



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 28, 2022

VIA EMAIL: rlenhard@cov.com and dlawlor@cov.com

Robert D. Lenhard
Derek Lawlor
Covington & Burling LLP
850 Tenth Street NW
Washington, DC 20001

RE: MUR 7870
Biden for President and Andrea Wise
in her official capacity as treasurer

Dear Mr. Lenhard and Mr. Lawlor:

On January 14, 2021, the Federal Election Commission notified you of a complaint alleging that your client violated certain sections of the Federal Election Campaign Act of 1971, as amended. On March 22, 2022, the Commission found, on the basis of the information in the complaint, and information provided by you and your client, that there is no reason to believe Biden for President and Andrea Wise, in her official capacity as treasurer, violated 52 U.S.C § 30118(a) and 11 C.F.R. § 114.2(d). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Amanda Andrade, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure
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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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7 RESPONDENTS: Google LLC MUR 7870
8 Biden for President and Andrea Wise
9 in her official capacity as treasurer
10

I. INTRODUCTION

12 The Complaint in this matter alleges that Google LLC (“Google”) made prohibited in-
13 kind corporate contributions to Biden for President and Andrea Wise in her official capacity as
14 treasurer (the “Biden Committee”) by coordinating with the Biden Committee to support 2020
15 presidential candidate Joe Biden. Specifically, the Complaint alleges that Google deliberately
16 altered its algorithms and protocols to depress internet traffic to some content and determined
17 whether Google users could see news articles. The Complaint further alleges that these actions
18 were intentionally calculated to influence the 2020 election based on the company’s alleged goal
19 of aiding Biden’s campaign and that Google coordinated these activities with the Biden
20 Committee through an unspecified number of Google employees serving as advisors to the Biden
21 Committee. The Responses from Google and the Biden Committee deny the allegations, with
22 Google arguing primarily that its operations are motivated by commercial considerations and the
23 Biden Committee arguing that the Complaint does not credibly allege any coordination.

24 As explained below, the Complaint lacks specific facts to support the allegations that
25 Google altered its algorithms or displayed certain content for the purpose of influencing an
26 election. Moreover, the Response from Google sets forth a credible explanation that it operated
27 its technologies for *bona fide* commercial reasons. Further, there is no information indicating
28 that Google’s alleged actions were coordinated with Biden or the Biden Committee within the

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1 meaning of the Act. For these reasons, the Commission finds no reason to believe that Google
2 LLC made, or that the Biden Committee knowingly accepted, prohibited in-kind corporate
3 contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2.

4 **II. FACTUAL BACKGROUND**

5 Google operates both the Google internet search engine (“Search”) and the YouTube
6 internet video streaming platform (“YouTube”), and has more than one billion users across the
7 world.¹ Both Search and YouTube generate revenue by selling paid advertising and other
8 sponsored content on their platforms so that consumers can use the products for free.² Biden for
9 President was the authorized campaign committee for Joseph Biden during the 2020 presidential
10 election and Andrea Wise is its current treasurer.³

11 The Complaint alleges that Google influenced the 2020 Presidential election by altering
12 its search results in a way that favored Biden, including “altering its algorithms to suppress
13 conservative and pro-Trump podcasts, YouTube channels, and videos.”⁴ The Complaint also
14 alleges that Google used “demonetization and Restricted Mode,”⁵ but does not explain how. In
15 addition, the Complaint alleges that Google “[d]etermined whether a news source is credible or
16 hate speech in order to further Democratic aims and elect Joe Biden.”⁶ The Complaint argues

¹ Google Resp. at 3 (Mar. 26, 2021).

² *Id.* at 3.

³ Biden for President, Am. Statement of Organization at 1 (May 18, 2021).

⁴ Compl. at 2 (Jan. 12, 2021).

⁵ *Id.*

⁶ *Id.*

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1 that these actions were coordinated with the Biden Committee because ““at least eight people
2 who work for Facebook, Amazon, Google and Apple”” sat on Biden’s Innovation Policy
3 Committee.⁷ The Complaint also alleges that Google is biased against Donald Trump, Biden’s
4 2020 general election opponent, citing to an undercover video of a Google executive allegedly
5 saying that Google was working to “prevent[] the next Trump situation.”⁸

6 In its Response, Google denies that it made prohibited contributions to the Biden
7 Committee because the Complaint describes purely commercial activity that does not meet the
8 statutory definition of a contribution.⁹ Google states that it “operates, and its products function,
9 in a completely apolitical manner. . . . Search and YouTube display content from, and sell
10 advertising to, billions of users, including among them political users of all forms and beliefs.”¹⁰
11 Google argues that for commercial reasons, it has chosen to analyze and filter content to improve
12 the user experience.¹¹ Google states that its policies seek to “distinguish between providing
13 access to a diversity of voices and limiting harmful content and behaviors” and to protect its
14 brand reputation by prohibiting content that could mislead users, including “misinformation
15 about election processes or results.”¹² Google asserts that, at the scale of its operation,

⁷ *Id.* at 1 (citing David McCabe and Kenneth P. Vogel, “Big Tech Makes Inroads With the Biden Campaign,” N.Y. TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/technology/big-tech-biden-campaign.html>).

⁸ “Insider Blows Whistle & Exec Reveals Google Plan to Prevent ‘Trump situation’ in 2020 on Hidden Cam,” Project Veritas (June 24, 2019), <https://www.projectveritas.com/news/insider-blows-whistle-exec-reveals-google-plan-to-prevent-trump-situation-in-2020-on-hidden-cam/> (cited by Complaint at 2 n.7).

⁹ Google Resp. at 8.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* at 3, 8-9.

1 enforcement of its policies requires both manual and automated efforts.¹³ For example, Google
2 states that in 2019 it blocked and removed roughly 2,700,000,000 advertisements for violating its
3 policies.¹⁴ Google uses input on its services from human “raters” recruited from across the
4 United States without regard to political orientation.¹⁵ These raters flag content that is
5 misleading or offensive, but Google uses this information only to evaluate the effectiveness of its
6 algorithms.¹⁶ Google states that, with very narrow exceptions, it “does not manually intervene in
7 any particular Search result.”¹⁷

8 In addition, Google explains that Search will display “fact checks” in connection with
9 certain search results.¹⁸ The company argues, however, that these fact checks are merely created
10 by third parties, “similar to the summaries of websites and pages that are displayed for any
11 search” and that “Google does not create, endorse, or influence any of these fact checks.”¹⁹ The
12 Response asserts that Search will automatically show a summary of that fact check if the
13 publisher in question satisfies certain criteria, such as being a “trusted source of information” as
14 determined by Google’s algorithms.²⁰

13 *Id.*

14 *Id.* at 3.

15 *Id.* at 4.

16 *Id.*

17 *Id.* at 5 (“Content is removed from organic Search results only in very limited circumstances, such as a court order, valid Digital Millennium Copyright Act takedown notice, or violation of Google’s webspam policies.”).

18 *Id.*

19 *Id.*

20 *Id.*

1 In response to the Complaint’s allegation that Google used its tool of “demonetization”
2 on YouTube to influence the 2020 presidential election, Google asserts that it merely applied
3 generally applicable terms of services.²¹ Google states that Creators that seek to generate
4 income through advertising and monetize their content on YouTube must adhere to the
5 platform’s generally applicable monetization policies.²² Violations of those such policies will
6 result in “demonetization,” where creators no longer have the ability to earn income through paid
7 ads in their videos.²³ Google states that these policies are apolitical and apply to all creators, and
8 the enforcement of such policies concerning monetization taken in the ordinary course of
9 business are not contributions.²⁴

10 Finally, the Complaint argues that Google used its tool of “Restricted Mode” to influence
11 the election.²⁵ Google explains, however, that “Restricted Mode is an optional feature that
12 individual YouTube users may choose to enable to help screen out potentially mature content
13 and that “political affiliation is not factored into the Restricted Mode filter.”²⁶ Google also states
14 that only “a small subset” of YouTube users have enabled Restricted Mode.²⁷

²¹ *Id.* at 9.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 9.

²⁵ Compl. at 2.

²⁶ Google Resp. at 6.

²⁷ *Id.* at 14.

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1 The Biden Committee likewise denies the allegations and argues that the Complaint
2 alleges no facts that would tend to show any coordination.²⁸ Specifically, in response to the
3 Complaint’s allegation about Google employees serving on Biden’s Innovation Policy
4 Committee, the Biden Committee’s Response states that this handful of employees were part of a
5 nearly 700-member volunteer advisory group for Biden.²⁹

6 **III. LEGAL ANALYSIS**

7 **A. Relevant Law**

8 The Act prohibits corporations from making contributions to federal candidates, and
9 likewise bars candidates, political committees (other than independent expenditure-only political
10 committees and committees with hybrid accounts), and other persons, from knowingly accepting
11 or receiving corporate contributions.³⁰

12 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit
13 of money or anything of value made by any person for the purpose of influencing any election
14 for Federal office.³¹ The term “anything of value” includes “all in-kind contributions.”³² In-
15 kind contributions include “coordinated expenditures,” that is, expenditures “made by any person
16 in cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate,

²⁸ Resp. of Biden Committee at 2-5 (Mar. 1, 2021).

²⁹ *Id.* at 2.

³⁰ 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).

³¹ 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

³² 11 C.F.R. § 100.52(d).

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1 his [or her] authorized committees, or their agents.”³³ Under Commission regulations, a
 2 communication is coordinated and thus treated as an in-kind contribution when it is: (1) paid for
 3 by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of five conduct
 4 standards.³⁴ In-kind contributions also include “provision of any goods or services without
 5 charge or at a charge that is less than the usual and normal charge for such goods or services.”³⁵

6 The Commission has long considered activity engaged in for *bona fide* commercial
 7 reasons not to be “for the purpose of influencing an election,” and thus, not a contribution or
 8 expenditure under section 30118(a).³⁶ This is true even if a candidate benefitted from the
 9 commercial activity.³⁷

³³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

³⁴ 11 C.F.R. § 109.21(a).

³⁵ *Id.* § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

³⁶ *See, e.g.*, Factual & Legal Analysis at 4, MUR 6586 (World Wrestling Entertainment, Inc.) (finding that the WWE acted with the “sole intent to defend its business reputation” and not for the purpose of influencing an election when the WWE’s senior vice president sent a letter to a newspaper seeking a retraction of a negative article about Senate candidate Linda McMahon, who owned and served as CEO of the WWE); First Gen. Counsel’s Rpt. at 13, MUR 5474 (Dog Eat Dog Films, *et al.*) (determining that distributors and marketers of *Fahrenheit 9/11* film did so “in connection with *bona fide* commercial activity and not for the purpose of influencing an election”) (Commission voted to approve no reason to believe recommendations); AO 2012-11 (Microsoft Corp.) (concluding that commercially reasonable efforts “to protect [Microsoft’s] brand reputation” by providing election-sensitive customers with free account security services are not an in-kind contribution).

³⁷ *See* First Gen. Counsel’s Rpt. at 16, MUR 3622 (The Clinton/Gore ‘92 Committee) (“[T]he fact that any of these candidates . . . may have received an indirect benefit (dissemination of their political positions) as a result of the sale of these tapes does not convert commercial activity into a corporate contribution.”) (Commission voted to approve no reason to believe recommendation); Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*) (opining that the “question under the Act is whether the legal services were provided for the purpose of influencing a federal election, not whether they provided a benefit to Van Hollen’s campaign,” and concluding there was no contribution given the “absence of any objective or subjective indication” respondents acted for the purpose of influencing the election).

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1 **B. The Commission Finds No Reason to Believe That Google Made, or the Biden**
2 **Committee Accepted, a Prohibited Contribution**

3 The Complaint alleges that Google made prohibited in-kind corporate contributions to
4 Biden and the Biden Committee by altering its algorithms and protocols to depress internet
5 traffic to some content and determining whether Google users could see news articles.³⁸ Yet, the
6 Complaint’s allegations are vague and speculative, and Google’s Response suggests a more
7 likely, non-political explanation of its actions. Google’s actions at issue in this matter appear to
8 constitute *bona fide* commercial activity and not contributions. In recent matters involving large
9 technology companies, the Commission has considered whether the company’s actions were
10 intended to improve the user experience and protect advertising revenue rather than influence an
11 election.³⁹ Here, the Response from Google provides a thorough explanation of the ways in
12 which Google operates its technologies for filtering content on the Internet to provide a more
13 attractive service to users.⁴⁰ Google has presented a credible argument that it acted at all relevant
14 times with a commercial purpose, and nothing in the Complaint provides a reasonable inference
15 to conclude otherwise.

16 The Complaint appears to argue that Google’s updates to its algorithms, its display of
17 “fact-checks,” and policies regarding monetization amounted to a prohibited contribution to the

³⁸ *See* Compl. at 1-2.

³⁹ *See, e.g.*, Factual and Legal Analysis at 8-10, MUR 7807 (Snap Inc., *et al.*) (finding enforcement of respondent’s Community Guidelines constituted *bona fide* commercial activity); Factual and Legal Analysis at 14, MURs 7821, 7827 & 7868 (Twitter, Inc., *et al.*) (finding that respondent’s policy of removing misinformation was for commercial purposes); Factual and Legal Analysis at 14, (MURs 7812, 7825 & 7869 (Facebook, Inc., *et al.*) (finding respondent’s application of fact checking program was consistent with its commercial purpose).

⁴⁰ Google Resp. at 3-7.

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1 Biden Committee.⁴¹ The Complaint does not, however, provide specific information or cite
2 sources that credibly support these general allegations. Therefore, as explained below, the
3 information before the Commission does not provide a reasonable basis to conclude that
4 Google’s alleged actions were made for the purpose of influencing a federal election. Neither
5 the Complaint nor other available information indicate that Google’s actions, as alleged, was
6 motivated by something other than a commercial interest.

7 As an initial matter, there is nothing in the current record to indicate that Google deviated
8 from its normal protocols for updating its algorithms and the asserted commercial purposes. As
9 described above, Google states that it seeks to combat “material that is excessively violent,
10 unlawful, deceptive, or obscene” for the purpose of protecting and enhancing the user
11 experience.⁴² Moreover, its Response provides extensive information about how Google
12 implements these policies in a broadly applicable manner without regard to political affiliation.⁴³

13 The Complaint argues that Google’s purpose was electoral, apparently based on a video
14 of a Google executive reportedly implying that Google was working to “prevent[] the next
15 Trump situation.”⁴⁴ It is not clear, however, what the executive meant by “Trump situation” and,
16 in context, the statement is insufficient evidence of a company-wide mission to influence the

⁴¹ Compl. at 2 (“Google also, on information and belief, determined whether a news source is credible or hate speech in order to further Democratic aims and elect Joe Biden.”).

⁴² Google Resp. at 3.

⁴³ *Id.* at 3-6.

⁴⁴ “Insider Blows Whistle & Exec Reveals Google Plan to Prevent ‘Trump situation’ in 2020 on Hidden Cam,” Project Veritas (June 24, 2019), <https://www.projectveritas.com/news/insider-blows-whistle-exec-reveals-google-plan-to-prevent-trump-situation-in-2020-on-hidden-cam/>.

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1 election. The Complaint also cites a news article alleging that Google made manual adjustments
2 to its algorithms, which in turn influenced Search results.⁴⁵ That article, however, only describes
3 “internal discussions and lists related to how Google determines whether news sources are
4 credible or contain hate speech” and a technology for ranking recommendations,⁴⁶ neither of
5 which supports an inference that Google used these technologies for the purpose of aiding the
6 Biden Committee. Moreover, as described above, Google’s Response explains in detail how the
7 company routinely makes these kinds of updates, and nothing in the article appears inconsistent
8 with Google’s explanation of its commercial purpose. Accordingly, without more, this
9 information appears to be of limited value and does not provide indication of a political purpose
10 underlying Google’s algorithm updates or its display of fact checks in Search results.

11 Google’s policies regarding monetization and Restricted Mode also appear to constitute
12 *bona fide* commercial activity because Google appears to have articulated a credible commercial
13 purpose behind these policies — that is, to “to protect and enhance the user experience” by
14 ensuring content creators abide by Google’s generally applicable terms of service and offering
15 users a way to screen out potentially mature content.⁴⁷ This is similar to commercial
16 explanations the Commission has accepted from other technology companies for broadly
17 applicable policies aimed at enhancing the user experience.⁴⁸ In these matters, the Commission

⁴⁵ Compl. at 2 (citing Lauren Feiner, “Trump Tweets Without Evidence that Google ‘Manipulated’ Votes in the 2016 Election and ‘Should Be Sued,’” CNBC (Aug. 19, 2019), <https://www.cnbc.com/2019/08/19/trump-claims-google-manipulated-votes-after-internal-docs-leak.html> [hereinafter CNBC Article]).

⁴⁶ CNBC Article.

⁴⁷ Google Resp. at 3, 6.

⁴⁸ *See supra* note 39.

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1 did not find reason to believe that companies violated the Act when they enforced commercially
2 motivated policies. In this case, the Complaint does not support an inference that Google did
3 anything more than enforce preexisting, apolitical policies. Accordingly, there is no basis in the
4 record to doubt Google's commercial motives.

5 Finally, there is no indication that Google coordinated its activities with Biden or his
6 campaign. The Complaint points to Biden's Innovation Policy Committee including "at least
7 eight people who work for Facebook, Amazon, Google and Apple."⁴⁹ But there is no specific
8 information as to how any of those individuals, who are unidentified, enabled Google to use its
9 company resources to support the Biden Committee. Accordingly, this information does not
10 provide a reasonable basis to infer that the Biden Committee coordinated with Google regarding
11 the specific activities alleged in the Complaint.⁵⁰

12 In conclusion, the available information indicates that the actions taken by Google to
13 reduce the distribution of potential misinformation appear to reflect commercial considerations,
14 rather than an effort to influence a federal election. Moreover, there is no basis to reasonably
15 conclude that Google coordinated its activities with the Biden Committee. Therefore, the
16 Commission finds no reason to believe that Google violated 52 U.S.C. § 30118(a) and 11 C.F.R.
17 § 114.2(b) by making a prohibited in-kind contribution to the Biden Committee and finds no

⁴⁹ Compl. at 1. *But see* Resp. of Biden Committee at 4 (noting that the Innovation Policy Committee included nearly 700 members and was a "volunteer advisory group").

⁵⁰ *See* Factual and Legal Analysis at 17, MUR 7812, 7825 & 7869 (Facebook, Inc., *et al.*) (rejecting identical argument that technology company employees serving on Biden's Innovation Policy Committee could raise a reasonable inference of coordination).

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- 1 reason to believe that the Biden Committee violated 52 U.S.C. § 30118(a) and 11 C.F.R.
- 2 § 114.2(d) by knowingly accepting or receiving such a contribution.