



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

May 1, 2025

**VIA EMAIL**

Derek Lawlor  
Andrew D. Garrahan  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
[dlawlor@cov.com](mailto:dlawlor@cov.com)  
[agarrahan@cov.com](mailto:agarrahan@cov.com)

RE: MUR 8274  
Joseph R. Biden, Jr.  
Harris for President f/k/a  
Biden for President and  
Keana Spencer in her official  
capacity as treasurer

Dear Messrs. Lawlor & Garrahan:

On December 1, 2023, the Federal Election Commission notified your clients, Joseph R. Biden, Jr. and Harris for President f/k/a Biden for President and Keana Spencer in her official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On March 25, 2025, the Commission, on the basis of the information in the complaint and information provided by respondents, voted to dismiss the allegation that your clients violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9. The Commission also voted to dismiss the allegation that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a). Accordingly, the Commission voted to close its file in this matter effective May 1, 2025.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. Any applicable Factual and Legal Analysis and Statements of Reasons available at the time of this letter's transmittal are attached.

If you have any questions, please contact Allen H. Coon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "A.B. Robinson".

Anne B. Robinson  
Assistant General Counsel

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Alvin L. Bragg, Jr. **MUR 8274**  
Joseph R. Biden, Jr.  
Harris for President f/k/a Biden for President and  
Keana Spencer in her official capacity as treasurer

**I. INTRODUCTION**

The Complaint alleges that Manhattan District Attorney Alvin L. Bragg, Jr. coordinated the prosecution of President Donald J. Trump with President Joseph R. Biden, Jr. and Biden's principal campaign committee, Harris for President (f/k/a Biden for President) and Keana Spencer in her official capacity as treasurer (the "Biden Committee"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the Complaint alleges that Bragg's purported coordination with Biden and the Biden Committee (collectively, the "Biden Respondents") resulted in an excessive and unreported in-kind contribution from Bragg to the Biden Committee. The Biden Respondents argue that the allegations in the Complaint do not indicate that the prosecution of Trump was a coordinated expenditure. Bragg did not submit a response.

As explained below, the available information does not indicate that there was any coordination between Bragg and the Biden Respondents concerning the prosecution of Trump. Therefore, the Commission dismisses the allegations that Bragg violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b) by making excessive contributions, and that the Biden Respondents violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive contributions. The Commission also dismisses the allegation that the Biden Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to report excessive in-kind contributions.

1 **II. FACTUAL BACKGROUND**

2 Alvin L. Bragg, Jr. is the District Attorney of New York County, New York (a/k/a  
3 Manhattan).<sup>1</sup> Joseph R. Biden, Jr. was a presidential candidate during the 2024 election cycle.<sup>2</sup>  
4 Biden withdrew his candidacy on July 21, 2024;<sup>3</sup> during his candidacy, the Biden Committee  
5 was Biden’s principal campaign committee.<sup>4</sup> Donald J. Trump was also a presidential candidate  
6 during the 2024 election cycle.<sup>5</sup>

7 On April 4, 2023, the Manhattan District Attorney’s Office announced a 34-count felony  
8 indictment of Trump “for falsifying New York business records in order to conceal damaging  
9 information and unlawful activity from American voters before and after the 2016 election.”<sup>6</sup>  
10 On May 30, 2024, a Manhattan jury found Trump guilty on all counts.<sup>7</sup> Trump won the 2024

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<sup>1</sup> *Meet Alvin Bragg*, MANHATTAN DIST. ATT’Y’S OFF., <https://manhattanda.org/meet-alvin-bragg/> (last visited Feb. 28, 2025). Bragg has served as the Manhattan District Attorney since his election to the position in 2022. *See* Press Release, Manhattan Dist. Att’y’s Off., Alvin Bragg Sworn in as District Attorney of New York County (Jan. 1, 2022), <https://manhattanda.org/alvin-bragg-sworn-in-as-district-attorney-of-new-york-county/>.

<sup>2</sup> *See* Joseph R. Biden, Jr., Amended Statement of Candidacy (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf>.

<sup>3</sup> *See* Joe Biden (@JoeBiden), X (July 21, 2024, 1:46 PM), <https://x.com/joebiden/status/1815080881981190320?s=46&t=B30ldupgCeikfMK6RJ4RrQ>.

<sup>4</sup> Biden for President, Amended Statement of Organization (Sept. 5, 2023), <https://docquery.fec.gov/pdf/444/202309059596987444/202309059596987444.pdf>. After Biden withdrew from the 2024 presidential race, the Biden Committee became the principal campaign committee of then Vice President Kamala D. Harris and was renamed Harris for President. *See* Harris for President, Amended Statement of Organization (July 21, 2024), <https://docquery.fec.gov/pdf/297/202407219665705297/202407219665705297.pdf>.

<sup>5</sup> *See* Donald J. Trump, Amended Statement of Candidacy (Nov. 15, 2022), <https://docquery.fec.gov/pdf/249/202211159546802249/202211159546802249.pdf>.

<sup>6</sup> Press Release, Manhattan Dist. Att’y’s Off., District Attorney Bragg Announces 34-Count Felony Indictment of Former President Donald J. Trump (Apr. 4, 2023), <https://manhattanda.org/district-attorney-bragg-announces-34-count-felony-indictment-of-former-president-donald-j-trump/> (cited in Compl. ¶ 21 n.27 (June 11, 2024)).

<sup>7</sup> *See* Verdict Sheet, *People v. Trump*, No. IND-71543-23 (N.Y. Sup. Ct. May 30, 2024), <https://www.ny.courts.gov/LegacyPDFS/press/PDFs/Trump-Verdict-Sheet.pdf>.

1 Presidential General Election held on November 5, 2024.<sup>8</sup> On January 10, 2025, Trump was  
 2 sentenced to an unconditional discharge;<sup>9</sup> he has since appealed his conviction.<sup>10</sup>

3 The Complaint alleges that Bragg prosecuted Trump in coordination with Biden and the  
 4 Biden Committee to influence the 2024 presidential election.<sup>11</sup> Specifically, the Complaint  
 5 alleges that certain public statements made and actions taken by Bragg, the Biden Respondents,  
 6 and other officials and actors indicate a coordinated effort to prosecute Trump.<sup>12</sup> These  
 7 statements and actions include the following:

- 8 • Biden’s November 9, 2022 statement that “if [Trump] does run[,] I’m making sure he,  
 9 under legitimate efforts of our Constitution, does not become the next President  
 10 again”;<sup>13</sup>
- 11 • Bragg’s statement as a candidate for Manhattan District Attorney that he had sued the  
 12 Trump administration “more than a hundred times”;<sup>14</sup>

<sup>8</sup> See, e.g., PUB. RECS. BRANCH, PUB. DISCLOSURE & MEDIA RELATIONS DIV., OFF. OF COMMC’NS, FEC, OFFICIAL 2024 PRESIDENTIAL GENERAL ELECTION RESULTS (Jan. 16, 2025), <https://www.fec.gov/resources/cms-content/documents/2024presgeresults.pdf>.

<sup>9</sup> Michael R. Sisak et al., *Trump Gets No-Penalty Sentence in His Hush Money Case, While Calling It ‘Despicable’*, ASSOCIATED PRESS, <https://apnews.com/article/trump-hush-money-sentencing-stormy-daniels-33e070bd3c1acb609bba13f23d784a3a> (last updated Jan. 10, 2025, 5:15 PM EST); see Decision and Order, *People v. Trump*, No. IND-71543-23, 2025 WL 78389, at \*12 (N.Y. Sup. Ct. Jan. 3, 2025).

<sup>10</sup> See, e.g., Michael R. Sisak & Jennifer Peltz, *President Donald Trump Appeals His New York Hush Money Conviction*, ASSOCIATED PRESS, <https://apnews.com/article/trump-hush-money-appeal-stormy-daniels-249a77a70ca b97137595f000fbd49307> (last updated Jan. 29, 2025, 11:53 AM EST).

<sup>11</sup> Compl. ¶¶ 2-3, 13-14, 27-28, 33-34, 38, 41 (June 11, 2024).

<sup>12</sup> Compl. ¶¶ 13-25.

<sup>13</sup> *Remarks by President Biden in Press Conference*, WHITE HOUSE (Nov. 9, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/11/09/remarks-by-president-biden-in-press-conference-8/> [<https://perma.cc/YZ39-QP2Z>] (alterations added) (quoted in Compl. ¶¶ 2, 13).

<sup>14</sup> Jonah E. Bromwich, *et al.*, *2 Leading Manhattan D.A. Candidates Face the Trump Question*, N.Y. TIMES, <https://www.nytimes.com/2021/06/02/nyregion/manhattan-district-attorney-trump.html?smid=url-share> (last updated June 22, 2021) (quoted in Compl. ¶ 17); see also Kim Barker et al., *The Inside Story of Alvin Bragg’s Case Against Trump*, N.Y. TIMES, <https://www.nytimes.com/2024/04/09/magazine/alvin-bragg-donald-trump-trial.html> (last updated Apr. 15, 2024) (stating that “[a] review of [news releases] and court filings found 30 cases in which the New York attorney general’s office had sued Trump or his federal agencies during Bragg’s time there – nearly always alongside other states.” (alteration added)); All In for Alvin (@AlvinBraggNYC), X (June 22, 2021, 9:48 AM), <https://x.com/AlvinBraggNYC/status/1407334798369202187> (“As Chief Deputy Attorney General of NY State, . . . I didn’t just sue Donald Trump and the Trump Foundation – I won.”).

- 1 • Bragg’s receipt of contributions from individuals who would later serve in the Biden  
2 administration;<sup>15</sup>
- 3 • Bragg’s prosecution of Trump based on a novel legal theory;<sup>16</sup>
- 4 • Bragg’s hiring of a former U.S. Department of Justice (“DOJ”) and New York  
5 Attorney General’s Office (“NYAG”) official who worked on their respective  
6 investigations into Trump;<sup>17</sup>
- 7 • Then-U.S. Attorney General Merrick Garland’s initial refusal to commit to provide  
8 the U.S. House Judiciary Committee with communications between DOJ and the  
9 Manhattan District Attorney’s Office during a Congressional hearing;<sup>18</sup>
- 10 • A Biden Committee press conference held outside the Manhattan Criminal  
11 Courthouse on the final day of Trump’s trial;<sup>19</sup> and
- 12 • A Biden Committee statement issued after the verdict stating, “[i]n New York today,  
13 we saw that no one is above the law. . . . Convicted felon or not, Trump will be the

<sup>15</sup> Compl. ¶ 18 (“One day after Bragg announced his primary campaign against his predecessor, Bragg received a contribution from Chiraag Bains, who would later become a Deputy Assistant to the President in the Biden White House. On June 29, 2019, Bragg received a contribution from Adam Hickey, who would later serve as a senior official in Biden’s Department of Justice.” (citations omitted)).

<sup>16</sup> *See id.* ¶¶ 3, 14, 17, 24; STAFF OF H. COMM. ON THE JUDICIARY, 118TH CONG., AN ANATOMY OF A POLITICAL PROSECUTION: THE MANHATTAN DISTRICT ATTORNEY’S OFFICE’S VENDETTA AGAINST PRESIDENT DONALD J. TRUMP (Apr. 25, 2024) (cited in Compl. ¶ 3 n.2). For further discussion of the legal theory of the Manhattan District Attorney’s prosecution of Trump, see, for example, Kate Christobek, *How Prosecutors Made the Case Against Trump*, N.Y. TIMES (May 30, 2024), <https://www.nytimes.com/2024/05/30/nyregion/prosecutors-case-against-trump.html>, and Erica Orden, *How a Hush Money Scandal Turned into a Criminal Case: The Whirlwind History of People v. Trump*, POLITICO (Apr. 15, 2024), <https://www.politico.com/news/2024/04/15/trump-hush-money-case-history-00152172> (cited in Comp. ¶ 3 n.2, ¶ 14 n.5).

<sup>17</sup> Jonah E. Bromwich, *Manhattan D.A. Hires Ex-D.O.J. Official to Help Lead Trump Investigation*, N.Y. TIMES (Dec. 5, 2022), <https://www.nytimes.com/2022/12/05/nyregion/alvin-bragg-trump-investigation.html> [<https://perma.cc/NF8F-B8RK>] (quoted in Compl. ¶ 20); *see* Letter from James D. Jordan, Chairman, H. Comm. on the Judiciary, to Matthew B. Colangelo, Senior Couns., N.Y. Cty. Dist. Att’y Off. (Apr. 7, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-04-07-jdj-colangelo.pdf> [<https://perma.cc/L6VM-3LU8>] (cited in Compl. ¶ 20 n.24).

<sup>18</sup> *See* Press Release, Rep. Matt Gaetz, Congressman Gaetz Slams AG Garland on Alleging the DOJ Communicating with State Prosecutors Against President Trump is a ‘Conspiracy Theory’ (June 4, 2024) [<https://perma.cc/D85Z-2K4R>] (cited in Compl. ¶ 20 n.26). *But see* Letter from Carlos Felipe Uriarte, Assistant Att’y Gen., Off. of Legis. Affs., U.S. Dep’t of Justice, to James D. Jordan, Chairman, H. Comm. on the Judiciary (June 10, 2024) (“Letter”), <https://www.politico.com/f/?id=00000190-075b-d29e-a9f3-677bfc9e0000> (cited in Resp. at 3 n.10 (Aug. 2, 2024)) (“The Department has conducted a comprehensive search for email communications since January 20, 2021, through the date of the verdict, between any officials in Department leadership, including all political appointees in those offices, and the District Attorney’s office regarding any investigation or prosecution of the former President. We found none.”).

<sup>19</sup> *See* Colleen Long & Zeke Miller, *Biden Campaign Sends Allies De Niro and First Responders to Trump’s NY Trial to Put Focus on Jan. 6*, ASSOCIATED PRESS (May 28, 2024), <https://www.ap.org/news-highlights/elections/2024/biden-campaign-sends-allies-de-niro-and-first-responders-to-trumps-ny-trial-to-put-focus-on-jan-6/> (cited in Compl. ¶ 22 n.30).

1 Republican nominee for president. The threat Trump poses to our democracy has  
2 never been greater.”<sup>20</sup>

3 The Complaint argues that the above information provides “strong circumstantial  
4 indications” that Bragg coordinated his prosecution of Trump with the Biden Respondents for  
5 purposes of “harm[ing] Trump’s candidacy and that charges would not have been brought but for  
6 Trump’s status as a presidential candidate.”<sup>21</sup> The Complaint thus asserts that Bragg’s  
7 prosecution of Trump is a coordinated expenditure “resulting in an in-kind contribution by Bragg  
8 to Biden for President”<sup>22</sup> that violates the Act’s prohibition on excessive contributions and its  
9 reporting requirements.<sup>23</sup>

10 The Response denies the allegations as speculative and insufficient to show a violation of  
11 the Act. Specifically, the Response contends that the alleged statements and activities do not  
12 support a claim of coordination between Bragg and the Biden Respondents.<sup>24</sup> The Response also  
13 argues that, because the allegations do not indicate that Bragg prosecuted Trump for the purpose  
14 of influencing a federal election, the prosecution was not an expenditure under the Act.<sup>25</sup>

### 15 **III. LEGAL ANALYSIS**

16 The Act and Commission regulations provide that no person may make, and no candidate  
17 or candidate’s authorized political committee may knowingly accept, any contribution that

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<sup>20</sup> Kamala HQ (@KamalaHQ), X (May 30, 2024, 5:44 PM), <https://x.com/KamalaHQ/status/1796296637133853110> (quoted in Compl. ¶ 22).

<sup>21</sup> Compl. ¶¶ 28, 33; *see also id.* ¶ 17 (“Bragg would not have prosecuted Trump but for Trump’s candidacy.”).

<sup>22</sup> *Id.* ¶ 34.

<sup>23</sup> *Id.* ¶¶ 26-45.

<sup>24</sup> Resp. at 2-3.

<sup>25</sup> *Id.* at 3-5.

1 violates the Act’s contribution limits.<sup>26</sup> During the 2024 election cycle, contributions made by  
2 any person (other than a multicandidate committee) to any candidate or candidate’s committee  
3 were limited to \$3,300 per election.<sup>27</sup> A candidate’s committee must report the identity of any  
4 person who makes a contribution to the committee during the reporting period and whose  
5 contribution or contributions have an aggregate amount or value in excess of \$200 within the  
6 election cycle.<sup>28</sup>

7 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit  
8 of money or anything of value made by any person for the purpose of influencing any election  
9 for Federal office.”<sup>29</sup> The phrase “anything of value” includes “*all* in-kind contributions” and  
10 “the provision of *any* goods or services without charge or at a charge that is less than the usual  
11 and normal charge for such goods or services.”<sup>30</sup> In-kind contributions include “coordinated  
12 expenditures,” which are “expenditures made by any person in cooperation, consultation, or  
13 concert, with, or at the request or suggestion of, a candidate, his [or her] authorized political  
14 committees, or their agents.”<sup>31</sup>

15 An “expenditure” includes “any purchase, payment, distribution, loan, advance, deposit,  
16 or gift of money or anything of value, made by any person for the purpose of influencing any  
17 election for Federal office.”<sup>32</sup> Under the Commission’s regulations, expenditures that are

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<sup>26</sup> 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9.

<sup>27</sup> See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 88 Fed. Reg. 7,088, 7,090 (Feb. 2, 2023).

<sup>28</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

<sup>29</sup> 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

<sup>30</sup> 11 C.F.R. § 100.52(d)(1) (emphases added).

<sup>31</sup> 52 U.S.C. § 30116(a)(7)(B); *accord* 11 C.F.R. § 109.20.

<sup>32</sup> 52 U.S.C. § 30101(9)(A)(i); *accord* 11 C.F.R. § 100.111(a).

1 “coordinated” with a candidate, but are not made for a coordinated communication or party-  
2 coordinated communication, constitute in-kind contributions to that candidate.<sup>33</sup> In this context,  
3 “[c]oordinated means made in cooperation, consultation or concert with, or at the request or  
4 suggestion of, a candidate, [or] a candidate’s authorized committee.”<sup>34</sup>

5 Having the “purpose of influencing a federal election” is a necessary element in defining  
6 whether a payment is a “contribution” or “expenditure” under the Act and Commission  
7 regulations.<sup>35</sup> In analyzing whether a payment made by a third party is a “contribution” or  
8 “expenditure,” the Commission has concluded that “the question under the Act is whether” the  
9 donation, payment, or service was “provided for the purpose of influencing a federal election  
10 [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”<sup>36</sup> As such, the  
11 Commission has previously found that activity lacking the requisite purpose of influencing a  
12 federal election — including, for example, activity to fulfill the obligations of holding federal  
13 office<sup>37</sup> — does not result in a “contribution” or “expenditure,” even if it confers a benefit on a  
14 candidate or otherwise affects a federal election. The electoral purpose of a payment may be  
15 clear on its face, as in payments to solicit contributions or for communications that expressly

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<sup>33</sup> 11 C.F.R. § 109.20(b); *see also* 11 C.F.R. § 100.52(d)(1) (providing that “in-kind contributions” may be a contribution under the Act); *id.* § 100.111(e)(1) (providing that “in-kind contributions” may be an expenditure under the Act).

<sup>34</sup> 11 C.F.R. § 109.20(a).

<sup>35</sup> *See* 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

<sup>36</sup> Factual & Legal Analysis (“F&LA”) at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

<sup>37</sup> *See e.g.*, Advisory Opinion 1981-37 at 2 (Gephardt) (“AO 1981-37”) (federal candidate did not receive a contribution by appearing at a series of “public affairs forums” paid for by a corporation because “the purpose of the activity is not to influence the nomination or election of a candidate for Federal office but rather in connection with the duties of a Federal officeholder” and although “involvement in the public affairs programs may indirectly benefit future campaigns, . . . the major purpose of the activity contemplated . . . would not be the nomination or election of you or any other candidate to Federal office”).

1 advocate for the election or defeat of a specific candidate, or inferred from the surrounding  
2 circumstances.<sup>38</sup>

3 Even if Bragg’s prosecution of Trump is a thing “of value,” there is insufficient  
4 information to indicate that the purpose of Bragg’s prosecution was to influence a federal  
5 election. The Commission has explained that an electoral purpose is not established simply by a  
6 thing of value benefitting a federal campaign.<sup>39</sup> The Manhattan District Attorney’s Office has  
7 stated that it prosecuted Trump to enforce “one of New York’s basic and fundamental business  
8 laws” and “ensure that everyone stands equal before the law.”<sup>40</sup> Although the outcome of this  
9 case may have affected Trump’s 2024 presidential campaign, “the Commission has consistently  
10 held that no contribution or expenditure results under the Act” where the activity at issue is “in  
11 connection with the duties of a Federal officeholder.”<sup>41</sup> Here by comparison, Bragg’s

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<sup>38</sup> See, e.g., AO 2000-08 at 1, 3 (Harvey) (concluding private individual’s \$10,000 “gift” to federal candidate would be a contribution because “the proposed gift would not be made but for the recipient’s status as a Federal candidate”); AO 1990-05 at 4 (Mueller) (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that federal candidate’s company newsletter featuring discussion of campaign resulted in contributions); AO 1988-22 at 5 (San Joaquin Valley Republican Assocs.) (concluding third party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because “the financing of a communication to the general public, not within the ‘press exemption,’ that discusses or mentions a candidate in an election-related context and is undertaken in coordination with the candidate or his campaign is ‘for the purpose of influencing a federal election’); F&LA at 17-20, MURs 4568, 4633, 4634 (Triad Mgmt. Servs., Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with “uncompensated fundraising and campaign management assistance” and “advertising assistance[.]” including spending “several million dollars” on coordinated advertisements).

<sup>39</sup> F&LA at 15, MURs 7854, 7946 (Center for Tech and Civic Life, *et al.*) (citing F&LA at 6, MUR 7024 (Van Hollen for Senate, *et al.*)).

<sup>40</sup> *Supra* note 6.

<sup>41</sup> AO 1981-37 at 2.

1 prosecution of Trump was in connection with his duties as a county officeholder and appears to  
2 be consistent with his official duties.

3           The available information also does not indicate that the prosecution was coordinated  
4 between the Respondents. The Complaint alleges that there are “strong circumstantial  
5 indications that Bragg coordinated with Biden,”<sup>42</sup> including: Bragg’s hiring of a former DOJ and  
6 NYAG official,<sup>43</sup> Garland’s initial refusal to disclose communications between the Department  
7 of Justice and the Manhattan District Attorney’s Office,<sup>44</sup> and the Biden Committee’s events and  
8 statements related to Trump’s trial and conviction.<sup>45</sup> Yet this “circumstantial” information does  
9 not indicate any interaction between Bragg and the Biden Respondents, nor does it support a  
10 finding that there is reason to believe Bragg prosecuted Trump in cooperation, consultation, or in  
11 concert, with, or at the request or suggestion of, the Biden Respondents.

12           The Complaint alleges a “link” between Bragg and the Biden Respondents through  
13 Bragg’s hiring of a former DOJ and NYAG official involved in previous investigations of  
14 Trump;<sup>46</sup> but this prior employment relationship is insufficient to support an allegation of  
15 coordination between the Respondents. Additionally, the available information indicates that  
16 there was no communication between Bragg and the Biden Respondents concerning the  
17 prosecution of Trump. To the contrary, DOJ has denied the existence of any email  
18 communications between its leadership and the Manhattan District Attorney’s Office concerning

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<sup>42</sup> Compl. ¶ 28.

<sup>43</sup> *Supra* note 17 and accompanying text.

<sup>44</sup> *Supra* note 18 and accompanying text.

<sup>45</sup> *Supra* notes 19-20 and accompanying text.

<sup>46</sup> Compl. ¶ 28.

1 any investigation or prosecution of Trump.<sup>47</sup> The Biden Respondents' statements and actions  
2 related to Trump's trial as alleged in the Complaint are also insufficient to infer coordination  
3 between Bragg and the Biden Respondents.

4 Because the available information is speculative and does not indicate that there was any  
5 contact between Bragg and the Biden Respondents, the prosecution of Trump does not appear to  
6 have been an in-kind contribution. Accordingly, the Commission dismisses the allegations that  
7 Bragg violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b) by making excessive  
8 contributions, and that the Biden Respondents violated 52 U.S.C. § 30116(f) and 11 C.F.R.  
9 § 110.9 by knowingly accepting excessive contributions. The Commission also dismisses the  
10 allegation that the Biden Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by  
11 failing to report such contributions.

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<sup>47</sup>

*See* Letter, *supra* note 18.



FEDERAL ELECTION COMMISSION  
 1050 FIRST STREET, N.E.  
 WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of :  
 : MUR 8274  
 Alvin R. Bragg, *et al.* :  
 :  
 :  
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**STATEMENT OF REASONS OF  
 VICE CHAIRMAN JAMES E. “TREY” TRAINOR, III  
 AND COMMISSIONER ALLEN J. DICKERSON**

In this Matter, the complainant contended that “[b]y pursuing [a] politically motivated prosecution against [Donald] Trump,” the Manhattan district attorney, Alvin Bragg, along with the campaign of former President Joe Biden, violated the Federal Election Campaign Act (“FECA” or “Act”) by making and receiving an illegal contribution or expenditure.<sup>1</sup>

The complaint fails for two independent reasons: (1) government action cannot form the basis for a FECA violation and (2) even if it did, so-called ‘lawfare’ is outside the Act’s definitions of “contribution” and “expenditure.” Accordingly, we voted to dismiss the complaint.<sup>2</sup>

**I. The Complaint’s Allegations**

In brief, the complaint alleges that the Manhattan district attorney’s decision to prosecute the current President (then merely a candidate) “was coordinated with Biden,” in furtherance of the former president’s re-election efforts.<sup>3</sup> The complaint draws this conclusion from three threads. First, that the Manhattan district attorney

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<sup>1</sup> Complaint at 2, ¶¶ 4-6.

<sup>2</sup> Certification at 1, MUR 8274 (Bragg), Mar. 27, 2025.

<sup>3</sup> *E.g.* Complaint at 12-13, ¶¶ 28- 30 (“The available information includes strong circumstantial indications that Bragg coordinated with [President] Biden...for the principal purpose of influencing the 2024 presidential election”).

hired a former Department of Justice (“DOJ”) official “to ‘jump-start’ his office’s investigation of President Trump.”<sup>4</sup> Second, from then-Attorney General Merrick Garland’s “refusal” to consent to a Congressional request “to disclose [any] communications between [DOJ]...and Bragg’s office.” And, third, from “the Biden campaign’s press event and statement immediately after the trial and conviction,” which purportedly show “that the purpose of” the “prosecution was to harm Trump’s candidacy.”<sup>5</sup>

In short, the complainant believes that the Manhattan district attorney and the Biden campaign violated 52 U.S.C. §§ 30116(a)(1)(A) (the individual contribution limit to campaign committees) and 30116(f) (the prohibition on knowing receipt of illegal contributions).<sup>6</sup> As one of the respondents summed up the complaint, it “makes the novel...legal argument that the New York state prosecution of former President Donald J. Trump...was a coordinated expenditure with, and therefore an [illegal] in-kind contribution to, Biden for President.”<sup>7</sup>

## II. Standard of Review

“The Commission will find reason-to-believe when a complaint (1) fairly invokes its jurisdiction, (2) is credible, and not merely a bare accusation of wrongdoing, (3) the response has not sufficiently answered the complaint, and (4) it determines that enforcement is a judicious use of the Commission’s scarce resources.”<sup>8</sup>

## III. Relevant Law

The federal contribution limit, 52 U.S.C. § 30116(a)(1), provides that “no person shall make contributions...to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate,

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<sup>4</sup> *Id.* at 12, ¶ 28.

<sup>5</sup> *Id.* at 15, ¶ 33.

<sup>6</sup> The complaint also alleges that the Biden committee failed to report receipt of the district attorney’s contribution. 52 U.S.C. § 30104(b). But if there was no such contribution or expenditure, there is no such reporting requirement.

<sup>7</sup> Biden Resp. at 1. The district attorney did not file a response.

<sup>8</sup> Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 2, MUR 8110 (Am. Coal. for Conservative Policies), July 29, 2024.

exceed \$[3,300].”<sup>9</sup> The bar on knowing receipt of illegal contributions, 52 U.S.C. § 30116(f), states that “[n]o candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section.”

The critical words in these two statutes are “person,” “contribution,” and “expenditure,” all of which are specifically defined in the Act.

A “person’ includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.”<sup>10</sup>

The terms “contribution” and “expenditure” have remained untouched since 1974, despite the intervening Supreme Court decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), which held that the First Amendment required both of those definitions to be read narrowly.<sup>11</sup> Thus, despite “contribution” being defined to include “anything of value made by any person for the purpose of influencing any election for Federal office,”<sup>12</sup> and “expenditure” being defined similarly, *Buckley* narrowed the scope of both terms.

The term “contribution,” then, must be interpreted in harmony with the judiciary’s instruction concerning “the limiting connotation created by the general understanding of what constitutes a political contribution...[f]unds provided to a candidate...directly or indirectly.”<sup>13</sup> The “indirect” provision of funds is addressed through the Act’s applications to “things given in-kind that hold a specific monetary value and are available on the market.”<sup>14</sup>

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<sup>9</sup> The statutory number of \$2,000 is regularly adjusted, by law, for inflation. During the 2024 election cycle at issue in the instant Matter, the limit was \$3,300. The complaint contends that the prosecution held a value of more than \$3,300 and was therefore an illegal excessive contribution. Complaint at 18, ¶ 39; *but see infra* at 7.

<sup>10</sup> 52 U.S.C. § 30101(11).

<sup>11</sup> As we have noted before, “[w]here the Supreme Court has provided such a ‘gloss,’ it must govern our application of the Act.” Statement of Reasons of Vice Chairman Cooksey and Comm’rs Dickerson and Trainor at 3, MURs 7931/8059 (Biden) and 7968/7969 (Trump), Oct. 6, 2023 (“Biden-Trump Statement”) (internal citation omitted).

<sup>12</sup> 52 U.S.C. § 30101(a)(8)(A)(i).

<sup>13</sup> *Buckley*, 424 U.S. at 23, n.24.

<sup>14</sup> Statement of Reasons of Chairman Dickerson and Comm’rs Cooksey and Trainor at 6, MUR 7645/7663/7705 (Trump), Aug. 31, 2022 (“Trump-Ukraine Statement”).

Similarly, when “the maker of the [alleged] expenditure” is “an individual other than a candidate,” the statutory term “expenditure” goes no further than “precisely [] that spending that is unambiguously related to the campaign of a particular federal candidate...[including] communications that expressly advocate the election or defeat of a clearly identified candidate.”<sup>15</sup>

#### **IV. We Dismissed The Complaint Because It Did Not Allege A FECA Violation.**

In sum, the complaint alleges that the Biden administration and the Manhattan district attorney conspired to leverage the New York County law enforcement apparatus against the then-President’s likely Republican opponent. But even if every factual allegation in the complaint is true, it fails as a matter of law because FECA does not address the use of the criminal law enforcement process against a political opponent.

There are three specific reasons why the Commission is not an appropriate forum for these allegations.

*a. Official acts of the federal government are neither “contributions” nor “expenditures.”*

Under the Act, “[t]he Commission is empowered to regulate the conduct of a narrow range of activity related to campaign spending, not the conduct of official policy.”<sup>16</sup> In particular, “the Act...precludes enforcement against ‘the Federal Government or any authority of the Federal Government.’”<sup>17</sup> Yet the complaint bases its allegation, in part, on official actions of the Department of Justice, such as the Attorney General’s manner of answering a question during a House oversight hearing, or his decision not to share evidence concerning communications between DOJ and Mr. Bragg’s office with Congress.<sup>18</sup> These are precisely the sort of “official acts” we have determined lie outside of FECA.<sup>19</sup>

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<sup>15</sup> *Buckley*, 424 U.S. at 79.

<sup>16</sup> Trump-Ukraine Statement at 9.

<sup>17</sup> *Id.*

<sup>18</sup> Complaint at 8, ¶ 20; *id.* at 12, ¶ 28.

<sup>19</sup> Trump-Ukraine Statement at 9.

Without these official acts, all that would remain of the complaint’s evidence against Biden and his campaign is press events after Mr. Trump, by then the presumptive Republican nominee for President, was convicted in the prosecution at issue.<sup>20</sup> But campaigns taking advantage of the misfortune of their opponents is unremarkable, and we decline the complaint’s invitation to transform it into a federal crime.

*b. Official acts of State and local governments are neither “contributions” nor “expenditures.”*

Even if the foregoing is mistaken, the prosecution at issue cannot constitute a “contribution” or an “expenditure,” because the Manhattan district attorney, acting in his official capacity, is no more a “person” under the Act than is the Federal government and, therefore, cannot make “contributions” or “expenditures.”<sup>21</sup>

The Act defines “person” to include “an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.” While Alvin Bragg is certainly “an individual,” the complaint is directed toward action that he could only carry out in his position as the Manhattan district attorney. So, the question is: can the office of the Manhattan district attorney, as an instrument of the local government, be considered a “person” under the Act?

The text is ambiguous, as state and local governments are not explicitly addressed within the definition of “person.”<sup>22</sup> Is such a government plausibly a “partnership” or a “committee?” Not in the ordinary sense of those terms. Nor do “association, corporation, or labor organization” comfortably encompass the official acts of the Manhattan district attorney.<sup>23</sup>

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<sup>20</sup> Mr. Trump was convicted on May 30, 2024, months after he won enough primary contests to ensure that a majority of delegates to the 2024 Republican national convention would be pledged to vote for him on the first ballot.

<sup>21</sup> 52 U.S.C. § 30101(a)(1)(A).

<sup>22</sup> At times, in dicta, the Commission has suggested state and local governments are “persons” under FECA. Factual and Legal Analysis at 22, MUR 8006 (Russell Fry) (“The Act’s definition of ‘person’ does not exclude a state or local government”). This was a mistake; as often happens in the law, the issue was not fully developed, and the Commission made a regrettable assumption.

<sup>23</sup> True, some local governments are “incorporated.” But in FECA, the word “corporation” is nestled alongside “association” and “labor organization.” This indicates that FECA’s drafters intended the statute to apply to similar private entities organized for private purposes, not governments capable of wielding the police power. *See Dubin v. United States*, 599 U.S. 110, 126 (2023) (“Because ‘transfer’ and ‘possess’ channel ordinary identity theft, *noscitur a sociis* indicates that ‘uses’ should be read in a similar manner to its companions”). To the extent that legislative history has value in statutory construction—admittedly, a disputed question—it also supports our reading. Statement of Sen.

What about the Act’s concluding provisions (“any other organization or group of persons”), as well as the non-exhaustive nature of the “person” definition (“includes”)? Does that get the complaint over the line? We think not. Those terms come immediately after “association, corporation, [and] labor organization.” The statutory “canon of *ejusdem generis*,”<sup>24</sup> “one of the oldest and most frequently applied canons,”<sup>25</sup> teaches that “a general or collective term at the end of a list of specific items is typically controlled and defined by reference to the specific classes that precede it.”<sup>26</sup> Thus, “organizations” and “groups of persons” ought to be read in line with their foregoing partner words, none of which are best understood to reach governments.

This is unsurprising. There is a “longstanding interpretive presumption that ‘person,’ when listed in a federal statute, “does not include” a State government, its subdivisions, or any other domestic “sovereign,” and “may be disregarded only upon some affirmative showing of statutory intent to the contrary.”<sup>27</sup> No such statutory intent exists here.<sup>28</sup> And since “[n]on-inclusion of the sovereign means non-inclusion of agencies of the sovereign as well,” the official acts of the Manhattan district attorney—indeed all local law enforcement—fall outside the Act.<sup>29</sup>

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Kennedy at 1081, Legislative History of the Federal Election Campaign Act of 1974 (“Who really owns America? Who owns Congress?...Does anyone doubt the connection between America’s reluctance to enforce effective price restraint and the campaign contributions of the Nation’s richest corporations?”); Statement of Sen. Baker at 202 (“I do not think a corporation or a union should be allowed to contribute”); Statement of Sen. Tower at 511 (“Mr. President, most of this talk has been about labor organizations but the same kind of abuse can be practiced by a corporation as well”). It would also be a jarring result if incorporated municipalities were subject to the Act, but *unincorporated* ones were not.

<sup>24</sup> *McDonnell v. United States*, 579 U.S. 550, 568 (2016).

<sup>25</sup> Antonin Scalia and Bryan Garner at 30, *Reading Law: The Interpretation of Legal Texts* (Kindle Ed.).

<sup>26</sup> *McDonnell v. United States*, 579 U.S. 550, 568 (2016).

<sup>27</sup> *Vt. Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 769, 780 (2000). Under the American system of government, sovereignty resides with the people and is delegated to Federal, state, and local governments. U.S. Const. amend. X.

<sup>28</sup> Indeed, the fact that the very next definition after “person” is “State,” 52 U.S.C. § 30101(11), is a strong indicator that States are not persons under the Act—otherwise Congress could have simply included States (and their local entities) explicitly in the definition of “person.”

<sup>29</sup> Scalia and Garner at 214.

*c. Criminal prosecutions are not “things of value” under the Act.*

Even if one were to disagree with the foregoing statutory interpretation, we still would have dismissed the complaint because a criminal prosecution is neither a “contribution” nor an “expenditure.”

As discussed above, *Buckley v. Valeo* sharply limited FECA’s application. Instead of “anything of value,” only donations which coincide with “the limiting connotation created by the general understanding of what constitutes a political contribution”<sup>30</sup> are “contributions.” A criminal prosecution is different in kind from the donation of money or the archetypical in-kind contribution (such as furniture, food, or office space). While private sector attorney time may have a market rate, law enforcement is a public good; attempts to create a market value for law enforcement are appropriately prosecuted as bribery. Thus criminal prosecutions, even allegedly malicious ones, are not “contributions” under the Act.

Nor is a criminal prosecution an “expenditure.” While all spending by candidate committees “can be assumed to fall within th[at] core area,” because anything a campaign does is “by definition, campaign related,” the Biden for President committee did not, and could not, prosecute anyone.<sup>31</sup> The prosecution was necessarily brought by the district attorney’s office.

But since the district attorney is not a political committee, the criminal case could only be considered an expenditure if it constituted “funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.”<sup>32</sup> And both the *Buckley* Court and our own implementing regulations “restrict the application” of express advocacy “to communications containing express words of advocacy of election or defeat,”<sup>33</sup> or those which “could only be interpreted by a reasonable person as containing [such] advocacy.”<sup>34</sup> A public prosecution cannot be plausibly forced into that box. Moreover, whatever “communication” may result from a criminal indictment and conviction is susceptible to multiple plausible interpretations.<sup>35</sup>

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<sup>30</sup> *Buckley*, 424 U.S. at 24, n.23.

<sup>31</sup> *Id.* at 79.

<sup>32</sup> *Id.* at 80.

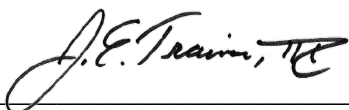
<sup>33</sup> *Id.* at 44, n.52.

<sup>34</sup> 11 C.F.R. § 100.22(b).

<sup>35</sup> Moreover, while a criminal prosecution may be commenced by the Manhattan district attorney, but in the American legal system, the district attorney alone does not control the prosecution’s “content.”

**CONCLUSION**

Because it failed, as a matter of law, to allege a violation of the Act, we voted to dismiss the complaint.




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James E. "Trey" Trainor, III  
Acting Chairman

April 29, 2025

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Date



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Allen J. Dickerson  
Commissioner

April 29, 2025

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Date

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Opposing counsel, the judge, and—carrying the last word—the jury, all contributed to the instant “communication.”