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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

TIFFANY MULLER  
END CITIZENS UNITED PAC  
100 M STREET SE  
WASHINGTON, DC 20003

**MUR 8117**

Complainant,

v.

FOX CORPORATION  
1211 SIXTH AVENUE  
NEW YORK, NY 10036

MAKE AMERICA GREAT AGAIN PAC  
F/K/A DONALD J. TRUMP FOR PRESIDENT, INC.  
BRADLEY T. CRATE, IN HIS OFFICIAL CAPACITY AS TREASURER  
725 FIFTH AVENUE  
NEW YORK, NY 10022

Respondents.

**COMPLAINT**

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Fox Corporation, Make America Great Again PAC, f/k/a Donald J. Trump for President, Inc., and Mr. Bradley T. Crate in his official capacity as treasurer (collectively, the “Respondents”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”), and Federal Election Commission (the “FEC” or “Commission”) regulations. According to his sworn testimony made public as part of a court filing, Rupert Murdoch, Chair of Fox Corporation, admitted that he provided confidential information about then-candidate Joe Biden’s ads and debate strategy, obtained by the corporation during the course of business, to Jared Kushner, senior advisor to President Trump’s re-election campaign. Fox Corporation’s blatant and cavalier act is a prohibited corporate contribution. The Commission must immediately investigate Respondents for violations of 52

U.S.C. § 30118(a) and 11 C.F.R. § 110.9, fine them the maximum amount permitted by law, and take appropriate remedial action.

## FACTUAL BACKGROUND

Donald Trump and Joe Biden were candidates for president during the 2020 presidential elections. During that election cycle, Donald Trump's principal campaign committee was Donald J. Trump for President, Inc., and his campaign's treasurer was Bradley Crate.<sup>1</sup> Rupert Murdoch is Chair of Fox Corporation.<sup>2</sup> Fox News Media is a subsidiary of Fox Corporation.<sup>3</sup> From April to June 2020, then-candidate Joe Biden aired more than one-fifth (22%) of his cable TV advertisements on Fox News.<sup>4</sup> That included more than 100 spots on the cable news show *Fox & Friends*, a national buy during the World Series, and a two-minute spot on Fox News during the Republican National Convention.<sup>5</sup> And in September 2020, Mr. Biden and the Democratic Party agreed to allow Fox News to moderate the first presidential debate.<sup>6</sup> The debate "aired live on Fox News Channel, FOX Business Network and Fox News Radio" and the questions were picked in advance by Fox News host, Chris Wallace.<sup>7</sup>

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<sup>1</sup> Donald J. Trump, FEC Form 1, Amended Statement of Organization (Dec. 12, 2019), <https://docquery.fec.gov/cgi-bin/forms/C00580100/1365044>.

<sup>2</sup> Fox Corp., Rupert Murdoch: Chair, <https://www.foxcorporation.com/management/executive-team/rupert-murdoch-2>.

<sup>3</sup> Fox Corp., Businesses: Fox News Media, <https://www.foxcorporation.com/businesses/fox-news>. FOX News Media operates the FOX News Channel (FNC), FOX Business Network (FBN), FOX News Digital, FOX News Audio, and others. *Id.*

<sup>4</sup> Ben Kamisar & Melissa Holzberg, *Trump Campaign Focuses Cable TV Buys on Fox News, While Biden Makes a Wider Play*, NBC News (July 21, 2020, 10:48 A.M. ET), <https://www.nbcnews.com/politics/meet-the-press/blog/meet-press-blog-latest-news-analysis-data-driving-political-discussion-n988541/ncrd1234453#blogHeader>.

<sup>5</sup> Philip Bump, *The Other Way Rupert Murdoch Tried to Tip the Scales for Trump*, Wash. Post (Feb. 28, 2023, 9:48 A.M. ET), <https://www.washingtonpost.com/politics/2023/02/28/trump-fox-news-rupert-murdoch-biden>.

<sup>6</sup> Paul Steinhauser, *First Presidential Debate: What to Watch for at the Trump vs. Biden Showdown*, Fox News (Sept. 29, 2020, 12:21 P.M. ET), <https://www.foxnews.com/politics/what-to-watch-for-at-the-first-trump-biden-presidential-debate>.

<sup>7</sup> Morgan Phillips, *How to Watch the First Presidential Debate Moderated by Fox News' Chris Wallace*, Fox News (Sept. 29, 2020, 10:52 A.M. ET), <https://www.foxnews.com/politics/trump-biden-debate-how-to-watch>.

“During Trump’s campaign,” according to a recent court filing, “Rupert [Murdoch] provided Trump’s son-in-law and senior advisor, Jared Kushner, with Fox confidential information about Biden’s ads, along with debate strategy.”<sup>8</sup> The filing “allege[s] through depositions, and internal texts and emails, that Murdoch provided Jared Kushner with advance knowledge of then-candidate Joe Biden’s political ads and debate preparations.”<sup>9</sup> Specifically, on at least one occasion, Murdoch “provid[ed] Kushner a preview of Biden’s ads before they were public.”<sup>10</sup>

At the time, Mr. Kushner was “the person officially overseeing the entire campaign . . . making decisions about staffing and spending.”<sup>11</sup> Specifically, Mr. Kushner took a principal role in decisions about the campaign’s ad spending and messaging. He was “involved in the Trump campaign’s decision to spend \$10 million on a 60-second ad that . . . r[a]n during the Super Bowl” and put together “meetings with campaign officials to discuss messaging.”<sup>12</sup>

This was not the first time Mr. Murdoch had advocated for Donald Trump or used his position as Chair of a major news corporation to help Republicans win elections. The same filing provides evidence that “Murdoch advocat[ed] explicitly for his charges to help boost Republicans.”<sup>13</sup> Murdoch wrote to his team at Fox News days before the Senate runoff elections in Georgia, telling them “we should concentrate on Georgia, helping any way we can,” and he instructed his hosts, “we must tell our viewers again and again what they will get [with Trump’s

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<sup>8</sup> Pls.’ Combined Opp’n to Defs.’ Rule 56 Mots. for Summ. J. at 12, *Dominion v. Fox Corp.*, No. N21C-03-257 (Super. Ct. Del. Feb. 27, 2023) [hereinafter *Plaintiffs’ Combined Opposition*].

<sup>9</sup> Azmi Haroun & Jacob Shamsian, *Rupert Murdoch Gave Jared Kushner ‘Confidential Information’ About Biden’s 2020 Ads Before They Were Public*, *Dominion Alleges*, Business Insider (Feb. 27, 2023, 6:17 P.M. ET), <https://www.businessinsider.com/murdoch-gave-kushner-confidential-information-about-biden-dominion-2023-2>.

<sup>10</sup> *Id.*

<sup>11</sup> Annie Karni & Maggie Haberman, *Kushner’s Global Role Shrinks as He Tackles Another: The 2020 Election*, N.Y. Times (Jan. 9, 2020), <https://www.nytimes.com/2020/01/09/us/politics/jared-kushner-trump-campaign.html>.

<sup>12</sup> *Id.*

<sup>13</sup> Bump, *supra* note 5.

tax legislation.]”<sup>14</sup> But this was one time, it seems, that Murdoch’s support was not aimed towards public, on-air advocacy for Trump and the Republicans’ positions. Instead, it took the form of passing concrete and highly valuable information about a political opponent’s strategy directly to the campaign.

The Trump campaign’s 2020 filings with the Commission did not disclose any in-kind contribution of this information to the campaign.<sup>15</sup>

### LEGAL DISCUSSION

The Act prohibits any corporation from making a contribution in connection with any federal election, and likewise bars any candidate, candidate’s political committee, or any person from knowingly accepting or receiving corporate contributions.<sup>16</sup> A contribution includes any direct or indirect “gift of money, or any services, or anything of value,” including an in-kind service provided without compensation, “made by any person for the purpose of influencing any election for Federal office.”<sup>17</sup> Material non-public information concerning campaign strategy, messaging, or advertising is a thing of value.<sup>18</sup> Here, Mr. Murdoch allegedly conveyed material, non-public information concerning a political rival’s advertising and messaging strategy—specifically, the actual advertisements that Mr. Biden placed with Fox News before they aired publicly—to Mr. Trump’s son-in-law, a senior advisor in the Trump campaign responsible for candidate messaging and advertising strategy.<sup>19</sup> There is no repository of pre-air advertisements

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<sup>14</sup> *Plaintiffs’ Combined Opposition*, supra note 8, at 12.

<sup>15</sup> See Fed. Election Comm’n, Make America Great Again PAC, Committee Filings (2019-2020), accessible at: <https://www.fec.gov/data/committee/C00580100/?tab=filings&cycle=2020>.

<sup>16</sup> 52 U.S.C. § 30118(a), (b)(2); 11 C.F.R. § 114.2.

<sup>17</sup> 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(d)(1).

<sup>18</sup> See, e.g., 11 C.F.R. § 109.21; First Gen. Counsel’s Rept., MUR 6908 (National Republican Congressional Committee) at 1 (Nov. 13, 2015) (considering conveyance of material, non-public polling information to be impermissible in-kind contribution); Fed. Election Comm’n, Adv. Op. 2022-12 (Ready for Ron) (provision of non-public list of supporter names and contact information constitutes an in-kind contribution).

<sup>19</sup> See Bump, supra note 5.

shared by media outlets.<sup>20</sup> The advertisements in Fox Corporation's possession were therefore non-public before they aired. This allowed Mr. Trump's campaign "to know with certainty what attacks [were] coming" and what "issues [Mr. Biden's] polling shows will" either "move persuadable voters or tamp down turnout among [Mr. Trump's base of] core support," allowing the Trump campaign to pre-empt attacks or blunt their force before his opponent's advertisements even hit the airwaves.<sup>21</sup> The advertisements and strategic information Mr. Murdoch reportedly conveyed to Mr. Trump's campaign were thus material to the campaign's strategy and of value under the Act and the Commission's regulations.<sup>22</sup>

The Commission has stated that a corporation's provision of a service to a candidate free of charge does not constitute a prohibited in-kind corporate contribution only if the corporation's provision of that service "is always provided without charge to every person."<sup>23</sup> The Commission's guidance specifically references a scenario in which a "television network corporation could give to a candidate a copy of a videotape segment in which the candidate appeared, so long as the company's policy was to provide a videotape copy free of charge to any member of the public appearing in a newscast."<sup>24</sup> Here, there is no evidence that Fox Corporation had a policy of providing pre-air advertising footage from one's opponent to all candidates. Nor is there evidence to suggest that Mr. Biden's campaign was afforded the same courtesy by the Chair of Fox Corporation to receive insider access to Mr. Trump's advertising buys placed on Fox's network, or that Fox Corporation provided Mr. Biden's campaign with insights into Mr. Trump's debate strategy. Therefore, it appears that Fox Corporation, through its

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(d)(1).

<sup>23</sup> Fed. Election Comm'n, Adv. Op. 2004-06 (Meetup) at 3 (emphasis in original).

<sup>24</sup> *Id.* at 4 (citing Fed. Election Comm'n, Adv. Op. 1978-60 (Sawyer)); *see also* Fed. Election Comm'n, Adv. Op. 1996-11 (NRL) (incorporated membership organization allowed to provide candidate speakers with free audio and video tapes of their own speeches because the tapes would be provided to all speakers, including candidates).

Chairman, violated the Act by making a prohibited in-kind contribution to the Trump campaign.<sup>25</sup> In turn, it appears that the Trump campaign violated the Act by failing to disclose the contribution to the Commission or take any steps to mitigate the illegality.<sup>26</sup>

Fox Corporation is not entitled to rely on the press exemption for this in-kind contribution. Under the Act, the “press exemption” provides that “[t]he term ‘expenditure’ does not include . . . any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”<sup>27</sup> However, the courts and the Commission’s precedent have reinforced that if an entity is not acting *as a press entity in conducting the activity at issue*, that is, it is not acting in its “legitimate press function,” the exemption will not apply.<sup>28</sup>

To determine whether an entity is acting in its “legitimate press function” the Commission considers two factors. First, whether the press entity’s materials are available to the general public, and second, whether the materials are comparable in form to those ordinarily issued by the press entity.<sup>29</sup> Among the “considerations of form” the Commission examines how the specific press action at issue is distributed, and whether such distribution differs from the typical format provided by the news entity.<sup>30</sup> In examining these two factors, the Commission

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<sup>25</sup> 52 U.S.C. § 30118(a); Fed. Election Comm’n, Adv. Op. 2011-11 (Colbert) at 8.

<sup>26</sup> 52 U.S.C. § 30116(f)

<sup>27</sup> *Id.* § 30118(9)(B)(i).

<sup>28</sup> *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publ’g*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981); Fed. Election Comm’n, Adv. Op. 2011-11 (Colbert); Fed. Election Comm’n, Adv. Op. 2007-20 (XM Radio); Fed. Election Comm’n, Adv. Op. 2005-19 (Inside Track); Fed. Election Comm’n, Adv. Op. 2004-07 (MTV).

<sup>29</sup> Fed. Election Comm’n, Adv. Op. 2011-11 (Colbert) at 7.

<sup>30</sup> *Id.* (citing *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986) (“MCFL”)).

has previously indicated that it is mindful that a press entity's press function is "distinguishable from active participation in a core campaign or electioneering function[]."31

Plainly put: the press exemption "does not cover campaign activity, even if the campaign activity is conducted by a press entity."32 Therefore, the press exemption does not cover the distribution of campaign flyers by a media entity,33 or "[i]f, for example, on Election Day a partisan newspaper hire[s] an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sen[ds] sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers."34 Nor does it cover a press organization suppressing a story (i.e., in industry-speak, a "catch-and-kill") only as a scheme to help the election prospects of a politician that corporate executives personally support.35 The Act's press exemption "does not afford *carte blanche* to media companies generally to ignore FECA's provisions."36

Here, Rupert Murdoch, the Chair of Fox Corporation, conveyed non-public advertisement copy, provided by Joe Biden's campaign to a subsidiary of his corporation to air on the corporation's media networks, to the son-in-law and senior advisor of candidate Donald Trump. Such a disclosure is not within the news corporation's legitimate press functions. The Commission's test looks at (1) whether the press entity's materials are available to the general public, and (2) whether the materials are comparable in form to those ordinarily issued by the

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<sup>31</sup> *Id.* (citing Fed. Election Comm'n, Adv. Op. 2008-14 (Melothé Inc.)).

<sup>32</sup> *MCFL*, 479 U.S. at 251.

<sup>33</sup> First Gen. Counsel's Rept., MUR 3657 (Multimedia Cablevision Co.) at 23-26 (May 25, 1994).

<sup>34</sup> *Reader's Digest Ass'n*, 509 F. Supp. at 1214 (S.D.N.Y. 1981).

<sup>35</sup> Factual and Legal Analysis, MURs 7324, 7332 & 7366 (A360 Media, LLC f/k/a American Media, Inc., et al.) at 9 (Apr. 13, 2021); U.S. Dept. of Justice, Letter from U.S. Attorney, S.D.N.Y (Sept. 20, 2018) at Exhibit A (detailing facts of illegal contributions by American Media Inc., regarding "hush payments" to suppress unfavorable story to aid then-candidate Donald Trump), *accessible at*: <https://www.justice.gov/usao-sdny/press-release/file/1119501>.

<sup>36</sup> *McConnell v. FEC*, 540 U.S. 93, 208 (2003).

press entity.<sup>37</sup> As to (1), at the time of this alleged disclosure, the advertisements were not available to the general public; they had not aired.<sup>38</sup> The answer to the second question, whether the materials are in a comparable form to those ordinarily issued, is also a resounding “no.” A secret, back-channel communication between the news corporation’s chairman, a known ally, friend, and public supporter of candidate Trump, and the son-in-law and senior advisor of the candidate is a far cry from the corporation’s typical news broadcasts, online publications, radio and television programs. Further, the activities at issue here are the definition of active participation in a core campaign function—exactly the type of conduct the Commission has repeatedly established the press exemption will not protect.<sup>39</sup>

#### REQUESTED ACTION

Respondents appear to have violated the Act and Commission regulations by making and accepting a prohibited in-kind corporate contribution. There is no violation that undermines the public’s faith in the election system and in our elected officials more than when those in power surreptitiously circumvent the rules that govern our federal elections, disregarding the consequences their actions have upon our democracy. Given the severity of Respondents’ alleged conduct, we respectfully request that the Commission immediately investigate these violations, fine Respondents the maximum amount permitted by law, and enjoin Respondents from further violations of the law.

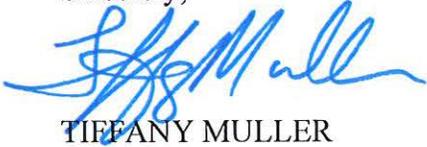
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<sup>37</sup> Fed. Election Comm’n, Adv. Op. 2011-11 (Colbert) at 7.

<sup>38</sup> *Plaintiffs’ Combined Opposition*, supra note 8, at 12.

<sup>39</sup> See Fed. Election Comm’n, Adv. Op. 2011-11 (Colbert) at 7 (citing Fed. Election Comm’n Adv. Op. 2008-14 (Melothe Inc.)).

Sincerely,



TIFFANY MULLER  
END CITIZENS UNITED PAC  
100 M STREET SE  
WASHINGTON, DC 20003

SUBSCRIBED AND SWORN to before me this 3rd day of March 2023



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Notary Public

My Commission Expires:

MARK ANDREWS  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires July 14, 2024

