

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

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6 **MUR 8342**

Respondent: The Washington Post

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8 **Complaint Receipt Date:** Oct. 31, 2024

9 **Response Date:** Nov. 26, 2024

10
11 [REDACTED]

12
13 **MUR 8343**

Respondents: The Washington Post
Harris for President and Keana
Spencer in her official capacity as
treasurer

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18 **Complaint Receipt Date:** Oct. 31, 2024

19 **Last Response Date:** Dec. 23, 2024

20
21 [REDACTED]

22
23 **Alleged Statutory/**

24 **Regulatory Violations:**

52 U.S.C. §§ 30104(g), 30118(a)

11 C.F.R. §§ 100.73, 100.132, 114.2(b), (d)

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26 The Complaint in MUR 8342 alleges that the *Washington Post* (the “*Post*”), a daily print
27 and online newspaper, made a prohibited in-kind corporate contribution or excessive individual
28 contribution, depending on its tax status, apparently to 2024 presidential candidate Kamala Harris,
29 when it purchased advertising on social media that boosted news reporting critical of her general
30 election opponent, Donald J. Trump, and was neutral in tone regarding Harris, in violation of the
31 Federal Election Campaign Act of 1971, as amended (the “Act”).¹

32 The Complaint in MUR 8343 makes the same allegations as to the *Post*, but also alleges that
33 Harris’s principal campaign committee, Harris for President and Keana Spencer in her official
34 capacity as treasurer (the “Committee”), knowingly accepted the prohibited contribution, or that

¹ MUR 8342 Compl. at 1 (Oct. 31, 2024).

1 alternatively the advertisements were an unreported independent expenditure made by the *Post* with
2 the purpose of promoting Harris’s candidacy.²

3 The Complaints both argue that the advertisements do not fall within the “press exemption”
4 in the definitions of “contribution” and “expenditure” in the Act and Commission regulations.³

5 In Response, the *Post* requests that the Commission dismiss the Complaint, arguing that the
6 advertisements in question were for the purpose of gaining readers and subscribers based on a
7 business judgment as to what will be most interesting to readers, were not coordinated with any
8 outside party, that the press exemption applies, and that the advertisements were constitutionally
9 protected speech.⁴ Specifically, the *Post* states that it chose to advertise high-performing news
10 articles and that articles concerning Harris and Trump were selected because they were among the
11 most popular on the *Post*’s website.⁵

12 The Act and Commission regulations exclude from the definitions of “contribution” and
13 “expenditure” the costs incurred in covering or carrying a news story, commentary, or editorial by
14 any broadcasting station, newspaper, website, magazine, or other periodical publication, including
15 an internet or electronic publication, unless the facility is owned or controlled by any political party,

² MUR 8343 Compl. at 1, 3 (Oct. 31, 2024); Kamala Harris, Amended Statement of Candidacy at 1 (Aug. 6, 2024) <https://docquery.fec.gov/pdf/899/202408069666088899/202408069666088899.pdf>; Harris for President, Amended Statement of Organization at 2 (Oct. 12, 2024) <https://docquery.fec.gov/pdf/997/202410129684923997/202410129684923997.pdf>.

³ MUR 8342 Compl. at 2-7; MUR 8343 Compl. at 5-6.

⁴ MUR 8342 Resp. at 4 (Nov. 25, 2024); MUR 8343 *Post* Resp. at 4 (Nov. 25, 2024).

⁵ MUR 8342 Resp., Decl. of Karl Wells ¶¶ 16-17; MUR 8343 *Post* Resp., Decl. of Karl Wells ¶¶ 16-17.

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1 political committee, or candidate.⁶ Costs covered by this “press exemption” are also exempt from
2 the Act’s disclaimer, disclosure, and reporting requirements.⁷

3 To assess whether the press exemption applies, the Commission uses a two-part test.⁸ The
4 first inquiry is whether the entity engaging in the activity is a “press entity.”⁹ Next, the Commission
5 determines the scope of the exemption using the two-part analysis from *Reader’s Digest*
6 *Association v. FEC*: (1) whether the entity is owned or controlled by a political party, political
7 committee, or candidate; and (2) whether the entity is acting within its “legitimate press function” in
8 conducting the activity.¹⁰ When determining whether the entity was acting within the scope of a
9 legitimate press function at the time of the alleged violation, the Commission considers two factors:
10 (1) whether the entity’s materials are available to the general public; and (2) whether they are
11 comparable in form to those ordinarily issued by the entity.¹¹ “The Commission has long
12 recognized that an entity otherwise eligible for the exemption would not lose its eligibility merely
13 because of a lack of objectivity in a news story, commentary, or editorial, even if the news story,
14 commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate
15 for Federal office.”¹²

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 (Melothe, 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.

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.).

1 The Commission has previously found that the *Post* produces news stories on a regular basis
2 and is not owned or operated by a political party, political committee, or candidate, and there is no
3 information here to alter the conclusion that the *Post* is a press entity.¹³ Further, by promoting news
4 stories about presidential candidates, available to the general public and apparently comparable in
5 form to its usual news reporting, the *Post* appears to have been acting within its legitimate press
6 function and thus its activities are protected by the press exemption.

7 Based on its experience and expertise, the Commission has established an Enforcement
8 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
9 assess whether particular matters warrant further administrative enforcement proceedings. These
10 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
11 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
12 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
13 potential violations and other developments in the law. This matter is rated as low priority for
14 Commission action after application of these pre-established criteria. Given that low rating and the
15 apparent applicability of the press exemption, we recommend that the Commission dismiss the
16 Complaint, consistent with the Commission's prosecutorial discretion to determine the proper
17 ordering of its priorities and use of agency resources.¹⁴ We also recommend that the Commission
18 close the file effective 30 days from the date the certification of this vote is signed (or on the next
19 business day after the 30th day, if the 30th day falls on a weekend or holiday) and send the
20 appropriate letters.

¹³ F&LA at 4, MUR 7239 (The Washington Post, *et al.*).

¹⁴ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

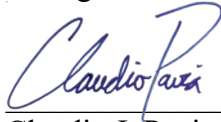
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January 31, 2025

Date


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