



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

VIA ELECTRONIC MAIL

Trevor M. Stanley
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May 22, 2024

RE: MUR 8009

Dear Mr. Stanley:

On June 13, 2022, the Federal Election Commission notified your client, Protect Ohio Values PAC and Vicki J. Hoffman in her official capacity as treasurer (“POV PAC”) of a complaint indicating violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and information supplied by your client, the Commission, on April 18, 2024, voted to dismiss the allegation that POV PAC violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a), and 11 C.F.R. §§ 104.9, 110.1(b)(1), and 114.2(b) by making and failing to report prohibited and excessive in-kind contributions to JD Vance for Senate in the form of information posted on *Medium* and services provided by Deep Root Analytics. Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter’s transmittal are enclosed.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Protect Ohio Values PAC and **MUR 8009**
Vicki J. Hoffman in her official
capacity as treasurer
JD Vance for Senate, Inc., and
Lisa Lisker in her official capacity
as treasurer

I. INTRODUCTION

The Complaint alleges that Protect Ohio Values PAC (“POV PAC”), a hybrid political action committee (“hybrid PAC”), spent over \$1 million on polling and voter-targeting information and provided that information for free through an “obscure website” to JD Vance for Senate, Inc., and Lisa Lisker in her official capacity as treasurer (the “Vance Committee”) during the 2022 Republican primary for U.S. Senate in Ohio. The Complaint further alleges that the Vance Committee used this information to make strategic decisions during the 2022 primary election. Thus, the Complaint claims that POV PAC made, and the Vance Committee accepted, an in-kind contribution of information and other valuable strategic material, which neither committee disclosed, and that both committees therefore violated the Federal Election Campaign Act of 1971, as amended (the “Act”).

POV PAC denies the allegations. In its Response, which includes a signed affidavit from Lucas Thompson, POV PAC’s Executive Director, POV PAC states that it created an “online blog” to communicate directly and effectively with donors, potential donors, influencers, and supporters and never communicated directly with the Vance Committee. Thompson further asserts that the close monitoring of POV PAC’s content by news media and Vance’s opponents demonstrates that the information it was communicating was publicly available.

1 The Vance Committee denies that it received prohibited in-kind contributions from POV
2 PAC because POV PAC's information was publicly available and there is no information to
3 suggest that the Vance Committee used or acted on information from POV PAC.

4 As set forth below, in light of the public nature of the communications at issue, the
5 Commission (1) dismisses the allegation that POV PAC made and failed to report prohibited and
6 excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a)
7 and 11 C.F.R. §§ 104.9, 110.1(b)(1), and 114.2(b) by making and failing to report prohibited and
8 excessive in-kind contributions in the form of information posted on *Medium*; (2) dismisses the
9 allegation that that the Vance Committee knowingly accepted and failed to report prohibited and
10 excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a)
11 and 11 C.F.R. §§ 104.8, 110.9, and 114.2(d) by knowingly accepting and failing to report
12 prohibited and excessive in-kind contributions in the form of information posted on *Medium*;
13 (3) dismisses the allegation that POV PAC violated 52 U.S.C. §§ 30104(b), 30116(a), and
14 30118(a) and 11 C.F.R. §§ 104.9, 110.1(b)(1), and 114.2(b) by making and failing to report
15 prohibited and excessive in-kind contributions in the form of services provided by Deep Root
16 Analytics; and (4) dismisses the allegation that the Vance Committee violated 52 U.S.C.
17 §§ 30104(b), 30116(f), and 30118(a) and 11 C.F.R. §§ 104.8, 110.9, and 114.2(d) by knowingly
18 accepting and failing to report prohibited and excessive in-kind contributions in the form of
19 services provided by Deep Root Analytics.

1 II. FACTUAL BACKGROUND

2 POV PAC registered with the Commission as an independent expenditure-only political
3 committee (“IEOPC”) on February 24, 2021.¹ On November 15, 2021, POV PAC amended its
4 Statement of Organization to declare itself a hybrid PAC.² Through the 2022 general election, POV
5 PAC raised just under \$19.8 million and disclosed nearly \$16 million in independent expenditures
6 in support of U.S. Senate candidate J.D. Vance.³ POV PAC has received funds into its non-
7 contribution account in amounts exceeding the Act’s limits and from sources the Act prohibits.⁴

8 J.D. Vance was a candidate for the U.S. Senate in Ohio in 2022 and filed his Statement of
9 Candidacy with the Commission on July 2, 2021.⁵ The Vance Committee is his authorized
10 committee.⁶

11 The Complaint in this matter alleges that POV PAC made unreported excessive and
12 prohibited contributions to the Vance Committee when it published documents and information

¹ POV PAC, Statement of Organization (Feb. 24, 2021), <https://docquery.fec.gov/pdf/840/202102249428874840/202102249428874840.pdf>.

² POV PAC, Amended Statement of Organization (Nov. 15, 2021), <https://docquery.fec.gov/pdf/029/202111159468499029/202111159468499029.pdf>.

³ *Protect Ohio Values PAC: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00770495/?tab=summary> (last visited Apr. 18, 2024). According to 24- and 48-Hour Reports of Independent Expenditures filed the day before the primary election, POV PAC spent \$11,880,698.25 in support of Vance’s primary election candidacy. POV PAC, 24-Hour Report of Independent Expenditures at 1 (May 2, 2022), <https://docquery.fec.gov/pdf/090/202205029502508090/202205029502508090.pdf> (reporting \$11,880,698.25 spent “calendar year to date per election for office sought” in support of J.D. Vance).

⁴ POV PAC, 2021 Year-End Report, Sched. A at 12 (Jan. 29, 2022), <https://docquery.fec.gov/pdf/113/202201299475487113/202201299475487113.pdf> (showing corporate contribution); POV PAC, 2021 Mid-Year Report, Sched. A at 9-10 (July 30, 2021), <https://docquery.fec.gov/pdf/194/202107309452400194/202107309452400194.pdf> (showing individual contributions in the amount of \$50,000, \$100,000, and \$10,000,000).

⁵ J.D. Vance, Statement of Candidacy (July 1, 2021), <https://docquery.fec.gov/pdf/454/202107019450893454/202107019450893454.pdf>.

⁶ J.D. Vance for Senate, Inc., Statement of Org. (July 1, 2021), <https://docquery.fec.gov/pdf/450/202107019450893450/202107019450893450.pdf>. Vance won the Ohio Senate Republican primary election on May 3, 2022, and subsequently won the November general election. *See 2022 Election Results*, OHIO SEC’Y OF STATE, <https://www.ohiosos.gov/elections/election-results-and-data/2022-official-election-results/> (last visited Apr. 18, 2024).

1 vital to the Vance Committee on *Medium*, an online publishing platform that allows registered
2 users to create and publish content.⁷ The published information allegedly included polling data,
3 an opposition research notebook, and POV PAC memoranda assessing the strengths and
4 weaknesses of Vance’s opponents.⁸ POV PAC also allegedly published potential scripts for
5 Vance to use in campaign materials as well as advice on gaining the endorsement of former
6 President Donald Trump.⁹ The Complaint acknowledges that POV PAC’s material “was
7 theoretically accessible to the public,” but alleges its existence was not widely known or
8 advertised and that it was not discoverable by a Google search.¹⁰ The Complaint cites a news
9 report describing POV PAC’s *Medium* blog and the circumstances surrounding the 2022 Ohio
10 Republican U.S. Senate primary, much of which is incorporated into the allegations in the
11 Complaint.¹¹

⁷ Compl. ¶¶ 8-9, 14-15 (June 6, 2022). The Complaint describes POV PAC’s material as a “website”; the POV PAC Response refers to it as a “blog.” *See, e.g.*, Compl. ¶¶ 7, 8, 10; POV PAC Resp. at 2-5 (Aug. 10, 2022).

⁸ Compl. ¶¶ 7, 10-16.

⁹ *Id.* ¶¶ 14-15. POV PAC made 21 entries to its *Medium* blog beginning on July 29, 2021, with an entry that includes internal polling information and ending on May 4, 2022, the day after the primary election, with an entry that thanks POV PAC supporters. *See* POV, *POV Poll Update*, MEDIUM (July 29, 2021), <https://medium.com/@protectohiovaluesforms/pov-poll-update-948b14d8caee>; POV, *Thank you Ohio!*, MEDIUM (May 4, 2022), <https://medium.com/@protectohiovaluesforms/thank-you-ohio-852ac7d2611d>. The entries include POV PAC polling information, descriptions of the PAC’s activities, including attendance at events featuring Vance, and information regarding Vance’s media appearances.

¹⁰ Compl. ¶¶ 8-9, 19, 46. *Medium* describes itself as “a new model for digital publishing” and states on its website that it “supports . . . vital storytelling without giving in to the incentives of advertising.” *Medium* states that “anyone can write on Medium” including “thought-leaders, journalists, experts, and individuals with unique perspectives.” *See About*, MEDIUM, <https://medium.com/about> (last visited Apr. 18, 2024). Although the Complaint alleges POV PAC’s *Medium* blog was not discoverable by a Google search, searches made at the time of this Analysis returned the site on the first page of results. *See infra* note 55.

¹¹ Compl. ¶¶ 7 (citing Alex Isenstadt, *A Mole Hunt, a Secret Website and Peter Thiel’s Big Risk: How J.D. Vance Won His Primary*, POLITICO (May 3, 2022, 11:08 PM), <https://www.politico.com/news/2022/05/03/jd-vance-win-ohio-primary-00029881>).

1 The Complaint further alleges that the Vance Campaign used POV PAC’s information to
2 guide its campaign messages and strategy.¹² For example, the Complaint alleges that in a
3 February 17, 2022 post to *Medium* entitled “The Next Step,” POV PAC counseled that Vance
4 should “own a critical issue,” specifically “the question of immigration,” and pointed to specific
5 biographical details and policy positions Vance should highlight in advertisements on the topic.¹³
6 The Complaint then alleges that, beginning April 5, 2022, the Vance Committee “adopted [POV
7 PAC]’s suggested campaign expenditures when it reportedly spent \$1 million to air immigration-
8 focused ads that directly drew on the ideas and language” included in POV PAC’s February 17,
9 2022 *Medium* post.¹⁴

10 In its Response, POV PAC denies that it made an in-kind contribution to the Vance
11 Committee when it published the information at issue.¹⁵ POV PAC asserts that a private website
12 or a mailing list was insufficient to reach its audience of donors, donor prospects, and large
13 teams of surrogates and advisors, so POV PAC created a publicly accessible blog on the *Medium*
14 platform that was fully open to everyone.¹⁶ POV PAC also posted links to each of its *Medium*
15 posts to its X (formerly Twitter) account, “@pov2022,” which was also publicly accessible.¹⁷
16 POV PAC states that it communicated with donors and convinced prospective donors that POV
17 PAC was the “right place to invest money to support J.D. Vance.”¹⁸ POV PAC Executive
18 Director Lucas Thompson avers in an affidavit attached to the POV PAC Response that POV

¹² Compl. ¶ 34.

¹³ *Id.* ¶¶ 14-15.

¹⁴ *Id.* ¶ 18.

¹⁵ POV PAC Resp. at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 2-3.

¹⁸ *Id.* at 3.

1 PAC published its blog entries containing significant information about the internal workings of
2 the PAC “with awareness that Politico and other campaigns” were able to view the blog entries
3 and access the posted information.¹⁹ Finally, Thompson declares that “[a]t no time did the
4 Vance Campaign request that POV [PAC] conduct a poll or provide any other goods or services”
5 and that POV PAC “had no indication that the Vance Campaign used the polling data or other
6 material” published on the *Medium* blog.²⁰ Thompson acknowledges the *Politico* article
7 detailing POV PAC’s posts on *Medium* and states that publication of the article — accompanied
8 by increased spending by groups supporting other candidates — “pushed” POV PAC to proceed
9 with its first media buys.²¹

10 POV PAC’s Response attaches as an Exhibit a memorandum from POV PAC to
11 “Interested Parties,” described in the Response and attached declaration as a “confidential
12 memorandum to key donors and other stakeholders” regarding the Ohio Senate race,²² dated,
13 September 28, 2021.²³ The memorandum outlines POV PAC’s work to “amplify JD’s unique
14 strengths while lightening the challenges he face[d] as a rookie candidate.”²⁴ Under the heading
15 “Research Support,” it states:

16 In April, we hired pollster Tony Fabrizio and the industry-leading
17 opposition researchers at Prospect Strategic. Our researchers
18 compiled extensive dossiers on JD and his opponents. Tony then
19 conducted a series of four polls, from April to August, to inform
20 our thinking about the race. We tested a set of policy positions and

¹⁹ *Id.*, Ex. H, ¶¶ 19, 21.

²⁰ *Id.* ¶ 22.

²¹ *Id.* ¶¶ 12-15. POV PAC made its first expenditure in support of Vance on July 1, 2021, when it paid Flexpoint Media, Inc., \$235,000 for “digital advertising.” POV PAC, 48-Hour Report of Independent Expenditures (July 2, 2021), <https://docquery.fec.gov/pdf/742/202107029450978742/202107029450978742.pdf>.

²² POV PAC Resp. at 3; *id.*, Ex. H ¶ 6 (Declaration of POV PAC Executive Director Lucas Thompson) [hereinafter Thompson Decl.].

²³ POV PAC Resp., Ex. C [hereinafter POV PAC Memo].

²⁴ *Id.* at 1.

1 messages based on JD’s public statements, JD’s vulnerabilities,
2 and the vulnerabilities of our leading opponents.

3 Using these insights, we hired the data science company DeepRoot
4 to build a series of models and segments around different issue
5 concerns and messages. The campaign is also hiring DeepRoot to
6 provide data services. The campaign will therefore be able to
7 access the modeled universes POC has created, and POV will be
8 able to access voter contact data uploaded into the database by the
9 campaign. This arrangement allows POV to bring presidential-
10 level targeting sophistication to JD’s campaign without expecting
11 the campaign to shoulder the cost of audience construction.²⁵

12 POV PAC posted the memorandum on its *Medium* page on October 4, 2021, in response to
13 donor pressure to “do more to support Vance immediately,”²⁶ and the *Medium* post contains
14 some of the data alleged by the Complaint to constitute in-kind contributions to the Vance
15 Committee.²⁷ “DeepRoot” appears to refer to Deep Root Analytics, a political consulting firm
16 focusing on “audience building and media data analysis.”²⁸ POV PAC’s disclosure reports
17 reflect \$909,450 in disbursements to Fabrizio, Lee, & Associates LLC (“Fabrizio LLC”),
18 composed of \$484,950 for “polling” and \$424,500 for “research/focus groups” and

²⁵ *Id.* at 4-5.

²⁶ POV PAC Resp. at 3; *see* POV, *Breaking New Ground: How POV Is Changing the Super PAC Game*, MEDIUM (Oct. 4, 2021), <https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920>.

²⁷ Compl. ¶¶ 11-13; *see* POV, *Breaking New Ground: How POV Is Changing the Super PAC Game*, MEDIUM (Oct. 4, 2021), <https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920>.

²⁸ *About Deep Root Analytics*, DEEP ROOT, <https://www.deeprootanalytics.com/about-us-0> (last visited Apr. 18, 2024).

1 “research/polling,”²⁹ as well as \$160,050 to Prospect Strategic Communications for “research
2 consulting.”³⁰ The reports reflect no disbursements to Deep Root Analytics.³¹

3 The Vance Committee also denies the allegations and asks the Commission to dismiss the
4 Complaint.³² The Vance Committee argues that the Complaint generally fails to allege the
5 Vance Committee accessed and used any of the information on POV PAC’s blog, with the
6 exception of one claim concerning drugs and immigration. Disputing that more specific claim,
7 the Vance Committee denies that the candidate spoke about this particular drug issue and
8 inveighed against drugs and open borders at the direction or instruction of POV PAC.³³ The
9 Response asserts that Vance disclosed information about his family member’s addiction in a
10 book published in 2016, authored a “tweetstorm” (a series of sequential posts on the social media
11 platform X, formerly known as Twitter) about these issues months before declaring his
12 candidacy, and spoke about “drugs and open borders” in his campaign announcement.³⁴

²⁹ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00770495&recipient_name=Fabrizio&two_year_transaction_period=2022 (last visited Apr. 18, 2024) (reflecting all disbursements by POV PAC to “Fabrizio” during the 2022 election cycle).

³⁰ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00770495&recipient_name=prospect&two_year_transaction_period=2022 (last visited Apr. 18, 2024) (reflecting all disbursements by POV PAC to “Prospect” during the 2022 election cycle).

³¹ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00770495&recipient_name=Deep&recipient_name=Root&two_year_transaction_period=2022 (last visited Apr. 18, 2024) (reflecting no disbursements by POV PAC to “Deep” or “Root” during the 2022 election cycle).

³² Vance Comm. Resp. at 1 (Aug. 5, 2022).

³³ *Id.* at 3.

³⁴ *Id.*

1 The Vance Committee’s disclosure reports reflect \$204,450 in disbursements to Fabrizio
2 LLC for “research” and \$250 in disbursements to Prospect Strategic Communications for the
3 same.³⁵ They reflect no disbursements to Deep Root Analytics.³⁶

4 Finally, both the Vance Committee and POV PAC argue that the material at issue is
5 uncompensated internet activity and is therefore exempt from the definition of contribution or
6 expenditure and exempt from the applicable regulations.³⁷

7 **III. ANALYSIS**

8 **A. Applicable Law**

9 The Act’s definition of “contribution” includes “any gift, subscription, loan, advance, or
10 deposit of money or anything of value” made by any person for the purpose of influencing any
11 election for Federal office.³⁸ Similarly, the Act’s definition of “expenditure” includes “any
12 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,
13 made by any person for the purpose of influencing any election for Federal office.”³⁹ The phrase
14 “anything of value” includes in-kind contributions, defined as the provision of any goods or
15 services without charge or at a charge that is less than the usual and normal charge for such
16 goods and services.⁴⁰ The Act and Commission regulations prohibit any person from making a

³⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00783142&recipient_name=Fabrizio&recipient_name=prospect&two_year_transaction_period=2022 (last visited Apr. 18, 2024) (reflecting all disbursements by the Vance Committee to “Fabrizio” and “Prospect” during the 2022 election cycle).

³⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00783142&recipient_name=Deep&recipient_name=Root&two_year_transaction_period=2022 (last visited Apr. 18, 2024) (reflecting no disbursements by the Vance Committee to “Deep” or “Root” during the 2022 election cycle).

³⁷ Vance Comm. Resp. at 5-7; POV PAC Resp. at 12.

³⁸ 52 U.S.C. § 30101(8)(A)(i).

³⁹ *Id.* § 30101(9)(A)(i).

⁴⁰ 11 C.F.R. § 100.52(d)(1).

1 contribution to an authorized committee in connection with an election in excess of \$2,900 for
2 the 2022 election cycle.⁴¹ Further, no candidate or committee may knowingly accept excessive
3 contributions.⁴²

4 The Act and Commission regulations bar corporations and labor organizations from
5 making, and federal candidates and their authorized committees from accepting, contributions or
6 expenditures related to any election for any political office.⁴³ However, IEOPCs and hybrid
7 PACs (in the latter's non-contribution account) may receive funds from corporations and labor
8 organizations, and they may also receive funds in amounts in excess of applicable federal
9 limits.⁴⁴ IEOPCs and hybrid PACs are prohibited from using these funds to make contributions
10 to candidates and their authorized committees; hybrid PACs may only make contributions to
11 candidates and their authorized committees from their hard-money contribution accounts.⁴⁵

12 The Act requires political committees to timely report and disclose funds they raise and
13 spend.⁴⁶ The Act and Commission regulations further set forth bright-line requirements for

⁴¹ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

⁴² 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

⁴³ *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

⁴⁴ *See* Advisory Opinion 2010-11 at 2-3 (Commonsense Ten) (stating that IEOPCs may receive unlimited funds and funds from corporations and labor organizations).

⁴⁵ Advisory Opinion 2017-10 at 2 (Citizens Against Plutocracy) (“An [IEOPC] ‘may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.’” (quoting Advisory Opinion 2016-21 at 3-4 (Great Am. PAC))); Factual & Legal Analysis (“F&LA”) at 6, MUR 7813 (Iowa Democratic Party, *et al.*) (“[IEOPCs] . . . are prohibited from making contributions to candidates and their authorized committees.”); F&LA at 4, MUR 7168 (Catherine Cortez Masto, *et al.*) (“[IEOPCs] are prohibited from making contributions to candidates and their authorized committees.”); F&LA at 8, MUR 7124 (Katie McGinty for Senate, *et al.*) (“IEOPCs and nonprofit corporations are prohibited from making contributions to candidates and their authorized committees.”).

⁴⁶ *See generally* 52 U.S.C. § 30104.

1 reporting receipts and disbursements in excess of \$200 within the calendar year or election cycle
2 along with select information about the contributor or the recipient of the given disbursement.⁴⁷

3 Uncompensated internet activities are exempted from the definition of contribution or
4 expenditure.⁴⁸ When an individual or a group of individuals, acting independently or in
5 coordination with any candidate, authorized committee, or political party committee, engages in
6 internet activities for the purpose of influencing a federal election, uncompensated personal
7 services related to such internet activities, or the use of equipment or services for uncompensated
8 internet activities, regardless of who owns the equipment and services, are not “contributions” or
9 “expenditures.”⁴⁹ Exempted activities include, but are not limited to, sending or forwarding
10 electronic messages; providing a hyperlink or other direct access to another person’s website;
11 blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another
12 person’s website; and any other form of communication distributed over the Internet.⁵⁰

13 **B. The Commission Dismisses the Allegation That Respondents Violated the**
14 **Act’s Contribution Limits and Prohibitions or Reporting Requirements**
15 **Through POV PAC’s Publication of Information and Materials Online**

16 One of the central questions in this matter is whether the strategy documents and
17 information POV PAC published on *Medium* resulted in in-kind contributions made to and
18 accepted by the Vance Committee. The Complaint relies on MUR 5409 (Grover Norquist, *et al.*)
19 to support its claim that a third party that uses its resources to provide materials to a campaign

⁴⁷ See *id.* §§ 30104(b)(6)(A), 30104(b)(6)(B)(v); 11 C.F.R. §§ 104.8(a), 104.9(a); see also Advisory Opinion 2015-12 at 4 (Ethiq) (“The Act requires each political committee to report the name, mailing address, occupation, and employer name of any individual who contributes more than \$200 to the committee in a calendar year.”).

⁴⁸ Internet Communications, 71 Fed. Reg. 18,589, 18,603 (Apr. 12, 2006) (adopting 11 C.F.R. §§ 100.94 and 100.155, which exempt uncompensated internet activities from the definition of contribution and expenditure).

⁴⁹ 11 C.F.R. §§ 100.94, 100.155.

⁵⁰ *Id.* §§ 100.94, 100.155.

1 committee free of charge has made an in-kind contribution, even if some of the materials
2 provided are based on publicly available information.⁵¹ In that matter, the Commission
3 determined that a third-party organization that had compiled lists of its meeting attendees —
4 using its resources to obtain and compile a variety of valuable campaign materials — and
5 provided those lists to a campaign had thereby made an in-kind contribution.⁵² However, the
6 clear distinction between that matter and the instant matter is that the third party in MUR 5409
7 directly provided the materials, which were based in part on publicly available information, to
8 the candidate’s committee; by contrast, anything of value at issue here was not initially based on
9 publicly available information, but it was ultimately made public after it was published to an
10 online blog, where it was accessible to the candidate’s committee. There is no allegation or
11 information indicating that POV PAC gave any information or materials directly to the Vance
12 Committee, as occurred in MUR 5409.

13 Additionally, the information at issue here was posted in ordinary language on a publicly
14 available platform, *Medium*, where any information is searchable and available at no cost to the
15 viewer.⁵³ Further, any member of the public can subscribe to posts by any content creator on the
16 site and receive notifications when new content is posted.⁵⁴ A Google search for “POV PAC JD
17 Vance” as of the date of this Analysis results in a link to the *Medium* site on the first page of

⁵¹ Compl. ¶ 31 n.41.

⁵² First Gen. Counsel’s Rpt. (“First GCR”) at 10 & Certification (“Cert.”) (Oct. 19, 2004), MUR 5409 (Grover Norquist, *et al.*) (approving the Office of General Counsel’s (“OGC”) recommendation to find reason to believe that a nonprofit corporation made prohibited in-kind contributions by providing a campaign with its private lists of conservative organizations and individuals, which the corporation “utilized its resources to obtain and compile”). Simultaneous with its finding reason to believe, the Commission voted to take no further action and close the file. Cert. ¶ 2 (Oct. 19, 2004), MUR 5409.

⁵³ POV, <https://medium.com/@protectohiovaluesforms> (last visited Apr. 18, 2024).

⁵⁴ *Id.*

1 results.⁵⁵ Although searches conducted at different times and by different users may not produce
2 exactly the same results, POV PAC's material appears to have been available to those who
3 sought it.

4 There is also no information indicating that anyone associated with the Vance Committee
5 or POV PAC communicated with one another about the existence of the *Medium* platform or
6 otherwise privately prearranged for use of the platform as a means of transmitting secret
7 information.

8 Moreover, the available information does not indicate that the Vance Committee made
9 use of POV PAC's information. Indeed, the only specific example alleged in the Complaint of
10 the Vance Committee making use of POV PAC's materials is the Vance campaign's subsequent
11 discussion of drugs and immigration. But the available information, including POV PAC's and
12 the Vance Committee's Responses, indicates that the candidate had spotlighted those issues in
13 his 2016 book, in statements before he announced his candidacy, and in his campaign
14 announcement well before POV PAC exhorted him to do so.

15 Further, POV PAC's polling results appear to have been made public by POV PAC
16 without any alleged request by the Vance Committee and thus would not be treated as an in-kind
17 contribution under the Commission's regulations for the allocation of polling expenses.⁵⁶

18 In light of our analysis that POV PAC's publishing of information and materials online
19 does not constitute a contribution to the Vance Committee, we do not need to separately address

⁵⁵ Google Search Results: *POV PAC JD Vance*, GOOGLE, <https://www.google.com/search?q=POV+PAC+JD+Vance> (last visited Apr. 18, 2024).

⁵⁶ See 11 C.F.R. § 106.4(c).

1 Respondents’ arguments that the underlying conduct may also fall within the uncompensated
2 internet activity exemption to the definition of contribution.⁵⁷

3 Accordingly, the Commission dismisses the allegation that that POV PAC made and
4 failed to report prohibited and excessive in-kind contributions to the Vance Committee in the
5 form of information posted on *Medium* in violation of 52 U.S.C. §§ 30104(b), 30116(a), and
6 30118(a) and 11 C.F.R. §§ 104.9, 110.1(b)(1), and 114.2(b); and dismisses the allegation that the
7 Vance Committee knowingly accepted and failed to report prohibited and excessive in-kind
8 contributions in violation of 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a) and 11 C.F.R.
9 §§ 104.8, 110.9, and 114.2(d).

10 **C. The Commission Dismisses the Allegation That Respondents Violated the**
11 **Act’s Contribution Limits and Prohibitions or Reporting Requirements**
12 **Through In-Kind Contributions Made by POV PAC in the Form of Services**
13 **Provided by Deep Root Analytics**

14 The Complaint alleges that POV PAC made potentially prohibited or excessive in-kind
15 contributions to the Vance Committee in the form of data services provided by Deep Root
16 Analytics, based on a *Medium* post in which POV PAC published voter targeting maps bearing
17 Deep Root’s logo and referencing an arrangement under which POV PAC would benefit the
18 Vance Committee via services provided by a common vendor.⁵⁸ The *Medium* post, and the
19 internal POV PAC memorandum from which it originated, state that POV PAC had hired Deep
20 Root Analytics, and that the Vance Committee “is also hiring DeepRoot to provide data services.
21 The campaign will therefore be able to access the modeled universes POV has created, and POV

⁵⁷ See *id.* §§ 100.94, 100.155; Vance Comm. Resp. at 5-7; POV PAC Resp. at 12. Moreover, although the Complaint contains detailed allegations concerning POV PAC’s expenditures on the materials and data underlying the content featured on *Medium*, the Complaint does not allege that POV PAC paid any individual to post those materials. See Compl. ¶¶ 11, 13, 30, 34, 36, 44-45. .

⁵⁸ Compl. ¶¶ 36-37.

1 will be able to access voter contract data uploaded into the database by the campaign.”⁵⁹ The
2 memorandum indicates that this arrangement will benefit the Vance Committee by relieving it of
3 the “cost of audience construction.”⁶⁰

4 While the described arrangement reflects conduct that could constitute the provision of an
5 in-kind contribution by POV PAC to the Vance Committee, it is unclear whether the conduct
6 described actually occurred. As noted above, though it appears that POV PAC may have
7 received some services from Deep Root, given that some of the data included in the October 4
8 *Medium* post and underlying memorandum bears Deep Root’s logo,⁶¹ neither POV PAC nor the
9 Vance Committee disclosed any disbursements to Deep Root Analytics during the 2022 election
10 cycle.⁶² .

11 Regardless of whether POV PAC and the Vance Committee both engaged Deep Root,
12 either as primary vendors as contemplated in the memorandum or as a subvendor, it appears that
13 the information POV PAC hoped to provide to the Vance Committee via Deep Root is
14 essentially the same information it included in its October 4, 2021 *Medium* post: The post refers
15 to the Vance Committee gaining access to the “modeled universes POV has created,” and the
16 post goes on to provide a series of graphics apparently produced by Deep Root regarding the
17 Vance Committee’s “key audience,” “market share” of Republican voters by metropolitan area

⁵⁹ POV, *Breaking New Ground: How POV Is Changing the Super PAC Game*, MEDIUM (Oct. 4, 2021), <https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920>; POV PAC Memo at 5.

⁶⁰ *Id.*

⁶¹ Compare POV PAC Memo at 7-9 (depicting graphics bearing a small, green-and-black logo in the lower right-hand corner), and POV, *Breaking New Ground: How POV Is Changing the Super PAC Game*, MEDIUM (Oct. 4, 2021), <https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920> (same), with Deep Root, <https://www.deeprootanalytics.com> (last visited Apr. 18, 2024) (depicting same green-and-black logo).

⁶² See *supra* notes 31, 36 and accompanying text.

1 within Ohio, and “top messages” on a county-by-county basis.⁶³ As discussed in Part III.B,
2 above, in matters where a respondent made valuable information publicly available, the
3 Commission has not found reason to believe that an in-kind contribution occurred.⁶⁴

4 Accordingly, given the fact that POV PAC published the information it allegedly
5 intended to provide to the Vance Committee via common engagement of Deep Root Analytics
6 on *Medium*, and considering the resources that would be needed to further investigate these
7 circumstances, the Commission dismisses as an exercise of prosecutorial discretion⁶⁵ the
8 allegation that POV PAC and the Vance Committee violated 52 U.S.C. §§ 30104(b), 30116(a),
9 30116(f), and 30118(a) and 11 C.F.R. §§ 104.8, 104.9, 110.1(b)(1), 110.9, and 114.2(b), (d) by
10 making, knowingly accepting, and failing to report prohibited and excessive in-kind
11 contributions in the form of services provided by Deep Root Analytics.

⁶³ POV, *Breaking New Ground: How POV Is Changing the Super PAC Game*, MEDIUM (Oct. 4, 2021), <https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920>.

⁶⁴ See Statement of Reasons of Chairman Dickerson, Comm’rs Cooksey, Trainor & Weintraub, MUR 7700 (VoteVets, *et al.*) (writing in a four-Commissioner Statement of Reasons that a public Tweet in which an authorized committee stated that it was “critical [that Nevada voters see the candidate’s military experience] on the air through the caucus” “could have been a generalized call for other independent Buttigieg supporters to get off the sidelines and full-throatedly support the candidate ahead of the Nevada caucuses” and thus did not constitute coordination that would give rise to an in-kind contribution); F&LA at 9, MUR 7124 (Katie McGinty for Senate, *et al.*) (holding, in the context of allegations regarding coordinated communications, that “the Commission has provided that ‘a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the [request or suggestion] conduct standard’” (quoting Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003))).

⁶⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).