

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

July 18, 2023

BY EMAIL AND CERTIFIED MAIL

Amanda Bogden
End Citizens United
P.O. Box 66005
Washington, DC 20035
amandabogden@endcitizensunited.org

RE: MUR 8056
Bob Healey for Congress, *et al.*

Dear Ms. Bogden:

The Federal Election Commission has considered the allegations contained in the above referenced complaint from End Citizens United dated August 24, 2022.

On July 13, 2023, the Commission found that there is no reason to believe Robert Healey, Jr., Bob Healey for Congress and Ronald R. Gravino in his official capacity as treasurer ("Bob Healey for Congress"), and Viking Yacht Company violated 52 U.S.C. § 30118(a) by making or accepting an in-kind corporate contribution in the form of a coordinated communication. Further, the Commission voted to dismiss the allegation that Robert Healey, Jr., Bob Healey for Congress, and Viking Yacht Company violated 52 U.S.C. § 30118(a) by making or accepting an in-kind corporate contribution in the form of facilities and logo use, as well as the allegation that Robert Healey, Jr. and Viking Yacht Company violated 52 U.S.C. § 30125(e)(1) by soliciting, receiving, directing, transferring, or spending non-federal funds in connection with an election for federal office. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis which explains these findings is enclosed.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). 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 Jake Tully, the attorney assigned to this matter, at (202) 694-1404.

Sincerely,

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Enclosure: Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

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2
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4 Respondents: Bob Healey for Congress and Ronald R. Gravino MUR 8056
5 in his official capacity as treasurer
6 Viking Yacht Company
7 Robert Healey, Jr.
8

9 **I. INTRODUCTION**

10 This matter was generated by a Complaint alleging that Viking Yacht Company
11 (“Viking”), a yacht manufacturer, made prohibited in-kind corporate contributions to the 2022
12 congressional campaign of its Chairman, Bob Healey, and his principal campaign committee,
13 Bob Healey for Congress and Ronald R. Gravino in his official capacity as treasurer (the “Healey
14 Committee”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).
15 The Complaint also alleges that Viking and Healey violated the soft money restriction on entities
16 established, financed, maintained, or controlled (“EFMC’d”) by a federal candidate using
17 nonfederal funds in connection with an election for federal office. Specifically, the Complaint
18 alleges that Viking, acting under the control of Healey, displayed images and messages on its
19 website advocating for Healey’s election, and that Viking’s logo and facilities appear in a digital
20 advertisement released by the Healey Committee.

21 In their respective Responses, Viking and the Healey Committee deny that the actions
22 described in the Complaint constitute violations of the Act. Respondents confirm that a posting
23 concerning Healey’s candidacy was made on Viking’s website, but claim that the posting merely
24 recognized and congratulated an employee for an accomplishment. The Responses argue that the
25 posting was not made in cooperation, consultation, or concert with Healey, the Healey
26 Committee, or either of their agents, and also deny that the posting qualifies as a communication
27 that expressly advocates Healey’s election. The Responses acknowledge that the Viking logo

1 appears in the digital advertisement discussed in the Complaint, but argue that the value of the
2 logo's appearance in the advertisement, as well as the value of the web posting, was *de minimis*.
3 The Responses do not discuss the alleged use of Viking facilities to film the Committee's digital
4 advertisement.

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

11 Accordingly, the Commission: (1) finds no reason to believe that Viking made, and the
12 Healey Committee knowingly accepted, a prohibited in-kind contribution in violation of
13 52 U.S.C. § 30118(a) with respect to Viking's web posting; (2) dismisses, as a matter of
14 prosecutorial discretion, the allegation that Viking made, and the Healey Committee knowingly
15 accepted, a prohibited in-kind contribution in violation of 52 U.S.C. § 30118(a) with respect to
16 the use of Viking's logo and facilities; and (3) dismisses, as a matter of prosecutorial discretion,
17 the allegation that Viking and Healey violated 52 U.S.C. § 30125(e)(1) by using corporate
18 resources to support Healey's election.

19 **II. FACTUAL BACKGROUND**

20 Viking is a yacht manufacturer that was incorporated in New Jersey in 1964.¹ Robert
21 Healey, Jr., a 2022 candidate for New Jersey's 3rd Congressional District, has been the chairman

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).

1 of Viking since October 2007.² Following Healey’s victory in the June 2022 primary election,
2 the Complaint alleges that Viking “prominently featured” an image of Healey on the homepage
3 of its website with the caption “Healey for Congress.”³ The Complaint states that the website
4 also contained the following message, alongside an image of Healey which was also used as the
5 profile picture for the Healey Committee’s Facebook page:

6 Congratulations to Viking’s Bob Healey Jr. He won the Republican nomination
7 for the U.S. House in New Jersey’s 3rd Congressional District. Bob is running to
8 improve economic opportunity and affordability, stand with our police and
9 enhance public safety, strengthen our military and defend our personal liberties
10 and freedoms. Onward to November!”⁴

11 According to the Complaint, this statement closely resembles the following statement posted on
12 the Healey Committee’s website:

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

18 The Complaint also states that the Healey Committee released a digital advertisement
19 which contains scenes from inside a manufacturing facility in which Healey is seen wearing a

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).

⁴ Compl. at 4.

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

1 polo shirt with the Viking logo visible on its front.⁶ The Complaint posits that the manufacturing
2 facility in the advertisement appears to be a Viking facility.⁷

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

6 The Healey Committee’s Response acknowledges that Healey is the chairman of Viking,
7 and that Viking posted a “congratulatory message talking about a past event,” but argues that the
8 message did not call for the election or defeat of any individual candidate, and asserts that the
9 message was not coordinated with the candidate or his campaign.⁹ The Response acknowledges
10 that a polo shirt bearing its logo can be seen “for a total of four (4) seconds” during the relevant
11 digital advertisement,¹⁰ but states that the writing on the shirt “is not legible for a majority of the
12 four seconds,” and further notes that “neither the word Viking nor the name Viking Yacht
13 Company was spoken during the video.”¹¹ The Response does not address the allegation that
14 Viking facilities may have been used to film the digital advertisement discussed in the
15 Complaint. The Response argues that the Healey Committee did not coordinate, accept, or direct
16 a contribution or in-kind contribution with or from Viking and that Healey did not direct or use
17 the resources of Viking to benefit his candidacy.¹² The Healey Committee’s Response concludes

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).

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.*

1 by requesting that the Commission exercise its prosecutorial discretion and dismiss the
2 allegations in the Complaint.¹³

3 Viking's Response makes substantially the same factual and legal assertions.¹⁴ The
4 Viking Response addresses the web posting, stating only that it "recognized and congratulated an
5 employee for an accomplishment, of its own volition, and without any direction to do so, as is
6 customary for" Viking.¹⁵ The Response states that the image accompanying the web posting
7 "was not prominently featured over any other image" posted on the website.¹⁶ With respect to
8 the digital advertisement allegedly filmed at a Viking facility, Viking's Response addresses only
9 the logo on Healey's polo shirt, stating that the logo appears in the video "only for a total of four
10 (4) seconds," and is "not legible for a majority of that time."¹⁷ Viking's Response does not
11 address the alleged use of Viking's facilities to film the digital advertisement. The Response
12 argues that neither the appearance of the Viking logo nor the website post constituted an in-kind
13 contribution to the Healey Committee, and further argues that each of these items was *de minimis*
14 in value.¹⁸ Viking's Response concludes by requesting that the Commission exercise its
15 prosecutorial discretion and dismiss the allegations contained in the Complaint.¹⁹

13 *Id.* at 7.

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

15 *Id.* at 2.

16 *Id.*

17 *Id.* at 3.

18 *Id.* at 5.

19 *Id.* at 6.

1 **III. LEGAL ANALYSIS**

2 **A. Viking's Web Post**

3 An expenditure made by any person “in cooperation, consultation, or concert with, or at
4 the request or suggestion of” a candidate or his or her authorized committee or agent qualifies as
5 an in-kind contribution to the candidate.²⁰ A communication that is coordinated with a candidate
6 or his or her authorized committee is considered an in-kind contribution and is subject to the
7 limits, prohibitions, and reporting requirements of the Act.²¹ Any person, such as a corporation,
8 who is otherwise prohibited from making a contribution under the Act is prohibited from paying
9 for a coordinated communication.²² The Commission's regulations provide that a
10 communication is coordinated with a candidate, his or her authorized committee, or agent of
11 either, if it meets a three-prong test: (1) it is paid for, in whole or in part, by a person other than
12 the candidate or authorized committee; (2) it satisfies a content standard in 11 C.F.R.
13 § 109.21(c); and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d).²³ All three prongs
14 must be satisfied for a communication to be considered coordinated.

15 The available record suggests that the content prong of the coordinated communication
16 test is not satisfied. The content prong can be satisfied in one of five ways.²⁴ The first requires a
17 communication to qualify as an electioneering communication, and the remaining four ways
18 require that a communication be a “public communication.”²⁵ Viking's website post was not an

²⁰ 52 U.S.C. § 30116(a)(7)(B)(i).

²¹ 11 C.F.R. § 109.21(b)(1).

²² *Id.* § 109.22.

²³ *Id.* § 109.21(a).

²⁴ *Id.* § 109.21(c).

²⁵ *Id.* § 109.21(c)(1)-(5).

1 electioneering communication because “communications over the Internet” are explicitly
2 excluded from the definition of an electioneering communication.²⁶ Further, the Commission’s
3 regulations define a public communication as “a communication by means of any broadcast,
4 cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass
5 mailing, or telephone bank to the general public, or any other form of general public political
6 advertising,” but the term “general public political advertising” does not include
7 “communications over the internet, except for communications placed for a fee on another
8 person’s website, digital device, application, or advertising platform.”²⁷ Thus, content placed on
9 a person’s own website without payment of a fee is not a “public communication,” and does not
10 satisfy the content prong.

11 The message at issue was placed on Viking’s own website, presumably by Viking
12 personnel. Nothing in the record suggests that Viking paid a fee for the placement of the
13 message, and the Commission has interpreted the phrase “placed for a fee” narrowly as to
14 exclude payments for services necessary to make an internet communication.²⁸ Thus, the web
15 posting is not a public communication. A communication that is neither an electioneering

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.

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).

1 communication nor a public communication fails § 109.21(c)'s content prong, and as a result is
2 neither a coordinated communication nor an in-kind contribution.²⁹

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

6 **B. Use of Viking Logo and Facilities**

7 1. Use of Viking Logo

8 The Act prohibits corporations from making contributions to federal candidates or their
9 committees, prohibits corporate officers and directors from consenting to such contributions, and
10 prohibits candidates and political committees from knowingly accepting such contributions.³⁰

11 The Act defines a contribution to include "any gift, subscription, loan, advance, or deposit of
12 money or anything of value made by any person for the purpose of influencing any election for
13 Federal office."³¹ "Anything of value" includes in-kind contributions, such as the provision of
14 goods or services without charge or at a charge that is less than the usual and normal charge.³²

15 The Commission has previously determined that a corporation's name, trade name, trademarks,
16 and service marks are also things of value owned by the corporation, and that allowing a
17 committee to use them in a manner suggesting the corporation's support or endorsement of a
18 candidate may constitute an in-kind contribution.³³

²⁹ See *supra* note 28; F&LA at 3-4, MUR 6722/6723 (HMPAC).

³⁰ 52 U.S.C. § 30118(a).

³¹ *Id.* § 30101(8)(A)(i).

³² 11 C.F.R. § 100.52(d)(1).

³³ 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 The Commission has dismissed allegations regarding the use of corporate logos or
2 images in campaign advertisements where the use was of *de minimis* value. In MUR 7302 (Tom
3 Campbell for North Dakota), the Commission dismissed allegations that the appearance of a
4 corporate logo in the background of advertisements in a \$250,000 statewide television ad
5 campaign constituted a prohibited in-kind contribution, reasoning that the value of the corporate
6 logo was likely *de minimis*.³⁴

7 The available information supports a similarly strong argument for *de minimis* valuation
8 in the instant matter. Both Responses note, and the Commission’s review of the digital
9 advertisement confirms, that the Viking logo appears in the digital advertisement for
10 approximately four seconds and that the Viking logo is not legible for the majority of those four
11 seconds.³⁵ Thus, the brief appearance of the Viking logo in the Healey Committee’s digital
12 advertisement appears to be of *de minimis* value.

13 2. Use of Viking Facilities

14 Neither Response in this matter contains any information or defenses concerning the use
15 of Viking facilities. However, because of the limited scope of the use of Viking’s facilities,
16 resulting in approximately four seconds of video footage, further investigation into the use of
17 Viking facilities would not be a prudent use of the Commission’s resources. Indeed, given the
18 four seconds of footage produced at the Viking facility, there is a likelihood that that any costs
19 incurred by Viking were *de minimis*.

³⁴ 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*).

³⁵ Viking Resp. at 3; Healey Committee Resp. at 3.

1 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the
2 allegation that Viking made, and the Healey Committee knowingly accepted, a prohibited in-
3 kind corporate contribution in violation of 52 U.S.C. § 30118(a) with respect to the use of
4 Viking’s logo and facilities.³⁶

5 **C. Soft Money Allegations**

6 The Act prohibits federal candidates, officeholders, agents of such candidates or
7 officeholders, or “an entity directly or indirectly established, financed, maintained or controlled
8 by or acting on behalf of 1 or more candidates or individuals holding Federal office” from
9 soliciting, receiving, directing, transferring, or spending funds “in connection with an election for
10 Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting
11 requirements of [the] Act.”³⁷ To determine whether an entity is EFMC’d by a covered individual
12 (the “sponsor”), the Commission considers a non-exhaustive list of ten factors.³⁸

13 The Complaint alleges that Viking was EFMC’d by Healey by virtue of his role as
14 chairman of Viking.³⁹ Consequently, the Complaint alleges that Viking and Healey violated
15 52 U.S.C. § 30125(e)(1) when Viking used its corporate resources to support Healey’s
16 campaign.⁴⁰ However, the Commission has not previously determined whether a prohibited in-

³⁶ *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

³⁷ 52 U.S.C. § 30125(e)(1).

³⁸ 11 C.F.R. § 300.2(c). These factors include “[w]hether a sponsor, directly or through its agent, owns a controlling interest in the voting stock or securities of the entity;” “[w]hether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;” and “[w]hether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity.” *Id.*

³⁹ Compl. at 6-7.

⁴⁰ *Id.*

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1 kind corporate contribution also constitutes a violation of the Act's soft money provisions,⁴¹ and
2 a decision to analyze these activities as possible soft money violations would necessarily re-tread
3 the previous analysis regarding whether the activities were in-kind corporate contributions.

4 Therefore, the Commission makes no determination as to whether an in-kind corporate
5 contribution would violate the Act's soft-money provisions, and it exercises its prosecutorial
6 discretion and dismisses the allegation that Viking and Healey violated 52 U.S.C. § 30125(e).⁴²

⁴¹ See First Gen. Counsel's Rpt. at 17, MUR 7628 (Kobach for Senate, *et al.*).

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