



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Biden for President (n/k/a Harris for President))	MURs 8123 and 8182
and Keana Spencer in her official capacity)	
as treasurer, <i>et al.</i> ¹)	

**STATEMENT OF REASONS OF VICE CHAIR ELLEN L. WEINTRAUB AND
COMMISSIONERS SHANA M. BROUSSARD AND DARA LINDENBAUM**

I. INTRODUCTION

These two Complaints focus on an October 2020 public statement (the “Public Statement”) signed by 51 former United States intelligence officials, which was published by *POLITICO*. The Complaints allege that the Public Statement constituted an unreported, coordinated, in-kind contribution and a prohibited government contractor contribution to then-presidential candidate Joseph R. Biden and other political committees.

The Office of General Counsel (“OGC”) recommended that the Commission dismiss the allegations.² OGC first reasoned that the Public Statement did not constitute an in-kind contribution because the uncompensated volunteer exemption applies and because the Public Statement did not satisfy the definition of a coordinated contribution.³ Further, OGC concluded that the individual signatories were not government contractors under the Act.⁴

While the Commission unanimously voted to dismiss the Complaints, the Commission did not approve a factual and legal analysis.⁵ We therefore write this Statement of Reasons to explain the basis for our vote.

¹ The committees “Biden for President” and “Biden Victory Fund” have been renamed “Harris for President” and “Harris Victory Fund,” respectively. *See* Harris for President, Amended Statement of Organization (July 21, 2024), <https://docquery.fec.gov/pdf/297/202407219665705297/202407219665705297.pdf>; Harris Victory Fund, Amended Statement of Organization (July 21, 2024), <https://docquery.fec.gov/pdf/305/202407219665705305/202407219665705305.pdf>. Because the activity discussed herein occurred while both committees used their prior names, this analysis refers to Biden for President and Biden Victory Fund.

² First Gen. Counsel’s Rpt. at 17-18.

³ *Id.* at 9-15.

⁴ *Id.* at 16-17.

⁵ Certification at 2 (Aug. 13, 2024).

II. FACTUAL BACKGROUND

Joseph R. Biden, Jr. was a candidate for President of the United States during the 2020 election cycle.⁶ At that time, Biden for President (“BFP”) was his principal campaign committee.⁷ Biden Victory Fund (“BVF”) and Biden Action Fund (“BAF”) were joint fundraising committees.⁸ The DNC is a national committee of the Democratic Party.⁹

During the latter part of the 2020 presidential campaign, news stories emerged regarding various emails purportedly sent by Hunter Biden, while he served as a board member of a Ukrainian energy company during his father’s term as Vice President of the United States. On or about October 17, 2020, Antony Blinken, who was a campaign advisor to BFP, contacted Michael Morell to discuss these news stories about Hunter Biden.¹⁰ According to Morell, his conversation with Blinken led him to initiate drafting the Public Statement advancing the opinion that the purported emails and related news stories might be part of a disinformation campaign orchestrated by Russian intelligence agencies.¹¹ According to his later testimony, Morell also had discussions with Blinken and BFP regarding disseminating the Public Statement to the media.¹²

The Public Statement was signed by 51 individuals who previously worked in the U.S. intelligence community.¹³ On October 19, 2020, weeks before the 2020 election, *POLITICO* published the Public Statement, which, among other things, opined that “the recent disclosure of emails allegedly belonging to Joe Biden’s son [Hunter Biden] ‘has all the classic earmarks of a

⁶ Joseph R. Biden, Jr., Amended Statement of Candidacy (Aug. 11, 2020), <https://docquery.fec.gov/pdf/584/202008149261305584/202008149261305584.pdf>.

⁷ Biden for President, Amended Statement of Organization (Aug. 11, 2020), <https://docquery.fec.gov/pdf/378/202008219266863378/202008219266863378.pdf>.

⁸ Biden Victory Fund, Amended Statement of Organization (Aug. 31, 2020), <https://docquery.fec.gov/pdf/685/202009019267073685/202009019267073685.pdf>; Biden Action Fund, Amended Statement of Organization (Aug. 16, 2020), <https://docquery.fec.gov/pdf/353/202008219266863353/202008219266863353.pdf>. Biden Action Fund terminated on December 11, 2020. *See* Biden Action Fund, Termination Report 2020 (Dec. 11, 2020), <https://docquery.fec.gov/pdf/799/202012119374346799/202012119374346799.pdf>.

⁹ DNC Services Corp / Democratic National Committee (“DNC”), Amended Statement of Organization (Sept. 22, 2020), <https://docquery.fec.gov/pdf/029/202009299284981029/202009299284981029.pdf>. The DNC continues to be the Democratic Party’s National Committee. *See* DNC, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/359/202304259581294359/202304259581294359.pdf>.

¹⁰ Compl., Ex. 1 at 2 (Oct. 23, 2023), MUR 8182; *see also* Letter from Jim Jordan, Chairman, H. Comm. on the Judiciary & Michael R. Turner, Chairman, H. Permanent Select Comm. on Intel., to the Hon. Antony Blinken, Sec’y, U.S. Dep’t of State (Apr. 20, 2023).

¹¹ Compl., Ex. 1 at 2-3, Ex. 5 at 2, MUR 8182.

¹² Compl., Ex. 1 at 7, 36-52, Ex. 5 at 3-4, MUR 8182. In an email to Nick Shapiro, Morell expressed that BFP requested the Public Statement be sent to a particular reporter at the Washington Post, who did not publish it. Compl., Ex. 1 at 3, MUR 8182 (citing an email from Michael Morell to Nick Shapiro (Oct. 19, 2020)). Shapiro distributed the Public Statement to multiple news outlets, ultimately making an arrangement with *POLITICO*. *Id.*

¹³ For a complete list of all signatories and their former official roles, *see* Compl. at 1-6, MUR 8123.

Russian information operation.”¹⁴ The Public Statement qualified its opinion by stating that, although the signatories had no evidence of Russian involvement in the emails and news stories, they were “deeply suspicious” that they were part of a Russian operation to “undermine the candidacy of former Vice President Biden and thereby help the candidacy of President Trump.”¹⁵

The Complaints argue that the Public Statement constituted an in-kind contribution and that BFP failed to report the Public Statement as a contribution. Further, the MUR 8182 Complaint alleges that the Public Statement also constituted an unreported contribution to DNC, BVF, and BAF. The MUR 8123 Complaint alleges that the individual signatories were federal contractors prohibited from making any political contributions, and that BFP was likewise prohibited from soliciting or accepting a contribution from the individual signatories due to their statuses as federal contractors.¹⁶

BFP argues that the Complaints fail to establish that the Public Statement’s publication was coordinated with BFP or that the Public Statement constituted a contribution or expenditure under the Act; it also argues that the MUR 8123 Complaint fails to establish that the individual signatories were federal contractors at the time of the Public Statement’s publication.¹⁷ Specifically, BFP emphasizes that the Complaint fails to allege either that a payment was made in connection with the Public Statement or that any of the “content standards” are met.¹⁸ Finally, DNC, BVF, and BAF argue that the MUR 8182 Complaint alleges no violation against them and, as such, the Complaint should be dismissed without further analysis as to these Respondents.¹⁹

III. LEGAL ANALYSIS

A. The Public Statement Does Not Constitute an In-Kind Contribution Because It Is Not a Coordinated Communication

The Act defines the term “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²⁰ Under Commission regulations, a communication is “coordinated,” and therefore constitutes an in-kind contribution, when the communication meets a three-part test: (1) payment, in whole or in part, for the communication by a person other than

¹⁴ Compl., Ex. 2; Natasha Bertrand, *Hunter Biden Story Is Russian Disinfo, Dozens of Former Intel Officials Say*, POLITICO (Oct. 19, 2020), <https://www.politico.com/news/2020/10/19/hunter-biden-story-russian-disinfo-430276>.

¹⁵ *Id.* (asserting that “with Trump down in the polls, there is incentive for Moscow to pull out the stops to do anything possible to help Trump win and/or to weaken Biden should he win”).

¹⁶ *See generally* Compl. (Mar. 22, 2023), MUR 8123.

¹⁷ *See generally* BFP Resp., MUR 8123 (May 16, 2023); Resp., MUR 8182 (Dec. 14, 2023). DNC, BVF, and BAF joined BFP in the Response to MUR 8182 and argued that the Complaint should be dismissed as to them because it alleges no violation against DNC, BVF, or BAF. Resp. at 1, MUR 8182.

¹⁸ Resp. at 4, MUR 8182.

¹⁹ *Id.* at 1.

²⁰ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

the candidate, authorized committee, or political party committee; (2) satisfaction of one of five “content” standards; and (3) satisfaction of one of six “conduct” standards.²¹

Here, neither Complaint alleges any payment made in connection with the Public Statement, let alone by an individual other than the candidate, authorized committee, political party committee, or an agent thereof.²² The available information indicates that Morell, the drafter of the Public Statement, and the signatories, were all unpaid. Consequently, the Public Statement does not meet the first prong of the test for a coordinated communication and is thus not an in-kind contribution.²³ Because the Public Statement fails the first part of the test, we need not address the other two parts.

B. The Federal Contractor Allegation Fails Because the Public Statement Does Not Constitute an In-Kind Contribution

The Act and the Commission’s regulations prohibit contributions to political committees by any person who enters into a contract with the United States or its departments or agencies for “furnishing any material, supplies, or equipment,” if payment on such contract “is to be made in whole or in part from funds appropriated by Congress.”²⁴ The prohibition covers contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.”²⁵ The Act also bars any person from knowingly soliciting a contribution from a federal contractor during the prohibited period.²⁶

The MUR 8123 Complaint asserts that the individual signatories, who are all former employees of the federal government agencies involved in intelligence activities, can be considered federal contractors because they are “bound by a lifelong contractual obligation with the Federal Government to maintain the secrecy of classified information.”²⁷

However, as explained above, the Public Statement did not constitute an in-kind contribution, and therefore, Respondents could not have solicited or received a prohibited federal contractor contribution. Further, we agree with OGC that the federal contractor allegation fails for the separate and independent reason that the individual signatories are not federal contractors

²¹ 11 C.F.R. § 109.21(a)(1)-(3). Although the MUR 8182 Complaint cites to the definition of “coordination” in 11 C.F.R. § 109.20, that regulation does not apply to coordinated communications.

²² *See generally* Compl., MUR 8123; Compl., MUR 8182.

²³ 11 C.F.R. § 109.21. It is therefore unnecessary to address whether the uncompensated volunteer exemption also applies. *See id.* § 100.74.

²⁴ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a). Such contributions are barred for the period between (1) the earlier of commencement of negotiations or when requests for proposal are sent out, and (2) the later of the completion of performance on or termination of negotiations for the contract. 11 C.F.R. § 115.1(b).

²⁵ 11 C.F.R. § 115.2(a).


²⁶ 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c).

²⁷ Compl. at 7, 17, MUR 8123.


under the Act.²⁸

Accordingly, we voted to dismiss the Complaint.²⁹

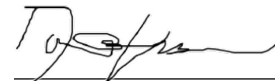
9/9/24
Date


Ellen L. Weintraub
Vice Chair

9/9/24
Date


Shana M. Broussard
Commissioner

9/9/24
Date


Dara Lindenbaum
Commissioner

²⁸ See First Gen. Counsel's Rpt. at 16-17.

²⁹ Certification at 2 (Aug. 13, 2024).