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.*	:	
	:	
	:	

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.[1]

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.[2]

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.[3] The complaint draws this conclusion from three threads. First, that the Manhattan district attorney

[1] Complaint at 2, ¶¶ 4-6.

[2] Certification at 1, MUR 8274 (Bragg), Mar. 27, 2025.

[3] *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."[4] 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."[5]

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).[6] 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."[7]

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."[8]

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,

[4] *Id*. at 12, ¶ 28.

[5] *Id*. at 15, ¶ 33.

[6] 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.

[7] Biden Resp. at 1. The district attorney did not file a response.

[8] 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]."[9] 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."[10]

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.[11] Thus, despite "contribution" being defined to include "anything of value made by any person for the purpose of influencing any election for Federal office,"[12] 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."[13] 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."[14]

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[9] 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.

[10] 52 U.S.C. § 30101(11).

[11] 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).

[12] 52 U.S.C. § 30101(a)(8)(A)(i).

[13] *Buckley*, 424 U.S. at 23, n.24.

[14] 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."[15]

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."[16] In particular, "the Act…precludes enforcement against 'the Federal Government or any authority of the Federal Government.'"[17] 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.[18] These are precisely the sort of "official acts" we have determined lie outside of FECA.[19]

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[15] *Buckley*, 424 U.S. at 79.

[16] Trump-Ukraine Statement at 9.

[17] *Id*.

[18] Complaint at 8, ¶ 20; *id*. at 12, ¶ 28.

[19] 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.[20] 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 then is the Federal government and, therefore, cannot make "contributions" or "expenditures."[21]

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."[22] 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.[23]

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[20] 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.

[21] 52 U.S.C. § 30101(a)(1)(A).

[22] 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.

[23] 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—admittingly, 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*,"[24] "one of the oldest and most frequently applied canons,"[25] 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.'"[26] 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."[27] No such statutory intent exists here.[28] 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.[29]

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 *un*incorporated ones were not.

[24] *McDonnell v. United States*, 579 U.S. 550, 568 (2016).

[25] Antonin Scalia and Bryan Garner at 30, Reading Law: The Interpretation of Legal Texts (Kindle Ed.).

[26] *McDonnell v. United States*, 579 U.S. 550, 568 (2016).

[27] *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.

[28] 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."

[29] 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"[30] 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.[31] 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."[32] 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,"[33] or those which "could only be interpreted by a reasonable person as containing [such] advocacy."[34] 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.[35]

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[30] *Buckley*, 424 U.S. at 24, n.23.

[31] *Id*. at 79.

[32] *Id*. at 80.

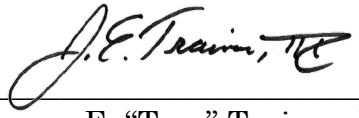
[33] *Id*. at 44, n.52.

[34] 11 C.F.R. § 100.22(b).

[35] 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

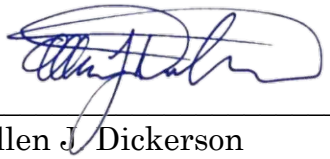
Because it failed, as a matter of law, to allege a violation of the Act, we voted to dismiss the complaint.



April 29, 2025

James E. "Trey" Trainor, III
Acting Chairman

Date



April 29, 2025

Allen J. Dickerson
Commissioner

Date

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