

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM DISMISSAL REPORT

MUR 8328

Respondent: National Public Radio

Complaint Receipt Date: Oct. 10, 2024

Response Date: Nov. 15, 2024

Alleged Statutory/ Regulatory Violations:

52 U.S.C. §§ 30104(g), 30118(a)
11 C.F.R. §§ 100.73, 100.132, 114.2(b), (d)

16 The Complaint appears to allege that National Public Radio (“NPR”), an independent,
17 nonprofit media organization, made prohibited in-kind corporate contributions to 2024 presidential
18 candidates Joseph R. Biden and Kamala Harris or failed to report independent expenditures
19 advocating for Biden and Harris, in violation of the Federal Election Campaign Act of 1971, as
20 amended (the “Act”).¹ The Complaint alleges that throughout the 2024 election cycle and since at
21 least the 2020 election cycle, NPR and its employees and agents “were expressly advocating for the
22 election and policies of the Democratic nominee and against those of the Republican nominee” and
23 argues that this express advocacy does not fall within the press exemption of the Act.² The
24 Complaint argues that NPR is controlled by the Democratic Party (because its donors, volunteers,
25 and agents, in turn, “exercise[] control over” a majority of NPR’s Board of Directors) and is not a
26 bona fide news organization (given the commentary, analysis, and editorializing by its employees
27 that advocated for the election of Biden and then Harris).³ The Complaint asserts, without

¹ See Compl. at 3 (Oct. 10, 2024).

2 *Id. at 3, 5-6.*

³ *Id.* at 3-4, 6.

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1 providing specifics, that NPR coordinated its activities with the Democratic Party, Harris, and
 2 Biden.⁴

3 In Response, NPR states that it is an independent, nonprofit news organization that provides
 4 coverages of critical news stories along with editorial content, that no political party, political
 5 committee or candidate have an ownership stake in NPR, and that its activities in question were
 6 legitimate press functions.⁵

7 The Act and Commission regulations exclude from the definitions of “contribution” and
 8 “expenditure” the costs incurred in covering or carrying a news story, commentary, or editorial by
 9 any broadcasting station, newspaper, website, magazine, or other periodical publication, including
 10 an internet or electronic publication, unless the facility is owned or controlled by any political party,
 11 political committee, or candidate.⁶ Costs covered by this “press exemption” are also exempt from
 12 the Act’s disclaimer, disclosure, and reporting requirements.⁷

13 To assess whether the press exemption applies, the Commission uses a two-part test.⁸ The
 14 first inquiry is whether the entity engaging in the activity is a “press entity.”⁹ Next, the Commission
 15 determines the scope of the exemption using the two-part analysis from *Reader’s Digest*
 16 *Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political
 17 committee, or candidate; and (2) whether the entity is acting within its “legitimate press function” in

⁴ *Id.* at 7.

⁵ Resp. at 3-7 (Nov. 15, 2024).

⁶ 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.73 (excluding *bona fide* news coverage from the definition of “contribution”); *id.* § 100.132 (excluding the same from the definition of “expenditure”).

⁷ Advisory Opinion 2011-11 at 6 (Colbert) (“AO 2011-11”); Factual & Legal Analysis (“F&LA”) at 5, MUR 7206 (Bonneville Int’l Corp.).

⁸ Advisory Opinion 2005-16 at 4 (Fired Up!) (“AO 2005-16”); Advisory Opinion 2008-14 at 4 (Melothé, Inc.) (“AO 2008-14”); F&LA at 5-6, MUR 7515 (CNN Broadcasting, Inc., *et al.*).

⁹ AO 2005-16 at 4; AO 2008-14 at 4.

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1 conducting the activity.¹⁰ When determining whether the entity was acting within the scope of a
 2 legitimate press function at the time of the alleged violation, the Commission considers two factors:
 3 (1) whether the entity's materials are available to the general public; and (2) whether they are
 4 comparable in form to those ordinarily issued by the entity.¹¹ "The Commission has long
 5 recognized that an entity otherwise eligible for the exemption would not lose its eligibility merely
 6 because of a lack of objectivity in a news story, commentary, or editorial, even if the news story,
 7 commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate
 8 for Federal office."¹²

9 The Commission has previously found that NPR produces news stories on a regular basis
 10 and is not owned or operated by a political party, political committee, or candidate, and there is no
 11 information here to change the conclusion that NPR is a press entity.¹³ Further, there is no basis to
 12 infer that the news reporting at issue was not available to the general public or was not comparable
 13 in form its usual news reporting. Thus, it appears that NPR appears to have been acting within its
 14 legitimate press function and thus its activities are protected by the press exemption.

15 Based on its experience and expertise, the Commission has established an Enforcement
 16 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
 17 assess whether particular matters warrant further administrative enforcement proceedings. These
 18 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
 19 and the amount in violation; (2) the apparent impact the alleged violation may have had on the

¹⁰ See *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981); AO 2011-11 at 6-7.

¹¹ F&LA at 4, MUR 7231 (CNN); Advisory Opinion 2016-01 at 3 (Ethiq).

¹² F&LA at 5, MUR 7206 (Bonneville Int'l Corp.) (quotation marks omitted) (quoting AO 2005-16 at 6); F&LA at 3, MUR 6579 (ABC News, Inc.).

¹³ F&LA at 3, MUR 7230 (National Public Radio).

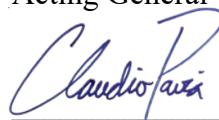
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1 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
2 potential violations and other developments in the law. This matter is rated as low priority for
3 Commission action after application of these pre-established criteria. Given that low rating and the
4 apparent applicability of the press exemption, we recommend that the Commission dismiss the
5 Complaint, consistent with the Commission's prosecutorial discretion to determine the proper
6 ordering of its priorities and use of agency resources.¹⁴ We also recommend that the Commission
7 close the file effective 30 days from the date the certification of this vote is signed (or on the next
8 business day after the 30th day, if the 30th day falls on a weekend or holiday) and send the
9 appropriate letters.

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18 January 31, 2025

19 BY:



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Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).