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Alexandria, Virginia 22314

October 31, 2024

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

RE: Complaint Against *The Washington Post* and Harris for President for Illegal Corporate In-Kind Contributions

Dear Ms. Stevenson:

“Democracy Dies in Darkness” according to *The Washington Post*, yet on the eve of the 2024 general election, it is the *Post* that reportedly is conducting a dark money corporate campaign in opposition to President Donald J. Trump—pretextually using its own online advertising efforts to promote Kamala Harris’s presidential candidacy.

I write on behalf of Donald J. Trump for President 2024, Inc. As described below, there is reason to believe that the Washington Post violated the Federal Election Campaign Act (“FECA” or “Act”) and Federal Election Commission (“FEC” or “Commission”) regulations by making illegal corporate in-kind contributions, in violation of 52 U.S.C. § 30118, or, in the alternative, unreported last-minute independent expenditures, in violation of 52 U.S.C. § 30104(g)(1). Therefore, we call upon the Commission to immediately investigate expenditures by *The Washington Post*.

I. Factual Background

The Washington Post recently announced it would not endorse a presidential candidate, a decision *the Post’s* owner defended on the basis that “Presidential endorsements do nothing to tip the scales of an election.”¹

Yet, on October 30, 2024, the news website *Semafor* published a report titled “Washington Post pays to boost stories critical of Trump as subscribers flee.”² The *Semafor* article discloses that, starting “on Monday,” October 28, 2024—just over a week before Election Day—*The*

¹ Jeff Bezos, The hard truth: Americans don’t trust the news media, Wash. Post (Oct. 28, 2024), <https://www.washingtonpost.com/opinions/2024/10/28/jeff-bezos-washington-post-trust>.

² See Max Tani & Josh Billinson, *Washington Post pays to boost stories critical of Trump as subscribers flee*, Semafor.com (Oct. 30, 2024), <https://www.semafor.com/article/10/30/2024/washington-post-pays-to-boost-stories-critical-of-trump-as-subscribers-flee>.

Washington Post has “aggressively ramped up its paid advertising campaign, boosting dozens of articles related to the election.”³

As *Semafor* reported, this is no simple commercial marketing campaign.⁴ “While the [*Post*] articles about Vice President Kamala Harris were relatively neutral in tone”—if not flattering—“and focused on her ... digital strategy, her policy proposals, and her chances of winning ..., the articles that the Post paid to highlight about [President] Trump told a different story.”⁵ In fact, *Semafor* reported, *the Washington Post* has paid to “boost[] multiple critical articles” of President Trump through this sudden, last-minute advertising campaign.⁶

II. There is Reason to Believe *The Washington Post* Made and Harris for President Accepted Illegal In-Kind Corporate Contributions

Under FECA, it is generally unlawful for corporations “to make a contribution or expenditure in connection with any election to any political office . . . or for any candidate, political committee, or other person knowingly to accept or receive any contribution.”⁷

Coordinated communications are treated as in-kind contribution to a candidate.⁸ A communication is “coordinated” when it (1) is paid for by a someone other than the campaign, (2) satisfies at least one of the content standards, and (3) satisfies at least one of the conduct standards.⁹

The advertisements in question were reportedly paid for by *The Washington Post*, and thus satisfy the payment prong.

As clarified by the Commission’s recent internet communication rulemaking, a communication that is “placed *or promoted* for a fee on another person’s website” is a “public communication.”¹⁰ “Public communications” that reference a clearly identified candidate for President within 120 days of an election satisfy the “content” prong. *The Washington Post*’s communications reference clearly identified candidates for office—President Trump and Vice

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 52 U.S.C. § 30118(a); *see also* 11 C.F.R. § 114.2(b) (“Any corporation whatever or any labor organization is prohibited from making a contribution.”).

⁸ 11 C.F.R. § 109.21(b).

⁹ 11 C.F.R. § 109.21(a).

¹⁰ 11 C.F.R. § 100.26 (emphasis added).

President Harris—are disseminated within 120 days of the 2024 presidential election and were promoted for a fee on the website of another. Accordingly, they satisfy the content prong.¹¹

The conduct prong is satisfied when there is material involvement of the campaign in the creation, production, or distribution of the communication, including regarding the content of the communication.¹² In one of the reportedly promoted articles, the Harris campaign brags about how they “create the news.”¹³ The reportedly promoted articles also include multiple quotes with Harris campaign officials, which confirm that there have been communications between *The Washington Post* and the Harris campaign. The content promoted by *The Washington Post* mirrors themes and issues highlighted by the Harris Campaign. To wit, one of the promoted articles highlighted how the Harris digital team was pushing content on social media claiming people were leaving President Trump’s rallies early.¹⁴ A month later, *The Washington Post* published an article, which was reportedly boosted by *The Post*, on the same topic, with a similar editorial framing.¹⁵ A reasonable inference is that the Harris team has communicated its messaging strategy to *The Washington Post*, and that that messaging strategy is reflected in what *The Post* chooses to promote.

Put differently, *The Post*’s own articles support a reasonable inference that the Harris team provided information about the content of communications that is material to *The Washington Post*’s communications, providing reason to believe the conduct prong is satisfied. Thus, there is reason to believe *The Washington Post* has made coordinated communications, which constitute illegal corporate in-kind contributions to Harris for President, and that Harris for President has accepted such contributions.

III. In the Alternative, *The Washington Post* Failed to Properly Report and Disclose Independent Expenditures

If *the Washington Post*’s public communications do not qualify as in-kind contributions, they alternatively are independent expenditures.

Under the Act, “[a] person (including a political committee) that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24

¹¹ As discussed in *infra* § III the Washington Post’s communications also satisfy the content prong because they are express advocacy.

¹² 11 C.F.R. § 109.21(d).

¹³ Drew Harwell, *The ‘feral 25-year-olds’ making Kamala Harris go viral on TikTok*, Wash. Post (Sept. 13, 2024), https://www.washingtonpost.com/technology/2024/09/13/harris-tiktok-social-media-team/?utm_source=facebook&utm_medium=acq-nat&utm_campaign=content_engage.

¹⁴ *Id.*

¹⁵ Marianne LeVine, Sabrina Rodriguez, Josh Dawsey and Abbie Cheeseman, *The reasons people say they leave Donald Trump’s rallies early*, Wash. Post (Oct. 4, 2024), https://www.washingtonpost.com/politics/2024/10/04/trump-rally-departures-early/?utm_source=facebook&utm_medium=acq-nat&utm_campaign=content_engage.

hours, before the date of an election shall file a report describing the expenditures within 24 hours.”¹⁶

“The term independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate.”¹⁷

The term “express advocacy” means a communication that:

(a) Uses phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in '94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon's the One,” “Carter '76,” “Reagan/Bush” or “Mondale!”; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.¹⁸

As described above, *The Washington Post's* ads are public communications that reference clearly identified candidates for federal office.

If they are not coordinated, then they are “independent.”

While the posts do not contain the “magic words” of express advocacy, when taken in context, with limited reference to external events, they can only be understood as calls to vote for Vice President Harris and against President Trump. First, they are made close in time to the

¹⁶ 52 U.S.C. § 30104(g)(1); *see also* 11 C.F.R. § 104.4(c).

¹⁷ 11 C.F.R. § 100.16(a).

¹⁸ 11 C.F.R. § 100.22.

election. Indeed, early voting is already occurring in jurisdictions like the Commonwealth of Virginia. Second, they mirror campaign themes of the Harris campaign. Third, they harshly and unfairly malign President Trump, while presenting a fawning portrait of Vice President Harris. In context, with voting already occurring, this can only be understood as an exhortation to vote for Vice President Harris and against President Trump. Thus, the communications are independent expenditures.

The Washington Post began running its “aggressively ramped up” digital advertisements opposing President Trump on October 28, 2024. But as of the date of the filing of this complaint, on October 31, 2024, no 24-Hour Reports have been filed with the Commission.

IV. The Press Exemption Does Not Apply

The *Washington Post* cannot avail itself of FECA’s “press” or “media exemption” for its dark money advertising.

The media exemption excludes from the definition of contribution “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication.”¹⁹

To assess whether the press exemption applies, the Commission uses a two-part test. The threshold question the FEC asks is whether the entity engaging in the activity is a “press entity” as described by FECA and FEC regulations. If the entity is a press entity, the exemption will apply so long as it: (i) is not owned or controlled by a political party, political committee, or candidate; and (ii) *is acting within its “legitimate press function” in conducting the activity.*

In this case, the Post is not “functioning within the scope of a legitimate press entity” through its partisan public advertising efforts in opposition to President Trump and in support of Kamala Harris.²⁰ Although a press entity is not required to be objective in delivering a news story, commentary, or editorial,²¹ the FEC has been clear that a legitimate press function is “distinguishable from active participation in core campaign or electioneering functions.”²² Indeed, “even if an entity is deemed to be a press entity if it were to act in a manner atypical of a press entity in the way in which it engages in core electioneering activities, the media exemption will not shield that particular conduct.”²³

¹⁹ 11 C.F.R. § 100.73; *see also* 52 U.S.C. § 30101(9)(B)(i) (excluding these types of activities from the definition of “expenditure”); 11 C.F.R. § 100.132 (same).

²⁰ *See Reader’s Digest Assoc’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981) (press entity must be acting as a press entity in performing the activity at issue).

²¹ Advisory Op. 2005-16 (Fired Up!).

²² Advisory Op. 2011-11 (Viacom, Inc.) at 8.

²³ MUR 6779 (Gilbert), First General Counsel’s Report at 12.

By boosting content to influence the election, *The Washington Post* is acting as like any other partisan player in the election process, not in its capacity as a press entity. *The Washington Post's* public advertising efforts in coordination with the Harris campaign is "core electioneering activit[y]" and thus not protected under the media exemption.

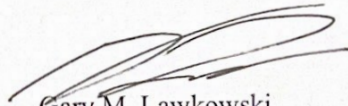
V. Conclusion

The facts support a reasonable inference that *The Washington Post* made, and Harris for President accepted, an illegal corporate contribution in the form of coordinated communications. Therefore, the Commission should find reason to believe a violation has occurred, conduct an immediate investigation, and assess an appropriate sanction for this corporate interference in our elections.

In the alternative, the facts show that *The Washington Post* made an unreported independent expenditure. Therefore, the Commission should find reason to believe a violation has occurred and assess an appropriate penalty for this infusion of dark money into the 2024 campaign.

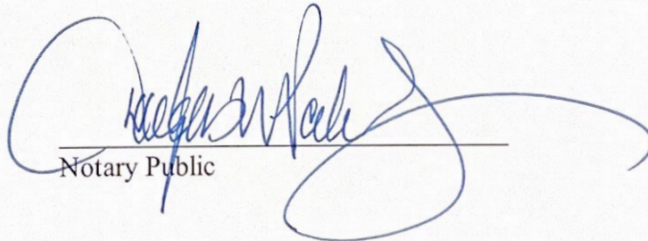
I declare under penalty of perjury that the foregoing factual assertions are true and correct to the best of my knowledge and belief:

Executed on October 31, 2024



Gary M. Lawkowski
Deputy General Counsel for
Donald J. Trump for President 2024, Inc.

SUBSCRIBED AND SWORN to before me this 31st day of October, 2024.



Notary Public

My Commission Expires:

