



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BY EMAIL ONLY

Chris@ashby.law

February 15, 2022

Chris Ashby
Ashby Law PC
625 N. Washington Street, Suite 325
Alexandria, Virginia 22314

Re: MUR 7998
Ohioans for JD, *et al.*

Dear Mr. Ashby:

On May 18, 2022, the Federal Election Commission (“Commission”) notified your clients, Ohioans for JD and Lisa Lisker in her official capacity as treasurer, 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 Ohioans for JD and Lisa Lisker 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. Lockett at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Roy Q. Lockett

BY: Roy Q. Lockett
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.¹ 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.² As a result,

¹ 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).

² Compl. at 6-7, 9.

MUR 7998 (Fox News Network, LLC, *et al.*)

EPS Dismissal Report

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1 the Complaint alleges that Vance controlled Fox News.³ 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.⁴ 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.⁵

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.⁶ 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.”⁷ 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.⁸ 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.⁹

³ *Id.* at 9.

⁴ *See id.* at 1, 6-9.

⁵ *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).

⁶ Fox News Resp. at 5-7 (July 15, 2022).

⁷ *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.

⁸ Committee Resp. at 2-4 (July 1, 2022).

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

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

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

¹⁰ 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”).

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

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

¹³ AO 2008-14 at 4.

¹⁴ *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).

¹⁵ 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.¹⁶ 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.¹⁷ 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

¹⁶ 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”).

¹⁷ *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).

1 ordering of its priorities and use of agency resources.¹⁸ We also recommend that the Commission
2 close the file and send the appropriate letters.

3 Lisa J. Stevenson
4 Acting General Counsel

5
6 Charles Kitcher
7 Associate General Counsel

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9
10 12/14/2022

11 Date

12 BY: 
13 Claudio J. Pavia
14 Deputy Associate General Counsel
15 for Enforcement

16 
17 Roy Q. Luckett
18 Acting Assistant General Counsel

19
20
21 
22 Laura Conley
23 Attorney

¹⁸ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).