



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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matters of :
 : MURs 8328/8342/8343
 Nat'l Public Radio *and* :
 Wash. Post, *et al.* :

**STATEMENT OF REASONS OF
 VICE CHAIRMAN JAMES E. "TREY" TRAINOR, III
 AND COMMISSIONER ALLEN J. DICKERSON**

In these Matters, the Commission unanimously rejected allegations that media bias constituted a violation of the Federal Election Campaign Act ("FECA" or "Act").¹ The Commission correctly determined that pursuing these complaints would be a poor use of agency resources.² We joined our colleagues in that vote. But because the legal issues presented are especially important, we write separately to explain that the reporting in question was unquestionably protected by the Constitution, notwithstanding any article of the Act.

As we have noted before, FECA "has always included an explicit statutory protection for 'the press' and 'the media.'"³ This carve-out is "Congress's creation, and we have been obligated to give it force."⁴ But is worth asking *why* such an exception exists in the first place. After all, the stated purpose of FECA is to regulate money spent to influence elections, and there is no question that those media entities do just that on a large scale. Indeed, many press outlets employ explicitly partisan hosts and journalists and make endorsements in election contests. Yet the media falls entirely

¹ Certification at 1, MUR 8328 (Nat'l Pub. Radio), Feb. 24, 2025; Certification at 1, MURs 8342/8343 (Wash. Post, *et al.*), Feb. 24, 2025.

² *Heckler v. Chaney*, 470 U.S. 821 (1985).

³ Supp. Statement of Reasons of Vice Chair Dickerson and Comm'r Trainor at 6, MURs 7821/7827/7868 (Twitter, Inc., *et al.*), Sept. 13, 2021 ("Twitter Statement") (citing 52 U.S.C. § 30101(9)(B)(i); 52 U.S.C. § 30104(f)(3)(B)(i)).

⁴ *Id.*

outside the Act, which otherwise imposes a licensing regime on similar speech and association.⁵ Why?

The answer, we believe, is that Congress understood that imposing the strictures of the campaign finance laws on media entities would fetter their expression. This is, of course, revealing. If a burden would be too much for the *Washington Post* or National Public Radio, how much more so for the rest of us?

The First Amendment provides that “Congress shall make no law...abridging the freedom of speech, or of the press.”⁶ Laypersons sometimes bifurcate these rights, asserting that while the Speech Clause protects all Americans, the Press Clause is a protection for the so-called media or press industry. Not so. “The ‘press’ referred to in the constitutional text is not the modern journalistic class, which did not exist at the founding, but rather ‘the printing press’ and its modern analogues—the technologies that allow for the distribution of words and images.”⁷ In short, the Speech and Press Clauses work together to protect the acts of speaking and writing by all Americans.

The *Washington Post* and National Public Radio, therefore, unquestionably have a fundamental First Amendment right to promote, support, advocate, or oppose federal candidates for office. But these liberties do not derive from their privileged status as “legitimate press entities” operating pursuant to a “legitimate press function.”⁸ Rather, they possess these liberties in common with everyone protected by the U.S. Constitution.

The Supreme Court, sadly, has upheld restrictions on speech and publishing by ordinary Americans that it would never permit for press entities.⁹ We believe that,

⁵ *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 801 (1978) (Burger, C.J., concurring op.) (“The very task of including some entities within the ‘institutional press’ [for constitutional protection] while excluding others, whether undertaken by legislature, court, or administrative agency, is reminiscent of the abhorred licensing system of Tudor and Stuart England—a system the First Amendment was intended to ban from this country”) (brackets supplied).

⁶ U.S. Const. amend. I.

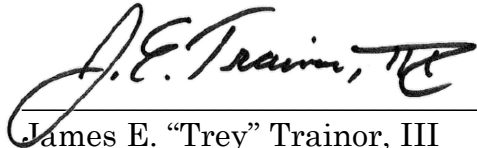
⁷ Twitter Statement at 8 (cleaned up).

⁸ This unfortunate nomenclature, sometimes adopted by the Commission in applying the media exemption, is derived from two forty-year-old federal district court decisions. It is doubtful, in our view, that courts applying modern First Amendment doctrine would approve. See *Fed. Election Comm’n v. Phillips Pub’g.*, 517 F. Supp. 1308 (D.D.C. 1981); *Reader’s Digest Ass’n v. Fed. Election Comm’n*, 509 F. Supp. 1210 (S.D.N.Y. 1981).

⁹ *E.g., McConnell v. Fed. Election Comm’n*, 540 U.S. 93 (2003) (largely upholding 2002 amendments to FECA against First Amendment challenge).

in time, all Americans will receive the benefits of the so-called “press exemption,” free to speak and associate for political purposes without being forced to assume onerous organizational forms, report trivial expenditures, and surrender the privacy of even small-dollar donors.

For the moment, however, the Respondents in these Matters unquestionably benefit from both Congressional and Constitutional protections, and the pursuit of enforcement against this legal backdrop would have been a poor use of the scarce agency resources entrusted to our care. We voted accordingly.



James E. “Trey” Trainor, III
Vice Chairman

April 28, 2025

Date



Allen J. Dickerson
Commissioner

April 28, 2025

Date