

BEFORE THE FEDERAL ELECTION COMMISSION

DONALD J. TRUMP FOR PRESIDENT, INC.
725 Fifth Avenue
New York, NY 10022

Complainant,

v.

SNAP INC.
2772 Donald Douglas Loop N.
Santa Monica, CA 90405

Respondent.

MUR No. **7807**

COMPLAINT

1. This complaint is filed by Donald J. Trump for President, Inc. (“Trump Campaign”), the principal campaign committee of President Donald J. Trump, with the Federal Election Commission (“FEC” or “Commission”) under 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Snap Inc. (“Snap” or “Company”) – the owner and operator of the social media photo-sharing platform Snapchat – has violated the contribution limits, source prohibitions, and reporting requirements of the Federal Election Campaign Act (“FECA” or “Act”), 52 U.S.C. § 30101, *et seq.*
2. Snap claims it “believes that there is no more powerful form of self-expression than helping its users [of Snapchat] engage in democracy and exercise their right to vote.”¹ Yet that is apparently only true so long as Snapchat’s users share the same partisan political views as Snap’s leadership.

¹ Camille Camdessus, *Trump, Biden Turn To New Presidential Campaign Field -- Snapchat*, Barron’s (May 26, 2020), <https://www.barrons.com/news/trump-biden-turn-to-new-presidential-campaign-field-snapchat-01590543604> (quoting Snap spokesperson) (internal quotation mark omitted).

3. Indeed, Snap is illegally placing its corporate thumb on the scale of the 2020 presidential election, misusing its vast corporate resources to actively influence the election by promoting the advertising of Democratic nominee Joe Biden and the Biden for President campaign (“Biden Campaign”) on Snapchat but refusing to offer the same services to President Trump and the Trump Campaign, all in an apparent partisan effort to suppress conservative voices on the platform.
4. For nearly four months, Snap has been actively promoting Biden Campaign advertising on Snapchat for free through Snapchat’s “Discover” feature – the mechanism on Snapchat by which advertisers reach new audiences – while at the same time excluding President Trump and his Campaign from using the Discover feature.
5. As a result, for the reasons described herein, Snap has made upwards of \$12.5 million worth of potentially prohibited in-kind corporate contributions in connection with the 2020 election in violation of 52 U.S.C. § 30118, none of which has been reported to the FEC.

RESPONDENT

6. Snap Inc. is a Delaware corporation headquartered in Santa Monica, California. Snap describes itself as a camera company.² Snap’s primary product is Snapchat, a free mobile photo sharing and chat application. Snap is a publicly traded company listed on the New York Stock Exchange. Snap generates revenue by increasing user engagement with Snapchat and delivering advertising to those users.

² Snap Inc., <https://www.snap.com/en-US> (last visited Sept. 25, 2020).

FACTS

7. The Trump and Biden Campaigns use Snapchat in their paid digital advertising efforts. As has proven true of all digital campaigning this election cycle, however, the Trump Campaign has used the Snapchat platform far more effectively than the Biden Campaign.³
8. A principal feature of Snapchat is its “Discover” page, where Snap promotes the content of its verified publishing partners,⁴ such as “news publishers, elected officials, celebrities, and influencers.”⁵
9. Discover is a critical tool for advertisers using the Snapchat platform. Every Snapchat account member – approximately 229 million daily users⁶ – has a Discover page, where users “can subscribe to a channel, watch snaps in Stories, see what their Snap friends are watching on their Discover page, and see recommended content, curated by the app based on their history.”⁷
10. Discover is important as a means to reach new audiences through Snapchat, particularly younger audiences who will be voting for the first time in 2020, because “38% of [Snapchat

³ Camdessus, *supra* (“It’s clear that we’re wiping the floor with Biden’s campaign.” (internal quotation marks omitted)).

⁴ Kayla Carmicheal, *Is Snapchat Discover Right for Your Brand?*, <https://blog.hubspot.com/marketing/how-to-get-on-snapchat-discover#:~:text=Snapchat%20Discover%20is%20a%20page,content%20from%20influencers%20or%20brands>.

⁵ Casey Newton, *Snap will stop promoting Trump’s account after concluding his tweets incited violence*, *The Verge* (June 3, 2020), <https://www.theverge.com/2020/6/3/21279280/snapchat-snap-remove-trump-account-discover-promotion-incite-violence-twitter>.

⁶ Sarah Frier, *Trump Embraces Snapchat as Battle for 2020 Youth Vote Heats Up*, *Bloomberg* (May 13, 2020), <https://www.bloomberg.com/news/articles/2020-05-13/trump-embraces-snapchat-as-battle-for-2020-youth-vote-heats-up?sref=yBaTdxlg> (explaining that “[o]n Snapchat, if they post popular content frequently enough, it will appear on the Discover page where many of the app’s 229 million daily users go to watch videos and other content”).

⁷ Carmicheal, *supra*.

users] don't use Facebook or Instagram," meaning much "of that audience is exclusive to Snapchat."⁸

11. As of early summer 2020, President Trump and his Campaign had seen their "Snapchat following more than triple over the past year in part due to regular promotion in the app's Discover tab."⁹
12. What content Snapchat's Discover feature promotes is entirely a discretionary decision by the leadership at Snap. In the words of Snap's CEO, Evan Spiegel: "Our Discover content platform is a curated platform, *where we decide what we promote.*"¹⁰
13. In early June 2020, Snap stopped promoting President Trump's and his Campaign's content on Snapchat's Discover page. Snap pretextually claims President Trump and the Trump Campaign violated Snapchat's community guidelines merely by commenting on ongoing violent and destructive street riots.¹¹
14. In reality, Snapchat's CEO disagreed with President Trump and his Campaign's messaging on these important social issues and sought to silence the President and his Campaign's voice based on his own partisan ideology.¹²
15. As a result, the Trump Campaign's Snapchat account is only visible to the "followers who actively subscribe to [Trump Campaign] videos on Snapchat, but it will no longer benefit from

⁸ *Id.*

⁹ Newton, *supra*.

¹⁰ *Id.* (emphasis added).

¹¹ *Id.*

¹² *Id.*

the added promotion that Discover placement provides,” meaning millions of users do not currently see the Trump Campaign’s messaging.¹³

16. Snap has continued to offer its advertising promotion services to the Biden Campaign through Snapchat Discover, meaning that the new audiences foreclosed to the Trump Campaign are seeing Biden’s content.¹⁴
17. These partisan actions by Snap have harmed the President and his Campaign while amplifying the Biden Campaign’s voice on Snapchat. Using the Discover feature, the Trump Campaign, on average, can generate approximately 1.5 million views of a single video posted on Snapchat. Without access to Discover, the average number of views drops to approximately 215,000 users. The average cost per view on Snapchat is 9 cents – meaning that in order to make up the difference in lost viewership, the Trump Campaign would have to pay approximately \$115,000 per video to reach the same scope of audience.
18. Over the course of nearly four months, through the partisan provision of its corporate resources, Snap has given the Biden Campaign approximately \$12.5 million in free advertising on Snapchat while the Trump Campaign has been excluded.

CAUSE OF ACTION

SNAP HAS MADE PROHIBITED CORPORATE CONTRIBUTIONS IN VIOLATION OF 52 U.S.C. § 30118

19. 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.” 52 U.S.C.

¹³ Garrett Sloane, *Snapchat Tosses Trump from Discover*, AdAge (June 3, 2020), <https://adage.com/article/digital/snapchat-tosses-trump-discover-drawing-advertiser-praise-and-presidential-rage/2260621>.

¹⁴ *Id.*

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

20. FECA defines the term “contribution” broadly. A contribution includes anything of value “made by any person for the purpose of influencing any election for Federal office.” Subject to certain exclusions, a contribution is “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or *anything of value*” made to “any candidate, campaign committee, or political party or organization, *in connection with*” a federal election. 52 U.S.C. § 30118(b)(2) (emphasis added).
21. Commission regulations further provide that “anything of value” includes all in-kind contributions, such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services Examples of such goods or services include, but are not limited to: facilities [and] advertising services.” 11 C.F.R. § 100.52(d)(1).
22. “A corporation may provide goods and services to political committees without being considered to have made an in-kind contribution *so long as it does so ‘on the same terms and conditions available to all similarly situated persons in the general public.’*” Advisory Op. 2018-11 (Microsoft) (quoting Advisory Op. 2004-06 (Meetup) at 1 (emphasis added)).
23. By providing free advertising services to the Biden Campaign through the Snapchat Discover feature but excluding the Trump Campaign from using those services, Snap has violated these well-established rules of campaign finance law and, consequently, made illegal corporate in-kind contributions to the Biden Campaign.
24. Under FECA and the regulations, an in-kind contribution arises if a corporation, based on pure partisanship, allows its preferred political candidate to use the advertising facilities while

expressly refusing to allow the opponent to use the same services on request. *See* 11 C.F.R. § 114.13 (“[A] corporation . . . which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee or candidate *if the meeting rooms are made available to any candidate or political committee upon request and on the same terms given to other groups using the meeting rooms.*”); Explanation & Justification (Jan. 11, 1977) (explaining that facilities must be provided “without regard to the political affiliation of the candidate or committee”); *see also, e.g.*, Advisory Op. 2018-12 (approving a company’s proposal to offer free or reduced-cost cybersecurity services to campaigns where the services would be made available on a nonpartisan basis and “*not to benefit any one campaign or political party over another or to otherwise influence any federal election*” (emphasis added)).

25. The Commission’s regulations governing the corporate staging of candidate debates prove the point. Those regulations exempt certain corporations from the corporate contribution ban when they stage candidate debates so long as: (i) the “debates include at least two candidates” and (ii) “[t]he staging organization(s) does not structure the debates to promote or advance one candidate over another.” *Id.* (emphasis added); *see also* Explanation & Justification, *Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates*, 64,260, 64,261 (Dec. 14, 1995) (“[T]he purpose of section 110.13 . . . is to provide a specific exception so that certain [corporate entities] may stage debates, without being deemed to have made prohibited corporate contributions to the candidates taking part in debates.”).
26. Moreover, Snap’s partisan provision of its corporate advertising services in support of the Biden Campaign is not an exempt activity under FECA’s “press” or “media exemption.” That

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..” 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). The exemption was intended only to ensure that FECA would not limit or burden the first amendment guarantee of freedom of the press. Those considerations are not implicated by Snap’s purely discretionary, partisan electioneering activities here.

27. To assess whether the press exemption applies, the Commission uses a two-part test. The FEC first asks 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.
28. *First*, Snap – a self-described camera company that operates a photo-sharing application – is not a press entity within the meaning of FECA and FEC regulations. In determining whether an entity is a press entity, the FEC focuses on “whether the entity in question is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.” Advisory Op. 2008-14 (Melothé) at 4. Although the FEC has not limited the definition to “traditional new outlets,” *id.* at 3, Snap, by means of its Snapchat application, does not fall within the type of entity the FEC has deemed to be “producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.” *See, e.g., id.* (proposal to launch and operate an internet TV station covering campaigns of one or more

federal candidates through news reports, roundtable discussions, coverage of campaign events, and commentary qualified as media entity); Advisory Op. 2000-13 (Ampex) at 3 (finding Web company that operated a network of specialized news and information websites with limited original content qualified as a media entity). Snap generally is not creating or distributing its own newsworthy content through Snapchat, nor does its platform for discussion of issues. *See, e.g.*, Advisory Op. 1996-2 (CompuServe) at 2 n.2 (analyzing proposal from a corporation that operated an online computer information service and concluding that neither the corporation nor its described services qualified for the press exemption). Snap’s Snapchat Discover page simply promotes the content of Snap’s publishing partners,¹⁵ including the posts of “news publishers, elected officials, celebrities, and influencers.”¹⁶

29. *Second*, even if Snap were a press entity, the Company is not “functioning within the scope of a legitimate press entity” through its partisan provision of corporate advertising services in promotion of Biden Campaign advertisements. *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). While a press entity is certainly not required to be objective in delivering a news story, commentary, or editorial, Advisory Op. 2005-16 (Fired Up!), the FEC has been clear that a legitimate press function is “distinguishable from active participation in core campaign or electioneering functions.” Advisory Op. 2011-11 (Viacom, Inc.) at 8. 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.” MUR 6779 (Gilbert), First General Counsel’s Report

¹⁵ Carmicheal, *supra*.

¹⁶ Newton, *supra*.


at 12. Accordingly, although the Commission has determined that a cable network could provide free airtime to candidates under the media exemption, central to that determination was the fact that the free airtime would be offered “on equal basis” to the candidates. Advisory Op. 1998-17 (Daniels Cablevision). Likewise, in Advisory Opinion 1982-44 (Turner Broadcasting), the Commission concluded that Turner Broadcasting offering the Republican National Committee and Democratic National Committee two hours of free airtime on TBS was a legitimate press function, since the free time would be offered to “both political parties.” Advisory Op. 1982-44 (Turner) at 3. Snap’s purely partisan decision to exclude the Trump Campaign from Snapchat’s Discover page, while continuing to promote the advertising content of Joe Biden and the Biden Campaign, is clearly atypical of a press entity and falls far outside the exemption.

PRAYER FOR RELIEF

30. Wherefore, the Commission should find reason to believe that Snap Inc. has violated 52 U.S.C. § 30101, *et seq.*, and conduct an immediate investigation of Snap under 52 U.S.C. § 30109(a)(2).
31. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations.
32. The Commission should issue an injunction prohibiting Snap from any and all violations in the future.
33. The Commission should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Dated: September 29, 2020

Respectfully submitted,

A handwritten signature in cursive script, reading "Matthew E. Morgan", written over a horizontal line.

Matthew E. Morgan
Campaign General Counsel
Donald J. Trump for President, Inc.
725 Fifth Avenue
New York, NY 10022

Counsel to Donald J. Trump for President, Inc.

SUBSCRIBED AND SWORN to before me this 29th day of September, 2020.



Notary Public

My Commission Expires:

9/30/2024

