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**Via Email**

Federal Election Commission  
Office of Complaints Examination  
& Legal Administration  
1050 First Street, NE  
Washington, District of Columbia 20463

**MUR 8009: RESPONSE OF JD VANCE FOR SENATE INC.**

Dear Commissioners:

On behalf of JD Vance for Senate Inc. and its Treasurer, Lisa Lisker, this letter responds to the complaint in MUR 8009. Because the Commission has chosen not to attempt to regulate internet communications of the type at issue in this MUR, and because the complaint provides no evidence that the Vance Committee actually accepted the alleged in-kind contributions from Protect Ohio Values PAC, I urge the Commission to dismiss the complaint and close its file in this matter.

**Facts and Background**

The Vance Committee is the authorized committee of JD Vance, the Republican nominee for United States Senator from Ohio in the forthcoming November 2022 General Election. Protect Ohio Values PAC is a nonqualified committee that maintains a segregated non-contribution account and has made independent expenditures supporting Mr. Vance's candidacy.

Complainants Campaign Legal Center, End Citizens United and Roger Wieand commenced this matter when they filed the underlying complaint against the Vance Committee and Protect Ohio Values PAC, mere days after End Citizens United maxed out to Mr. Vance's opponent, U.S. Representative Tim Ryan. The complaint entirely concerns content that Protect Ohio Values PAC created and placed on its own website. Specifically, it alleges that the PAC made excessive, prohibited and unreported in-kind contributions to the Vance Committee by posting information on a blog it maintained on the free online publishing platform Medium.<sup>1</sup>

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<sup>1</sup> If the Commission's Office of General Counsel augments the record in this matter with unsworn statements reported in news articles or other alleged facts found via Google searches, or if OGC



The complaint attempts to minimize the PAC's Medium blog as "an obscure website"<sup>2</sup> that "was not readily accessible to the public."<sup>3</sup> But that claim is ludicrous. Medium is one of the 500 most trafficked websites in the world.<sup>4</sup> It reportedly has over 50 million users<sup>5</sup> and its blogs receive hundreds of millions of monthly views.<sup>6</sup> At its most active, Medium can receive nearly twice as many monthly page views (236.65 million)<sup>7</sup> as Drudge Report (84.8 million in June 2022)<sup>8</sup> and Huffington Post (50.3 million in June 2022)<sup>9</sup> combined. In 2021, U.S. Senator Bernie Sanders was one of the top ten Medium authors,<sup>10</sup> with 222,000 followers. Rep. Tim Ryan maintains a blog on Medium.<sup>11</sup> So do the Commission staffers masquerading as altFEC,<sup>12</sup> the self-styled "unofficial #Resistance team of the U.S. Federal Election Commission." Even the complainant Campaign Legal Center is on Medium.<sup>13</sup> I found all their blogs when I typed their names into the search bar in the top right-hand corner of the Medium.com homepage.

As for Protect Ohio Values PAC's Medium blog, the campaign of one of Mr. Vance's opponents reportedly found it<sup>14</sup> during the course of the Republican primary campaign, followed it for "months" and used the information it found posted there.<sup>15</sup> The complaint is larded up with 39

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conjures additional legal theories not alleged in the complaint, the Vance Committee demands notice and an opportunity to respond prior to the Commission's reason to believe vote.

<sup>2</sup> Compl. ¶ 1.

<sup>3</sup> Compl. ¶ 46.

<sup>4</sup> <https://www.semrush.com/website/medium.com/overview/>.

<sup>5</sup> <https://bloggingguide.com/medium-platform-statistics/>.

<sup>6</sup> <https://www.semrush.com/website/medium.com/overview/>.

<sup>7</sup> <https://medium.com/blogging-guide/how-many-views-do-medium-articles-get-8d259b356ece>.

<sup>8</sup> <https://www.semrush.com/website/drudgereport.com/overview/>.

<sup>9</sup> <https://www.semrush.com/website/huffpost.com/overview/>.

<sup>10</sup> <https://medium.com/illumination/introducing-mediums-top-10-writers-in-2021-3c12c347a882>.

<sup>11</sup> <https://medium.com/@RepTimRyan>.

<sup>12</sup> [https://medium.com/@alt\\_fec](https://medium.com/@alt_fec).

<sup>13</sup> <https://medium.com/@CampaignLegal>.

<sup>14</sup> <https://www.politico.com/news/2022/05/03/jd-vance-win-ohio-primary-00029881>.

<sup>15</sup> The complaint does not name this rival candidate's campaign committee as a respondent, but the news article the complaint relies on identifies it.



pages of screenshotted Google search results for “Protect Ohio Values,” “POV” and “JD Vance,”<sup>16</sup> apparently proffered in an attempt to demonstrate the supposed unavailability of the PAC’s blog,<sup>17</sup> as if Google is the only way to find something online. Of course, notably missing from the complaint is any allegation that complainants went to one of the largest blogging sites in the world and typed the words “Protect Ohio Values” into the search bar—as others apparently went to Medium.com and, fruitfully, did.

Also missing from the complaint is any allegation that the Vance Committee accessed and used any of the information on Protect Ohio Values PAC’s blog—other than a claim that some six weeks after the PAC posted a blog article discussing an ad about the connection between illegal immigration and drugs, the Vance Committee created, produced and distributed a so-called “straight to camera” television ad highlighting Mr. Vance’s personal experience with the connection.<sup>18</sup> The connection could not have been a new idea for Mr. Vance,<sup>19</sup> who disclosed his own mother’s addiction to drugs in a best-selling book he authored before he became a candidate for U.S. Senate,<sup>20</sup> talked about drugs and open borders in his announcement speech,<sup>21</sup> and authored this “tweetstorm” in March of 2021, months before declaring his candidacy:

It's amazing how rarely you hear much compassion for the American citizens who have their communities and lives torn apart by the Mexican drug trade.

By all means, have compassion for “kids in cages.” I do. But spare some for your neighbors and the people who work in your community, fight your wars, and share a country with you.

The choice to have a porous border is a choice. Changing that would require more enforcement and more willingness to turn people away. It may mean fewer migrants making a dangerous journey, yes, but it would also mean less misery for Americans. That makes it worthwhile.<sup>22</sup>

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<sup>16</sup> Compl. Exs. C, D.

<sup>17</sup> Compl. ¶ 9.

<sup>18</sup> Compl. ¶ 41.

<sup>19</sup> Neither could the concept of a “straight to camera” ad been a novel one for the Vance Committee and its advertising team, such ads having been a part of American political campaigns for, literally, multiple decades.

<sup>20</sup> <https://www.amazon.com/Hillbilly-Elegy-Memoir-Family-Culture/dp/0062300547>.

<sup>21</sup> <https://youtu.be/jJiCTr9zOaE>.

<sup>22</sup> <https://twitter.com/JDVance1/status/1376220386120056834>.



Mr. Vance included with his tweetstorm a link to an article from the Courier Journal entitled “Mexican drug cartels saturate U.S. with deadliest meth ever.”<sup>23</sup> The complaint also claims that Mr. Vance stated and tweeted that “[w]e need to declare the Mexican drug cartels terrorist organizations” only after Protect Ohio Values PAC took the same position on its blog,<sup>24</sup> but misses the fact that former President Donald Trump made national headlines when he said the very same thing two years prior.<sup>25</sup>

## **Argument**

1. Protect Ohio Values PAC’s public blog was neither a contribution nor an expenditure. It was uncompensated internet activity that the Commission in 2006 chose not to attempt to regulate.

In its 2006 internet communications rulemaking, the Commission amended its rules to include paid internet advertisements in the definition of “public communication,” and to exclude uncompensated “internet activities” by individuals and groups of individuals from the definitions of “contribution” and “expenditure.”<sup>26</sup> As a result of the rulemaking,

[W]hen an individual or group engages in uncompensated “Internet activities”—meaning “any . . . form of communication distributed over the Internet”—for the purpose of influencing a Federal election, neither their services nor their use of equipment or services to communicate over the Internet constitute “expenditures” under the Act, unless the communications are placed for a fee on another person’s website. This exclusion from regulation is known as the “Internet exemption.” The Commission has explained that this is a “broad exemption” intended to “make clear, appropriately so, that individuals [and groups] engaging in unfettered political discourse over the Internet using their own computer facilities (or those publicly available) [are] not . . . subject to regulation under the campaign finance laws.”<sup>27</sup>

<sup>23</sup> <https://www.courier-journal.com/story/news/crime/2018/05/03/meth-resurgence-drug-epidemic-fentanyl/447191002/>.

<sup>24</sup> Compl. ¶42.

<sup>25</sup> <https://bit.ly/3zY9jIU>.

<sup>26</sup> 71 F.R. 18589, 18589 (Apr. 12, 2006); see also 11 C.F.R. §§ 100.26 (exempting internet communications from the definition of “public communication,” unless “placed for a fee on another person’s Web site”), 100.94 (uncompensated internet activity is not a “contribution”), 100.155 (uncompensated internet activity is not an “expenditure”).

<sup>27</sup> MUR 6729 (Checks and Balances), Statement of Reasons of Comm’rs Goodman, Hunter & Petersen at 3 (citing 11 C.F.R. §§ 100.155 and 100.94 and 71 F.R. at 18603), and First Gen’l Counsel’s Rpt. at 5 (“[T]he Commission has promulgated a regulation that exempts the costs associated with uncompensated ‘internet activity’ by an individual or group of individuals from the definitions of ‘contribution’ and ‘expenditure.’ 11 C.F.R. § 100.155.”).



Applying the internet exemption, the Commission has recognized that an individual can expend funds to create videos supporting and opposing candidates, and that the individual's expenditures do not constitute "expenditures" for purposes of Commission regulation unless and until the individual pays to advertise the videos on others' websites or facilities.<sup>28</sup> In another matter, the Office of General Counsel and commissioners agreed that a group did not engage in regulated activity when it created videos and distributed them solely on the internet without incurring advertising or other distribution costs.<sup>29</sup> Commissioners also have agreed that a group that created press releases and sent email messages attacking federal candidates did not make contributions and expenditures regulable under the Act—because no one compensated the group to do so, and it did not pay others to advertise its messages.<sup>30</sup> Indeed, when it comes to free internet content created by groups and posted without compensation on their own websites and blogs, the only thing the Commission has said is that they "may" need to bear a disclaimer.<sup>31</sup>

Importantly, the internet exemption applies to individuals and groups alike, and a group of individuals does not lose entitlement to the internet exemption merely by virtue of having become a federal political committee. For purposes of federal campaign finance regulation, the starting point is that the internet is unregulated—for everyone. Only accepting compensation from a third party for creating internet content, or paying a third party to post internet content on their website, vitiates the exemption and renders internet content subject to regulation as a contribution or expenditure.

In this matter, Protect Ohio Values PAC is a group of individuals, entitled to the Commission's internet exemption. According to the complaint, the PAC created content and placed it on its blog on the internet. The complaint does not allege that anyone compensated the PAC to undertake that activity,<sup>32</sup> and there is no allegation that the PAC paid anyone to advertise its

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<sup>28</sup> AO 2008-10 (Voter Voter) at 7-8 & n. 12.

<sup>29</sup> MUR 6729 (Checks and Balances), Statement of Reasons of Comm'rs Goodman, Hunter & Petersen at 2, First Gen'l Counsel's Rpt. at 6.

<sup>30</sup> MUR 6795 (CREW), Concurring Statement of Reasons of Comm'rs Goodman & Hunter at 4-5.

<sup>31</sup> 71 F.R. at 18605.

<sup>32</sup> On this point, the blog at issue appears very clearly to be the blog of Protect Ohio Values PAC, and not the blog of any individual employee or other agent of Protect Ohio Values PAC. This is important. While the PAC may have compensated someone to create the blog posts at issue, the complaint presents no evidence that anyone compensated the PAC to create them. Commission precedent clearly establishes that the costs of creating and producing internet communications are just as exempt from the definition of contribution and expenditure as are the costs of maintaining a website and placing the materials there. AO 2008-10 (costs of creating internet communications are within the scope of the internet exemption); see also MUR 6729 (Checks and Balances), Statement of Reasons of Comm'rs Goodman, Hunter & Petersen at 4 & fn. 21 (citing historical Commission guidance materials). The question, therefore, is not—as the complaint labors to establish—whether the PAC spent funds to create and produce its internet communications. The question is whether anyone compensated the PAC for doing so, and there is no evidence in the complaint that anyone did so.





content.<sup>33</sup> This matter requires a straightforward application of the internet exemption. The Commission should apply it, dismiss the complaint and close the file in this MUR.

2. The complaint fails to allege facts that, if true, would prove the Vance Committee accepted the alleged in-kind contributions at issue.

Even if the Commission determines that Protect Ohio Values PAC's blog constituted an expenditure, the Commission still should dismiss the complaint because it does not allege facts that, if true, would prove the Vance Committee accepted the corresponding in-kind contribution. To the contrary, all the complaint alleges are similarities and coincidences—and a very few of them, at that—of the type that the Commission repeatedly has rejected as a basis for finding reason to believe that a committee has violated the Act.

Specifically, as noted above at pp. 3-4, the complaint claims that the PAC blogged about a potential "straight to camera" ad focused on the connection between illegal immigration and drugs, and the Vance Committee later released a similar ad. And it claims that after a PAC blog post suggested that Mexican drug cartels should be designated as terrorist organizations, Mr. Vance once stated and tweeted the same thing.

The Commission does not recognize thematic similarities and temporal proximity of two communications as a sufficient basis for making a reason to believe finding. In MUR 6821, for instance, the Commission by a vote of 5-1 voted to adopt the First General Counsel's Report, and found no reason to believe in a matter in which the complaint presented evidence of "alleged thematic similarities of two communications . . . and their rough temporal proximity."<sup>34</sup> Similarly, in MUR 7124, the Commission voted 5-0 to adopt the First General Counsel's Report, and found no reason to believe in a matter in which the complaint alleged "similarities between [a website] and the commercials, and the timing and geographic placement of the commercials."<sup>35</sup> Likewise, in MUR 5963, a 6-0 Commission vote adopted the First General Counsel's Report, and found no reason to believe in a matter in which the complaint alleged similarities in advertisements, noting

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<sup>33</sup> The complaint complains over and over and over again that the PAC's blog was "an obscure website," ¶ 1, and a "secret website," ¶ 7, that "was not intended for the general public," ¶ 20, the "existence [of which] was not widely known," ¶ 19, it was "not . . . widely known," ¶ 27, because it "was essentially hidden from public view," ¶ 9, and "did not turn up from Google searches." ¶ 19. The complaint continues, faulting the PAC because it "does not appear to have advertised its Medium webpage to the public, and there is no indication that anyone else publicized it," ¶ 19, so it was "not widely publicized," ¶ 26, and thus "it does not appear that these materials were in fact, readily available to the public." ¶ 32. None of this has anything at all to do with the legal standard. The Act and Commission regulations do not require information to be publicly advertised in order for it to be deemed publicly available. In fact, the advertising requirement that complainants apparently seek to graft onto the law here would steer individuals and groups directly into the teeth of regulation that the Commission, in the internet communications rulemaking, gave them the opportunity to avoid by not advertising their internet communications.

<sup>34</sup> MUR 6821 (Shaheen), First Gen'l Counsel's Rpt. at 8-9.

<sup>35</sup> MUR 7124 (McGinty), First Gen'l Counsel's Rpt. at 10.



that similar information was “available on the public record,” and terming the allegations in the complaint “speculative.”<sup>36</sup> In a similar vein, the Commission has been dismissive of complaints alleging so-called “signaling” over the internet between candidates and Super PACs.<sup>37</sup>

More fundamentally, the Commission never has found that a candidate’s campaign receives an in-kind contribution of political strategy when a supporter puts information and analysis about the campaign on its blog on the internet—ideas and suggestions that the candidate’s campaign may or may not already have seen, have had in its own mind all along, been planning to release at some later time or have or would have developed on its own. Such a finding would effectively place words, phrases and campaign tactics off limits to candidates and their campaigns if an overzealous supporter posted them online first. It also opens the door to shenanigans and chicanery by rivals and opponents—inciting them to scour the internet for blogs and websites maintained by the candidate’s supporters, or perhaps even to load up a blog with information on their own, wait for the candidate to say or the campaign to do something similar, and then pounce, filing a complaint and ensnaring the candidate in the Commission’s enforcement process for years. In this regard, a reason to believe finding in this matter would have a chilling effect on “the most accessible marketplace of ideas in history”—one that the Commission has, since 2006, sought to “safeguard” as a forum for “constitutionally protected political speech.”<sup>38</sup>

For all these reasons, I urge the Commission to dismiss the complaint and close its file in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Ashby", with a long horizontal flourish extending to the right.

Chris Ashby

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<sup>36</sup> MUR 5963 (Club for Growth), First Gen’l Counsel’s Rpt. at 7. See also MUR 7681 (American Jobs and Growth PAC), Statement of Reasons of Comm’rs Dickerson & Trainor at 9 (no RTB based upon “similarities between a campaign’s public materials and an outside actor’s public communication alone”); MUR 6603 (Chandler), Statement of Reasons of Comm’rs Petersen, Hunter & Goodman at 2 (citing MUR 6821 (Shaheen) as precedent and stating that “alleged similarities of the two communications at issue and their rough temporal proximity do not give rise to” RTB); MUR 7136 (Strickland), First Gen’l Counsel’s Rpt. at 6 (citing MUR 7124 (McGinty) as precedent and recommending no RTB based upon alleged “similarities between the website information and the timing and placement of the ads”); MUR 7138 (Murphy), First Gen’l Counsel’s Rpt. at 9 (“similarities between the [website] and the timing, subject matter, and geographic distribution of [the advertisement] are insufficient” basis for RTB); MUR 7681 (VoteVets), First Gen’l Counsel’s Rpt. at 8-9, (“alleged thematic similarities of the two communications at issue, and their rough temporal proximity do not give rise to” RTB).

<sup>37</sup> See, e.g., MUR 7700 (VoteVets), and especially Statement of Reasons of Commr’s Dickerson, Cooksey, Trainor & Weintraub.

<sup>38</sup> 71 F.R. at 18590.