate makes.<sup>17</sup> Finally, it appears that when Fox  
8 News disseminated the article about Vance’s fundraising, it was operating within a legitimate press  
9 function.

10           Based on its experience and expertise, the Commission has established an Enforcement  
11 Priority System using formal, pre-determined scoring criteria to allocate agency resources and  
12 assess whether particular matters warrant further administrative enforcement proceedings. These  
13 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity  
14 and the amount in violation; (2) the apparent impact the alleged violation may have had on the  
15 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in  
16 potential violations and other developments in the law. This matter is rated as low priority for  
17 Commission action after application of these pre-established criteria. Given that low rating and the  
18 apparent applicability of the press exemption, we recommend that the Commission dismiss the  
19 Complaint consistent with the Commission’s prosecutorial discretion to determine the proper

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<sup>16</sup> Fox News Resp. at 2, 6 (stating that Fox News is a 24-hour news service that “has been the most watched television news channel for more than 20 consecutive years” and that it is “ultimately owned and controlled by a publicly-traded company, Fox Corporation”); *see* Advisory Opinion 2010-08 at 5 (Citizens United) (stating that to determine whether an entity is a “press entity” the Commission looks to “whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials”).

<sup>17</sup> *See* F&LA at 7, MUR 7515 (CNN Broadcasting, Inc., *et al.*) (finding that CNN was covered by the press exemption when it aired a town hall with a single candidate for U.S. Senate).

ordering of its priorities and use of agency resources.<sup>18</sup> We also recommend that the Commission close the file and send the appropriate letters.


Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel

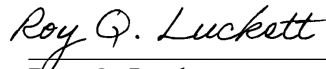
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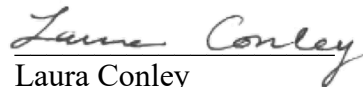
BY:



Claudio J. Pavia  
Deputy Associate General Counsel  
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<sup>18</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).