

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7280**

4 DATE COMPLAINT FILED: September 26, 2017

5 DATE OF NOTIFICATION: N/A

6 LAST RESPONSE RECEIVED: N/A

7 DATE ACTIVATED: November 30, 2017

8 EARLIEST SOL: November 16, 2021

9 LATEST SOL: October 8, 2022

10 ELECTION CYCLE: 2020

11 **COMPLAINANT:**

12 Common Cause

13 **RESPONDENTS:**

14 Unknown Owner of "Trump 2020" Facebook Page

15 **RELEVANT STATUTES
AND REGULATIONS:**

16 52 U.S.C. § 30104(b)(4)(H)(iii)

17 52 U.S.C. § 30104(c)

18 52 U.S.C. § 30120(a)

19 11 C.F.R. § 110.11(a)

20 **INTERNAL REPORTS CHECKED:**

21 None

22 **FEDERAL AGENCIES CHECKED:**

23 None

24 **I. INTRODUCTION**

25
26
27 The Complaint alleges that the unknown owner of a Facebook page named "Elect Trump
28 2020" ("Trump 2020") made at least \$34,100 in independent expenditures in support of
29 President Trump's 2020 reelection campaign by paying to place communications containing
30 express advocacy on Facebook.¹ The Complaint therefore asserts that the unknown respondent
31 violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to report
32 these independent expenditures and failing to include proper disclaimers in the communications.²

¹ Compl. at 1 (Sep. 26, 2017); *see also id.* at 2 n. 1 (noting URL for Respondent's page as <https://www.facebook.com/ElectTrump2020>).

² *Id.* at 2.

1 As discussed below, the unknown respondent appears to have made independent
2 expenditures by spending funds for Facebook advertisements that advocated the election of
3 Trump without reporting those expenditures to the Commission or including disclaimers on those
4 paid advertisements. Accordingly, we recommend that the Commission find reason to believe
5 that the unknown respondent violated 52 U.S.C. §§ 30104(b)(4)(H)(iii) or (c) and 30120. We
6 also recommend that the Commission authorize compulsory process if needed in the
7 investigation.

8 **II. FACTS**

9 Relying on a *Vice News* report, the Complaint asserts that, since November 2016, the
10 unknown respondent made at least \$34,100 in payments to Facebook to promote content on
11 Trump 2020 and nine other unidentified “pro-Trump” Facebook pages.³ According to the *Vice*
12 *News* article, the unknown respondent did not report any of the spending to the Commission.⁴

13 The unknown respondent publishes Trump 2020 under the anonymous Facebook
14 username “@ElectTrump2020,” and the page currently has more than 500,000 followers.⁵
15 While the Complaint notes that Trump 2020 describes itself as “a political organization,” the
16 Complaint alleges that the page has a single “owner” who is identified as “a Wisconsin
17 businessman” in the article.⁶ Neither the Complaint nor the article identifies which Trump 2020
18 posts were placed for a fee or might otherwise constitute independent expenditures advocating
19 the election of Trump.

³ Compl. at 2 (citing Alex Thompson and Noah Kulwin, *No one is tracking the illegal political ads in your Facebook feed*, VICE NEWS (Sep. 25, 2017), <https://news.vice.com/story/facebook-political-ads>).

⁴ *Id.*

⁵ <https://www.facebook.com/ElectTrump2020>.

⁶ *See supra* note 3.

1 Our review of the Trump 2020 page shows that since Trump filed his Statement of
 2 Candidacy for the 2020 election on January 20, 2017,⁷ the unknown respondent has uploaded
 3 and posted hundreds of videos and images, none of which include disclaimers. The Trump 2020
 4 page’s posts include content shared from other Facebook accounts and the page’s own content.
 5 The original content includes posts with slogans such as, “TRUMP MAKE AMERICA GREAT
 6 AGAIN!” “MAKE AMERICA EVEN GREATER TRUMP 2020,” “TRUMP PENCE 2020,”
 7 “2020 TRUMP FOR PRESIDENT,” and “RE-ELECT TRUMP 2020.”⁸ Although the
 8 Complaint and the underlying article do not specify which of Trump 2020’s posts were placed
 9 for a fee or might otherwise correspond to the alleged independent expenditures in question,
 10 every Trump 2020 post by the unknown respondent appears underneath a message header,
 11 reproduced below, bearing a photograph of Trump in front of an American flag and the profile
 12 name “Trump 2020.”



13
 14 *Figure 1: Trump 2020 message header*

15 **III. LEGAL ANALYSIS**

16 **A. There is Reason to Believe that Respondent Made and Failed to Report** 17 **Independent Expenditures**

18 An “independent expenditure” is an expenditure expressly advocating the election or
 19 defeat of a clearly identified federal candidate that is not coordinated with a candidate, a
 20 candidate’s authorized committee, or their agents, or a political party committee or its agents.⁹

⁷ See Donald J. Trump Statement of Candidacy (Jan. 20, 2017).

⁸ See Attachment 1.

⁹ 52 U.S.C. § 10101(17); 11 C.F.R. § 100.16.

1 The Act and Commission regulations require political committees that make independent
2 expenditures to file reports disclosing their independent expenditures.¹⁰ Persons who are not
3 political committees who make independent expenditures aggregating more than \$250 in a
4 calendar year must also file reports of independent expenditures.¹¹

5 In determining whether a communication contains express advocacy about a clearly
6 identified candidate, the Commission analyzes the message under 11 C.F.R. § 100.22. A
7 communication expressly advocates the election or defeat of a clearly identified candidate under
8 11 C.F.R. § 100.22(a) when it uses phrases such as those specifically enumerated in the text of
9 the regulation (*e.g.*, “vote for the President,” “re-elect your Congressman,” “support the
10 Democratic nominee”) or contains campaign slogans or individual words that “in context can
11 have no other reasonable meaning than to urge the election or defeat of one or more clearly
12 identified candidate(s) such as posters or bumper stickers which say ‘Nixon’s the One,’ ‘Carter
13 ’76,’ ‘Reagan/Bush,’ or ‘Mondale!’”¹²

14 All Trump 2020 posts are accompanied by the message header, reproduced above,
15 bearing a photograph of Trump and phrase “Trump 2020,” which is identical to the “Carter ‘76”
16 example provided in 11 C.F.R. § 100.22(a) and has no other reasonable meaning in this context
17 than to urge the election of Trump. All of the Trump 2020 posts, therefore, contain express
18 advocacy under section 100.22(a). Additionally, the content of each post reproduced in
19 Attachment 1 constitutes express advocacy independent of the language in the message header.

¹⁰ See 52 U.S.C. § 30104(b)(4)(H)(iii) (requiring political committees other than authorized political committees to disclose all disbursements made in connection with independent expenditures).

¹¹ 52 U.S.C. § 30104(c)(1) (requiring every person, other than a political committee, who makes independent expenditures aggregating over \$250 during a calendar year to file reports of such expenditures); *see also* 11 C.F.R. §§ 104.4, 109.10.

¹² 11 C.F.R. § 100.22(a); *see also Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 249 (1986).

1 Several posts contain the phrases “TRUMP PENCE 2020,” “2020 TRUMP FOR PRESIDENT,”
2 and “RE-ELECT TRUMP 2020”¹³ which clearly and unambiguously call for the re-election of
3 Trump in 2020 and are phrases included among and analogous to those that 11 C.F.R.
4 § 100.22(a) defines as “having no other reasonable meaning” than advocating for the election of
5 Trump, a clearly identified candidate. Further, other posts contain the official campaign slogan
6 of the Trump campaign, “MAKE AMERICA GREAT AGAIN!” or a close variation thereof,
7 such as “MAKE AMERICA EVEN GREATER TRUMP 2020.”¹⁴

8 Because the available information indicates that all of Trump 2020’s posts expressly
9 advocated the re-election of Trump in 2020, and we are unaware of facts suggesting that the
10 unknown respondent coordinated with the Trump campaign to produce or distribute them, the
11 costs for promoting Trump 2020’s posts on Facebook appear to have constituted independent
12 expenditures. If a political committee made those independent expenditures, it was required to
13 report the expenditures in reports filed with the Commission.¹⁵ If a person other than a
14 committee made the independent expenditures, the person should have filed a report with the
15 Commission disclosing those expenditures.¹⁶

16 In past matters involving allegations that unknown respondents failed to report
17 independent expenditures, the Commission has found reason to believe and conducted
18 investigations to determine the identity of the respondent and the cost of the communications.¹⁷

¹³ See Attachment 1.

¹⁴ See <http://www.donaldjtrump.com/> (last visited Mar. 30, 2018) (showing “MAKE AMERICA GREAT AGAIN” slogan in logo at top and in two other locations on homepage); see also 11 C.F.R. § 100.22(a) (including campaign slogans in express advocacy definition).

¹⁵ See 52 U.S.C. § 30104(b)(4)(H)(iii).

¹⁶ See 52 U.S.C. § 30104(c)(1).

¹⁷ See MUR 6838 (Joseph Aossey) (where the Commission found RTB and authorized an investigation based on postcard mailers containing express advocacy bearing a noncompliant disclaimer where the respondent and costs of the mailer were unknown); MUR 6642 (Christopher Kauffman) (where the Commission found RTB and

1 Here, the complaint includes information about the amount reportedly spent on the Facebook
2 posts, but does not identify particular communications that correspond to the expenditures. As in
3 previous cases, the identity and amount of the apparent independent expenditures are easily
4 ascertainable.¹⁸ Given that the entire Trump 2020 page itself appears to expressly advocate
5 Trump’s re-election, we believe there is sufficient information for a reason to believe finding as
6 to the respondent’s failure to report independent expenditures and to conduct an investigation.¹⁹
7 Accordingly, we recommend that the Commission find reason to believe that unknown
8 respondent violated 52 U.S.C. § 30104(b)(4)(H)(iii) or (c) by failing to report independent
9 expenditures.

10 **B. There is Reason to Believe that Respondent Failed to Include Required**
11 **Disclaimers on Paid Facebook Advertisements**

12 A “disclaimer” is a statement that must appear on certain communications to identify
13 who paid for the communication and whether a communication was authorized by a candidate.²⁰
14 With some exceptions,²¹ the Act and Commission regulations require disclaimers for “public

authorized an investigation based on a billboard containing express advocacy and a noncompliant disclaimer where the respondent and costs of the billboard were unknown); MURs 6486 and 6491 (Mark Hicks) (where the Commission found RTB and authorized an investigation based into independent expenditures related to two billboards that expressly advocated for the defeat of President Obama where the respondent and the costs of the billboards were both unknown).

¹⁸ In MUR 6838, the Commission was able to identify the respondent by tracing the bulk mail permit used to distribute the mailers. In MURs 6642 and 6486/6491, the Commission was able to identify the respondents by contacting the company who managed the leases for the billboards at issue. Here, the Commission can easily ascertain the respondent’s identity through Facebook.

¹⁹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007).

²⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11.

²¹ Commission regulations set forth several exceptions to the general disclaimer requirements, including the “small items exception,” which exempts communications placed on “[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed,” 11 C.F.R. § 110.11(f)(1)(i), and the “impracticable exception,” which exempts “[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.” 11 C.F.R. § 110.11(f)(1)(ii).

1 communications” that expressly advocate the election or defeat of a clearly identified federal
2 candidate.²² The term “public communication” includes “communications placed for a fee on
3 another person’s Web site.”²³ Thus, disclaimer requirements apply to “all potential forms of
4 advertising” placed for a fee online, including “banner advertisements, streaming video, popup
5 advertisements, and directed search results.”²⁴ A communication that is not paid for or
6 authorized by a candidate must “clearly state the full name and permanent street address,
7 telephone number, or World Wide Web address of the person who paid for the communication,
8 and that the communication is not authorized by any candidate or candidate’s committee.”²⁵

9 In Advisory Opinion 2017-12 (Take Back Action Fund) (“AO 2017-12”), which was
10 issued recently on December 15, 2017, the Commission determined that the requester was
11 required to include all of the disclaimer information required by 52 U.S.C. § 30120(a) on its paid
12 Facebook Image and Video advertising.²⁶ Prior to that opinion, the Commission had been asked
13 on several occasions whether small, character-limited internet advertisements could be exempt
14 from the disclaimer requirements under the small items exception at 11 C.F.R. § 110.11(f)(1)(i)
15 or the impracticable exception at 11 C.F.R. § 110.11(f)(1)(ii); the Commission has not, in
16 response to any advisory opinion request, been able to agree by the required four affirmative

²² 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); *see also* 11 C.F.R. § 100.22 (defining “expressly advocating”).

²³ 11 C.F.R. § 100.26.

²⁴ *See* Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006).

²⁵ 11 C.F.R. § 110.11(b)(3); *see also* 52 U.S.C. § 30120(a)(3).

²⁶ *See* Advisory Op. 2017-12 (Take Back Action Fund); *see also* Concurrence of Comm’r. Weintraub at 1, Concurrence of Comm’rs. Hunter, Goodman & Petersen at 1-2. Because the Commission could not agree on the underlying rationale for the decision, the advisory opinion itself merely concluded that disclaimers would be required on Facebook Image and Video ads in cases where the specific circumstances were substantially similar to those laid out in the request, but did not discuss the reasoning behind that conclusion.

1 votes that either exception applied.²⁷ Facebook has noted that they have expanded their
2 advertising platform beyond what was offered at the time of its advisory opinion request in 2011,
3 allowing users to create advertisements with larger images and more text.²⁸ Because the
4 Commission has never determined that one of the exceptions applied to Facebook
5 advertisements, even those created under Facebook’s previous and more restrictive size and
6 character count parameters,²⁹ the paid advertisements in this matter appear to require
7 disclaimers.³⁰

8 Here, the available information indicates that the unknown respondent spent at least
9 \$34,100 for paid placement of content on Facebook, at least some of which was for advertising
10 by Trump 2020, all of which expressly advocated for Trump’s re-election. As discussed above,
11 all of Trump 2020’s posts expressly advocated Trump’s election and, therefore, all of Trump
12 2020’s paid Facebook advertisements constituted public communications that required a
13 compliant disclaimer, though no such disclaimers were included. As discussed above,
14 identifying the Trump 2020 posts that correspond to the known expenditures is easily
15 ascertainable.³¹ Accordingly, we recommend that the Commission find reason to believe that

²⁷ See Advisory Op. Req. at 1, AO 2011-09 (Facebook) (concerning application of exceptions to zero-to-160 text character ads with thumbnail size images); Advisory Op. Req., AO 2013-18 (Revolution Messaging) (concerning application of exceptions to mobile banner ads); *see also* Advisory Op. 2010-19 (Google) (concluding that Google’s proposed AdWords program, in which 95-character ads would link to a page with a full disclaimer, “under the circumstances described . . . [was] not in violation of the Act or Commission regulations,” but not answering whether Google AdWords ads would qualify for the small items or impracticable exception).

²⁸ See Internet Communication Disclaimers and Definition of “Public Communication,” 83 Fed. Reg. 12,864, 12,868 (Mar. 26, 2018) (quoting comment from Facebook on the rulemaking).

²⁹ See Advisory Op. Req., AO 2011-09 (Facebook).

³⁰ See 11 C.F.R. § 100.26 (defining public communications to include “communications placed for a fee on another person’s Web site.”).

³¹ See *supra* note 18.

1 Respondent violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include
2 disclaimers on its paid express advocacy advertisements.

3 **IV. PROPOSED INVESTIGATION**

4 The investigation would focus on identifying the owner of the Trump 2020 Facebook
5 page; determining what portion of the \$34,100 in Facebook advertisements was for Trump 2020
6 posts; determining whether any of the \$34,100 was used to place posts containing express
7 advocacy on the unknown respondent’s other pro-Trump Facebook pages; and determining
8 whether any of the paid Facebook advertisements contained disclaimers. We recommend that
9 the Commission authorize the use of compulsory process for use as necessary in the
10 investigation. Facebook apparently maintains records which can provide this additional
11 information, but we note that Facebook’s published “Information for Law Enforcement
12 Authorities” policy states that they will only release customer records to the government
13 pursuant to a valid subpoena, search warrant, court order, or national security letter.³² Therefore,
14 a subpoena will likely be necessary to obtain the information.

15 **V. RECOMMENDATIONS**

- 16 1. Find reason to believe that Unknown Respondent violated 52 U.S.C.
17 § 30104(b)(4)(H)(iii) or (c);
- 18 2. Find reason to believe that Unknown Respondent violated 52 U.S.C. § 30120(a)
19 and 11 C.F.R. § 110.11(a);
- 20 3. Authorize the use of compulsory process;
- 21 4. Approve the attached Factual and Legal Analysis; and
- 22 5. Approve the appropriate letters.

³² Facebook Information for Law Enforcement Authorities,
<https://www.facebook.com/safety/groups/law/guidelines>.

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Lisa J. Stevenson
Acting General Counsel

3/30/18
Date

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Jin Lee/kg
Jin Lee
Acting Assistant General Counsel

RW
Ray L. Wolcott
Attorney

- Attachments:
1. Screen Captures of Trump 2020 Posts
 2. Factual and Legal Analysis

Image 1 – March 12, 2017



Image 2 – March 25, 2017



 **Trump 2020**
Like This Page · March 25, 2017 · 

The future will be built on the economic growth and prosperity we experience during the next 8 years.

 Like  Comment  Share

Image 3 – March 28, 2017



Image 4 – April 2, 2017



Image 5 – July 21, 2017



Image 6 – September 3, 2017



Image 7 – September 16, 2017



Image 8 – September 17, 2017



Image 9 – September 22, 2017



Image 10 – September 29, 2017



Image 11 – October 8, 2017



FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Unknown Owner of “Trump 2020” Facebook Page **MUR:** 7280

I. INTRODUCTION

The Complaint alleges that the unknown owner of a Facebook page named “Elect Trump 2020” (“Trump 2020”) made at least \$34,100 in independent expenditures in support of President Trump’s 2020 reelection campaign by paying to place communications containing express advocacy on Facebook.¹ The Complaint therefore asserts that the unknown respondent violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by failing to report these independent expenditures and failing to include proper disclaimers in the communications.²

As discussed below, the unknown respondent appears to have made independent expenditures by spending funds for Facebook advertisements that advocated the election of Trump without reporting those expenditures to the Commission or including disclaimers on those paid advertisements. Accordingly, the Commission finds reason to believe that the unknown respondent violated 52 U.S.C. §§ 30104(b)(4)(H)(iii) or (c) and 30120.

II. FACTS

Relying on a *Vice News* report, the Complaint asserts that, since November 2016, the unknown respondent made at least \$34,100 in payments to Facebook to promote content on

¹ Compl. at 1 (Sep. 26, 2017); *see also id.* at 2 n. 1 (noting URL for Respondent’s page as <https://www.facebook.com/ElectTrump2020>).

² *Id.* at 2.

1 Trump 2020 and nine other unidentified “pro-Trump” Facebook pages.³ According to the *Vice*
2 *News* article, the unknown respondent did not report any of the spending to the Commission.⁴

3 The unknown respondent publishes Trump 2020 under the anonymous Facebook
4 username “@ElectTrump2020,” and the page currently has more than 500,000 followers.⁵
5 While the Complaint notes that Trump 2020 describes itself as “a political organization,” the
6 Complaint alleges that the page has a single “owner” who is identified as “a Wisconsin
7 businessman” in the article.⁶ Neither the Complaint nor the article identifies which Trump 2020
8 posts were placed for a fee or might otherwise constitute independent expenditures advocating
9 the election of Trump.

10 The Commission’s review of the Trump 2020 page shows that since Trump filed his
11 Statement of Candidacy for the 2020 election on January 20, 2017,⁷ the unknown respondent has
12 uploaded and posted hundreds of videos and images, none of which include disclaimers. The
13 Trump 2020 page’s posts include content shared from other Facebook accounts and the page’s
14 own content. The original content includes posts with slogans such as, “TRUMP MAKE
15 AMERICA GREAT AGAIN!” “MAKE AMERICA EVEN GREATER TRUMP 2020,”
16 “TRUMP PENCE 2020,” “2020 TRUMP FOR PRESIDENT,” and “RE-ELECT TRUMP
17 2020.”⁸ Although the Complaint and the underlying article do not specify which of Trump

³ Compl. at 2 (citing Alex Thompson and Noah Kulwin, *No one is tracking the illegal political ads in your Facebook feed*, VICE NEWS (Sep. 25, 2017), <https://news.vice.com/story/facebook-political-ads>).

⁴ *Id.*

⁵ <https://www.facebook.com/ElectTrump2020>.

⁶ *See supra* note 3.

⁷ *See* Donald J. Trump Statement of Candidacy (Jan. 20, 2017).

⁸ *See* Attachment 1.

1 2020’s posts were placed for a fee or might otherwise correspond to the alleged independent
 2 expenditures in question, every Trump 2020 post by the unknown respondent appears underneath
 3 a message header, reproduced below, bearing a photograph of Trump in front of an American
 4 flag and the profile name “Trump 2020.”



5
6 *Figure 1: Trump 2020 message header*

7 **III. LEGAL ANALYSIS**

8 **A. There is Reason to Believe that Respondent Made and Failed to Report**
 9 **Independent Expenditures**

10 An “independent expenditure” is an expenditure expressly advocating the election or
 11 defeat of a clearly identified federal candidate that is not coordinated with a candidate, a
 12 candidate’s authorized committee, or their agents, or a political party committee or its agents.⁹
 13 The Act and Commission regulations require political committees that make independent
 14 expenditures to file reports disclosing their independent expenditures.¹⁰ Persons who are not
 15 political committees who make independent expenditures aggregating more than \$250 in a
 16 calendar year must also file reports of independent expenditures.¹¹

17 In determining whether a communication contains express advocacy about a clearly
 18 identified candidate, the Commission analyzes the message under 11 C.F.R. § 100.22. A

⁹ 52 U.S.C. § 10101(17); 11 C.F.R. § 100.16.

¹⁰ See 52 U.S.C. § 30104(b)(4)(H)(iii) (requiring political committees other than authorized political committees to disclose all disbursements made in connection with independent expenditures).

¹¹ 52 U.S.C. § 30104(c)(1) (requiring every person, other than a political committee, who makes independent expenditures aggregating over \$250 during a calendar year to file reports of such expenditures); see also 11 C.F.R. §§ 104.4, 109.10.

1 communication expressly advocates the election or defeat of a clearly identified candidate under
2 11 C.F.R. § 100.22(a) when it uses phrases such as those specifically enumerated in the text of
3 the regulation (*e.g.*, "vote for the President," "re-elect your Congressman," "support the
4 Democratic nominee") or contains campaign slogans or individual words that "in context can
5 have no other reasonable meaning than to urge the election or defeat of one or more clearly
6 identified candidate(s) such as posters or bumper stickers which say 'Nixon's the One,' 'Carter
7 '76,' 'Reagan/Bush,' or 'Mondale!'"¹²

8 All Trump 2020 posts are accompanied by the message header, reproduced above,
9 bearing a photograph of Trump and phrase "Trump 2020," which is identical to the "Carter '76"
10 example provided in 11 C.F.R. § 100.22(a) and has no other reasonable meaning in this context
11 than to urge the election of Trump. All of the Trump 2020 posts, therefore, contain express
12 advocacy under section 100.22(a). Additionally, the content of each post reproduced in
13 Attachment 1 constitutes express advocacy independent of the language in the message header.
14 Several posts contain the phrases "TRUMP PENCE 2020," "2020 TRUMP FOR PRESIDENT,"
15 and "RE-ELECT TRUMP 2020"¹³ which clearly and unambiguously call for the re-election of
16 Trump in 2020 and are phrases included among and analogous to those that 11 C.F.R.
17 § 100.22(a) defines as "having no other reasonable meaning" than advocating for the election of
18 Trump, a clearly identified candidate. Further, other posts contain the official campaign slogan

¹² 11 C.F.R. § 100.22(a); *see also Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 249 (1986).

¹³ *See* Attachment 1.

1 of the Trump campaign, “MAKE AMERICA GREAT AGAIN!” or a close variation thereof,
2 such as “MAKE AMERICA EVEN GREATER TRUMP 2020.”¹⁴

3 Because the available information indicates that all of Trump 2020’s posts expressly
4 advocated the re-election of Trump in 2020, and the Commission is unaware of facts suggesting
5 that the unknown respondent coordinated with the Trump campaign to produce or distribute
6 them, the costs for promoting Trump 2020’s posts on Facebook appear to have constituted
7 independent expenditures. If a political committee made those independent expenditures, it was
8 required to report the expenditures in reports filed with the Commission.¹⁵ If a person other than
9 a committee made the independent expenditures, the person should have filed a report with the
10 Commission disclosing those expenditures.¹⁶

11 In past matters involving allegations that unknown respondents failed to report
12 independent expenditures, the Commission has found reason to believe and conducted
13 investigations to determine the identity of the respondent and the cost of the communications.¹⁷
14 Here, the complaint includes information about the amount reportedly spent on the Facebook
15 posts, but does not identify particular communications that correspond to the expenditures. As in

¹⁴ See <http://www.donaldjtrump.com/> (last visited Mar. 30, 2018) (showing “MAKE AMERICA GREAT AGAIN” slogan in logo at top and in two other locations on homepage); see also 11 C.F.R. § 100.22(a) (including campaign slogans in express advocacy definition).

¹⁵ See 52 U.S.C. § 30104(b)(4)(H)(iii).

¹⁶ See 52 U.S.C. § 30104(c)(1).

¹⁷ See MUR 6838 (Joseph Aossey) (where the Commission found RTB and authorized an investigation based on postcard mailers containing express advocacy bearing a noncompliant disclaimer where the respondent and costs of the mailer were unknown); MUR 6642 (Christopher Kauffman) (where the Commission found RTB and authorized an investigation based on a billboard containing express advocacy and a noncompliant disclaimer where the respondent and costs of the billboard were unknown); MURs 6486 and 6491 (Mark Hicks) (where the Commission found RTB and authorized an investigation based into independent expenditures related to two billboards that expressly advocated for the defeat of President Obama where the respondent and the costs of the billboards were both unknown).

1 previous cases, the identity and amount of the apparent independent expenditures are easily
2 ascertainable.¹⁸ Given that the entire Trump 2020 page itself appears to expressly advocate
3 Trump’s re-election, there is sufficient information for a reason to believe finding as to the
4 respondent’s failure to report independent expenditures and to conduct an investigation.¹⁹
5 Accordingly, the Commission finds reason to believe that unknown respondent violated 52
6 U.S.C. § 30104(b)(4)(H)(iii) or (c) by failing to report independent expenditures.

7 **B. There is Reason to Believe that Respondent Failed to Include Required**
8 **Disclaimers on Paid Facebook Advertisements**

9 A “disclaimer” is a statement that must appear on certain communications to identify
10 who paid for the communication and whether a communication was authorized by a candidate.²⁰
11 With some exceptions,²¹ the Act and Commission regulations require disclaimers for “public
12 communications” that expressly advocate the election or defeat of a clearly identified federal
13 candidate.²² The term “public communication” includes “communications placed for a fee on
14 another person’s Web site.”²³ Thus, disclaimer requirements apply to “all potential forms of

¹⁸ In MUR 6838, the Commission was able to identify the respondent by tracing the bulk mail permit used to distribute the mailers. In MURs 6642 and 6486/6491, the Commission was able to identify the respondents by contacting the company who managed the leases for the billboards at issue. Here, the Commission can easily ascertain the respondent’s identity through Facebook.

¹⁹ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007).

²⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11.

²¹ Commission regulations set forth several exceptions to the general disclaimer requirements, including the “small items exception,” which exempts communications placed on “[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed,” 11 C.F.R. § 110.11(f)(1)(i), and the “impracticable exception,” which exempts “[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.” 11 C.F.R. § 110.11(f)(1)(ii).

²² 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); see also 11 C.F.R. § 100.22 (defining “expressly advocating”).

²³ 11 C.F.R. § 100.26.

1 advertising” placed for a fee online, including “banner advertisements, streaming video, popup
2 advertisements, and directed search results.”²⁴ A communication that is not paid for or
3 authorized by a candidate must “clearly state the full name and permanent street address,
4 telephone number, or World Wide Web address of the person who paid for the communication,
5 and that the communication is not authorized by any candidate or candidate’s committee.”²⁵

6 In Advisory Opinion 2017-12 (Take Back Action Fund) (“AO 2017-12”), which was
7 issued recently on December 15, 2017, the Commission determined that the requester was
8 required to include all of the disclaimer information required by 52 U.S.C. § 30120(a) on its paid
9 Facebook Image and Video advertising.²⁶ Prior to that opinion, the Commission had been asked
10 on several occasions whether small, character-limited internet advertisements could be exempt
11 from the disclaimer requirements under the small items exception at 11 C.F.R. § 110.11(f)(1)(i)
12 or the impracticable exception at 11 C.F.R. § 110.11(f)(1)(ii); the Commission has not, in
13 response to any advisory opinion request, been able to agree by the required four affirmative
14 votes that either exception applied.²⁷ Facebook has noted that they have expanded their
15 advertising platform beyond what was offered at the time of its advisory opinion request in 2011,

²⁴ See Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006).

²⁵ 11 C.F.R. § 110.11(b)(3); see also 52 U.S.C. § 30120(a)(3).

²⁶ See Advisory Op. 2017-12 (Take Back Action Fund); see also Concurrence of Comm’r. Weintraub at 1, Concurrence of Comm’rs. Hunter, Goodman & Petersen at 1-2. Because the Commission could not agree on the underlying rationale for the decision, the advisory opinion itself merely concluded that disclaimers would be required on Facebook Image and Video ads in cases where the specific circumstances were substantially similar to those laid out in the request, but did not discuss the reasoning behind that conclusion.

²⁷ See Advisory Op. Req. at 1, AO 2011-09 (Facebook) (concerning application of exceptions to zero-to-160 text character ads with thumbnail size images); Advisory Op. Req., AO 2013-18 (Revolution Messaging) (concerning application of exceptions to mobile banner ads); see also Advisory Op. 2010-19 (Google) (concluding that Google’s proposed AdWords program, in which 95-character ads would link to a page with a full disclaimer, “under the circumstances described . . . [was] not in violation of the Act or Commission regulations,” but not answering whether Google AdWords ads would qualify for the small items or impracticable exception).

1 allowing users to create advertisements with larger images and more text.²⁸ Because the
2 Commission has never determined that one of the exceptions applied to Facebook
3 advertisements, even those created under Facebook’s previous and more restrictive size and
4 character count parameters,²⁹ the paid advertisements in this matter appear to require
5 disclaimers.³⁰

6 Here, the available information indicates that the unknown respondent spent at least
7 \$34,100 for paid placement of content on Facebook, at least some of which was for advertising
8 by Trump 2020, all of which expressly advocated for Trump’s re-election. As discussed above,
9 all of Trump 2020’s posts expressly advocated Trump’s election and, therefore, all of Trump
10 2020’s paid Facebook advertisements constituted public communications that required a
11 compliant disclaimer, though no such disclaimers were included. As discussed above,
12 identifying the Trump 2020 posts that correspond to the known expenditures is easily
13 ascertainable.³¹ Accordingly, the Commission finds reason to believe that Respondent violated
14 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include disclaimers on its paid
15 express advocacy advertisements.

²⁸ See Internet Communication Disclaimers and Definition of “Public Communication,” 83 Fed. Reg. 12,864, 12,868 (Mar. 26, 2018) (quoting comment from Facebook on the rulemaking).

²⁹ See Advisory Op. Req., AO 2011-09 (Facebook).

³⁰ See 11 C.F.R. § 100.26 (defining public communications to include “communications placed for a fee on another person’s Web site.”).

³¹ See *supra* note 18.