

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 **MUR 8056**

6 DATE COMPLAINT FILED: 08/24/2022

7 DATE OF NOTIFICATION: 08/30/2022

8 DATE OF LAST RESPONSE: 10/11/2022

9 DATE ACTIVATED: 01/27/2023

10 EXPIRATION OF SOL: 06/07/2027

11 ELECTION CYCLE: 2022

12
13
14 **COMPLAINANT:**

End Citizens United

15
16 **RESPONDENTS:**

17 Bob Healey for Congress and Ronald R. Gravino in
18 his official capacity as treasurer
19 Viking Yacht Company
20 Robert Healey, Jr.

21 **RELEVANT STATUTES
22 AND REGULATIONS:**

23 52 U.S.C. § 30116

24 52 U.S.C. § 30118(a)

25 52 U.S.C. § 30125(e)

26 11 C.F.R. § 100.26

27 11 C.F.R. § 109.21

28 11 C.F.R. § 109.22

29 11 C.F.R. § 114.9

30 11 C.F.R. § 300.2

31 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

32
33 **FEDERAL AGENCIES CHECKED:**

None

34 **I. INTRODUCTION**

35 The Complaint alleges that Viking Yacht Company (“Viking”), a yacht manufacturer,
36 made prohibited in-kind corporate contributions to the 2022 congressional campaign of its
37 Chairman, Bob Healey, and his principal campaign committee, Bob Healey for Congress and
38 Ronald R. Gravino in his official capacity as treasurer (the “Healey Committee”) in violation of
39 the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also alleges

1 that Viking and Healey violated the soft money restriction on entities established, financed,
2 maintained, or controlled (“EFMC’d”) by a federal candidate using nonfederal funds in
3 connection with an election for federal office. Specifically, the Complaint alleges that Viking,
4 acting under the control of Healey, displayed images and messages on its website advocating for
5 Healey’s election, and that Viking’s logo and facilities appear in a digital advertisement released
6 by the Healey Committee.

7 In their respective Responses, Viking and the Healey Committee deny that the actions
8 described in the Complaint constitute violations of the Act. Respondents confirm that a posting
9 concerning Healey’s candidacy was made on Viking’s website, but claim that the posting merely
10 recognized and congratulated an employee for an accomplishment. The Responses argue that the
11 posting was not made in cooperation, consultation, or concert with Healey, the Healey
12 Committee, or either of their agents, and also deny that the posting qualifies as a communication
13 that expressly advocates Healey’s election. The Responses acknowledge that the Viking logo
14 appears in the digital advertisement discussed in the Complaint, but argue that the value of the
15 logo’s appearance in the advertisement, as well as the value of the web posting, was *de minimis*.
16 The Responses do not discuss the alleged use of Viking facilities to film the Committee’s digital
17 advertisement.

18 As discussed below, the web posting discussed in the Complaint is not an in-kind
19 contribution because it does not satisfy the content prong of the Commission’s coordinated
20 communication test. The Healey Committee’s use of Viking’s logo was likely *de minimis*, and
21 its apparent use of Viking’s facilities and employees to film a campaign advertisement appears to
22 have been similarly limited in scope. Finally, the Complaint’s soft money allegations are
23 duplicative of its corporate contribution allegations.

1 Therefore, we recommend that the Commission: (1) find no reason to believe that Viking
2 made, and the Healey Committee knowingly accepted, a prohibited in-kind contribution in
3 violation of 52 U.S.C. § 30118(a) with respect to Viking's web posting; (2) dismiss, as a matter
4 of prosecutorial discretion, the allegation that Viking made, and the Healey Committee
5 knowingly accepted, a prohibited in-kind contribution in violation of 52 U.S.C. § 30118(a) with
6 respect to the use of Viking's logo and facilities; and (3) dismiss, as a matter of prosecutorial
7 discretion, the allegation that Viking and Healey violated 52 U.S.C. § 30125(e)(1) by using
8 corporate resources to support Healey's election.

9 **II. FACTUAL BACKGROUND**

10 Viking is a yacht manufacturer that was incorporated in New Jersey in 1964.¹ Robert
11 Healey, Jr., a 2022 candidate for New Jersey's 3rd Congressional District, has been the chairman
12 of Viking since October 2007.² Following Healey's victory in the June 2022 primary election,
13 the Complaint alleges that Viking "prominently featured" an image of Healey on the homepage
14 of its website with the caption "Healey for Congress."³ The Complaint states that the website
15 also contained the following message, alongside an image of Healey which was also used as the
16 profile picture for the Healey Committee's Facebook page:

17 Congratulutions to Viking's Bob Healey Jr. He won the Republican nomination
18 for the U.S. House in New Jersey's 3rd Congressional District. Bob is running to
19 improve economic opportunity and affordability, stand with our police and

¹ *Business Name Search*, N.J. DEPT. OF THE TREASURY, <https://www.njportal.com/DOR/BusinessNameSearch/Search/BusinessName> (enter "Viking Yacht Company" in query box) (last visited May 15, 2023).

² *Robert Healey Jr.*, LINKEDIN, <https://www.linkedin.com/in/robert-healey-jr-5055659> (last visited May 15, 2023).

³ Compl. at 3 (Aug. 24, 2022); July 10, 2022 Archive of Viking Yachts, INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20220710165859/https://www.vikingyachts.com/main/main.asp> (last visited May 15, 2023).

1 enhance public safety, strengthen our military and defend our personal liberties
2 and freedoms. Onward to November!”⁴

3 According to the Complaint, this statement closely resembles the following statement posted on
4 the Healey Committee's website:

5 Bob's passion to serve and his mission to help those around him is a driving force
6 in his life. He's running for Congress to improve economic opportunity and
7 affordability, stand with our police and enhance public safety, strengthen our
8 military and the Joint Base, fight against radical liberals and cancel culture, and
9 defend our personal liberties and freedoms.⁵

10 The Complaint also states that the Healey Committee released a digital advertisement
11 which contains scenes from inside a manufacturing facility in which Healey is seen wearing a
12 polo shirt with the Viking logo visible on its front.⁶ The Complaint posits that the manufacturing
13 facility in the advertisement appears to be a Viking facility.⁷

14 The Complaint alleges that the message on Viking's website and the apparent use of
15 Viking logos and facilities violate the Act's prohibition on corporate contributions, as well as the
16 prohibition on soft money expenditures by an entity EFMC'd by a federal candidate.⁸

17 The Healey Committee's Response acknowledges that Healey is the chairman of Viking,
18 and that Viking posted a “congratulatory message talking about a past event,” but argues that the
19 message did not call for the election or defeat of any individual candidate, and asserts that the
20 message was not coordinated with the candidate or his campaign.⁹ The Response acknowledges

⁴ Compl. at 4.

⁵ *Id.*; Main Page, BOB HEALEY FOR CONGRESS, <https://www.bobhealeyfornj.com/> (last visited May 15, 2023).

⁶ Compl. at 5; Bob Healey Jr. for Congress, *Bob Healey: A Force for Good* at 0:17-0:20, YOUTUBE, <https://www.youtube.com/watch?v=aw5kb34imn8> (“YouTube Ad”) (last visited May 15, 2023).

⁷ Compl. at 7.

⁸ *Id.* at 6-8.

⁹ Healey Committee Resp. at 2-3, 5 (Oct. 7, 2022).

1 that a polo shirt bearing its logo can be seen “for a total of four (4) seconds” during the relevant
2 digital advertisement,¹⁰ but states that the writing on the shirt “is not legible for a majority of the
3 four seconds,” and further notes that “neither the word Viking nor the name Viking Yacht
4 Company was spoken during the video.”¹¹ The Response does not address the allegation that
5 Viking facilities may have been used to film the digital advertisement discussed in the
6 Complaint. The Response argues that the Healey Committee did not coordinate, accept, or direct
7 a contribution or in-kind contribution with or from Viking and that Healey did not direct or use
8 the resources of Viking to benefit his candidacy.¹² The Healey Committee’s Response concludes
9 by requesting that the Commission exercise its prosecutorial discretion and dismiss the
10 allegations in the Complaint.¹³

11 Viking’s Response makes substantially the same factual and legal assertions.¹⁴ The
12 Viking Response addresses the web posting, stating only that it “recognized and congratulated an
13 employee for an accomplishment, of its own volition, and without any direction to do so, as is
14 customary for” Viking.¹⁵ The Response states that the image accompanying the web posting
15 “was not prominently featured over any other image” posted on the website.¹⁶ With respect to
16 the digital advertisement allegedly filmed at a Viking facility, Viking’s Response addresses only
17 the logo on Healey’s polo shirt, stating that the logo appears in the video “only for a total of four

¹⁰ These are the same four seconds during which Viking’s employees and facilities are apparently displayed. YouTube Ad at 0:17-0:20.

¹¹ Healey Committee Resp. at 3.

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ *See generally* Viking Resp. (Oct. 11, 2022).

¹⁵ *Id.* at 2.

¹⁶ *Id.*

1 (4) seconds,” and is “not legible for a majority of that time.”¹⁷ Viking’s Response does not
2 address the alleged use of Viking’s facilities to film the digital advertisement. The Response
3 argues that neither the appearance of the Viking logo nor the website post constituted an in-kind
4 contribution to the Healey Committee, and further argues that each of these items was *de minimis*
5 in value.¹⁸ Viking’s Response concludes by requesting that the Commission exercise its
6 prosecutorial discretion and dismiss the allegations contained in the Complaint.¹⁹

7 **III. LEGAL ANALYSIS**

8 **A. The Commission Should Find No Reason to Believe that Viking’s Web Post** 9 **Constituted a Prohibited In-Kind Contribution**

10 An expenditure made by any person “in cooperation, consultation, or concert with, or at
11 the request or suggestion of” a candidate or his or her authorized committee or agent qualifies as
12 an in-kind contribution to the candidate.²⁰ A communication that is coordinated with a candidate
13 or his or her authorized committee is considered an in-kind contribution and is subject to the
14 limits, prohibitions, and reporting requirements of the Act.²¹ Any person, such as a corporation,
15 who is otherwise prohibited from making a contribution under the Act is prohibited from paying
16 for a coordinated communication.²² The Commission’s regulations provide that a
17 communication is coordinated with a candidate, his or her authorized committee, or agent of
18 either, if it meets a three-prong test: (1) it is paid for, in whole or in part, by a person other than
19 the candidate or authorized committee; (2) it satisfies a content standard in 11 C.F.R.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6.

²⁰ 52 U.S.C. § 30116(a)(7)(B)(i).

²¹ 11 C.F.R. § 109.21(b)(1).

²² *Id.* § 109.22.

1 § 109.21(c); and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d).²³ All three prongs
2 must be satisfied for a communication to be considered coordinated.

3 While the payment prong would appear to be satisfied by Viking paying the cost for its
4 website, the available record suggests that the content prong is not satisfied. The content prong
5 can be satisfied in one of five ways.²⁴ The first requires a communication to qualify as an
6 electioneering communication, and the remaining four ways require that a communication be a
7 “public communication.”²⁵ Viking’s website post was not an electioneering communication
8 because “communications over the Internet” are explicitly excluded from the definition of an
9 electioneering communication.²⁶ Further, the Commission’s regulations define a public
10 communication as “a communication by means of any broadcast, cable, or satellite
11 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone
12 bank to the general public, or any other form of general public political advertising,” but the term
13 “general public political advertising” does not include “communications over the internet, except
14 for communications placed for a fee on another person’s website, digital device, application, or
15 advertising platform.”²⁷ Thus, content placed on a person’s own website without payment of a
16 fee is not a “public communication,” and does not satisfy the content prong.

²³ *Id.* § 109.21(a).

²⁴ *Id.* § 109.21(c).

²⁵ *Id.* § 109.21(c)(1)-(5).

²⁶ An electioneering communication means “any broadcast, cable, or satellite communication that: (1) refers to a clearly identified candidate for Federal office; (2) is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate, and the candidate referenced is seeking the nomination of that political party; and (3) is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives.” *Id.* § 100.29(a). “[C]ommunications over the Internet” are exempt from the definition of an electioneering communication. *Id.* § 100.29(c)(1).

²⁷ *Id.* § 100.26.

1 The message at issue appears to have been placed on Viking's own website. Nothing in
2 the record suggests that Viking paid a fee for the placement of the message, and the Commission
3 has interpreted the phrase "placed for a fee" narrowly as to exclude payments for services
4 necessary to make an internet communication.²⁸ Thus, the web posting is not a public
5 communication. A communication that is neither an electioneering communication nor a public
6 communication fails § 109.21(c)'s content prong, and as a result is neither a coordinated
7 communication nor an in-kind contribution.²⁹

8 Accordingly, the Commission should find no reason to believe that Viking made, and the
9 Healey Committee knowingly accepted, a prohibited in-kind corporate contribution in violation
10 of 52 U.S.C. § 30118(a) with respect to Viking's web posting.³⁰

²⁸ Factual & Legal Analysis ("F&LA") at 5-6, MUR 6657 (Akin for Senate) (finding that a political committee's online communications were not "public communications" because they were not placed for a fee on another's website, despite the fact that the committee may have "incurred significant related expenses"); *see* F&LA at 11, MUR 6414 (Carnahan in Congress Committee, *et al.*) (finding that payment for research services used to make website does not result in website being placed for a fee).

²⁹ *See supra* note 28; F&LA at 3-4, MUR 6722/6723 (HMPAC). We have analyzed this web posting under 11 C.F.R. § 109.21 (concerning coordinated communications), rather than 11 C.F.R. § 109.20(b) (concerning coordinated expenditures generally) because this web posting is a communication of the type contemplated by § 109.21. The Commission has stated that 11 C.F.R. § 109.20(b) "addresses expenditures that *are not made for communications* but that are coordinated with a candidate, authorized committee, or political party committee," whereas 11 C.F.R. § 109.21 "specifically address[es] [coordination] in the context of communications." Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (emphasis added).

³⁰ We note that the Complaint did not raise the alternative theory that this web post might instead be analyzed as an unreported independent expenditure. In MURs 7838, 7849, 7852, and 7856 (Expensify, Inc., *et al.*), it was alternatively alleged in separate complaints that an email from a corporation's CEO in support of a federal candidate constituted either an impermissible in-kind contribution or an unreported independent expenditure. F&LA at 1, MUR 7838 (Expensify, Inc., *et al.*). The Commission found no reason to believe an in-kind contribution occurred because, among other reasons, emails are exempted from the definitions of an electioneering communication and public communication, respectively. F&LA at 5-9, MUR 7838. The Commission dismissed as a matter of prosecutorial discretion the alternative allegation that the email may have caused Expensify to cross the independent expenditure reporting threshold. F&LA at 9-11, MUR 7838. In reaching its conclusion, the Commission drew from analysis in the Explanation and Justification ("E&J") for the Commission's coordination rules, which stated "there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients." Internet Communications, 71 Fed. Reg. 18589, 18596 (Apr. 12, 2006) ("Internet Communications E&J"). That same E&J provides relevant analysis in the context of communications placed on a website. In explaining the "placed-for-a-fee" requirement for determining whether web communications are coordinated, the Commission stated "[t]he cost of placing a particular piece of political commentary on the [w]eb is generally

1 **B. The Commission Should Dismiss the Allegation that Viking Made, and the**
 2 **Healey Committee Accepted, a Prohibited In-Kind Contribution of Viking's**
 3 **Logo and Facilities**

4 1. Use of Viking Logo

5 The Act prohibits corporations from making contributions to federal candidates or their
 6 committees, prohibits corporate officers and directors from consenting to such contributions, and
 7 prohibits candidates and political committees from knowingly accepting such contributions.³¹

8 The Act defines a contribution to include “any gift, subscription, loan, advance, or deposit of
 9 money or anything of value made by any person for the purpose of influencing any election for
 10 Federal office.”³² “Anything of value” includes in-kind contributions, such as the provision of
 11 goods or services without charge or at a charge that is less than the usual and normal charge.³³

12 The Commission has previously determined that a corporation's name, trade name, trademarks,
 13 and service marks are also things of value owned by the corporation, and that allowing a
 14 committee to use them in a manner suggesting the corporation's support or endorsement of a
 15 candidate may constitute an in-kind contribution.³⁴

16 The Commission has dismissed allegations regarding the use of corporate logos or
 17 images in campaign advertisements where the use was of *de minimis* value. In MUR 7302 (Tom
 18 Campbell for North Dakota), the Commission dismissed allegations that the appearance of a
 19 corporate logo in the background of advertisements in a \$250,000 statewide television ad

insignificant.” Internet Communications E&J at 18594. Accordingly, even assuming there was express advocacy, it is unlikely that the web post at issue in this case involved significant expenditures, and we therefore have declined to analyze Viking's web post alternatively as an unreported independent expenditure.

³¹ 52 U.S.C. § 30118(a).

³² *Id.* § 30101(8)(A)(i).

³³ 11 C.F.R. § 100.52(d)(1).

³⁴ *See e.g.*, Advisory Opinion 2007-10 at 2-3 (Reyes); F&LA at 4, MUR 7302 (Tom Campbell for North Dakota); F&LA at 7, MUR 6542 (Mullin for Congress).

1 campaign constituted a prohibited in-kind contribution, reasoning that the value of the corporate
2 logo was likely *de minimis*.³⁵

3 The available information appears to support a similarly strong argument for *de minimis*
4 valuation in the instant matter. Both Responses note, and our review of the digital advertisement
5 confirms, that the Viking logo appears in the digital advertisement for approximately four
6 seconds and that the Viking logo is not legible for the majority of those four seconds.³⁶ Thus,
7 the brief appearance of the Viking logo in the Healey Committee's digital advertisement appears
8 to be of *de minimis* value.

9 2. Use of Viking Facilities

10 Commission regulations include a safe harbor for certain uses of corporate facilities.
11 11 C.F.R. § 114.9 enables a corporation's stockholders and employees to make "occasional,
12 isolated, or incidental" use of corporate facilities for individual volunteer activity in connection
13 with a federal election. A stockholder or employee must reimburse the corporation "only to the
14 extent that the overhead or operating costs of the corporation are increased" by the use of the
15 facilities.³⁷ Individual volunteer activity that does not exceed one hour per week or four hours
16 per month is considered to be "occasional, isolated, or incidental."³⁸

17 In MUR 6542 (Mullin for Congress), the Commission exercised its prosecutorial
18 discretion and dismissed allegations that Mullin Plumbing made a prohibited in-kind corporate
19 contribution when it allowed its corporate logos, employees, and facilities to appear in campaign

³⁵ F&LA at 5, MUR 7302 (Tom Campbell for North Dakota); *see also* F&LA at 2, 7-8, MUR 6542 (Mullin for Congress) (finding that the appearance of corporate "storefront images [and] logo-bearing . . . vehicles" in campaign advertisements was likely *de minimis*).

³⁶ Viking Resp. at 3; Healey Committee Resp. at 3.

³⁷ 11 C.F.R. § 114.9(a)(1).

³⁸ *Id.* § 114.9(a)(2)(i).

1 advertisements in support of a federal candidate.³⁹ The respondents in Mullin claimed that the
2 corporation was reimbursed for the use of its facilities, and the Commission found that further
3 analysis of the § 114.9 safe harbor issue would have entailed an investigation into the sufficiency
4 of that reimbursement.⁴⁰ Thus, after determining that the use of Mullin Plumbing's name and
5 logo were likely of *de minimis* value, the Commission determined that it would not be a prudent
6 use of its resources to separately pursue the issue concerning the use of Mullin Plumbing's
7 employees and facilities.⁴¹

8 Neither Response in this matter contains any information or defenses concerning the use
9 of Viking facilities (including any reference to the total time spent on these advertisements and
10 the effect on Viking overhead), and the issue of the § 114.9 safe harbor is never raised. Further,
11 neither Response posits that Healey or anyone else reimbursed Viking for the use of its facilities.
12 Thus, it is unclear whether 11 C.F.R. § 114.9(a)(2)(i)'s safe harbor might apply here. However,
13 because of the limited scope of the use of Viking's facilities, resulting in approximately four
14 seconds of video footage, we conclude that further investigation into the use of Viking facilities
15 would not be a prudent use of the Commission's resources. Indeed, given the four seconds of
16 footage produced at the Viking facility, there is a likelihood that any costs incurred by Viking
17 were *de minimis*.

18 Accordingly, we recommend that the Commission exercise its prosecutorial discretion
19 and dismiss the allegation that Viking made, and the Healey Committee knowingly accepted, a

³⁹ F&LA at 7-10, MUR 6542 (Mullin for Congress).

⁴⁰ *Id.*

⁴¹ *Id.*

1 prohibited in-kind corporate contribution in violation of 52 U.S.C. § 30118(a) with respect to the
2 use of Viking's logo and facilities.⁴²

3 **C. The Commission Should Dismiss the Allegation that Viking Violated the**
4 **Act's Soft Money Prohibition**

5 The Act prohibits federal candidates, officeholders, agents of such candidates or
6 officeholders, or "an entity directly or indirectly established, financed, maintained or controlled
7 by or acting on behalf of 1 or more candidates or individuals holding Federal office" from
8 soliciting, receiving, directing, transferring, or spending funds "in connection with an election for
9 Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting
10 requirements of [the] Act."⁴³ To determine whether an entity is EFMC'd by a covered individual
11 (the "sponsor"), the Commission considers a non-exhaustive list of ten factors, including
12 "[w]hether a sponsor, directly or through its agent, owns a controlling interest in the voting stock
13 or securities of the entity;" "[w]hether a sponsor, directly or through its agent, has the authority
14 or ability to direct or participate in the governance of the entity through provisions of
15 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
16 procedures;" and "[w]hether a sponsor, directly or through its agent, has the authority or ability
17 to hire, appoint, demote, or otherwise control the officers, or other decision-making employees
18 or members of the entity."⁴⁴

19 The Complaint alleges that Viking was EFMC'd by Healey by virtue of his role as
20 chairman of Viking.⁴⁵ Consequently, the Complaint alleges that Viking and Healey violated

⁴² See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

⁴³ 52 U.S.C. § 30125(e)(1).

⁴⁴ 11 C.F.R. § 300.2(c).

⁴⁵ Compl. at 6-7.

1 52 U.S.C. § 30125(e)(1) when Viking used its corporate resources to support Healey's
 2 campaign.⁴⁶ The Commission has not previously made any findings as to whether a prohibited
 3 in-kind corporate contribution also constitutes a violation of the Act's soft money provisions.⁴⁷
 4 Because a decision to analyze these activities as possible soft money violations would
 5 necessarily re-tread the previous analysis regarding whether the activities were in-kind corporate
 6 contributions and reach the same conclusion as to each allegation, we do not believe that the
 7 Commission should expend additional resources to determine whether Viking is EFMC'd by
 8 Healey or whether the Act's soft money restrictions apply to these in-kind contributions.⁴⁸

9 Therefore, we recommend that the Commission exercise its prosecutorial discretion and
 10 dismiss the allegation that Viking and Healey violated 52 U.S.C. § 30125(e).⁴⁹

11 **V. RECOMMENDATIONS**

- 12 1. Find no reason to believe that Viking Yacht Company violated 52 U.S.C.
 13 § 30118(a) by making an in-kind corporate contribution in the form of a
 14 coordinated communication;
- 15 2. Find no reason to believe that Robert Healey, Bob Healey for Congress, and
 16 Ronald R. Gravino in his official capacity as treasurer violated 52 U.S.C.
 17 § 30118(a) by accepting an in-kind corporate contribution in the form of a
 18 coordinated communication;
- 19 3. Dismiss as a matter of prosecutorial discretion the allegation that Viking Yacht
 20 Company violated 52 U.S.C. § 30118(a) by making an in-kind corporate
 21 contribution in the form of corporate logo and facilities use;
- 22 4. Dismiss as a matter of prosecutorial discretion the allegation that Robert Healey,
 23 Bob Healey for Congress, and Ronald R. Gravino in his official capacity as

⁴⁶ *Id.* We note that it is unclear whether the Complaint takes the position that each of Viking's alleged actions in support of Healey's candidacy (including the web post and the use of Viking's logo and facilities) constituted soft money violations, or whether only some subset of these actions constituted soft money violations.

⁴⁷ See First Gen. Counsel's Rpt. at 17, MUR 7628 (Kobach for Senate, *et al.*).

⁴⁸ See Certification ¶ 3.b (Apr. 26, 2022), MUR 7628 (Kobach for Senate, *et al.*) (dismissing as a matter of prosecutorial discretion an alleged violation of 52 U.S.C. § 30125(e) when the subject contribution was also alleged to have constituted a violation of 52 U.S.C. § 30118(a)).

⁴⁹ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

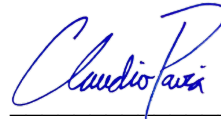
- 1 treasurer violated 52 U.S.C. § 30118(a) by accepting an in-kind corporate
2 contribution in the form of corporate logo and facilities use;
- 3 5. Dismiss as a matter of prosecutorial discretion the allegation that Robert Healey
4 and Viking Yacht Company violated 52 U.S.C. § 30125(e)(1) by soliciting,
5 receiving, directing, transferring, or spending non-federal funds in violation of the
6 Act in connection with an election for federal office;
- 7 6. Approve the attached Factual and Legal Analysis;
- 8 7. Approve the appropriate letters; and
- 9 8. Close the file.

10 Lisa J. Stevenson
11 Acting General Counsel

12 Charles Kitcher
13 Associate General Counsel for Enforcement

14
15
16 May 16, 2023

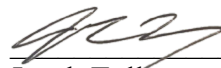
17
18 Date



19 Claudio J. Pavia
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