

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 8301**

4 DATE COMPLAINT FILED: Aug. 13, 2024

5 DATE OF NOTIFICATIONS: Aug. 20, 2024

6 LAST RESPONSE RECEIVED: Nov. 27, 2024

7 DATE ACTIVATED: Feb. 11, 2025

8 [REDACTED]
 9 STATUTE OF LIMITATIONS: Aug. 12, 2029-
 10 Oct. 11, 2029

11 ELECTION CYCLE: 2024

12 **COMPLAINANTS:**

13 End Citizens United
 Tiffany Muller

14 **RESPONDENTS:**

15 X Corp.
 16 Never Surrender, Inc. f/k/a Donald J. Trump for
 17 President 2024, Inc. and Bradley T. Crate in his
 18 official capacity as treasurer
 Donald J. Trump

19 **RELEVANT STATUTES
 20 AND REGULATIONS:**

21 52 U.S.C. § 30101(8), (9), (22)
 22 52 U.S.C. § 30118(a)
 23 11 C.F.R. § 100.94
 24 11 C.F.R. § 100.155
 25 11 C.F.R. § 109.21
 11 C.F.R. § 114.2(b), (d)

26 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

27 **FEDERAL AGENCIES CHECKED:**

None

28 **I. INTRODUCTION**

29 The Complaint alleges that the social media platform X Corp., Inc. ("X") made, and 2024
 30 presidential candidate Donald J. Trump and his principal campaign committee, Never Surrender,
 31 Inc. f/k/a Donald J. Trump for President 2024, Inc. and Bradley T. Crate in his official capacity
 32 as treasurer (the "Trump Committee") (collectively, the "Trump Respondents"), knowingly
 33 accepted, prohibited corporate contributions in violation of the Federal Election Campaign Act
 34 of 1971, as amended (the "Act"). Specifically, the Complaint alleges that, on August 12, 2024,

1 X livestreamed a conversation between Elon R. Musk, the owner of X, and Trump, during which
2 Musk expressly advocated for Trump's election. The Trump Committee submitted a Response
3 arguing that the Trump Respondents did not accept a corporate contribution because the
4 livestream is exempt from the Act's definition of "contribution." Neither Trump nor Musk
5 submitted a response.

6 As explained below, the available information indicates that the livestream does not
7 satisfy the content prong of the coordinated communications test under Commission regulations
8 because the internet exemption applies; therefore, the livestream was not a prohibited corporate
9 contribution. Accordingly, we recommend that the Commission dismiss the allegations that X
10 made a prohibited corporate contribution in violation of 52 U.S.C. § 30118(a) and 11 C.F.R.
11 § 114.2(b), and that the Trump Respondents knowingly accepted a prohibited corporate
12 contribution in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d).

13 II. FACTUAL BACKGROUND

14 X is a social media platform and private corporation that, at the time of the livestream,
15 was wholly owned by X Holdings Corp.; Elon Musk appears to be the majority shareholder of X
16 Holdings Corp.¹ Donald J. Trump is the President of the United States and was a candidate in

¹ See Resp't's Notice of Submission of Unredacted Suppl. Corporate Disclosure Statement Ex. A at 1-2, *Anoke v. Twitter, Inc.*, No. 3:23-cv-02217 (N.D. Cal. 2023), ECF No. 54 (stating that "Twitter, Inc. has been merged into X Corp" and "X Corp. is wholly owned by X Holdings Corp." and disclosing Musk as "owner[]/shareholder[] of X Holdings Corp."); Matthew Martin *et al.*, *Elon Musk Has Been Buying up X Shares Near His Initial Purchase Price*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2025-03-18/musk-has-been-buying-up-x-shares-near-his-initial-purchase-price> (last updated Mar. 18, 2025, 3:15 PM EDT) (stating that Musk is "the majority shareholder of the company [X]" and "owned almost 74% of X as of October 2023"). X Corp. has since been acquired by xAI, a privately held corporation founded by Musk. See Barbara Ortutay, *Elon Musk Sells X to His Own xAI for \$33 Billion in All-Stock Deal*, ASSOCIATED PRESS, <https://apnews.com/article/x-musk-sale-xai-b245f463076ac9b72c41f92160dc77eb> (last updated Mar. 29, 2025, 1:12 PM EDT); see also Elon Musk (@elonmusk), X (Mar. 28, 2025, 5:20 PM), <https://x.com/elonmusk/status/1905731750275510312> ("@xAI has acquired @X in an all-stock transaction.").

1 the 2024 presidential election.² Donald J. Trump for President 2024 was Trump's principal
 2 campaign committee during the 2024 election cycle; it has since converted to a leadership PAC
 3 and changed its name to Never Surrender, Inc.³

4 On August 12, 2024, X livestreamed an over two-hourlong conversation between Musk
 5 and Trump.⁴ The livestream was hosted on Spaces,⁵ a feature of X allowing its users to host
 6 live, audio-only conversations that “can be listened to by anyone on the Internet.”⁶ During the
 7 livestream, Musk and Trump discussed the presidential campaign,⁷ and Musk expressed his
 8 support for Trump's candidacy and opposition to Kamala D. Harris, Trump's general election
 9 opponent.⁸ Spaces malfunctioned before the conversation began, delaying the start of the
 10 livestream.⁹ At the time, Musk posted on X that “a massive DDOS [distributed denial of
 11 service] attack on X” caused the glitches.¹⁰ Before the livestream, the Trump Respondents

² See FEC, OFFICIAL 2024 PRESIDENTIAL GENERAL ELECTION RESULTS (Jan. 16, 2025), <https://www.fec.gov/resources/cms-content/documents/2024presgeresults.pdf>; Donald J. Trump, Amended Statement of Candidacy (Nov. 15, 2022).

³ Donald J. Trump for President 2024, Inc., Amended Statement of Organization at 1 (Aug. 20, 2024), <https://docquery.fec.gov/pdf/680/202408209674127680/202408209674127680.pdf>; Never Surrender, Inc., Amended Statement of Organization at 1-2 (Nov. 12, 2024), <https://docquery.fec.gov/pdf/551/202411129719967551/202411129719967551.pdf>.

⁴ Michael Gold, *Musk Tees Up Softball Questions for Trump on X, After Technical Problems*, N.Y. TIMES (Aug. 13, 2024), <https://www.nytimes.com/2024/08/12/us/politics/trump-musk-interview-x.html> (cited in Compl. at 2 n.5 (Aug. 13, 2024)).

⁵ *Id.*

⁶ *About X Spaces*, X, <https://help.x.com/en/using-x/spaces> (last visited Mar. 10, 2025).

⁷ See Gold, *supra* note 4; see also Kate Conger & Ryan Mac, *Musk's Trump Talk: After Glitchy Start, a Two-Hour Ramble*, N.Y. TIMES (Aug. 13, 2024), <https://www.nytimes.com/2024/08/13/technology/elon-musk-x-donald-trump.html> (reporting that Trump and Musk participated in the event from different locations).

⁸ Elon Musk (@elonmusk), at 2:46, X (Aug. 13, 2024, 3:03 AM), <https://x.com/elonmusk/status/1823254086126608862>; see Donald J Trump, *President Trump's Interview with Elon Musk on X*, YOUTUBE (Aug. 13, 2024), <https://youtu.be/QzWjFzRMQNA?si=JuGiKOSbj2XyRB0K>.

⁹ Gold, *supra* note 4.

¹⁰ Elon Musk (@elonmusk), X (Aug. 12, 2024, 8:18 PM), <https://x.com/elonmusk/status/1823152153445404990?lang=en> (stating “[w]orking on shutting it down”). *But see* Gaby Del Valle & Kylene Robison, *The Elon Musk /*

1 apparently promoted the event through advertisements on X.¹¹ According to press reporting,
2 approximately a million people listened to the livestream.¹²

3 The Complaint alleges that the livestream “amounted to a virtual campaign event for
4 Donald J. Trump financed by X” and “featured express advocacy by X owner Elon Musk to
5 support the Trump Campaign.”¹³ The Complaint also alleges that “X employees were assigned
6 to facilitate, monitor, and in real time fix the technical issues with the livestream event.”¹⁴ The
7 Complaint argues that, “[b]ecause X spent considerable resources to host an event to expressly
8 advocate for Trump,”¹⁵ X made and the Trump Respondents knowingly accepted a prohibited
9 corporate contribution.¹⁶ The Complaint does not specify the cost of the event, the equipment
10 used to livestream the event, or the total personnel employed to support the event. Additionally,
11 the Complaint argues that, because the event “is not ‘comparable in form’ to X’s regular
12 activities,” “X was not acting in its legitimate press function” when it livestreamed the
13 conversation between Musk and Trump and thus it is not covered by the press exemption to the
14 Act’s definitions of “contribution” and “expenditure.”¹⁷

15 The Trump Committee submitted a Response arguing that the event was not a
16 “contribution” under the Act because it was covered by the internet exemption or the press

Donald Trump Interview on X Started with an Immediate Tech Disaster, VERGE (Aug. 12, 2024, 8:38 PM EDT),
<https://www.theverge.com/2024/8/12/24219121/donald-trump-elon-musk-interview-x-twitter-crashes> (reporting that
an anonymous source at the company stated that there was not a denial-of-service attack).

11 *See* Conger & Mac, *supra* note 7.

12 *See, e.g.*, Gold, *supra* note 4; Conger & Mac, *supra* note 7; Del Valle & Robison, *supra* note 10.

13 Compl. at 1-2 (citation omitted).

14 *Id.* at 2.

15 *Id.* at 5.

16 *Id.*

17 *Id.* at 4 (quoting Advisory Opinion 2010-08 (Citizens United) at 6).

1 exemption.¹⁸ The Response asserts that the internet exemption applies here because the event “is
2 an uncompensated internet communication hosted on the company’s own website.”¹⁹ The
3 Response also asserts that the press exemption applies because X is a press or media entity that is
4 not owned or controlled by any political party, committee, or candidate, and it was acting in its
5 legitimate press function by hosting the livestream.²⁰

6 **III. LEGAL ANALYSIS**

7 The Act prohibits corporations from making contributions to federal candidates, and
8 further prohibits candidates, political committees (other than independent expenditure-only
9 political committees and committees with hybrid accounts), and other persons from knowingly
10 accepting or receiving corporate contributions.²¹

11 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit
12 of money or anything of value made by any person for the purpose of influencing any election
13 for Federal office.”²² The term “anything of value” includes “all in-kind contributions.”²³ In-
14 kind contributions include “coordinated expenditures,” which are expenditures “made by any
15 person in cooperation, consultation or in concert with, or at the request or suggestion of, a
16 candidate, [her or] his authorized committees, or their agents.”²⁴ A communication that is
17 coordinated with a candidate or candidate’s committee is considered an in-kind contribution to

18 Resp. at 1-5 (Nov. 27, 2024).

19 *Id.* at 3. The Response discusses the internet exemption in the context of the “coordinated communication”
test under Commission regulations. *See id.* at 2.

20 *Id.* at 3-4.

21 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(b), (d).

22 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

23 11 C.F.R. § 100.52(d).

24 52 U.S.C. § 30116(a)(7)(B)(i); *accord* 11 C.F.R. § 109.20.

1 that candidate or candidate's committee and subject to the limitations, prohibitions, and reporting
 2 requirements of the Act and Commission regulations.²⁵

3 A communication is coordinated if it (1) is paid for by a third-party (the "payment
 4 prong"),²⁶ (2) satisfies one of five content standards (the "content prong"),²⁷ and (3) satisfies one
 5 of five conduct standards (the "conduct prong").²⁸ All three prongs must be met for a
 6 communication to be considered a coordinated communication and an in-kind contribution.²⁹ In-
 7 kind contributions also include "provision of any goods or services without charge or at a charge
 8 that is less than the usual and normal charge for such goods or services."³⁰

9 The available information appears to indicate that X satisfied the payment prong by
 10 expending corporate resources to host the livestream,³¹ and the conduct prong appears to be
 11 satisfied by Trump's involvement in the livestream.³² However, X's livestreamed event does not
 12 appear to satisfy the content prong. The content standards all require a communication to be

²⁵ See 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.21(b); *see also id.* § 100.52(d).

²⁶ 11 C.F.R. § 109.21(a)(1).

²⁷ The content standards state that the communication at issue must be (1) a communication that is an electioneering communication; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; (4) a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c).

²⁸ The conduct standards are (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. *Id.* § 109.21(d).

²⁹ *Id.* § 109.21(a); *see* Explanation and Justification for Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

³⁰ *Id.* § 100.52(d) (listing examples of goods or services, including securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

³¹ *See supra* note 10 and accompanying text.

³² Because he participated in the livestreamed conversation, Trump was materially involved in decisions regarding the content of the communication. *See* 11 C.F.R. § 109.21(d)(2)(i).

1 either an “electioneering communication” or a “public communication,” neither of which appears
2 to apply to the event.³³

3 An “electioneering communication” is “any broadcast, cable, or satellite communication”
4 that “refers to a clearly identified candidate for Federal office;” is publicly distributed within a
5 certain time period before an election, depending on the office; and is targeted to the relevant
6 electorate, depending on the office.³⁴ Because X hosted the livestream on the internet, not
7 broadcast, cable, or satellite, the event does not qualify as an electioneering communication.

8 A “public communication” is “a communication by means of any broadcast, cable, or
9 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
10 telephone bank to the general public, or any other form of general public political advertising.”³⁵
11 Commission regulations provide that public communications “shall not include communications
12 over the Internet, except for communications placed for a fee on another person’s Web site.”³⁶
13 Here, X hosted the livestream on its own platform, not another person’s website. Therefore, the
14 event does not appear to be a public communication.

15 X’s livestreamed event does not satisfy the content prong of the coordinated
16 communications test. Because the event is not a coordinated communication, it did not result in
17 a prohibited corporate contribution.³⁷ Accordingly, we recommend that the Commission dismiss
18 the allegations that X made a prohibited corporate contribution in violation of 52 U.S.C.

³³ *See id.* § 109.21(c) (establishing content standards).

³⁴ 52 U.S.C. § 30104(f)(3) (defining electioneering communication); 11 C.F.R. § 100.29 (same).

³⁵ 52 U.S.C. § 30101(22) (defining public communication); 11 C.F.R. § 100.26 (same).

³⁶ 11 C.F.R. § 100.26.

³⁷ *See Factual & Legal Analysis (“F&LA”) at 8-9, MUR 8056 (Bob Healey for Congress, et al.) (“A communication that is neither an electioneering communication nor a public communication fails [section] 109.21(c)’s content prong, and as a result is neither a coordinate communication nor an in-kind contribution.”) (citing F&LA at 3-4, MUR 6722, 6723 (House Majority PAC, et al.)).*

1 § 30118(a) and 11 C.F.R. § 114.2(b), and that the Trump Respondents knowingly accepted a
 2 prohibited corporate contribution in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d).

3 **IV. RECOMMENDATIONS**

- 4 1. Dismiss the allegation that X Corp. violated 52 U.S.C. § 30118(a) and 11 C.F.R.
 5 § 114.2(b) by making a prohibited corporate contribution;
- 6 2. Dismiss the allegation that Donald J. Trump and Never Surrender Inc. f/k/a
 7 Donald J. Trump for President 2024, Inc. and Bradley T. Crate in his official
 8 capacity as treasurer violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by
 9 knowingly accepting a prohibited corporate contribution;
- 10 3. Approve the attached Factual and Legal Analysis;
- 11 4. Approve the appropriate letters; and
- 12 5. Close the file effective 30 days after the date the certification of this vote is signed
 13 (or on the next business day after the 30th day, if the 30th day falls on a weekend
 14 or holiday).

15 Lisa J. Stevenson
 16 Acting General Counsel

17 March 31, 2025
 18 Date

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