



**FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463**

**POLICY STATEMENT OF CHAIRMAN ALLEN J. DICKERSON REGARDING THE
COMMISSION’S USE OF ANONYMOUS SOURCES REPORTED IN THE PRESS**

Before it may open an investigation in an enforcement matter, this Commission is required to make a threshold determination that there is “reason to believe” (“RTB”) that a violation of the Federal Election Campaign Act of 1971 (“FECA” or the “Act”) has occurred. This is one of the most challenging tasks assigned to us by Congress. Reflecting the constitutionally sensitive space in which we operate, the need to make such a preliminary finding is an unusual requirement with few parallels in the administrative agencies. And because the Commission makes this determination on a limited record—consisting only of the complaint, any response, and a report from the Office of General Counsel—it poses difficult questions of proof.

I write to address a longstanding practice (and a recent dispute) concerning the use of media reports to support an RTB finding. In a recent Matter, two of my colleagues and I declined to move forward, in part, because the only support for certain allegations came from anonymously sourced assertions in the press. We noted that “[t]he Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB and thereby commence an investigation.”¹ Two of our colleagues disagreed in unusually strong terms.²

At the threshold, one commissioner has suggested that the First Amendment is implicated here.³ I agree. The press unquestionably have a constitutional right to report the news as they see fit—including through the use of anonymous sources. And the law has long recognized that right by excluding from the Commission’s

¹ Statement of Reasons of Vice Chair Petersen & Comm’rs Hunter & McGahn at 6, n.12, MUR 6056 (Protect Colo. Jobs, *et al.*) (citing *Fed. Election Comm’n v. Machinists Non-Partisan Pol. League*, 655 F.2d 380, 388 (D.C. Cir. 1981)).

² Statement of Reasons of Comm’rs Broussard & Weintraub, MUR 7784 (Make Am. Great Again PAC, *et al.*).

³ @EllenLWeintraub, Twitter (June 27, 2022, 10:23 AM), <https://twitter.com/EllenLWeintraub/status/1541427010119127043>.

jurisdiction “any cost incurred in covering or carrying a news story, commentary, or editorial.”⁴

But the First Amendment conveys no presumption of truth—not even to the press.⁵ The right to speak and publish freely is a bar to state censorship, not an affirmative right to have one’s free expression used against others. The decision to mobilize government resources to pursue violations of law is governed by another part of the Constitution: the Due Process Clause.⁶

We are not permitted to presume the truth of an anonymous source’s statements and set our enforcement process in motion simply because those statements were printed or reported by a media outlet. Nor may the Commission presume the credibility of such statements when reported by favored media sources based upon uncritical and ill-informed assumptions about those publications’ fact-checking processes. Such an approach is necessarily capricious. It is insufficiently rigorous to meet our statutory responsibility to independently determine RTB. And it gives short shrift to our unique status as an agency whose “sole purpose [is] the regulation of core constitutionally protected activity—the behavior of individuals and groups only insofar as they act, speak and associate for political purposes.”⁷

Accordingly, the Commission has long declined to find RTB when the only backing for a complaint is anonymously sourced reporting. That remains the wisest course.

I. HISTORICALLY, THE COMMISSION HAS NOT DEFERRED TO ANONYMOUSLY SOURCED REPORTING

Congress established the Commission to “administer, seek to obtain compliance with, and formulate policy with respect to” the Act.⁸ Our duties in this capacity

⁴ 11 C.F.R. § 100.73. *See also, e.g.*, 52 U.S.C. §§ 30101(9)(B)(i) (excluding from the definition of “expenditure” “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”); 30104(f)(3)(B)(i) (excluding same from the definition of “electioneering communication”).

⁵ It has long been understood that the Press Clause does not confer special rights on members of the institutional media. *E.g.*, *Near v. Minn.*, 283 U.S. 697, 707 (1931) (defining the “the press” as an “essential personal liberty of *the citizen*”) (emphasis supplied); *Aldrich v. Press Printing Co.*, 9 Minn. 133, 138 (Minn. 1864) (“The press does not possess any immunities, not shared by every individual.”).

⁶ U.S. CONST. Amend. V (“No person shall be . . . deprived of life, liberty, or property, without due process of law”).

⁷ *Am. Fed’n of Labor & Cong. of Indus. Orgs. v. Fed. Election Comm’n*, 333 F.3d 168, 170 (D.C. Cir. 2003) (quoting *Machinists Non-Partisan Pol. League*, 655 F.2d at 387).

⁸ 52 U.S.C. § 30106(b)(1).

include “exclusive” jurisdiction over FECA’s civil enforcement.⁹ Importantly, however, the Commission has no independent enforcement authority. Rather, its civil enforcement powers ultimately depend upon its ability to demonstrate an actionable FECA violation in court.¹⁰ Every decision to proceed with enforcement requires an underlying factual and legal theory which, if proven, could persuade a federal court that the respondent violated the Act.

Thus, the Commission has long declined to defer to the veracity of anonymous sources¹¹ and press reports.¹² For example, in MUR 6056, apart from “allegations by anonymous sources connected to the Complainant’s campaign made most prominently in [a newspaper] article, no other evidence [of a FECA violation] was provided.”¹³ This was insufficient because, “[w]ithout more, the links in the chain of anonymous suppositions and hearsay [were] too weak to sustain an RTB finding and subject Respondents to a Federal investigation.”¹⁴

More recently, the Commission considered allegations that Senator Bernie Sanders established, financed, maintained, or controlled Our Revolution, a 501(c)(4) organization, thereby violating FECA.¹⁵ The allegations relied heavily upon “news reporting about Sanders’s role in Our Revolution”¹⁶ including “an article from *ABC News* refer[ring] to Our Revolution as ‘a news organization formed by [Sanders] to

⁹ *Id.* § 30107(e), (a)(6).

¹⁰ *See, e.g., id.* § 30109(a)(6)(A).

¹¹ *See, e.g.,* Factual & Legal Analysis at 5, MUR 5845 (Citizens for Truth) (“purported information from ‘several anonymous sources on the campaign trail’ regarding allegations of coordination can and should be afforded no weight as no details are provided and there is no way to verify the information.”); *id.* at 6, n.8 (“Here, the complainant sets forth no facts and offers no specific information that would support his allegations, instead relying on ‘anonymous sources’ and bald assertions. Alleging that a search of the telephonic and electronic records of [respondent’s] members would uncover evidence of coordination, without more, does not rise to evidence of a violation”) (citations omitted).

¹² *See, e.g.,* Statement of Reasons of Vice Chair Hunter and Comm’rs McGahn & Petersen at 2, 5, MUR 6279 (U.S. Dry Cleaning, *et al.*) (declining to find RTB that there was an unlawful corporate contribution or contribution in the name of another where *New Orleans Times-Picayune* quoted a corporate executive as saying that “he was eventually reimbursed by his employer for his \$4,800 contribution,” but company’s response explained that, at the time of the contribution, the executive was owed back wages and the so-called “reimbursement” was, in fact, made up of earned wages).

¹³ Statement of Reasons of Vice Chair Petersen & Comm’rs Hunter & McGahn at 8, MUR 6056 (Protect Colo. Jobs, *et al.*).

¹⁴ *Id.* at 9.

¹⁵ *See* First Gen’l Counsel’s Rep’t, MUR 7683 (Our Revolution, *et al.*).

¹⁶ *Id.* at 5, n.17.

continue his political revolution across the country.”¹⁷ In addition, “*The Washington Post* described Our Revolution as Sanders’s ‘long-awaited post primary movement,’ and one *USA Today* reporter who interviewed Sanders about his post-election plans wrote that Sanders ‘plans to launch educational and political organizations within the next few weeks to keep his progressive movement alive,’ including Our Revolution.”¹⁸ These press reports were insufficient for the Commission to find RTB.¹⁹

In short, the Commission’s practice of declining to deploy our investigatory resources based upon anonymous sources—including those reported by media outlets—is nothing new. It is also consistent with the relative narrowness of the Commission’s mandate and investigatory authority (especially as compared to what Congress has granted other agencies).²⁰

II. RECENT RESURGENCE OF THE ANONYMOUS-MEDIA-SOURCE PROBLEM

Recently, the Commission had occasion to continue this historical practice when it declined to pursue enforcement because, among other reasons, “[u]nsourced reports are not a proper basis for Commission enforcement action.”²¹ Two of my Democratic colleagues balked, stating that one of the allegations at issue was “backed up by detailed reporting in *The Wall Street Journal* and *The New York Times*.”²² In support

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7, n.22. See also, e.g., *id.* at 2, n.2 (citing *USA Today*); 6 (referring to “[n]ews reports . . . suggest[ing] that Sanders was involved in the formation of Our Revolution”) & n.18 (citing *Washington Post*); 7, n.23 (citing *USA Today*); 7, n.24 (citing *Jacobin*); 7, n.26 (citing *CNBC*); 8, n.28 (citing *Cleveland.com*); 10, n.38 (citing *Associated Press*); 15, n.62 (citing *Washington Post*); 17, n.67 (citing *Las Cruces Sun News*).

¹⁹ Certification, MUR 7683 (Our Revolution, *et al.*) (Aug. 11, 2021).

²⁰ Cf. *Machinists Non-Partisan Pol. League*, 655 F.2d at 387–88 (noting “the obvious difference between the scope of investigatory authority vested in agencies such as the FTC, SEC, or the Administrator of the Department of Labor’s Wage and Hour Division on the one hand, and the FEC on the other” insofar as “[t]he former agencies are vested with broad duties to gather and compile information and to conduct periodic investigations concerning business practices. But the FEC has no such roving statutory functions . . . Plainly, mere ‘official curiosity’ will not suffice as the basis for FEC investigations[.]”)(citations omitted).

²¹ Statement of Reasons of Chairman Dickerson & Comm’rs Cooksey & Trainor at 8–9, MUR 7784 (MAGA PAC, *et al.*).

²² Statement of Reasons of Comm’rs Broussard & Weintraub at 4, nn. 26 & 27, MUR 7784 (Make Am. Great Again PAC, *et al.*) (citing Julie Bykowicz, *Trump’s Campaign Machine Has Two-Year Head Start*, WALL ST. J. (Apr. 14, 2019), <https://www.wsj.com/articles/trumps-campaign-machine-has-two-year-head-start-11555243200>; Danny Hakim & Glenn Thrush, *How the Trump Campaign Took Over*

of their deference to these publications, my colleagues invoked the role of anonymous sourcing in the Watergate scandal.²³

Commissioner Weintraub also took to social media to suggest that her vote depended on her subjective view of those outlets, stating that “[p]art of evaluating the credibility of a news report is evaluating the credibility of the source it appears in.”²⁴ While criticizing our declination to pursue enforcement, Commissioner Weintraub also stated that “[w]hen Complainants or our lawyers cite news reports, the Commission evaluates the overall credibility of those news reports and, necessarily, the news organizations that produced them.”²⁵ This is not the Commission’s practice and would raise insurmountable difficulties if it were.

There are only two ways for the Commission to change course and begin initiating investigations based solely upon anonymously sourced press reports. We could generally credit such reporting or, as has been suggested, engage in a case-by-case evaluation of news sources to determine if they are “trustworthy enough.”²⁶

Neither approach is workable. We cannot, as a federal agency, take at face value every anonymous source cited by every publication—particularly in the constitutionally sensitive area we are charged with regulating. Efforts to distinguish among publications based upon our subjective sense of their “trustworthiness” would fare no better, inevitably raising concerns that the Commission is acting capriciously.²⁷

the G.O.P., N.Y. TIMES (Mar. 9, 2020), <https://www.nytimes.com/2020/03/09/us/trump-campaign-brad-parscale.html>).

²³ *Id.* at 4–5.

²⁴ @EllenLWeintraub, Twitter (June 27, 2022, 10:23 AM), <https://twitter.com/EllenLWeintraub/status/1541427010119127043>.

²⁵ @EllenLWeintraub, Twitter (June 27, 2022, 10:18 AM), <https://twitter.com/EllenLWeintraub/status/1541425839019106304>.

²⁶ *Accord* Statement of Reasons of Comm’rs Broussard & Weintraub at 4, MUR 7784 (Make Am. Great Again PAC, *et al.*) (“We cannot agree that *The Wall Street Journal* is not a trustworthy enough news source to form the basis of a credible allegation that a significant violation of the Act may have occurred and merits investigation.”).

²⁷ *See, e.g., Dep’t of Commerce v. N.Y.*, 588 U.S. ____; 139 S. Ct. 2551, 2569 (2019) (action is arbitrary-and-capricious where agency cannot “articulate[] ‘a satisfactory explanation’ for [the] decision, ‘including a rational connection between the facts found and the choice made.’”) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)); *Dep’t of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. ____; 140 S. Ct. 1891, 1933 (2020) (Alito, J., concurring in part) (“The APA’s arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.”).

Neither the Commission as an institution nor its individual members have any special competence in evaluating the “trustworthiness” of media sources.²⁸ We have no inside information as to how anonymous sourcing works generally, let alone for specific publications, which necessarily have divergent policies reflecting their risk tolerances and business models. As just one example, *Insider*—a source OGC relied upon heavily for the enforcement recommendation that my colleagues recently chastised three Commissioners for rejecting²⁹—“will grant anonymity to any source at any time for any reason.”³⁰ And not only do the policies governing the use of anonymous sources vary from publication to publication, and time to time, but those rules are not always rigorously followed.³¹ It is precisely because media outlets have (constitutionally protected) discretion to make these calls that we cannot presume the truth of such reports or assign masthead-based credibility ratings.

Undaunted, two Commissioners have suggested that “press reports that contain anonymous sources” are entitled to a presumption of reliability because *those* anonymous sources “have reporters, editors, and publications vouching for them.”³² Put more bluntly, this is an argument for deferring to particular anonymous sources because we can safely outsource a credibility assessment to the “reporters, editors, and publications” who decide—in their absolute discretion—to publish them.³³ I disagree.

²⁸ Cf. 52 U.S.C. § 30106(a)(3) (Providing that Commission “[m]embers shall be chosen on the basis of their experience, integrity, impartiality, and good judgment[.]”).

²⁹ See *supra*, n.2.

³⁰ Henry Blodget, *Our Policy On Anonymous Sources*, BUSINESS INSIDER (Sept. 7, 2011), <https://www.businessinsider.com/our-policy-on-anonymous-sources-2011-9>; but see *Anonymous Sources*, ASSOCIATED PRESS, <https://www.ap.org/about/news-values-and-principles/telling-the-story/anonymous-sources> (“Under AP’s rules, material from anonymous sources may be used only if: (1) The material is information and not opinion or speculation, and is vital to the report. (2) The information is not available except under the conditions of anonymity imposed by the source. (3) The source is reliable, and in a position to have direct knowledge of the information.”).

³¹ E.g., Brian Stelter, *Three journalists leaving CNN after retracted article*, CNN (June 27, 2017), <https://money.cnn.com/2017/06/26/media/cnn-announcement-retracted-article/index.html> (“The [retracted] story, which reported that Congress was investigating a ‘Russian investment fund with ties to Trump officials,’ cited a single anonymous source. These types of stories are typically reviewed by several departments within CNN—including fact-checkers, journalism standards experts and lawyers—before publication” but “[a]n internal investigation by CNN management found that some standard editorial processes were not followed when the article was published”).

³² Statement of Reasons of Comm’rs Broussard & Weintraub at 4, MUR 7784 (Make Am. Great Again PAC, *et al.*).

³³ *Id.*

Even the media sources my Democratic colleagues would privilege have recognized that anonymous sourcing is a risky business. Bill Keller, former executive editor of *The New York Times*, has noted that “as a general rule, stories based on unnamed sources generally are less convincing than those based on named sources and documents.”³⁴

Undoubtedly, important stories have been broken using carefully vetted anonymous sources. But not every anonymous source turns out to have the perspicacity of Deep Throat.³⁵ Even cursory research reveals plenty of stories based entirely on anonymous sources that fell apart with the passage of time and the application of scrutiny.³⁶ Sometimes such stories were written in good faith and

³⁴ Bill Keller, *Keller Memo on Anonymous Sources*, N.Y. TIMES (June 9, 2008), <https://www.nytimes.com/2008/06/09/business/media/04kellermemo.html>. See also, e.g., Margaret Sullivan, *Tightening the Screws on Anonymous Sources*, N.Y. TIMES (Mar. 15, 2016), <https://archive.nytimes.com/publiceditor.blogs.nytimes.com/2016/03/15/new-york-times-anonymous-sources-policy-public-editor/> (“After two major front-page errors in a six-month period, *Times* editors are cracking down on the use of anonymous sources...The devil, of course, is in the enforcement. The *Times* often has not done an effective job of carrying out the policy it already has, one element of which states that anonymous sources may be used only as ‘a last resort.’”); Margaret Sullivan, *The Disconnect on Anonymous Sources*, N.Y. TIMES (Oct. 12, 2013), <https://www.nytimes.com/2013/10/13/opinion/sunday/the-public-editor-the-disconnect-on-anonymous-sources.html> (noting that despite “the Obama administration’s crackdown on press leaks [having] made news sources warier of speaking on the record” “reporters [still must]...push back harder against sources who request anonymity...After all, people don’t talk to The Times out of the goodness of their hearts; usually, they have an agenda”); Clark Hoyt, *Those Persistent Anonymous Sources*, N.Y. TIMES (Mar. 21, 2009), <https://www.nytimes.com/2009/03/22/opinion/22pubed.html> (“The *Times* has a tough policy on anonymous sources, but continues to fall down in living up to it.”); Michael Farrell, *Anonymous Sources*, SPJ ETHICS COMM. POSITION PAPERS (Soc’y of Prof. Journalists, Indianapolis, IN), <https://www.spj.org/ethics-papers-anonymity.asp> (“Anonymous sources certainly have a checkered journalistic history.”).

³⁵ Of course, there was great trepidation about going to press reliant on Deep Throat alone. *Washington Post* executive editor Ben Bradlee later admitted his concern that Woodward and Bernstein may have embellished the Deep Throat story. Jeff Himmelman, *The Red Flag in the Flowerpot*, NEW YORK (Apr. 27, 2012), <https://nymag.com/news/features/ben-bradlee-2012-5/>. In addition, despite denying for decades that they had relied on grand jurors as sources in the Watergate scandal, in 2012 it was revealed that Woodward and Bernstein had, in fact, used a juror as an anonymous source. *Id.* None of this is to criticize *The Post’s* reporting; it is famous precisely because it was an extraordinary effort and *not* run-of-the-mill political reporting.

³⁶ To provide just a few: Stephen Sorace, *NYT, Washington Post, NBC News retract reporting that Giuliani got FBI Russia warning*, FOX NEWS (May 2, 2021), <https://www.foxnews.com/media/new-york-times-washington-post-nbc-news-corrections-giuliani-fbi-russia-warning> (“The New York Times, Washington Post and NBC News on Saturday issued corrections to stories about Rudy Giuliani, retracting reporting that said the FBI had warned him about being targeted by a Russian influence operation . . . All three outlets reported that the information was provided by anonymous sources.”); Amy Gardner, *Exclusive: Trump pressured a Georgia elections investigator in a separate call legal experts say could amount to obstruction*, WASH. POST (Mar. 11, 2021), https://www.washingtonpost.com/politics/trump-call-georgia-investigator/2021/01/09/7a55c7fa-51cf-11eb-83e3-322644d82356_story.html (“Correction: Two months after publication of this story, the Georgia secretary of state released

simply disproved by later events or the release of more complete information.³⁷ Others have turned out to be pure fabrications.³⁸ This history should give commissioners pause before relying on assertions credited entirely to anonymous sources, especially given the politically and constitutionally sensitive nature of our work.

Accordingly, decisions to find RTB and to set the machinery of government in motion against respondents based upon anonymously sourced media reports will necessarily reflect commissioners' subjective views of particular publications and journalists. That is antithetical to due process.

And even if there were a "reasoned explanation"³⁹ behind a policy of picking-and-choosing which journalists or outlets were to receive "most-favored" status before the Commission, or to instead open the floodgates to any anonymously-sourced story making any allegation,⁴⁰ we would still have to grapple with the fact that even the most vaunted media outlets have demonstrated a capacity to get basic tenets of campaign finance law wrong.⁴¹ I do not speak from a position of judgment—federal

an audio recording of President Donald Trump's December phone call with the state's top elections investigator. The recording revealed that The Post misquoted Trump's comments on the call, based on information provided by a source."); Glenn Greenwald, *Beyond BuzzFeed: The 10 Worst, Most Embarrassing U.S. Media Failures on the Trump-Russia Story*, THE INTERCEPT (Jan. 20, 2019), <https://theintercept.com/2019/01/20/beyond-buzzfeed-the-10-worst-most-embarrassing-u-s-media-failures-on-the-trump-russia-story/> ("Rather than some super secretive operative giving Trump, Jr. advanced access, as both CNN and MSNBC told the public for hours they had confirmed, it was instead just some totally pedestrian message from a random member of the public suggesting Trump, Jr. review documents the whole world was already talking about. All of the anonymous sources CNN and MSNBC cited somehow all got the date of the email wrong."); Matthew Goldstein & Ben Protess, *Golfer Mickelson's Role Said to Be Overstated in Insider Inquiry*, N.Y. TIMES (June 11, 2014), <https://archive.nytimes.com/dealbook.nytimes.com/2014/06/11/mickelson-said-not-to-have-traded-clorox-stock/> (walking back previous *Times* reporting based on anonymous sources which "said that Clorox was among the stocks that federal authorities were examining as part of an" investigation into trades made by Phil Mickelson, because "[t]he overstated scope of the investigation came from information provided to *The Times* by other people briefed on the matter who have since acknowledged making a mistake.").

³⁷ Michael R. Gordon & Judith Miller, *U.S. Says Hussein Intensifies Quest for A-Bomb Parts*, N.Y. TIMES (Sept. 8, 2002), <https://www.nytimes.com/2002/09/08/world/threats-responses-iraqis-us-says-hussein-intensifies-quest-for-bomb-parts.html>.

³⁸ Jayson Blair, *U.S. Sniper Case Seen as a Barrier to a Confession*, N.Y. TIMES (Oct. 30, 2002), <https://www.nytimes.com/2002/10/30/us/retracing-trail-investigation-us-sniper-case-seen-barrier-confession.html>.

³⁹ See *supra* n.27.

⁴⁰ See *Fed. Comm. Comm'n. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

⁴¹ E.g., Edward Wyatt, *New Chief of the F.C.C. Is Confirmed*, N.Y. TIMES (Oct. 29, 2013), <https://www.nytimes.com/2013/10/30/business/media/senate-approves-fcc-nominees.html> (describing

campaign finance law is complicated and often counterintuitive, as the late Justice Antonin Scalia once observed.⁴² But the law’s complexity also counsels against deferring to an anonymous source’s characterization of a legal violation, or a journalist’s conceptions of how FECA interacts with what they may have learned from anonymous sources.

Nor do my colleagues consider whether their current embrace of anonymous sourcing in pursuit of enforcement would *undermine* enforcement in future matters. Consider: under FECA, respondents are notified of a complaint against them and the allegations therein.⁴³ Respondents then have an “opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken . . . on the basis of the complaint.”⁴⁴ Under my colleagues’ *ad hoc* policy, there seems to be little reason for respondents not to go to the media, quietly feed a politically allied reporter a story which undermines the allegations in the complaint, and then attach any resultant anonymously sourced story as evidence that the Commission ought to dismiss the Matter at the RTB stage. Either my colleagues would be forced to consider this exculpatory information (since it has “reporters, editors, and publications vouching for [it]”)⁴⁵ or their newly announced policy is merely an enforcement-biased one-way ratchet. By contrast, under our historical approach, the Commission goes down neither path.

At a minimum, to accept the vague pronouncement that anonymous sources are generally credible would raise problems in future enforcement matters. And the lack of anything more than a one-off credibility assessment from my colleagues, based perhaps on a nearly half-century-old example, suggests that they have yet to grapple

Super PACs as “anonymously financed” even though independent-expenditure-only committees must report all donors over \$200); Eric Lipton & Clifford Krauss, *Fossil Fuel Industry Ads Dominate TV Campaign*, N.Y. TIMES (Sept. 13, 2012), <https://www.nytimes.com/2012/09/14/us/politics/fossil-fuel-industry-opens-wallet-to-defeat-obama.html> (stating that “after the Supreme Court lifted limits on corporate contributions in 2010[] Mr. Romney . . . accepted \$3 million in contributions from Oxbow,” despite ban on corporate contributions to candidates remaining in effect and no evidence that then-candidate for President, Mitt Romney, had accepted a \$3 million contribution from any corporation).

⁴² Tr. of Oral Arg. at 17:17–19, *McCutcheon v. Fed. Election Comm’n*, No. 12-536 (Oct. 8, 2013) (“JUSTICE SCALIA: I agree – I agree that – that this campaign finance law is so intricate that I can’t figure it out.”).

⁴³ 52 U.S.C. § 30109(a)(1) (“Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation.”).

⁴⁴ *Id.*

⁴⁵ Statement of Reasons of Comm’rs Broussard & Weintraub at 4, MUR 7784 (Make Am. Great Again PAC, *et al.*).

with these serious issues.⁴⁶ Tellingly, they have not articulated any standard for engagement with anonymous reporting.

III. CONCLUSION


The Commission has long declined to move forward with enforcement where a complaint is predicated upon press reports which, in turn, are predicated upon anonymous sources. That approach has hewn to our statutory mandate and ensured that we do not deploy the coercive powers of the federal government on the basis of rumor. In charting this course, the Commission respects the politically sensitive and constitutionally protected nature of the activity it regulates. It also strengthens its posture when it does find RTB.

Some commissioners have suggested that we jettison this approach in favor of a vague notion of deference to the press. Whether they mean this as a general policy or instead believe that the Commission should privilege particular publications is unclear. But the Commission is not equipped to adopt either rule. And even if we had the relevant expertise (we do not), neither the Commission nor individual commissioners have access to the information required to make case-by-case credibility assessments of anonymous sources reported by the media. Indeed, to demand such information from press entities would itself raise significant First Amendment concerns.

Accordingly, in keeping with the Commission's practice, I will not support RTB where the inculpatory information in the record before us consists solely of anonymously sourced press reports. Of course, reports that rely upon named sources and similarly reliable public information are another matter.

October 5, 2022

Date



Allen J. Dickerson
Chairman

⁴⁶ As some have noted, our colleagues have occasionally broken from a general deference to press reporting when other candidate committees have been respondents. *E.g.*, Statement of Reasons of Comm'rs Cooksey & Trainor at 3–4, MUR 7683 (Our Revolution, *et al.*).