

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 7191**

DATE COMPLAINT FILED: November 7, 2016  
DATE OF NOTIFICATIONS: November 14, 2016  
RESPONSE RECEIVED: January 13, 2017  
DATE ACTIVATED: June 21, 2017

SOL: February 14, 2018 through January 11, 2022  
ELECTION CYCLE: 2016

**COMPLAINANT:**

J. Russell Lloyd

**RESPONDENTS:**

Rand Paul  
Freedom for all Americans (f/k/a Rand Paul for  
President, Inc.) and Paul Kilgore in  
his official capacity as treasurer  
Reinventing a New Direction Political Action  
Committee and Kevin Broghamer in his official  
capacity as treasurer

**RAD REFERRAL: 17L-49**

DATE RECEIVED: December 20, 2017  
DATE OF NOTIFICATION: December 21, 2017  
RESPONSE RECEIVED: April 18, 2018  
DATE ACTIVATED: April 26, 2018

SOL: April 4, 2021 through January 11, 2022  
ELECTION CYCLE: 2016

**SOURCE:**

Internally Generated

**RESPONDENT:**

Rand Paul for President, Inc. and Paul Kilgore in  
his official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(1)-(2)  
52 U.S.C. § 30102(e)  
52 U.S.C. § 30103  
52 U.S.C. § 30104  
52 U.S.C. § 30116(a), (f)  
11 C.F.R. § 100.72  
11 C.F.R. § 100.131  
11 C.F.R. § 102.9(e)  
11 C.F.R. § 104.13(a)  
11 C.F.R. § 110.1(a)-(b), (k)  
11 C.F.R. § 110.2(b), (l)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**AGENCIES CHECKED:**

None

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1     **I.     INTRODUCTION**

2             In April 2015, Rand Paul announced his candidacy for President of the United States and  
3     filed a Statement of Candidacy designating Rand Paul for President, Inc. and Paul Kilgore in his  
4     official capacity as treasurer (the “Committee”) as his principal campaign committee.<sup>1</sup> The  
5     Committee did not disclose any testing-the-waters expenditures on its first report to the Federal  
6     Election Commission (the “Commission”).

7             The Complaint alleges that Paul violated the Federal Election Campaign Act of 1971, as  
8     amended (the “Act”), by using his leadership political action committee (“leadership PAC”),  
9     Reinventing a New Direction Political Action Committee and Kevin Broghamer in his official  
10    capacity as treasurer (“RAND PAC”), to finance his testing-the-waters activities beginning in  
11    2013.<sup>2</sup> The Complaint also alleges that Paul became a candidate prior to April 2015, and he and  
12    the Committee therefore failed to timely register and report with the Commission.<sup>3</sup>

13            Additionally, the Complaint and a Referral from the Commission’s Reports Analysis  
14    Division (“RAD”) separately allege that, after Paul withdrew from the presidential primary, the  
15    Committee failed to timely refund or redesignate the contributions it received for the general  
16    election.<sup>4</sup>

17            RAND PAC and the Committee submitted a joint Response denying that they violated  
18    the Act.<sup>5</sup> The Response asserts that there is no evidence that Paul was taking actions to explore a

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<sup>1</sup>     Rand Paul, Statement of Candidacy, President (Apr. 8, 2015); Statement of Organization (Apr. 7, 2015). In May 2017, the Committee converted to a multicandidate political committee and changed its name to Freedom for All Americans. *See* Freedom for All Americans, Amended Statement of Organization (May 16, 2017).

<sup>2</sup>     MUR 7191 Compl. at 5-10 (Nov. 7, 2016) (“Compl.”).

<sup>3</sup>     *Id.* at 5-6.

<sup>4</sup>     Compl. at 4, 10-11.

<sup>5</sup>     MUR 7191 Resp. (Jan. 13, 2017) (“Resp.”). Paul did not file a Response in MUR 7191.

1 presidential run before he declared his candidacy, and that RAND PAC never contributed to his  
2 campaign or any alleged pre-candidacy efforts.<sup>6</sup> It asserts that all of RAND PAC's  
3 disbursements, from travel to research and staffing, were to advance RAND PAC's  
4 organizational mission of supporting "pro-liberty" candidates.<sup>7</sup>

5           Contrary to the Response's denial, the available information indicates that Paul began  
6 testing the waters for a possible presidential candidacy as early as 2013 and RAND PAC  
7 financed at least some of those activities. Accordingly, we recommend that the Commission find  
8 reason to believe that: (1) RAND PAC made, and Paul and the Committee accepted, excessive  
9 in-kind contributions, in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 100.72 and 100.131;  
10 (2) the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 100.72 and 100.131 by  
11 failing to report receipts and disbursements from the testing-the-waters period; (3) RAND PAC  
12 violated 52 U.S.C. § 30104(b) by failing to disclose in-kind contributions to the Committee; and  
13 (4) RAND PAC, the Committee, and Paul violated 52 U.S.C. § 30116(f) by making or accepting  
14 11 C.F.R. § 110.2(l) pre-candidacy expenditures by multicandidate political committees. We  
15 also recommend that the Commission authorize the use of compulsory process in connection  
16 with an investigation to determine the precise testing-the-waters period and the extent of the  
17 expenditures RAND PAC made to support Paul's exploratory activities.

18           Because there is currently insufficient information to determine whether Paul became a  
19 candidate prior to April 2015, we also recommend that the Commission take no action at this  
20 time with respect to the allegations that: (1) Paul violated 52 U.S.C. § 30102(e)(1) by failing to  
21 timely file a Statement of Candidacy and designate a principal campaign committee; and (2) the

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<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 2.

1 Committee violated 52 U.S.C. §§ 30103(a) and 30104 by failing to timely file a Statement of  
2 Organization and disclosure reports. If during the course of the investigation we uncover  
3 additional information concerning these allegations, we will make the appropriate  
4 recommendations.

5 Finally, because the Committee failed to refund many of the contributions it received for  
6 the general election within the allotted window to do so, we recommend that the Commission  
7 open as matter under review as to Rad Referral 17L-49, merge it into MUR 7191, and find  
8 reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

## 9 **II. FACTUAL BACKGROUND**

10 On April 7, 2015, Kentucky Senator Rand Paul publicly declared his candidacy for  
11 President of the United States.<sup>8</sup> Paul filed a Statement of Candidacy on April 8, designating the  
12 Committee as his authorized campaign committee with Paul Kilgore as the Committee's  
13 treasurer.<sup>9</sup> The Committee filed its Statement of Organization on April 7.<sup>10</sup>

### 14 **A. Paul's Pre-Candidacy Activities**

15 Prior to declaring his presidential candidacy, Paul engaged in a number of activities that  
16 appear to be connected to a potential run. First, as identified in the Complaint, Paul made  
17 numerous statements indicating he was testing the waters for a presidential run. The Complaint  
18 first points to Paul's Tea Party Response to President Barrack Obama's 2013 State of the Union

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<sup>8</sup> Compl. at 3 (citing Jeremy W. Peters & Alan Rappeport, *Rand Paul Announces Presidential Run*, N.Y. TIMES, Apr. 7, 2015, <https://www.nytimes.com/2015/04/08/us/politics/rand-paul-republican-presidential-nomination.html>). About one month later, Paul released a book about his politics, which he was presumably planning and writing for some time before the announcement. Heather Struck, *Reading Between the Lines in Rand Paul's New Book*, REUTERS, May 27, 2015, <http://blogs.reuters.com/talesfromthetrail/2015/05/27/reading-between-the-lines-in-rand-pauls-new-book/>.

<sup>9</sup> Rand Paul, Statement of Candidacy, President (Apr. 8, 2015).

<sup>10</sup> Committee, Statement of Organization (Apr. 7, 2015).

1 Address.<sup>11</sup> Immediately following these February 13, 2013, remarks, Paul gave an interview in  
2 which he stated in response to a question about whether he was planning to run for President that  
3 he was “interested.”<sup>12</sup> Paul explained, “I’ve said I am interested. And we are thinking about it  
4 but probably would [sic] make a decision until 2014.”<sup>13</sup>

5 In addition, the Complaint alleges that during 2014 and 2015, Paul continued to publicly  
6 discuss his decision-making process during interviews. In January 2014, he stated that he was  
7 considering a run and that the chance he would enter the presidential race was “50-50.”<sup>14</sup> In  
8 January 2015, Paul said that he was seeing “if we think we’re in the mix . . . and can win. I don’t  
9 want to do it just to do it, we want to do it because we actually think we can win.”<sup>15</sup> He  
10 predicted that his decision would come in March or April and shared that he was still engaging in  
11 family discussions before making up his mind.<sup>16</sup>

12 Further, in March 2015, about two weeks before he officially announced his candidacy,  
13 Paul made television appearances on the Fox News channel, during which he discussed his  
14 exploratory efforts and an upcoming announcement. On March 23, Paul appeared on the Kelly  
15 File and was asked about Senator Ted Cruz’s recent announcement as a presidential candidate:

16 **Megyn Kelly:** Now he got out ahead of you. Ah, why weren’t you first?  
17

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<sup>11</sup> Compl. at 2.

<sup>12</sup> *Id.* (quoting Interview, *Rand Paul: ‘Big Government’s Not a Friend to Those Who are Trying to Get Ahead,’* NPR POLITICS, Feb. 14, 2013, <http://www.npr.org/2013/02/14/172034468/rand-paul-big-governments-not-a-friend-to-those-who-are-trying-to-get-ahead>).

<sup>13</sup> *Id.*

<sup>14</sup> RAND PAC, FACEBOOK Post, “Sen. Paul Joins Potter Gray Elementary School 4<sup>th</sup> Grader Clay Wallace—January 26, 2014,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Jan. 28, 2014).

<sup>15</sup> Compl. at 3 (quoting Lawrence Smith, *Sen. Rand Paul Looking at Presidential Announcement in March or April*, WDRB.COM, Jan. 9, 2015, <http://www.wdrb.com/story/27803393/sen-rand-paul-looking-at-presidential-announcement-in-march-or-april>).

<sup>16</sup> *Id.*

1           **Senator Rand Paul:** Ha ha ha, we'll see. We're thinking about it, and we're  
 2           pretty close to a decision, and we'll have some kind of announcement April 7.  
 3           And ah you know, people can go to Rand Paul for Kentucky or Kentucky for  
 4           Rand Paul dot com, they can find out more about it instantaneously.

5  
 6           **Megyn Kelly:** So now he's got a couple of weeks lead on you in terms of, you  
 7           know, reaching out there, being out there, maybe even with respect to fundraising.  
 8           Is that an advantage?

9  
 10          **Senator Rand Paul:** It's a long battle and you know we've spent the last two  
 11          years actually traveling the country taking the message out and we think that  
 12          there's a unique brand of Republicanism, a unique brand of Conservative  
 13          constitutionalism that also reaches out to new people. So I try to get along with  
 14          all the wings of the party. But I also am able to take the message of liberty and of  
 15          the Bill of Rights, and take it to Howard University, to the Urban League, to  
 16          NAACP, to Ferguson, to Berkley and try to bring new people into the party. So it  
 17          isn't just about rousing the base, it's about exciting the base by being for the  
 18          principles of liberty, but it's then taking those principles of liberty, not diluting  
 19          them, and taking them to new people and bringing them into the party, that's the  
 20          way you win general elections.

21  
 22          **Megyn Kelly:** How can you do what, with respect to your dad, failed to do?

23  
 24          **Senator Rand Paul:** I think that if you see my polling, the polling that's out  
 25          there so far, nobody is doing better against Hillary Clinton than myself because  
 26          we're already picking up 3 to 5% or more of the independent vote above what the  
 27          others are picking up—<sup>17</sup>

28  
 29          The following day on March 24, 2015, Paul appeared on the Sean Hannity Show and  
 30          again explained that he spent years traveling throughout the country, from California to  
 31          Maryland, to spread his platform.<sup>18</sup> He also compared himself to Ted Cruz, stating:

32               Yeah and like I say, Ted Cruz and I come from the same wing of the party. So  
 33               sometimes you'll have two very conservative—two Senators who support the  
 34               Constitution, and you'll have to look for nuances and differences between the  
 35               two, and one of those might be winnability. *When you look at polling right now,*  
 36               *you'll find that nobody in the Republican Party does better against Hillary*  
 37               *Clinton than myself, and I think that's because we've tried very hard to pick up*

<sup>17</sup>        *Sen. Paul Joins Megyn Kelly on Fox News- March 23, 2015, YOUTUBE,*  
[https://www.youtube.com/watch?v=E\\_kLSs9MDmc&feature=youtu.be](https://www.youtube.com/watch?v=E_kLSs9MDmc&feature=youtu.be) (posted Mar. 23, 2015) (*see* minute 0:41).  
 The full transcript of the interview appears at Attachment 2.

<sup>18</sup>        *See Sen. Rand Paul Joins Sean Hannity on Fox News- March 24, 2015, YouTube,*  
[https://www.youtube.com/watch?v=u1PS-R5\\_\\_dw](https://www.youtube.com/watch?v=u1PS-R5__dw) (posted Mar. 25, 2015) (*see* minute 2:31). The full transcript of  
 the interview appears at Attachment 3.

1           *independent vote and voters who haven't been voting Republican, and frankly*  
2           *that's how you win elections.*<sup>19</sup>

3  
4 In addition, when asked when his announcement would be, Paul stated, "It's coming up soon,  
5 and I keep seeing on the Internet April 7, so it might be. I don't know, but I think it's coming  
6 soon."<sup>20</sup> Paul had previously announced his April 7, 2015, "Stand with Rand" rally and tour on  
7 or before March 17, 2015.<sup>21</sup>

8           Second, consistent with these statements, Paul appears to have undertaken specific  
9 activities to test the waters prior to his announcement. In 2014, Paul was a speaker at the  
10 Conservative Political Action Conference ("CPAC"), and RAND PAC engaged in a Facebook  
11 campaign to encourage attendees to vote for him in the CPAC presidential preference straw poll,  
12 using the catchphrase "Stand with Rand."<sup>22</sup> In 2015, Paul again spoke at CPAC, where he  
13 discussed his policy positions and stated at the conclusion of his remarks that "it's time for a new  
14 President," asking the crowd: "Will you *stand with me*? Will you fight for freedom? Will you  
15 vote for freedom?"<sup>23</sup> The audience chanted "President Paul" in response,<sup>24</sup> and "Stand with

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<sup>19</sup>       *Id.* (see minute 2:31).

<sup>20</sup>       *Id.* (see minute 4:14).

<sup>21</sup>       DJ Judd & Steve Chaggaris, *Rand Paul Sets Presidential Announcement Date*, CBS NEWS, Mar. 17, 2015, <https://www.cbsnews.com/news/rand-paul-sets-presidential-announcement-date/>.

<sup>22</sup>       See RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014); "Rand Paul Full Speech at CPAC 2014," YOUTUBE, <https://www.youtube.com/watch?v=Y5DG2tKqPIM> (posted Mar. 7, 2014). Paul won the straw poll in 2013, 2014, and 2015. Compl. at 2 (citing Alexandra Jaffe, *Rand Paul Wins 2015 CPAC Straw Poll*, CNN, Feb. 28, 2015, <http://www.cnn.com/2015/02/28/politics/cpac-2015-straw-poll-results-rand-paul/>).

<sup>23</sup>       *Sen. Rand Paul Speaks at Conservative Political Action Conference 2015*, RAND PAC, Feb. 27, 2015, <http://randpac.com/sen-rand-paul-speaks-conservative-political-action-conference-2015/> (emphasis added).

<sup>24</sup>       Rand Paul CPAC 2015 Full Speech, YOUTUBE, <https://www.youtube.com/watch?v=AXJOcBfcH3s> (posted Feb. 27, 2015) (see minute 13:17).



1 Rand” later became one of the campaign’s slogans.<sup>25</sup> Paul mentioned no other possible  
2 candidates in his speech.

3 In addition to his involvement with CPAC, Paul traveled often to early primary states. In  
4 June 2013, he visited South Carolina to meet party activists and hold a “listening session,”  
5 explaining that his trip was meant to show that he and the Republican Party can appeal to a broad  
6 audience.<sup>26</sup> He then returned to the state at least twice in fall 2014.<sup>27</sup> In spring 2014, Paul  
7 visited New Hampshire to speak at a summit, hold a rally, and attend a private reception, and  
8 returned in October 2014, January 2015, and March 2015.<sup>28</sup> In addition, Paul went on a three-  
9 day tour of Iowa in August 2014 and returned in October 2014 and February 2015.<sup>29</sup> In total,  
10 Paul visited 32 states during 2013 and 2014.<sup>30</sup>

11 The Complaint further claims that Paul’s actions to amend Kentucky’s ballot access rules  
12 were indicative of his intent to run for president and constituted testing-the-waters activities.  
13 Paul was up for reelection to the Senate in 2016, but Kentucky law prevents a candidate from

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<sup>25</sup> *Internet Archive*, WAYBACK MACHINE, <https://archive.org/web/web.php> (searching for “randpaul.com” shows snapshots of what Paul’s campaign website looked like in the past, and the website’s homepage prominently displayed the “Stand with Rand” slogan as soon as Paul announced his candidacy).

<sup>26</sup> *Rand Paul Testing 2016 Waters During SC Visit*, WDRB.COM, Jun. 28, 2013, <http://www.wdrb.com/story/22712491/rand-paul-testing-2016-waters-during-sc-visit>; RAND PAC, FACEBOOK, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (“RAND PAC Facebook”); *see also* Meg Kinnard, *Rand Paul Testing ’16 Waters in S.C. Tea Party Favorite Seeks Broad Appeal*, POST & COURIER, Jun. 28, 2013, [http://www.postandcourier.com/politics/rand-paul-testing-waters-in-s-c-tea-party-favorite/article\\_a37fb8ad-c998-5b90-a35b-629a4e66edad.html](http://www.postandcourier.com/politics/rand-paul-testing-waters-in-s-c-tea-party-favorite/article_a37fb8ad-c998-5b90-a35b-629a4e66edad.html).

<sup>27</sup> RAND PAC, FACEBOOK, *supra* note 26.

<sup>28</sup> *Id.*; RAND PAC, <http://randpac.com/> (last visited June 15, 2018) (“RAND PAC Website”).

<sup>29</sup> RAND PAC, FACEBOOK, *supra* note 26; RAND PAC Website, *supra* note 28; Sharyn Jackson, *Rand Paul in Iowa: No “Firm Decision” Yet on Presidential Run*, DES MOINES REGISTER, Oct. 22, 2014, <http://www.desmoinesregister.com/story/news/elections/2014/10/22/rand-paul-iowa-no-decision-president-run/17732119/>.

<sup>30</sup> Jackson, *supra* note 29.

1 appearing on the ballot for two different races.<sup>31</sup> Thus, he would have to give up his Senate seat  
2 in order to appear on the ballot as a candidate for President.<sup>32</sup> During the summer of 2014, the  
3 Kentucky State Legislature debated a bill that would have removed this prohibition on a  
4 candidate running simultaneously for President and Senate.<sup>33</sup> Contemporaneous reports  
5 maintained that “Rand Paul [was] extraordinarily involved” in the effort, and that he considered  
6 state legislators’ positions on the amendment as a factor in lending support and fundraising on  
7 their behalf.<sup>34</sup> While Paul was ultimately unable to convince the legislature to change its rules,  
8 he was successful in his 2015 effort to push the Kentucky Republican Party to hold a presidential  
9 caucus instead of a primary, which eliminated the issue of him appearing on the same ballot  
10 twice.<sup>35</sup>

11 Finally, the Complaint provides information indicating that, in the months immediately  
12 preceding his official announcement, Paul hired a number of individuals at RAND PAC, who  
13 then quickly transitioned into positions as paid campaign staff. For example, on January 13,  
14 2015, Paul announced the hiring of Chip Englander, and “people familiar with the hire” said that  
15 Englander “ha[d] been assured that he will manage what has become a campaign-in waiting.”<sup>36</sup>

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<sup>31</sup> Joseph Gerth, *Rand Paul May Forgo White House Ballot Measure*, COURIER-JOURNAL, Dec. 22, 2014, <http://www.courier-journal.com/story/news/politics/rand-paul/2014/12/22/rand-paul-may-forgo-white-house-ballot-measure-kentucky/20778599/>.

<sup>32</sup> *See id.*

<sup>33</sup> Compl. at 2 (citing *The Obscure Kentucky Contest that Could Alter Rand Paul’s 2016 Plans*, NAT’L J., Aug. 14, 2014, <https://www.nationaljournal.com/s/41882/obscure-kentucky-contests-that-could-alter-rand-pauls-2016-plans>).

<sup>34</sup> *Id.*

<sup>35</sup> Eugene Scott & Tal Kopan, *Rand Paul Win: Kentucky GOP Switch to Caucus*, CNN, Aug. 24, 2015, <http://www.cnn.com/2015/08/23/politics/rand-paul-kentucky-caucus/index.html>.

<sup>36</sup> Compl. at 3 (citing Robert Costa, *Rand Paul Announces Campaign Manager for Likely 2016 Campaign*, WASH. POST, Jan. 13, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/01/13/rand-paul-announces-campaign-manager-as-he-ramps-up-2016-campaign/>).

1 When Paul did launch his campaign in April 2015, Englander was indeed his campaign manager,  
2 heading a team that included the above names.<sup>37</sup> Paul also hired advisor Chris LaCivita, who  
3 was reportedly “planning to direct Paul’s South Carolina campaign,” and Michael Biundo, who  
4 was reportedly “set to run Paul’s New Hampshire campaign.”<sup>38</sup> Even earlier, in November 2014,  
5 Paul hired Vincent Harris to be the Chief Digital Strategist of RAND PAC<sup>39</sup>—the same title he  
6 would later hold on Paul’s campaign.<sup>40</sup> In addition, Jonathan Van Norman, who became the  
7 Committee’s political director for Iowa, was receiving payments from RAND PAC as of March  
8 2015.<sup>41</sup>

## 9 **B. RAND PAC’s Activities**

10 After Paul’s initial election to the Senate in 2010, he established RAND PAC as his  
11 leadership PAC, registering it as such with the Commission on March 9, 2011.<sup>42</sup> RAND PAC’s  
12 stated mission is to “lead the battle for sound money, limited government, and fidelity to our  
13 Constitution,” and to “support and elect Pro-Liberty, Pro-Constitution candidates in Kentucky  
14 and across the country.”<sup>43</sup>

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<sup>37</sup> Andrea Billups, *Rand Paul’s 2016 Team Includes Deep DC, Personal Ties*, NEWSMAX, Apr. 7, 2015, <http://www.newsmax.com/Politics/Rand-Paul-campaign-team-Chip-Englander/2015/04/07/id/636897/>.

<sup>38</sup> *See id.*

<sup>39</sup> RAND PAC, FACEBOOK Post, “RANDPAC Chief Digital Strategist Announcement,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Nov. 18, 2014).

<sup>40</sup> *See* Shane Goldmacher & Darren Samuelsohn, *Trump Hires Rand Paul’s Former Digital Director*, POLITICO, June 28, 2016, <http://www.politico.com/story/2016/06/donald-trump-rand-paul-digital-224915>.

<sup>41</sup> *See* RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (itemizing travel reimbursements); John Cheves, *Rand Paul’s PAC Paid Vendors Also Used by his Presidential Campaign*, LEXINGTON HERALD-LEADER, May 27, 2016, <http://www.kentucky.com/news/politics-government/article80324367.html>.

<sup>42</sup> RAND PAC, Statement of Organization (Mar. 9, 2011). On April 18, 2012, RAND PAC also registered as a multicandidate political committee. RAND PAC, Notification of Multicandidate Status (Apr. 18, 2012).

<sup>43</sup> *See* RAND PAC Website, *supra* note 28.

1 RAND PAC was active during the 2012, 2014, and 2016 election cycles. The chart  
 2 below summarizes its financial activities through the 2016 elections:<sup>44</sup>

3 **RAND PAC Activities 2011-2016**

Year	Receipts	Disbursements
2011	\$173,031.82	\$79,464.86
2012	\$1,688,586.70	\$1,356,655.55
2013	\$1,606,347.05	\$1,467,787.50
2014	\$2,135,791.07	\$2,539,408.96
2015	\$857,598.51	\$966,926.49
2016	\$241,900.76	\$269,001.35

4 As reflected above, RAND PAC raised and spent over \$1 million in 2012 and 2013 and its  
 5 activity peaked in 2014 when it raised and spent over \$2 million. Further, in the first half of  
 6 2015, RAND PAC raised \$723,468.96 and spent \$749,756.39.<sup>45</sup> However, after Paul declared  
 7 his candidacy for President in April 2015, the PAC's fundraising dropped to just \$134,129.55  
 8 during the period of July through December 2015 and \$241,900.76 for the entire year of 2016.<sup>46</sup>  
 9 RAND PAC's disbursements saw a similarly precipitous drop after Paul declared his candidacy,  
 10 spending only \$217,170.10 in the latter six months of 2015 and \$269,001.35 in 2016.<sup>47</sup>

11 In the two years leading up to Paul's announcement, it appears that RAND PAC also  
 12 spent a small fraction of its funds on its stated purpose of supporting "pro-liberty" candidates. In  
 13 2013, the PAC disbursed \$130,045 to candidates and party committees, or on financing  
 14 independent expenditures, which constituted just 9% out of the \$1,467,787.50 it spent in total. In  
 15 2014, RAND PAC spent \$298,875, or 11%, on these activities out of \$2,539,408.96 in total  
 16 disbursements; and in 2015, just \$29,000, or 3%, of \$966,926.49 in total disbursements.

<sup>44</sup> See RAND PAC, Committee Filings 2011-2016.

<sup>45</sup> RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016).

<sup>46</sup> See Rand PAC, Amended 2015 Year-End Report through 2016 Reports.

<sup>47</sup> See *id.*

1 Conversely, in 2012 RAND PAC spent \$670,500 on these activities, or 49%, of \$1,356,655.55 in  
2 total disbursements.<sup>48</sup>

3 On March 12, 2015, RAND PAC published a media advisory stating that Paul was  
4 planning to open a “tech office” in Austin, Texas on March 16.<sup>49</sup> The media advisory quoted  
5 RAND PAC personnel explaining that “Senator Rand Paul will run the most innovative, tech-  
6 forward operation of any elected official in the country” and that it will be a “crowd-sourced  
7 campaign.”<sup>50</sup> Paul hired Rachel Kania to work in the new office as his Senior Field and  
8 Technology Strategist, and Kania stated: “As the newest member of Team Rand, I look forward  
9 to leveraging the latest in campaign technology to activate our energized volunteer base. Team  
10 Rand will be the most technologically-savvy campaign in the field and his message will inspire  
11 and widen the GOP base unlike any other candidate.”<sup>51</sup> RAND PAC reported making \$5,898.90  
12 in “payroll disbursements” to Kania from March 2015 until April 3, 2015.

### 13 C. Rand Paul for President, Inc.’s Activities

14 As noted previously, Rand Paul for President, Inc. filed its Statement of Organization on  
15 April 7, 2015, the same day Paul announced his candidacy.<sup>52</sup> The day after his announcement,

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<sup>48</sup> These figures were calculated by comparing RAND PAC’s disbursements for “federal candidates/committees and other political committees” (line 23), independent expenditures (line 24), and “other disbursements (including non-federal donations)” (line 29) to RAND PAC’s overall spending. *See id.*

<sup>49</sup> Media Advisory, *Senator Rand Paul to Open Tech Office in Austin, Announces Hire of Senior Field and Tech Strategist*, RAND PAC, Mar. 12, 2015, <http://randpac.com/senator-rand-paul-to-open-tech-office-in-austin-announces-hire-of-senior-field-and-tech-strategist/>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See* Section II. at 5.

1 Paul had a campaign website fully functional, including a merchandise store with 23 clothing  
2 items available for purchase, in addition to yard signs, “car décor,” and other accessories.<sup>53</sup>

3 The Committee’s first disclosure report was its July Quarterly Report.<sup>54</sup> That report  
4 disclosed that the Committee began receiving contributions for the 2016 presidential primary  
5 election on April 7, 2015.<sup>55</sup> It also stated that the Committee’s first disbursement occurred on  
6 April 2, 2015, only five days before Paul publicly announced his candidacy.<sup>56</sup> The Committee  
7 reported no reimbursements to RAND PAC.<sup>57</sup>

8 Several top campaign staffers held similar paid positions with RAND PAC and the  
9 campaign, including Doug Stafford, an advisor to the campaign and the executive director of  
10 RAND PAC, and Sergio Gor, RAND PAC’s spokesman and the campaign’s communications  
11 director.<sup>58</sup>

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<sup>53</sup> *Internet Archive*, WAYBACK MACHINE, <https://archive.org/web/web.php> (searching for “randpaul.com” and “store.randpaul.com” reveals snapshots of what Paul’s campaign website and merchandise looked like on various dates).

<sup>54</sup> *See* Committee, 2015 July Quarterly Report (July 15, 2015).

<sup>55</sup> Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016). While the report itemizes contributions dating back to July 4, 2014, those contributions were transferred from Paul’s other authorized committees: Rand Paul for US Senate 2016 and Rand Paul Victory Committee. *See id.* at Line 18 & Schedule A-P at pp. 2498-2867. The transfers occurred on and after April 2, 2015. Rand Paul for US Senate 2016, 2015 July Quarterly Report (July 15, 2015); Rand Paul Victory Committee, 2015 July Quarterly Report (July 15, 2015).

<sup>56</sup> Committee, Amended 2015 July Quarterly Report, Schedule B-P.

<sup>57</sup> *See id.*

<sup>58</sup> Katie Glueck, *The Power Players Behind Rand Paul’s Campaign*, POLITICO, Apr. 7, 2015, <http://www.politico.com/story/2015/04/rand-paul-2016-campaign-team-116715>; RAND PAC, Report; Committee, Reports.

1           After Paul suspended his campaign on February 3, 2016,<sup>59</sup> the Committee's disclosure  
2 reports show that it refunded contributions Paul received for the general election from February  
3 2016 through January 2017.<sup>60</sup>

### 4 **III. LEGAL ANALYSIS**

#### 5 **A. There is Reason to Believe that Paul and the Committee Violated the Testing-** 6 **the-Waters Regulations**

7  
8           An individual becomes a candidate under the Act if: (a) such individual receives  
9 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her  
10 consent to another person to receive contributions or make expenditures on behalf of such  
11 individual and if such person has received such contributions or has made such expenditures in  
12 excess of \$5,000.<sup>61</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to  
13 designate a principal campaign committee by filing a Statement of Candidacy with the  
14 Commission.<sup>62</sup> The principal campaign committee must file a Statement of Organization within  
15 ten days of its designation,<sup>63</sup> and must file disclosure reports with the Commission in accordance  
16 with 52 U.S.C. § 30104(a) and (b).<sup>64</sup>

17           The Commission has established limited testing-the-waters exemptions that permit an  
18 individual to test the feasibility of a campaign for federal office without becoming a candidate

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<sup>59</sup> Compl. at 4 (citing Shane Goldmacher, Alex Isenstadt & Daniel Strauss, *Rand Paul Drops Out of White House Race*, POLITICO, Feb. 3, 2016, <http://www.politico.com/story/2016/02/rand-paul-dropping-out-of-white-house-race-218675>).

<sup>60</sup> See Committee, Amended 2016 March Monthly Report (Mar. 31, 2016); Committee, 2017 February Monthly Report (Feb. 20, 2017).

<sup>61</sup> 52 U.S.C. § 30101(2).

<sup>62</sup> *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>63</sup> See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>64</sup> See, e.g., Factual & Legal Analysis at 6, MUR 6735 (Sestak); Factual & Legal Analysis at 5, MUR 6449 (Bruning); Factual & Legal Analysis at 2, MUR 5363 (Sharpton).

1 under the Act.<sup>65</sup> These exemptions exclude from the definition of “contribution” and  
2 “expenditure” those funds received and payments made solely to determine whether an  
3 individual should become a candidate.<sup>66</sup> These regulations seek to draw a distinction between  
4 activities directed to an evaluation of the feasibility of one’s candidacy and conduct signifying  
5 that a decision to become a candidate has been made.<sup>67</sup> Testing-the-waters activities include, but  
6 are not limited to, payments for polling, telephone calls, and travel, and only funds permissible  
7 under the Act may be used for such activities.<sup>68</sup>

8 An individual who is testing the waters need not register or file disclosure reports with  
9 the Commission unless and until the individual subsequently decides to run for federal office.<sup>69</sup>  
10 However, an individual who tests the waters must keep financial records, and if he or she  
11 becomes a candidate, all funds received, or payments made in connection with testing the waters,  
12 become contributions and expenditures under the Act and must be reported as such in the first  
13 report filed by the candidate’s principal campaign committee.<sup>70</sup>

14 Prior to declaring his candidacy in April 2015, Paul did not establish a testing-the-waters  
15 account, nor did he disclose any testing-the-waters expenses on his Committee’s first report.<sup>71</sup>  
16 While the Response stops short of stating that Paul did not test the waters, it contends that “the  
17 complaint fails to cite any statement by Senator Paul or his agents declaring that he was

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<sup>65</sup> See 11 C.F.R. §§ 100.72, 100.131; Factual & Legal Analysis at 7, MUR 6775 (Clinton); Factual & Legal Analysis at 8, MUR 6776 (Innis); Factual & Legal Analysis at 6, MUR 6735.

<sup>66</sup> See 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>67</sup> See Advisory Op. 1981-32 (Askew) at 4 (“AO 1981-32”).

<sup>68</sup> *Id.* at 3.

<sup>69</sup> See *id.*; see also Advisory Op. 2015-09 (Senate Majority PAC) at 5 (“AO 2015-09”).

<sup>70</sup> 11 C.F.R. § 101.3.

<sup>71</sup> See Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016).



1 exploring or pursuing the Republican nomination prior to his presidential campaign  
2 announcement.”<sup>72</sup> The available information, however, indicates that Paul spent funds to test the  
3 waters prior to declaring his candidacy in April 2015, but failed to report the applicable  
4 contributions and expenditures.

5 *First*, contrary to the Response’s assertion that Paul made no statements that he was  
6 exploring the Republican nomination, Paul made a number of public statements acknowledging  
7 that he was considering a presidential bid and was taking steps to assess his chances of success.  
8 As early as 2013, Paul began giving interviews in which he stated that he was considering  
9 running for President, had a timeline for making a decision, was having family conversations on  
10 the subject, and would only run if it looked like he could win.<sup>73</sup> Then, after Senator Ted Cruz  
11 announced his candidacy for president on March 23, 2015, Paul appeared in a string of Fox  
12 News appearances on March 23 and 24, to describe his own efforts in preparing to run for the  
13 presidency.<sup>74</sup> He indicated that he planned to make his own announcement on April 7, 2015,  
14 stating “we’re pretty close to a decision, and we’ll have some kind of announcement April 7.”<sup>75</sup>  
15 When asked whether Cruz had an edge in fundraising over him because Paul had yet to declare,  
16 Paul responded that “[i]t’s a long battle, and you know we’ve spent the last two years actually  
17 traveling the country taking the message out.”<sup>76</sup> Paul also referenced various polls indicating  
18 that he was the best potential candidate to take on Hillary Clinton and win over independent

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<sup>72</sup> Resp. at 2.

<sup>73</sup> See Section II.A.

<sup>74</sup> *Id.*

<sup>75</sup> Megyn Kelly Transcript at 2.

<sup>76</sup> *Id.*

1 voters.<sup>77</sup> He also announced the date he planned to declare his candidacy.<sup>78</sup> Thus, the Response  
2 inaccurately asserts that there were no statements in which Paul expressed that he was exploring  
3 the Republican nomination, and, in so doing, fails to rebut the statements identified by the  
4 Complaint or their significance.<sup>79</sup>

5         *Second*, Paul's extensive travel to key early primary states prior to his announcement that  
6 he was running for President provides further support for the allegation that he was testing the  
7 waters prior to April 2015. Paul travelled to South Carolina, New Hampshire, and Iowa on  
8 multiple occasions between June 2013 and March 2015, where he held "listening sessions,"  
9 rallies, and private meetings.<sup>80</sup> On the Hannity Show in 2015, Paul acknowledged that the  
10 purpose of his extensive travel was to "take [his message] to a lot of audiences that really haven't  
11 listened to Republicans before" and "pick up [the] independent vote," because "that's how you  
12 win elections."<sup>81</sup>

13         In advisory opinions, the Commission has stated that "travel throughout the country for  
14 speaking to political and non-political groups on a variety of public issues and meeting with  
15 opinion makers and others interested in public affairs for the purpose of determining whether  
16 potential political support exists for a national campaign" fits within testing-the-waters  
17 activities,<sup>82</sup> and that expenses for such activities should be allocated to the individual's potential

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<sup>77</sup>         *Supra*, note 20; *see* Section II.A.

<sup>78</sup>         *See* Section II.A.

<sup>79</sup>         *See* Compl. at 2; Resp. at 2; *see also* Advisory Op. 1985-40 (Republican Majority Fund) at 6-7 ("AO 1985-40") (stating that "remarks . . . [that] indicate [a person's] potential interest in, and his ongoing consideration of whether to seek . . . the presidential nomination" are testing-the-waters events).

<sup>80</sup>         *See* Section II.A.

<sup>81</sup>         *See id.*

<sup>82</sup>         AO 1981-32 at 2, 4; *see also id.* at 5 (stating that events "oriented to ascertaining whether there is an initial base of support adequate to launch a campaign effort" are testing-the-waters activities).

1 candidacy.<sup>83</sup> Additionally, in MUR 5908 (Duncan Hunter), the Commission found reason to  
2 believe that a candidate's spending on travel to early primary states "to publicize his Presidential  
3 campaign, and/or gauge support for his campaign" before declaring his candidacy should have  
4 been reported as testing-the-waters or campaign expenses.<sup>84</sup> As the Response does not deny that  
5 Paul tested the waters, and Paul did not file his own Response, his travel throughout the country  
6 remains strong evidence that he was taking steps to determine whether he should run for  
7 President.<sup>85</sup>

8 *Third*, the Response does not rebut the allegation that Paul was actively involved in  
9 efforts to alter Kentucky's ballot access laws and the Kentucky Republican Party's presidential  
10 nominating procedures in a manner that would allow him to run for President while holding onto  
11 his Senate seat.<sup>86</sup> As the regulations classify taking action to qualify for the ballot under state  
12 law as conduct indicative of a decision to run for office, a potential candidate's efforts to change  
13 the laws and procedures controlling ballot access so that he can be in a better position to run at a  
14 later date at least suggests that the person is considering becoming a candidate.<sup>87</sup>

15 *Fourth*, it appears that Paul hired campaign staff in anticipation of an upcoming  
16 candidacy. The Commission has explained that an individual tests the waters by employing  
17 "political consultants for the purpose of assisting with advice on the potential mechanics of  
18 constructing a national campaign organization" and assessing potential support from the

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<sup>83</sup> See AO 1985-40 at 9.

<sup>84</sup> Factual & Legal Analysis at 4-7, MUR 5908 (Hunter). The Commission took no further action in this matter where the investigation revealed that the leadership committee's excessive contributions to the candidate were likely *de minimis*. See Statement of Reasons, Comm'rs Petersen, Hunter, McGahn, Walther & Weintraub at 2-3, *id.*

<sup>85</sup> See Resp. at 2.

<sup>86</sup> See *id.*; Section II.A.

<sup>87</sup> See 11 C.F.R. §§ 100.72(b), 100.131(b).

1 electorate.<sup>88</sup> In January 2015, Paul announced that he had hired Chip Englander to work at  
2 RAND PAC, but Englander was reportedly hired with the promise that he would manage the  
3 presidential campaign that was officially launched three months later. Similarly, Rand  
4 reportedly hired a number of other individuals at RAND PAC who were quickly transitioned into  
5 the campaign within months of their hiring, including Chris La Civita (as director of Paul's  
6 South Carolina campaign), Michael Biundo (as director of Paul's South Carolina campaign),  
7 Jonathan Van Norman (as political director in Iowa), and Vincent Harris (as chief digital  
8 strategist, and heads of operations in certain key states).<sup>89</sup> This information indicates that Paul  
9 was, at the very least, conducting activities to determine whether to become a candidate.

10 Therefore, as early as 2013, the record indicates that Paul was testing-the-waters by  
11 discussing a potential candidacy and testing his policy positions, traveling the country to attend  
12 events and meet supporters, attempting to change Kentucky's ballot access laws, and hiring  
13 campaign staff. Because Paul never established a testing-the-waters account, and did not report  
14 any testing-the-waters activities, we recommend that the Commission find reason to believe that  
15 Paul violated 11 C.F.R. §§ 100.72 and 100.131 and that the Committee violated 52 U.S.C.  
16 § 30104(b) and 11 C.F.R. §§ 100.72 and 100.131.

17 **B. There is Reason to Believe RAND PAC Made, and the Committee Accepted,**  
18 **Excessive, Unreported In-Kind Contributions**

19 Commission regulations provide that all funds raised and spent for testing-the-waters  
20 activities are subject to the Act's limitations and prohibitions.<sup>90</sup> Multicandidate committees,  
21

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<sup>88</sup> AO 1981-32 at 2-5.

<sup>89</sup> *See* Section II.A.

<sup>90</sup> *See* 11 C.F.R. §§ 100.72(a), 100.131(a).

1 including leadership PACs,<sup>91</sup> are limited to contributing \$5,000 per election to candidates or  
2 their authorized committees.<sup>92</sup> The Act prohibits all committees from knowingly accepting  
3 excessive contributions.<sup>93</sup> Further, if Paul was engaging in activities on behalf of RAND PAC  
4 but also undertook activities relating to his own personal candidacy, he should have allocated  
5 any expenses between RAND PAC and his potential candidacy pursuant to 11 C.F.R.  
6 § 106.1(a).<sup>94</sup> Thus, after the appropriate allocations, if RAND PAC spent more than \$5,000 on  
7 Paul's testing-the-waters activities, once Paul became a candidate, RAND PAC would have  
8 made excessive in-kind contributions to Paul, and the Committee would have accepted those  
9 excessive contributions.<sup>95</sup>

10 While the Commission has sought to "ensure that leadership PACs are not used  
11 improperly to support the 'associated' candidate's [own] campaign,"<sup>96</sup> it has recognized that  
12 mere association is insufficient to form a conclusion that a leadership PAC contributed to the

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<sup>91</sup> The Commission's regulations define "Leadership PAC" as, *inter alia*, "a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual." *Id.* § 100.5(e)(6). When promulgating this rule in 2003, the Commission observed that leadership PACs are generally "formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates," or donated to party committees. Leadership PACs, 69 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003) (internal quotation marks omitted) (explanation and justification) ("Leadership PACs E&J").

<sup>92</sup> 52 U.S.C. § 30116(a)(2)(A).

<sup>93</sup> *Id.* § 30116(f).

<sup>94</sup> AO 1985-40 at 8-9 (stating that a leadership PAC is required to allocate travel costs when the potential candidate holds private meetings for testing-the-waters activities in conjunction with appearances on behalf of federal candidates).

<sup>95</sup> Leadership PACs E&J, 69 Fed. Reg. at 67,017 ("To the extent that leadership PACs are used to pay for costs that could and should otherwise be paid for by a candidate's authorized committee, such payments are in-kind contributions, subject to the Act's contribution limits and reporting requirements.").

<sup>96</sup> *Id.* at 67,014.

1 sponsoring candidate's testing-the-waters activities.<sup>97</sup> Rather, there must be a "nexus" between  
2 the leadership PAC and the potential candidate's federal campaign activity.<sup>98</sup>

3 In this case, the record supports a reasonable inference that such a nexus exists. As  
4 discussed above, Paul has publicly acknowledged that he was exploring a potential candidacy  
5 since 2013 and engaged in numerous activities to gauge his support in the electorate, including  
6 extensively traveling throughout the country to meet voters in early primary states.<sup>99</sup> However,  
7 while Paul's authorized committee reported no spending for such testing-the-waters activities,  
8 RAND PAC reported substantial disbursements for travel during 2013 and 2014, totaling  
9 \$500,924.90, and regularly promoted Paul's trips on its website.<sup>100</sup>

10 In particular, the available information indicates that RAND PAC sponsored Paul's  
11 appearances at CPAC and used its website and Facebook page to publicize his speeches and his  
12 inclusion in the CPAC straw poll.<sup>101</sup> Beyond CPAC, RAND PAC played a key role in  
13 promoting Paul's official candidacy announcement. On March 26, 2015, RAND PAC posted a  
14 media advisory to its website stating that Paul was going to hold a "Stand with Rand" rally on  
15 April 7, 2015, which would kick off a four-day tour with stops in New Hampshire, South

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<sup>97</sup> First Gen. Counsel's Rpt. at 29, MUR 5260 (Talent); Certification, *id.* (Jan. 6, 2003).

<sup>98</sup> See First Gen. Counsel's Rpt. at 29, *id.*; Certification, *id.* (Jan. 6, 2003).

<sup>99</sup> See Section II.A.

<sup>100</sup> See RAND PAC Website, *supra* note 28; see also RAND PAC, 2013-2014 Reports (summing the total of 856 disbursements for "travel," "travel reimbursement," "transportation service," "lodging," and "mileage reimbursement").

<sup>101</sup> See RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (disclosing a \$4,000 "registration fee" to American Conservative Union, the organization that sponsors CPAC); *Sen. Rand Paul Speaks at Conservative Political Action Conference 2015*, RAND PAC, Feb. 27, 2015 <http://randpac.com/sen-rand-paul-speaks-conservative-political-action-conference-2015/> (publishing the transcript of Paul's CPAC 2015 speech); RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014) (posting about RAND PAC's booth at CPAC 2014, which featured a life-size cutout of Paul, and providing a link to his speech).

1 Carolina, Iowa, and Nevada.<sup>102</sup> On April 6, 2015, it posted a video again publicizing the April 7  
2 event and discussing Paul's accomplishments and ability to "fix Washington."<sup>103</sup>

3         These changes in RAND PAC's spending patterns suggest that RAND PAC functioned,  
4 at least in part, to subsidize Paul's efforts to assess whether his candidacy and ideas would  
5 resonate with voters.<sup>104</sup> As discussed above, RAND PAC disbursed only \$130,045 to candidates  
6 and party committees, or on financing independent expenditures, during the 2013 to 2015 time  
7 period, amounting to just \$457,920 out of over \$4 million in disbursements.<sup>105</sup> In 2012, Rand  
8 PAC spent almost 50% of its disbursements on those activities.<sup>106</sup> RAND PAC's fundraising  
9 and spending also peaked during the 2013 to 2015 timeframe and then dropped significantly  
10 once Paul declared his candidacy.<sup>107</sup>

11         Finally, top campaign staffers held equivalent paid positions with RAND PAC and the  
12 campaign, including Stafford, who advised the campaign and was executive director of RAND  
13 PAC, and Gor, RAND PAC's spokesman and the campaign's communications director.<sup>108</sup>  
14 Vincent Harris, who was not paid for his services to RAND PAC but was for his role in the  
15 campaign, was also the chief digital strategist for the both the leadership PAC and the  
16 Committee.<sup>109</sup> These employees' overlapping titles, and the proximity of when some actors

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<sup>102</sup> Media Advisory, *National Stand with Rand Tour*, RAND PAC, Mar. 26, 2015, <http://randpac.com/national-stand-with-rand-tour/>.

<sup>103</sup> Media Advisory, *WATCH: Rand Paul, A Different Kind of Republican*, RAND PAC, Apr. 6, 2015, <http://randpac.com/watch-rand-paul-a-different-kind-of-republican/>.

<sup>104</sup> See AO 1985-40 at 8-9.

<sup>105</sup> See RAND PAC, 2013-2015 Reports.

<sup>106</sup> See *id.*

<sup>107</sup> See *id.*

<sup>108</sup> Glueck, *supra* note 58.

<sup>109</sup> See Section II.A; RAND PAC, Reports; Committee, Amended 2015 July Quarterly Report.

1 came onto RAND PAC's payroll only to move over to the campaign quickly after, suggests that  
2 they were providing services to Rand's testing-the-waters efforts instead of, or in addition to,  
3 RAND PAC.

4 The Response denies that RAND PAC was defraying the costs of Paul's testing-the-  
5 waters efforts and asserts that the Complaint's arguments are speculative.<sup>110</sup> But the Response  
6 provides little information about how the PAC spent its money on advancing its mission, given  
7 that (1) it spent only about 10 percent of its budget on contributions to other candidates, and  
8 (2) the information above indicates that it spent funds to help Paul travel throughout the country  
9 and promote his own upcoming candidacy.<sup>111</sup>

10 Thus, the available information indicates that Paul used his RAND PAC staff and  
11 itinerary of events to explore a potential candidacy, and that the costs to RAND PAC for  
12 sponsoring Paul's activities over two or more years far exceeded the \$5,000 limit. Under these  
13 circumstances, we recommend that the Commission find reason to believe that RAND PAC  
14 violated 52 U.S.C. §§ 30104(b) and 30116(f) by making excessive, unreported in-kind  
15 contributions to the Committee, and Paul and the Committee violated the same provision by  
16 accepting and failing to report the excessive contributions.

17 **C. There is Reason to Believe RAND PAC Made Excessive In-Kind**  
18 **Contributions to Paul in Violation of 11 C.F.R. § 110.2(l)**  
19

20 In addition to alleging that Paul failed to comply with the rules governing testing-the-  
21 waters activities, the Complaint alleges that RAND PAC made excessive in-kind contributions to  
22 Paul under 11 C.F.R. § 110.2(l),<sup>112</sup> which governs certain "[p]re-candidacy expenditures by

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<sup>110</sup> Resp. at 2.

<sup>111</sup> See RAND PAC, 2013-2015 Reports (comparing total receipts to relevant expenditures).

<sup>112</sup> Compl. at 8-10.



1 multicandidate political committees deemed in-kind contributions.”<sup>113</sup> Under this regulation, a  
2 payment by a multicandidate political committee is an in-kind contribution to, and an  
3 expenditure by, a presidential candidate, although made before he or she becomes a candidate, if  
4 three conditions are met: (1) the expenditure is made on or after January 1 of the year following  
5 the last presidential election year; (2) with respect to the goods or services involved, the  
6 candidate accepted or received them, requested or suggested their provision, or was materially  
7 involved or involved in substantial discussion about providing them; and (3) the goods or  
8 services are (a) polling expenses, (b) compensation paid to employees, consultants, or vendors  
9 for “services rendered in connection with establishing and staffing offices in States where  
10 Presidential primaries . . . are to be held, other than offices in the candidate’s home state” or  
11 Washington, D.C., or (c) administrative expenses, including rent, utilities, office supplies and  
12 equipment, in connection with establishing and staffing the offices described in subsection (b).<sup>114</sup>  
13 Travel is not a qualified expenditure under Section 110.2(l).

14 Here, the evidence suggests that RAND PAC paid for expenses on behalf of Paul that  
15 qualify as non-travel pre-candidacy expenditures under this regulation. RAND PAC announced  
16 on March 12, 2015, that Paul was planning to open a “tech office” in Austin, Texas, and Paul  
17 subsequently hired Kania to work as his Senior Field and Technology Strategist in that office.<sup>115</sup>  
18 Accordingly, RAND PAC’s payments to Kania appear to qualify as Section 110.2(l)

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<sup>113</sup> 11 C.F.R. § 110.2(l).

<sup>114</sup> *Id.* § 110.2(l)(1)(i)-(iii). If a candidate, through his or her authorized committee, reimburses the multicandidate committee within 30 days of becoming a candidate, a payment by the multicandidate committee will not constitute an in-kind contribution. *Id.* § 110.2(l)(2).

<sup>115</sup> *See* Section II.B.

1 compensation to an employee for staffing a campaign office, as Paul was involved in hiring her  
2 and was therefore materially involved in securing her services.<sup>116</sup>

3 It is also reasonable to conclude that disbursements to other employees were related to  
4 establishing and staffing offices in battleground states. RAND PAC's reports disclose payments  
5 to Jonathan Van Norman, the Committee's political director for Iowa, for travel and consulting  
6 in Iowa;<sup>117</sup> payments for equipment and office supplies in Florida, Virginia, and Minnesota; and  
7 for payroll expenses in Ohio.<sup>118</sup> Given that Paul established RAND PAC and it was his  
8 leadership PAC, there is a substantial probability that he was materially involved in RAND  
9 PAC's provision of these goods and services to his potential campaign.<sup>119</sup>

10 Lastly, RAND PAC paid for "survey research" in 2013 and 2014, including making a  
11 \$19,571 disbursement to a vendor called "the Polling Company."<sup>120</sup> While the purpose of these  
12 surveys and polling is unclear from RAND PAC's filings, Paul referenced having polling data  
13 about the presidential election when he appeared on the Kelly File in March 2015.<sup>121</sup> Therefore,  
14 it is possible that these RAND PAC expenditures were for the benefit of Paul's testing-the-  
15 waters efforts and that Paul received them in his capacity as a potential candidate. In that case,  
16 they would qualify as Section 110.2(l) polling expenses.<sup>122</sup>

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<sup>116</sup> See 11 C.F.R. § 110.2(l).

<sup>117</sup> See, e.g., RAND PAC, Second Amended 2015 Mid-Year Report.

<sup>118</sup> See Compl., Exh. 1.

<sup>119</sup> See 11 C.F.R. § 110.2(l).

<sup>120</sup> RAND PAC, Amended 2013 Year-End Report (Oct. 15, 2014); RAND PAC, Amended 2014 April Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 July Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 October Quarterly Report (Dec. 4, 2014); RAND PAC, Amended 2014 Post-General Report (Jan. 31, 2015).

<sup>121</sup> See Section II.A.

<sup>122</sup> See 11 C.F.R. § 110.2(l).

1           Accordingly, based on the available information and reasonable inferences from the  
2 record, we recommend that the Commission find reason to believe that RAND PAC made, and  
3 the Committee and Paul accepted, excessive in-kind contributions resulting from RAND PAC's  
4 payment of certain pre-candidacy expenses under 11 C.F.R. § 1102.(l), in violation of 52 U.S.C.  
5 § 30116(f). Again, as noted in the previous sections, there is also reason to believe RAND PAC  
6 and the Committee failed to properly disclose these contributions, in violation of 52 U.S.C.  
7 § 30104(b).

8           **D.     There is Insufficient Information to Conclude that Paul Triggered**  
9           **Candidacy Prior to April 2015**

10  
11           As set forth above, an individual becomes a candidate if he or she receives contributions  
12 or makes expenditures in excess of \$5,000 or consents to another person doing so on his or her  
13 behalf and the other person so acts.<sup>123</sup> The testing-the-waters exemption is not available to  
14 individuals who have made a decision to become a candidate.<sup>124</sup> Commission regulations set  
15 forth a non-exhaustive list of activities that indicate that an individual is no longer testing the  
16 waters and has decided to become a candidate. Such indicia include: (1) using general public  
17 political advertising to publicize his or her intention to campaign for federal office; (2) raising  
18 funds in excess of what could reasonably be expected to be used for exploratory activities or  
19 undertaking activity designed to amass campaign funds that would be spent after he or she  
20 becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her  
21 as a candidate for a particular office; (4) conducting activities in close proximity to the election

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<sup>123</sup>       See Section III.A; 52 U.S.C. § 30101(2).

<sup>124</sup>       See AO 2015-09 at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed Reg. 9992, 9993 (Mar. 13, 1985) (exemption "explicitly limited 'solely' to activities designed to evaluate a potential candidacy") ("Testing the Waters E&J").

1 or over a protracted period of time;<sup>125</sup> and (5) taking action to qualify for the ballot under state  
2 law.<sup>126</sup>

3 Here, Paul took some actions that arguably indicate that he made a decision to run for  
4 President months before he filed his Statement of Candidacy. For example, Paul hired staff by  
5 January 2015, apparently with an explicit promise to at least Chip Englander and Rachel Kania  
6 that they would work on the campaign;<sup>127</sup> announced plans to open a “campaign” office in  
7 Austin, Texas on March 12, 2015;<sup>128</sup> announced his April 7, 2015 “Stand with Rand” rally and  
8 tour on or before March 17, 2015;<sup>129</sup> and prepared his campaign website and merchandise some  
9 time before his announcement in order to have them immediately available to the public.<sup>130</sup>

10 Nevertheless, we have found no statements made by Paul or an authorized representative  
11 indicating that he made a final decision to run prior to April 7, and while Paul alluded to an  
12 announcement he would be making that day, he never specified what that announcement would  
13 be. In addition, paying expenses to staff offices for a potential candidacy may be consistent with  
14 certain “pre-candidacy expenditures,” as reflected in section 110.2(I) of the Commission’s  
15 regulations. Accordingly, we recommend that the Commission take no action at this time with

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<sup>125</sup> The Commission has advised that there is no specific time limit for such activities, and the length of time spent testing the waters is but one factor in determining whether an individual becomes a candidate. AO 2015-09 at 6.

<sup>126</sup> 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>127</sup> *See* Sections II.A & III.C.

<sup>128</sup> *See* Section III.C. In addition, Paul debuted a “Rand Paul 2016” t-shirt on Twitter in December 2014 with the caption, “I think this will be a very popular item this year.” @RandPaul, TWITTER (Dec. 23, 2014), <https://twitter.com/RandPaul/status/547408690039775232>. While Paul was also running for Senate in 2016, he linked this shirt to a presidential run by stating further that “[w]e all know having a fashion forward campaign is important to success, as @RickSantorum showed us in 2012.” @RandPaul, TWITTER (Dec. 23, 2014), <https://twitter.com/RandPaul/status/547408270995259392>.

<sup>129</sup> DJ Judd & Steve Chaggaris, *Rand Paul Sets Presidential Announcement Date*, CBS NEWS, Mar. 17, 2015, <https://www.cbsnews.com/news/rand-paul-sets-presidential-announcement-date/>.

<sup>130</sup> *See* Section II.A.

1 respect to the allegations that Paul violated 52 U.S.C. § 30102(e)(1) by failing to timely file a  
2 Statement of Candidacy and designate a principal campaign committee, and that the Committee  
3 violated 52 U.S.C. §§ 30103(a) and 30104 by failing to timely file a Statement of Organization  
4 and disclosure reports. If during the course of the investigation we uncover evidence indicating  
5 that Paul became a candidate prior to 15 days before April 7, 2015, we will make the appropriate  
6 recommendations.<sup>131</sup>

7 **E. There is Reason to Believe that the Committee Failed to Make Timely**  
8 **Refunds of Contributions Designated for the General Election**

9 During the 2016 election cycle, an authorized committee was limited to accepting a total  
10 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.<sup>132</sup> A  
11 primary election and a general election are each considered a separate “election,” and the  
12 individual contribution limits are applied separately with respect to each election.<sup>133</sup>

13 The Commission’s regulations permit a candidate or his authorized committee to receive  
14 contributions for the general election prior to the primary election.<sup>134</sup> If, however, the candidate  
15 does not become a candidate in the general election, the committee must: (1) refund the

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<sup>131</sup> While not alleged in the Complaint, we discovered that Paul’s principal campaign committee for his 2016 senatorial campaign, Rand Paul for US Senate 2016, transferred \$1,400,000 to the Committee on April 2, 2015, which the Committee accepted. *See* Rand Paul for Senate 2016, 2015 July Quarterly Report (June 22, 2015); Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016). If Paul was in fact a candidate for both President and Senate at that time, this transfer would have been prohibited under 52 U.S.C. § 30116(a)(5)(C)(i) and 11 C.F.R. § 110.3(c)(5)(i), which state that the “transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office” is prohibited if the transfer is made “when the candidate is actively seeking nomination or election to both such offices.” However, because we lack definitive information as to whether Paul was a presidential candidate on April 2 as opposed to April 7, 2015, we do not make a recommendation as to the potential violation at this time. *See* Rand Paul, Amended Statement of Candidacy (Aug. 9, 2013) (revealing that Paul declared his candidacy for Senate in 2016 during 2013, so he was a Senate candidate on April 2, 2015).

<sup>132</sup> 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 CFR §§110.1(a)-(b), 110.2(b)(1).

<sup>133</sup> 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

<sup>134</sup> *See* 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

1 contributions designated for the general election; (2) redesignate such contributions in  
 2 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
 3 accordance with 11 C.F.R. § 110.1(k)(3).<sup>135</sup> The committee must do so within 60 days of the  
 4 date that the committee has actual notice of the need to redesignate, reattribute, or refund the  
 5 contributions, such as the date the candidate loses the primary or withdraws from the  
 6 campaign.<sup>136</sup>

7 Paul announced that he was “suspending” his campaign on February 3, 2016,<sup>137</sup> but the  
 8 Committee continued reporting reimbursements to those who contributed to Paul for the general  
 9 election until January 2017.<sup>138</sup> The Complaint alleges that the Committee’s refunds were  
 10 untimely, and RAD also referred the Committee to the Office of General Counsel for failing to  
 11 refund \$257,658.65 of contributions within the applicable 60-day window.<sup>139</sup> In response to the  
 12 Commission’s RAD Referral asserting that the Committee’s refunds were untimely, the  
 13 Committee argues that Paul remained a candidate after he “suspended” his campaign, and that  
 14 suspending a campaign is different than withdrawing from a campaign.<sup>140</sup> The Committee

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<sup>135</sup> See *id.* § 102.9(e)(3); see also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“AO 1992-15”) (“[T]he Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

<sup>136</sup> Advisory Op. 2008-04 (Dodd); AO 1992-15. The Commissions’ regulations include procedures for reattributing or redesignating a contribution. See generally 11 C.F.R. § 110.1(b), (k). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. *Id.* §§ 110.1(b)(5), 110.1(k)(3).

<sup>137</sup> See RR 17L-49 Resp. at 1-2 (Apr. 18, 2018) (“RAD Referral Resp.”); Goldmacher, Isenstadt & Strauss, *supra* note 58.

<sup>138</sup> See 11 C.F.R. § 102.9(e)(3); Committee, 2017 February Monthly Report (Feb. 20, 2017).

<sup>139</sup> Compl. at 11; Referral at 1, RR 17L-49 (Dec. 20, 2017) (“RAD Referral”).

<sup>140</sup> RAD Referral Resp. at 2.

1 further argues that Paul remained a candidate until Donald Trump became the Republican  
2 Party's presidential nominee on July 19, 2016, so refunds were not due until September 19,  
3 2016.<sup>141</sup>

4 The Committee's arguments are unsupported and contrary to the Commission's own  
5 guidance. First, in Advisory Opinion 2012-06 (RickPerry.org) ("AO 2012-06"), the Commission  
6 determined that the 60-day period to redesignate or refund general election contributions expires  
7 after the presidential candidate "suspended" his presidential campaign.<sup>142</sup> Thus, the Commission  
8 has not previously drawn a distinction between withdrawing from or suspending a campaign  
9 given that both terms signify that the candidate has ceased campaigning. Further, despite its  
10 contention that Paul had not fully withdrawn his candidacy, the Committee's own actions cast  
11 doubt to its argument. Beginning in March 2016, the month after Paul had suspended his  
12 presidential campaign, the Committee began the process of redesignating its 2016 general  
13 election contributions to Rand Paul for U.S. Senate 2016 ("Senate Committee") and Rand Paul  
14 Victory Kentucky ("JFC"), which was a joint fundraising committee, comprised of the Senate  
15 Committee.<sup>143</sup>

16 Finally, even assuming that July 19, 2016 was the starting date for the 60-day window,  
17 the Committee still failed to timely remedy all of the general election contributions, having failed  
18 to refund or redesignate such contributions totaling \$165,749.09 until after September 17,

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<sup>141</sup> See *id.* at 1-2.

<sup>142</sup> AO 2012-06 at 4. The Commission, however, could not agree on whether the candidate could obtain redesignations of its general election contributions to finance its activities as a non-connected committee or to fund the candidate's state campaign committee. *Id.*

<sup>143</sup> See Committee, 2016 April Monthly Report (disclosing \$23,025 in transfers to Senate Committee and \$186,951.46 in transfers to the JFC); Referral at 2.

1 2016.<sup>144</sup> Therefore, we recommend that the Commission open as matter under review as to Rad  
2 Referral 17L-49, merge it with MUR 7191, and find reason to believe that the Committee  
3 violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

#### 4 **IV. INVESTIGATION**

5 To determine whether Paul and the other Respondents violated the Act, the investigation  
6 will focus on Paul's activities during the January 2013 to April 2015 time period in which it  
7 appears he was testing the waters. Specifically, we will examine Paul's activities during the  
8 travel and events RAND PAC sponsored, the activities of personnel who held positions with  
9 both RAND PAC and the Committee, and the extent to which RAND PAC or any other yet  
10 unknown entity paid for staff, services, or equipment to assist Paul in testing the waters and  
11 preparing a campaign. We recommend that the Commission authorize the use of compulsory  
12 process, including the issuance of appropriate interrogatories, document subpoenas, and  
13 deposition subpoenas, as necessary.

#### 14 **V. RECOMMENDATIONS**

- 15 1. Open a matter under review for RR17L-49 and merge it into MUR 7191;
- 16 2. Find reason to believe that Rand Paul violated 52 U.S.C. § 30116(f) and 11 C.F.R.  
17 §§ 100.72(a) and 100.131(a);
- 18 3. Find reason to believe that Rand Paul for President, Inc. and Paul Kilgore in his  
19 official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(a)(5)(C) and  
20 (f) and 11 C.F.R. §§ 100.72(a), 100.131(a), and 102.9(e)(3);
- 21 4. Find reason to believe that Reinventing a New Direction Political Action  
22 Committee and Kevin Broghamer in his official capacity as treasurer violated  
23 52 U.S.C. §§ 30104(b) and 30116(f);
- 24 5. Take no action at this time with respect to the allegation that Rand Paul violated  
25 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a) and Rand Paul for President,  
26 Inc. and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C.  
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<sup>144</sup> See Chart of Unrefunded Rand Paul Contributions,



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§§ 30103(a) and 30104, in connection with filing a timely Statement of Candidacy, Statement of Organization, and filing disclosure reports;

- 6. Approve the attached Factual and Legal Analysis;
- 7. Authorize the use of compulsory process; and
- 8. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

6/18/18  
\_\_\_\_\_  
Date

*Kathleen M. Guith*  
\_\_\_\_\_  
Kathleen M. Guith  
Associate General Counsel for Enforcement

*Jin Lee*  
\_\_\_\_\_  
Jin Lee  
Acting Assistant General Counsel

*Christopher L. Edwards*  
\_\_\_\_\_  
Christopher Edwards  
Attorney

Attachments:

- 1.
- 2. Transcript of Rand Paul’s March 23, 2015, Interview on “The Kelly File”
- 3. Transcript of Rand Paul’s March 24, 2015, Interview on “The Sean Hannity Show”



1 Committee failed to timely refund or redesignate the contributions it received for the general  
2 election.<sup>4</sup>

3 RAND PAC and the Committee submitted a joint Response denying that they violated  
4 the Act.<sup>5</sup> The Response asserts that there is no evidence that Paul was taking actions to explore a  
5 presidential run before he declared his candidacy, and that RAND PAC never contributed to his  
6 campaign or any alleged pre-candidacy efforts.<sup>6</sup> It asserts that all of RAND PAC's  
7 disbursements, from travel to research and staffing, were to advance RAND PAC's  
8 organizational mission of supporting "pro-liberty" candidates.<sup>7</sup>

## 9 **II. FACTUAL BACKGROUND**

10 On April 7, 2015, Kentucky Senator Rand Paul publicly declared his candidacy for  
11 President of the United States.<sup>8</sup> Paul filed a Statement of Candidacy on April 8, designating the  
12 Committee as his authorized campaign committee with Paul Kilgore as the Committee's  
13 treasurer.<sup>9</sup> The Committee filed its Statement of Organization on April 7.<sup>10</sup>

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<sup>4</sup> Compl. at 4, 10-11.

<sup>5</sup> MUR 7191 Resp. (Jan. 13, 2017) ("Resp."). Paul did not file a Response in MUR 7191.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Compl. at 3 (citing Jeremy W. Peters & Alan Rappoport, *Rand Paul Announces Presidential Run*, N.Y. TIMES, Apr. 7, 2015, <https://www.nytimes.com/2015/04/08/us/politics/rand-paul-republican-presidential-nomination.html>). About one month later, Paul released a book about his politics, which he was presumably planning and writing for some time before the announcement. Heather Struck, *Reading Between the Lines in Rand Paul's New Book*, REUTERS, May 27, 2015, <http://blogs.reuters.com/talesfromthetrail/2015/05/27/reading-between-the-lines-in-rand-pauls-new-book/>.

<sup>9</sup> Rand Paul, Statement of Candidacy, President (Apr. 8, 2015).

<sup>10</sup> Committee, Statement of Organization (Apr. 7, 2015).

1           **A.     Paul’s Pre-Candidacy Activities**

2           Prior to declaring his presidential candidacy, Paul engaged in a number of activities that  
3 appear to be connected to a potential run. First, as identified in the Complaint, Paul made  
4 numerous statements indicating he was testing the waters for a presidential run. The Complaint  
5 first points to Paul’s Tea Party Response to President Barrack Obama’s 2013 State of the Union  
6 Address.<sup>11</sup> Immediately following these February 13, 2013, remarks, Paul gave an interview in  
7 which he stated in response to a question about whether he was planning to run for President that  
8 he was “interested.”<sup>12</sup> Paul explained, “I’ve said I am interested. And we are thinking about it  
9 but probably would [sic] make a decision until 2014.”<sup>13</sup>

10           In addition, the Complaint alleges that during 2014 and 2015, Paul continued to publicly  
11 discuss his decision-making process during interviews. In January 2014, he stated that he was  
12 considering a run and that the chance he would enter the presidential race was “50-50.”<sup>14</sup> In  
13 January 2015, Paul said that he was seeing “if we think we’re in the mix . . . and can win. I don’t  
14 want to do it just to do it, we want to do it because we actually think we can win.”<sup>15</sup> He  
15 predicted that his decision would come in March or April and shared that he was still engaging in  
16 family discussions before making up his mind.<sup>16</sup>

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<sup>11</sup> Compl. at 2.

<sup>12</sup> *Id.* (quoting Interview, *Rand Paul: ‘Big Government’s Not a Friend to Those Who are Trying to Get Ahead,’* NPR POLITICS, Feb. 14, 2013, <http://www.npr.org/2013/02/14/172034468/rand-paul-big-governments-not-a-friend-to-those-who-are-trying-to-get-ahead>).

<sup>13</sup> *Id.* .

<sup>14</sup> RAND PAC, FACEBOOK Post, “Sen. Paul Joins Potter Gray Elementary School 4<sup>th</sup> Grader Clay Wallace—January 26, 2014,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Jan. 28, 2014).

<sup>15</sup> Compl. at 3 (quoting Lawrence Smith, *Sen. Rand Paul Looking at Presidential Announcement in March or April*, WDRB.COM, Jan. 9, 2015, <http://www.wdrb.com/story/27803393/sen-rand-paul-looking-at-presidential-announcement-in-march-or-april>).

<sup>16</sup> *Id.*

1 Further, in March 2015, about two weeks before he officially announced his candidacy,  
2 Paul made television appearances on the Fox News channel, during which he discussed his  
3 exploratory efforts and an upcoming announcement. On March 23, Paul appeared on the Kelly  
4 File and was asked about Senator Ted Cruz's recent announcement as a presidential candidate:

5 **Megyn Kelly:** Now he got out ahead of you. Ah, why weren't you first?  
6

7 **Senator Rand Paul:** Ha ha ha, we'll see. We're thinking about it, and we're  
8 pretty close to a decision, and we'll have some kind of announcement April 7.  
9 And ah you know, people can go to Rand Paul for Kentucky or Kentucky for  
10 Rand Paul dot com, they can find out more about it instantaneously.  
11

12 **Megyn Kelly:** So now he's got a couple of weeks lead on you in terms of, you  
13 know, reaching out there, being out there, maybe even with respect to fundraising.  
14 Is that an advantage?  
15

16 **Senator Rand Paul:** It's a long battle and you know we've spent the last two  
17 years actually traveling the country taking the message out and we think that  
18 there's a unique brand of Republicanism, a unique brand of Conservative  
19 constitutionalism that also reaches out to new people. So I try to get along with  
20 all the wings of the party. But I also am able to take the message of liberty and of  
21 the Bill of Rights, and take it to Howard University, to the Urban League, to  
22 NAACP, to Ferguson, to Berkley and try to bring new people into the party. So it  
23 isn't just about rousing the base, it's about exciting the base by being for the  
24 principles of liberty, but it's then taking those principles of liberty, not diluting  
25 them, and taking them to new people and bringing them into the party, that's the  
26 way you win general elections.  
27

28 **Megyn Kelly:** How can you do what, with respect to your dad, failed to do?  
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30 **Senator Rand Paul:** I think that if you see my polling, the polling that's out  
31 there so far, nobody is doing better against Hillary Clinton than myself because  
32 we're already picking up 3 to 5% or more of the independent vote above what the  
33 others are picking up—<sup>17</sup>  
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<sup>17</sup> *Sen. Paul Joins Megyn Kelly on Fox News- March 23, 2015*, YOUTUBE,  
[https://www.youtube.com/watch?v=E\\_kLSs9MDmc&feature=youtu.be](https://www.youtube.com/watch?v=E_kLSs9MDmc&feature=youtu.be) (posted Mar. 23, 2015) (*see* minute 0:41).

1           The following day on March 24, 2015, Paul appeared on the Sean Hannity Show and  
2 again explained that he spent years traveling throughout the country, from California to  
3 Maryland, to spread his platform.<sup>18</sup> He also compared himself to Ted Cruz, stating:

4           Yeah and like I say, Ted Cruz and I come from the same wing of the party. So  
5 sometimes you'll have two very conservative—two Senators who support the  
6 Constitution, and you'll have to look for nuances and differences between the  
7 two, and one of those might be winnability. *When you look at polling right now,*  
8 *you'll find that nobody in the Republican Party does better against Hillary*  
9 *Clinton than myself, and I think that's because we've tried very hard to pick up*  
10 *independent vote and voters who haven't been voting Republican, and frankly*  
11 *that's how you win elections.*<sup>19</sup>

12  
13 In addition, when asked when his announcement would be, Paul stated, “It’s coming up soon,  
14 and I keep seeing on the Internet April 7, so it might be. I don’t know, but I think it’s coming  
15 soon.”<sup>20</sup> Paul had previously announced his April 7, 2015, “Stand with Rand” rally and tour on  
16 or before March 17, 2015.<sup>21</sup>

17           Second, consistent with these statements, Paul appears to have undertaken specific  
18 activities to test the waters prior to his announcement. In 2014, Paul was a speaker at the  
19 Conservative Political Action Conference (“CPAC”), and RAND PAC engaged in a Facebook  
20 campaign to encourage attendees to vote for him in the CPAC presidential preference straw poll,  
21 using the catchphrase “Stand with Rand.”<sup>22</sup> In 2015, Paul again spoke at CPAC, where he

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<sup>18</sup> See *Sen. Rand Paul Joins Sean Hannity on Fox News- March 24, 2015*, YouTube, [https://www.youtube.com/watch?v=u1PS-R5\\_\\_dw](https://www.youtube.com/watch?v=u1PS-R5__dw) (posted Mar. 25, 2015) (see minute 2:31).

<sup>19</sup> *Id.* (see minute 2:31).

<sup>20</sup> *Id.* (see minute 4:14).

<sup>21</sup> DJ Judd & Steve Chaggaris, *Rand Paul Sets Presidential Announcement Date*, CBS NEWS, Mar. 17, 2015, <https://www.cbsnews.com/news/rand-paul-sets-presidential-announcement-date/>.

<sup>22</sup> See RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014); “Rand Paul Full Speech at CPAC 2014,” YOUTUBE, <https://www.youtube.com/watch?v=Y5DG2tKqPIM> (posted Mar. 7, 2014). Paul won the straw poll in 2013, 2014, and 2015. Compl. at 2 (citing Alexandra Jaffe, *Rand Paul Wins 2015 CPAC Straw Poll*, CNN, Feb. 28, 2015, <http://www.cnn.com/2015/02/28/politics/cpac-2015-straw-poll-results-rand-paul/>).

1 discussed his policy positions and stated at the conclusion of his remarks that “it’s time for a new  
2 President,” asking the crowd: “Will you *stand with me*? Will you fight for freedom? Will you  
3 vote for freedom?”<sup>23</sup> The audience chanted “President Paul” in response,<sup>24</sup> and “Stand with  
4 Rand” later became one of the campaign’s slogans.<sup>25</sup> Paul mentioned no other possible  
5 candidates in his speech.

6 In addition to his involvement with CPAC, Paul traveled often to early primary states. In  
7 June 2013, he visited South Carolina to meet party activists and hold a “listening session,”  
8 explaining that his trip was meant to show that he and the Republican Party can appeal to a broad  
9 audience.<sup>26</sup> He then returned to the state at least twice in fall 2014.<sup>27</sup> In spring 2014, Paul  
10 visited New Hampshire to speak at a summit, hold a rally, and attend a private reception, and  
11 returned in October 2014, January 2015, and March 2015.<sup>28</sup> In addition, Paul went on a three-

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<sup>23</sup> *Sen. Rand Paul Speaks at Conservative Political Action Conference 2015*, RAND PAC, Feb. 27, 2015, <http://randpac.com/sen-rand-paul-speaks-conservative-political-action-conference-2015/> (emphasis added).

<sup>24</sup> Rand Paul CPAC 2015 Full Speech, YOUTUBE, <https://www.youtube.com/watch?v=AXJOcBfch3s> (posted Feb. 27, 2015) (*see* minute 13:17).

<sup>25</sup> *Internet Archive*, WAYBACK MACHINE, <https://archive.org/web/web.php> (searching for “randpaul.com” shows snapshots of what Paul’s campaign website looked like in the past, and the website’s homepage prominently displayed the “Stand with Rand” slogan as soon as Paul announced his candidacy).

<sup>26</sup> *Rand Paul Testing 2016 Waters During SC Visit*, WDRB.COM, Jun. 28, 2013, <http://www.wdrb.com/story/22712491/rand-paul-testing-2016-waters-during-sc-visit>; RAND PAC, FACEBOOK, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (“RAND PAC Facebook”); *see also* Meg Kinnard, *Rand Paul Testing ’16 Waters in S.C. Tea Party Favorite Seeks Broad Appeal*, POST & COURIER, Jun. 28, 2013, [http://www.postandcourier.com/politics/rand-paul-testing-waters-in-s-c-tea-party-favorite/article\\_a37fb8ad-c998-5b90-a35b-629a4e66edad.html](http://www.postandcourier.com/politics/rand-paul-testing-waters-in-s-c-tea-party-favorite/article_a37fb8ad-c998-5b90-a35b-629a4e66edad.html).

<sup>27</sup> RAND PAC, FACEBOOK, *supra* note 26.

<sup>28</sup> *Id.*; RAND PAC, <http://randpac.com/> (last visited June 15, 2018) (“RAND PAC Website”).

1 day tour of Iowa in August 2014 and returned in October 2014 and February 2015.<sup>29</sup> In total,  
2 Paul visited 32 states during 2013 and 2014.<sup>30</sup>

3           The Complaint further claims that Paul’s actions to amend Kentucky’s ballot access rules  
4 were indicative of his intent to run for president and constituted testing-the-waters activities.  
5 Paul was up for reelection to the Senate in 2016, but Kentucky law prevents a candidate from  
6 appearing on the ballot for two different races.<sup>31</sup> Thus, he would have to give up his Senate seat  
7 in order to appear on the ballot as a candidate for President.<sup>32</sup> During the summer of 2014, the  
8 Kentucky State Legislature debated a bill that would have removed this prohibition on a  
9 candidate running simultaneously for President and Senate.<sup>33</sup> Contemporaneous reports  
10 maintained that “Rand Paul [was] extraordinarily involved” in the effort, and that he considered  
11 state legislators’ positions on the amendment as a factor in lending support and fundraising on  
12 their behalf.<sup>34</sup> While Paul was ultimately unable to convince the legislature to change its rules,  
13 he was successful in his 2015 effort to push the Kentucky Republican Party to hold a presidential

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<sup>29</sup> RAND PAC, FACEBOOK, *supra* note 26; RAND PAC Website, *supra* note 28; Sharyn Jackson, *Rand Paul in Iowa: No “Firm Decision” Yet on Presidential Run*, DES MOINES REGISTER, Oct. 22, 2014, <http://www.desmoinesregister.com/story/news/elections/2014/10/22/rand-paul-iowa-no-decision-president-run/17732119/>.

<sup>30</sup> Jackson, *supra* note 29.

<sup>31</sup> Joseph Gerth, *Rand Paul May Forgo White House Ballot Measure*, COURIER-JOURNAL, Dec. 22, 2014, <http://www.courier-journal.com/story/news/politics/rand-paul/2014/12/22/rand-paul-may-forgo-white-house-ballot-measure-kentucky/20778599/>.

<sup>32</sup> *See id.*

<sup>33</sup> Compl. at 2 (citing *The Obscure Kentucky Contest that Could Alter Rand Paul’s 2016 Plans*, NAT’L J., Aug. 14, 2014, <https://www.nationaljournal.com/s/41882/obscure-kentucky-contests-that-could-alter-rand-pauls-2016-plans>).

<sup>34</sup> *Id.*



1 caucus instead of a primary, which eliminated the issue of him appearing on the same ballot  
2 twice.<sup>35</sup>

3 Finally, the Complaint provides information indicating that, in the months immediately  
4 preceding his official announcement, Paul hired a number of individuals at RAND PAC, who  
5 then quickly transitioned into positions as paid campaign staff. For example, on January 13,  
6 2015, Paul announced the hiring of Chip Englander, and “people familiar with the hire” said that  
7 Englander “ha[d] been assured that he will manage what has become a campaign-in waiting.”<sup>36</sup>  
8 When Paul did launch his campaign in April 2015, Englander was indeed his campaign manager,  
9 heading a team that included the above names.<sup>37</sup> Paul also hired advisor Chris LaCivita, who  
10 was reportedly “planning to direct Paul’s South Carolina campaign,” and Michael Biundo, who  
11 was reportedly “set to run Paul’s New Hampshire campaign.”<sup>38</sup> Even earlier, in November  
12 2014, Paul hired Vincent Harris to be the Chief Digital Strategist of RAND PAC<sup>39</sup>—the same  
13 title he would later hold on Paul’s campaign.<sup>40</sup> In addition, Jonathan Van Norman, who became  
14 the Committee’s political director for Iowa, was receiving payments from RAND PAC as of  
15 March 2015.<sup>41</sup>

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<sup>35</sup> Eugene Scott & Tal Kopan, *Rand Paul Win: Kentucky GOP Switch to Caucus*, CNN, Aug. 24, 2015, <http://www.cnn.com/2015/08/23/politics/rand-paul-kentucky-caucus/index.html>.

<sup>36</sup> Compl. at 3 (citing Robert Costa, *Rand Paul Announces Campaign Manager for Likely 2016 Campaign*, WASH. POST, Jan. 13, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/01/13/rand-paul-announces-campaign-manager-as-he-ramps-up-2016-campaign/>).

<sup>37</sup> Andrea Billups, *Rand Paul’s 2016 Team Includes Deep DC, Personal Ties*, NEWSMAX, Apr. 7, 2015, <http://www.newsmax.com/Politics/Rand-Paul-campaign-team-Chip-Englander/2015/04/07/id/636897/>.

<sup>38</sup> *See id.*

<sup>39</sup> RAND PAC, FACEBOOK Post, “RANDPAC Chief Digital Strategist Announcement,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Nov. 18, 2014).

<sup>40</sup> *See* Shane Goldmacher & Darren Samuelsohn, *Trump Hires Rand Paul’s Former Digital Director*, POLITICO, June 28, 2016, <http://www.politico.com/story/2016/06/donald-trump-rand-paul-digital-224915>.

<sup>41</sup> *See* RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (itemizing travel reimbursements); John Cheves, *Rand Paul’s PAC Paid Vendors Also Used by his Presidential Campaign*,

1           **B.      RAND PAC’s Activities**

2           After Paul’s initial election to the Senate in 2010, he established RAND PAC as his  
 3 leadership PAC, registering it as such with the Commission on March 9, 2011.<sup>42</sup> RAND PAC’s  
 4 stated mission is to “lead the battle for sound money, limited government, and fidelity to our  
 5 Constitution,” and to “support and elect Pro-Liberty, Pro-Constitution candidates in Kentucky  
 6 and across the country.”<sup>43</sup>

7           RAND PAC was active during the 2012, 2014, and 2016 election cycles. The chart  
 8 below summarizes its financial activities through the 2016 elections:<sup>44</sup>

9   **RAND PAC Activities 2011-2016**

<b>Year</b>	<b>Receipts</b>	<b>Disbursements</b>
2011	\$173,031.82	\$79,464.86
2012	\$1,688,586.70	\$1,356,655.55
2013	\$1,606,347.05	\$1,467,787.50
2014	\$2,135,791.07	\$2,539,408.96
2015	\$857,598.51	\$966,926.49
2016	\$241,900.76	\$269,001.35

10 As reflected above, RAND PAC raised and spent over \$1 million in 2012 and 2013 and its  
 11 activity peaked in 2014 when it raised and spent over \$2 million. Further, in the first half of  
 12 2015, RAND PAC raised \$723,468.96 and spent \$749,756.39.<sup>45</sup> However, after Paul declared  
 13 his candidacy for President in April 2015, the PAC’s fundraising dropped to just \$134,129.55

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LEXINGTON HERALD-LEADER, May 27, 2016, <http://www.kentucky.com/news/politics-government/article80324367.html>.

<sup>42</sup> RAND PAC, Statement of Organization (Mar. 9, 2011). On April 18, 2012, RAND PAC also registered as a multicandidate political committee. RAND PAC, Notification of Multicandidate Status (Apr. 18, 2012).

<sup>43</sup> RAND PAC Website, *supra* note 28.

<sup>44</sup> *See* RAND PAC, Committee Filings 2011-2016.

<sup>45</sup> RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016).

1 during the period of July through December 2015 and \$241,900.76 for the entire year of 2016.<sup>46</sup>  
2 RAND PAC's disbursements saw a similarly precipitous drop after Paul declared his candidacy,  
3 spending only \$217,170.10 in the latter six months of 2015 and \$269,001.35 in 2016.<sup>47</sup>

4 In the two years leading up to Paul's announcement, it appears that RAND PAC also  
5 spent a small fraction of its funds on its stated purpose of supporting "pro-liberty" candidates. In  
6 2013, the PAC disbursed \$130,045 to candidates and party committees, or on financing  
7 independent expenditures, which constituted just 9% out of the \$1,467,787.50 it spent in total. In  
8 2014, RAND PAC spent \$298,875, or 11%, on these activities out of \$2,539,408.96 in total  
9 disbursements; and in 2015, just \$29,000, or 3%, of \$966,926.49 in total disbursements.  
10 Conversely, in 2012 RAND PAC spent \$670,500 on these activities, or 49%, of \$1,356,655.55 in  
11 total disbursements.<sup>48</sup>

12 On March 12, 2015, RAND PAC published a media advisory stating that Paul was  
13 planning to open a "tech office" in Austin, Texas on March 16.<sup>49</sup> The media advisory quoted  
14 RAND PAC personnel explaining that "Senator Rand Paul will run the most innovative, tech-  
15 forward operation of any elected official in the country" and that it will be a "crowd-sourced  
16 campaign."<sup>50</sup> Paul hired Rachel Kania to work in the new office as his Senior Field and  
17 Technology Strategist, and Kania stated: "As the newest member of Team Rand, I look forward

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<sup>46</sup> See Rand PAC, Amended 2015 Year-End Report through 2016 Reports.

<sup>47</sup> See *id.*

<sup>48</sup> These figures were calculated by comparing RAND PAC's disbursements for "federal candidates/committees and other political committees" (line 23), independent expenditures (line 24), and "other disbursements (including non-federal donations)" (line 29) to RAND PAC's overall spending. See *id.*

<sup>49</sup> Media Advisory, *Senator Rand Paul to Open Tech Office in Austin, Announces Hire of Senior Field and Tech Strategist*, RAND PAC, Mar. 12, 2015, <http://randpac.com/senator-rand-paul-to-open-tech-office-in-austin-announces-hire-of-senior-field-and-tech-strategist/>.

<sup>50</sup> *Id.*

1 to leveraging the latest in campaign technology to activate our energized volunteer base. Team  
2 Rand will be the most technologically-savvy campaign in the field and his message will inspire  
3 and widen the GOP base unlike any other candidate.”<sup>51</sup> RAND PAC reported making \$5,898.90  
4 in “payroll disbursements” to Kania from March 2015 until April 3, 2015.

5 **C. Rand Paul for President, Inc.’s Activities**

6 As noted previously, Rand Paul for President, Inc. filed its Statement of Organization on  
7 April 7, 2015, the same day Paul announced his candidacy.<sup>52</sup> The day after his announcement,  
8 Paul had a campaign website fully functional, including a merchandise store with 23 clothing  
9 items available for purchase, in addition to yard signs, “car décor,” and other accessories.<sup>53</sup>

10 The Committee’s first disclosure report was its July Quarterly Report.<sup>54</sup> That report  
11 disclosed that the Committee began receiving contributions for the 2016 presidential primary  
12 election on April 7, 2015.<sup>55</sup> It also stated that the Committee’s first disbursement occurred on  
13 April 2, 2015, only five days before Paul publicly announced his candidacy.<sup>56</sup> The Committee  
14 reported no reimbursements to RAND PAC.<sup>57</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *See* Section II.A. at 2.

<sup>53</sup> *Internet Archive, WAYBACK MACHINE*, <https://archive.org/web/web.php> (searching for “randpaul.com” and “store.randpaul.com” reveals snapshots of what Paul’s campaign website and merchandise looked like on various dates).

<sup>54</sup> *See See* Committee, 2015 July Quarterly Report (July 15, 2015).

<sup>55</sup> Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016). While the report itemizes contributions dating back to July 4, 2014, those contributions were transferred from Paul’s other authorized committees: Rand Paul for US Senate 2016 and Rand Paul Victory Committee. *See id.* at Line 18 & Schedule A-P at pp. 2498-2867. The transfers occurred on and after April 2, 2015. Rand Paul for US Senate 2016, 2015 July Quarterly Report (July 15, 2015); Rand Paul Victory Committee, 2015 July Quarterly Report (July 15, 2015).

<sup>56</sup> Committee, Amended 2015 July Quarterly Report, Schedule B-P.

<sup>57</sup> *See id.*

1           Several top campaign staffers held similar paid positions with RAND PAC and the  
2 campaign, including Doug Stafford, an advisor to the campaign and the executive director of  
3 RAND PAC, and Sergio Gor, RAND PAC's spokesman and the campaign's communications  
4 director.<sup>58</sup>

5           After Paul suspended his campaign on February 3, 2016,<sup>59</sup> the Committee's disclosure  
6 reports show that it refunded contributions Paul received for the general election from February  
7 2016 through January 2017.<sup>60</sup>

### 8           **III. LEGAL ANALYSIS**

#### 9                   **A. There is Reason to Believe that Paul and the Committee Violated the** 10                   **Testing-the-Waters Regulations**

11           An individual becomes a candidate under the Act if: (a) such individual receives  
12 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her  
13 consent to another person to receive contributions or make expenditures on behalf of such  
14 individual and if such person has received such contributions or has made such expenditures in  
15 excess of \$5,000.<sup>61</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to  
16 designate a principal campaign committee by filing a Statement of Candidacy with the  
17 Commission.<sup>62</sup> The principal campaign committee must file a Statement of Organization within  
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<sup>58</sup> Katie Glueck, *The Power Players Behind Rand Paul's Campaign*, POLITICO, Apr. 7, 2015, <http://www.politico.com/story/2015/04/rand-paul-2016-campaign-team-116715>; RAND PAC, Report; Committee, Reports.

<sup>59</sup> Compl. at 4 (citing Shane Goldmacher, Alex Isenstadt & Daniel Strauss, *Rand Paul Drops Out of White House Race*, POLITICO, Feb. 3, 2016, <http://www.politico.com/story/2016/02/rand-paul-dropping-out-of-white-house-race-218675>).

<sup>60</sup> See Committee, Amended 2016 March Monthly Report (Mar. 31, 2016); Committee, 2017 February Monthly Report (Feb. 20, 2017).

<sup>61</sup> 52 U.S.C. § 30101(2).

<sup>62</sup> *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

1 ten days of its designation,<sup>63</sup> and must file disclosure reports with the Commission in accordance  
2 with 52 U.S.C. § 30104(a) and (b).<sup>64</sup>

3 The Commission has established limited testing-the-waters exemptions that permit an  
4 individual to test the feasibility of a campaign for federal office without becoming a candidate  
5 under the Act.<sup>65</sup> These exemptions exclude from the definition of “contribution” and  
6 “expenditure” those funds received and payments made solely to determine whether an  
7 individual should become a candidate.<sup>66</sup> These regulations seek to draw a distinction between  
8 activities directed to an evaluation of the feasibility of one’s candidacy and conduct signifying  
9 that a decision to become a candidate has been made.<sup>67</sup> Testing-the-waters activities include, but  
10 are not limited to, payments for polling, telephone calls, and travel, and only funds permissible  
11 under the Act may be used for such activities.<sup>68</sup>

12 An individual who is testing the waters need not register or file disclosure reports with  
13 the Commission unless and until the individual subsequently decides to run for federal office.<sup>69</sup>  
14 However, an individual who tests the waters must keep financial records, and if he or she  
15 becomes a candidate, all funds received, or payments made in connection with testing the waters,

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<sup>63</sup> See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>64</sup> See, e.g., Factual & Legal Analysis at 6, MUR 6735 (Sestak); Factual & Legal Analysis at 5, MUR 6449 (Bruning); Factual & Legal Analysis at 2, MUR 5363 (Sharpton).

<sup>65</sup> See 11 C.F.R. §§ 100.72, 100.131; Factual & Legal Analysis at 7, MUR 6775 (Clinton); Factual & Legal Analysis at 8, MUR 6776 (Innis); Factual & Legal Analysis at 6, MUR 6735.

<sup>66</sup> See 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>67</sup> See Advisory Op. 1981-32 (Askew) at 4 (“AO 1981-32”).

<sup>68</sup> *Id.* at 3.

<sup>69</sup> See *id.*; see also Advisory Op. 2015-09 (Senate Majority PAC) at 5 (“AO 2015-09”).

1 become contributions and expenditures under the Act and must be reported as such in the first  
2 report filed by the candidate's principal campaign committee.<sup>70</sup>

3 Prior to declaring his candidacy in April 2015, Paul did not establish a testing-the-waters  
4 account, nor did he disclose any testing-the-waters expenses on his Committee's first report.<sup>71</sup>  
5 While the Response stops short of stating that Paul did not test the waters, it contends that "the  
6 complaint fails to cite any statement by Senator Paul or his agents declaring that he was  
7 exploring or pursuing the Republican nomination prior to his presidential campaign  
8 announcement."<sup>72</sup> The available information, however, indicates that Paul spent funds to test the  
9 waters prior to declaring his candidacy in April 2015, but failed to report the applicable  
10 contributions and expenditures.

11 *First*, contrary to the Response's assertion that Paul made no statements that he was  
12 exploring the Republican nomination, Paul made a number of public statements acknowledging  
13 that he was considering a presidential bid and was taking steps to assess his chances of success.  
14 As early as 2013, Paul began giving interviews in which he stated that he was considering  
15 running for President, had a timeline for making a decision, was having family conversations on  
16 the subject, and would only run if it looked like he could win.<sup>73</sup> Then, after Senator Ted Cruz  
17 announced his candidacy for president on March 23, 2015, Paul appeared in a string of Fox  
18 News appearances on March 23 and 24, to describe his own efforts in preparing to run for the  
19 presidency.<sup>74</sup> He indicated that he planned to make his own announcement on April 7, 2015,

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<sup>70</sup> 11 C.F.R. § 101.3.

<sup>71</sup> *See* Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016).

<sup>72</sup> Resp. at 2.

<sup>73</sup> *See* Section II.A.

<sup>74</sup> *Id.*

1 stating “we’re pretty close to a decision, and we’ll have some kind of announcement April 7.”<sup>75</sup>  
2 When asked whether Cruz had an edge in fundraising over him because Paul had yet to declare,  
3 Paul responded that “[i]t’s a long battle, and you know we’ve spent the last two years actually  
4 traveling the country taking the message out.”<sup>76</sup> Paul also referenced various polls indicating  
5 that he was the best potential candidate to take on Hillary Clinton and win over independent  
6 voters.<sup>77</sup> He also announced the date he planned to declare his candidacy.<sup>78</sup> Thus, the Response  
7 inaccurately asserts that there were no statements in which Paul expressed that he was exploring  
8 the Republican nomination, and, in so doing, fails to rebut the statements identified by the  
9 Complaint or their significance.<sup>79</sup>

10 *Second*, Paul’s extensive travel to key early primary states prior to his announcement that  
11 he was running for President provides further support for the allegation that he was testing the  
12 waters prior to April 2015. Paul travelled to South Carolina, New Hampshire, and Iowa on  
13 multiple occasions between June 2013 and March 2015, where he held “listening sessions,”  
14 rallies, and private meetings.<sup>80</sup> On the Hannity Show in 2015, Paul acknowledged that the  
15 purpose of his extensive travel was to “take [his message] to a lot of audiences that really haven’t

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<sup>75</sup> Megyn Kelly Transcript at 2.

<sup>76</sup> *Id.*

<sup>77</sup> *Supra*, note 20; *see* Section II.A.

<sup>78</sup> *See* Section II.A.

<sup>79</sup> *See* Compl. at 2; Resp. at 2; *see also* Advisory Op. 1985-40 (Republican Majority Fund) at 6-7 (“AO 1985-40”) (stating that “remarks . . . [that] indicate [a person’s] potential interest in, and his ongoing consideration of whether to seek . . . the presidential nomination” are testing-the-waters events).

<sup>80</sup> *See* Section II.A.



1 listened to Republicans before” and “pick up [the] independent vote,” because “that’s how you  
2 win elections.”<sup>81</sup>

3 In advisory opinions, the Commission has stated that “travel throughout the country for  
4 speaking to political and non-political groups on a variety of public issues and meeting with  
5 opinion makers and others interested in public affairs for the purpose of determining whether  
6 potential political support exists for a national campaign” fits within testing-the-waters  
7 activities,<sup>82</sup> and that expenses for such activities should be allocated to the individual’s potential  
8 candidacy.<sup>83</sup> Additionally, in MUR 5908 (Duncan Hunter), the Commission found reason to  
9 believe that a candidate’s spending on travel to early primary states “to publicize his Presidential  
10 campaign, and/or gauge support for his campaign” before declaring his candidacy should have  
11 been reported as testing-the-waters or campaign expenses.<sup>84</sup> As the Response does not deny that  
12 Paul tested the waters, and Paul did not file his own Response, his travel throughout the country  
13 remains strong evidence that he was taking steps to determine whether he should run for  
14 President.<sup>85</sup>

15 *Third*, the Response does not rebut the allegation that Paul was actively involved in  
16 efforts to alter Kentucky’s ballot access laws and the Kentucky Republican Party’s presidential  
17 nominating procedures in a manner that would allow him to run for President while holding onto

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<sup>81</sup> *See id.*

<sup>82</sup> AO 1981-32 at 2, 4; *see also id.* at 5 (stating that events “oriented to ascertaining whether there is an initial base of support adequate to launch a campaign effort” are testing-the-waters activities).

<sup>83</sup> *See* AO 1985-40 at 9.

<sup>84</sup> Factual & Legal Analysis at 4-7, MUR 5908 (Hunter). The Commission took no further action in this matter where the investigation revealed that the leadership committee’s excessive contributions to the candidate were likely *de minimis*. *See* Statement of Reasons, Comm’rs Petersen, Hunter, McGahn, Walther & Weintraub at 2-3, *id.*

<sup>85</sup> *See* Resp. at 2.

1 his Senate seat.<sup>86</sup> As the regulations classify taking action to qualify for the ballot under state  
2 law as conduct indicative of a decision to run for office, a potential candidate's efforts to change  
3 the laws and procedures controlling ballot access so that he can be in a better position to run at a  
4 later date at least suggests that the person is considering becoming a candidate.<sup>87</sup>

5 *Fourth*, it appears that Paul hired campaign staff in anticipation of an upcoming  
6 candidacy. The Commission has explained that an individual tests the waters by employing  
7 "political consultants for the purpose of assisting with advice on the potential mechanics of  
8 constructing a national campaign organization" and assessing potential support from the  
9 electorate.<sup>88</sup> In January 2015, Paul announced that he had hired Chip Englander to work at  
10 RAND PAC, but Englander was reportedly hired with the promise that he would manage the  
11 presidential campaign that was officially launched three months later. Similarly, Rand  
12 reportedly hired a number of other individuals at RAND PAC who were quickly transitioned into  
13 the campaign within months of their hiring, including Chris La Civita (as director of Paul's  
14 South Carolina campaign), Michael Biundo (as director of Paul's South Carolina campaign),  
15 Jonathan Van Norman (as political director in Iowa), and Vincent Harris (as chief digital  
16 strategist, and heads of operations in certain key states).<sup>89</sup> This information indicates that Paul  
17 was, at the very least, conducting activities to determine whether to become a candidate.

18 Therefore, as early as 2013, the record indicates that Paul was testing-the-waters by  
19 discussing a potential candidacy and testing his policy positions, traveling the country to attend

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<sup>86</sup> *See id.*; Section II.A.

<sup>87</sup> *See* 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>88</sup> AO 1981-32 at 2-5.

<sup>89</sup> *See* Section II.A.

1 events and meet supporters, attempting to change Kentucky’s ballot access laws, and hiring  
2 campaign staff. Because Paul never established a testing-the-waters account, and did not report  
3 any testing-the-waters activities, the Commission finds reason to believe that Paul violated 11  
4 C.F.R. §§ 100.72 and 100.131 and that the Committee violated 52 U.S.C. § 30104(b) and 11  
5 C.F.R. §§ 100.72 and 100.131.

6 **B. There is Reason to Believe RAND PAC Made, and the Committee**  
7 **Accepted, Excessive, Unreported In-Kind Contributions**  
8

9 Commission regulations provide that all funds raised and spent for testing-the-waters  
10 activities are subject to the Act’s limitations and prohibitions.<sup>90</sup> Multicandidate committees,  
11 including leadership PACs,<sup>91</sup> are limited to contributing \$5,000 per election to candidates or  
12 their authorized committees.<sup>92</sup> The Act prohibits all committees from knowingly accepting  
13 excessive contributions.<sup>93</sup> Further, if Paul was engaging in activities on behalf of RAND PAC  
14 but also undertook activities relating to his own personal candidacy, he should have allocated  
15 any expenses between RAND PAC and his potential candidacy pursuant to 11 C.F.R.

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<sup>90</sup> See 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>91</sup> The Commission’s regulations define “Leadership PAC” as, *inter alia*, “a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual.” *Id.* § 100.5(e)(6). When promulgating this rule in 2003, the Commission observed that leadership PACs are generally “formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder’s travel when campaigning for other Federal candidates,” or donated to party committees. Leadership PACs, 69 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003) (internal quotation marks omitted) (explanation and justification) (“Leadership PACs E&J”).

<sup>92</sup> 52 U.S.C. § 30116(a)(2)(A).

<sup>93</sup> *Id.* § 30116(f).

1 § 106.1(a).<sup>94</sup> Thus, after the appropriate allocations, if RAND PAC spent more than \$5,000 on  
2 Paul’s testing-the-waters activities, once Paul became a candidate, RAND PAC would have  
3 made excessive in-kind contributions to Paul, and the Committee would have accepted those  
4 excessive contributions.<sup>95</sup>

5 While the Commission has sought to “ensure that leadership PACs are not used  
6 improperly to support the ‘associated’ candidate’s [own] campaign,”<sup>96</sup> it has recognized that  
7 mere association is insufficient to form a conclusion that a leadership PAC contributed to the  
8 sponsoring candidate’s testing-the-waters activities.<sup>97</sup> Rather, there must be a “nexus” between  
9 the leadership PAC and the potential candidate’s federal campaign activity.<sup>98</sup>

10 In this case, the record supports a reasonable inference that such a nexus exists. As  
11 discussed above, Paul has publicly acknowledged that he was exploring a potential candidacy  
12 since 2013 and engaged in numerous activities to gauge his support in the electorate, including  
13 extensively traveling throughout the country to meet voters in early primary states.<sup>99</sup> However,  
14 while Paul’s authorized committee reported no spending for such testing-the-waters activities,

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<sup>94</sup> AO 1985-40 at 8-9 (stating that a leadership PAC is required to allocate travel costs when the potential candidate holds private meetings for testing-the-waters activities in conjunction with appearances on behalf of federal candidates).

<sup>95</sup> Leadership PACs E&J, 69 Fed. Reg. at 67,017 (“To the extent that leadership PACs are used to pay for costs that could and should otherwise be paid for by a candidate’s authorized committee, such payments are in-kind contributions, subject to the Act’s contribution limits and reporting requirements.”).

<sup>96</sup> *Id.* at 67,014.

<sup>97</sup> First Gen. Counsel’s Rpt. at 29, MUR 5260 (Talent); Certification, *id.* (Jan. 6, 2003).

<sup>98</sup> *See* First Gen. Counsel’s Rpt. at 29, *id.*; Certification, *id.* (Jan. 6, 2003).

<sup>99</sup> *See* Section II.A.

1 RAND PAC reported substantial disbursements for travel during 2013 and 2014, totaling  
2 \$500,924.90, and regularly promoted Paul’s trips on its website.<sup>100</sup>

3 In particular, the available information indicates that RAND PAC sponsored Paul’s  
4 appearances at CPAC and used its website and Facebook page to publicize his speeches and his  
5 inclusion in the CPAC straw poll.<sup>101</sup> Beyond CPAC, RAND PAC played a key role in  
6 promoting Paul’s official candidacy announcement. On March 26, 2015, RAND PAC posted a  
7 media advisory to its website stating that Paul was going to hold a “Stand with Rand” rally on  
8 April 7, 2015, which would kick off a four-day tour with stops in New Hampshire, South  
9 Carolina, Iowa, and Nevada.<sup>102</sup> On April 6, 2015, it posted a video again publicizing the April 7  
10 event and discussing Paul’s accomplishments and ability to “fix Washington.”<sup>103</sup>

11 These changes in RAND PAC’s spending patterns suggest that RAND PAC functioned,  
12 at least in part, to subsidize Paul’s efforts to assess whether his candidacy and ideas would  
13 resonate with voters.<sup>104</sup> As discussed above, RAND PAC disbursed only \$130,045 to candidates  
14 and party committees, or on financing independent expenditures, during the 2013 to 2015 time

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<sup>100</sup> See RAND PAC Website, *supra* note 28; see also RAND PAC, 2013-2014 Reports (summing the total of 856 disbursements for “travel,” “travel reimbursement,” “transportation service,” “lodging,” and “mileage reimbursement”).

<sup>101</sup> See RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (disclosing a \$4,000 “registration fee” to American Conservative Union, the organization that sponsors CPAC); *Sen. Rand Paul Speaks at Conservative Political Action Conference 2015*, RAND PAC, Feb. 27, 2015 <http://randpac.com/sen-rand-paul-speaks-conservative-political-action-conference-2015/> (publishing the transcript of Paul’s CPAC 2015 speech); RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014) (posting about RAND PAC’s booth at CPAC 2014, which featured a life-size cutout of Paul, and providing a link to his speech).

<sup>102</sup> Media Advisory, *National Stand with Rand Tour*, RAND PAC, Mar. 26, 2015, <http://randpac.com/national-stand-with-rand-tour/>.

<sup>103</sup> Media Advisory, *WATCH: Rand Paul, A Different Kind of Republican*, RAND PAC, Apr. 6, 2015, <http://randpac.com/watch-rand-paul-a-different-kind-of-republican/>.

<sup>104</sup> See AO 1985-40 at 8-9.

1 period, amounting to just \$457,920 out of over \$4 million in disbursements.<sup>105</sup> In 2012, Rand  
2 PAC spent almost 50% of its disbursements on those activities.<sup>106</sup> RAND PAC's fundraising  
3 and spending also peaked during the 2013 to 2015 timeframe and then dropped significantly  
4 once Paul declared his candidacy.<sup>107</sup>

5 Finally, top campaign staffers held equivalent paid positions with RAND PAC and the  
6 campaign, including Stafford, who advised the campaign and was executive director of RAND  
7 PAC, and Gor, RAND PAC's spokesman and the campaign's communications director.<sup>108</sup>  
8 Vincent Harris, who was not paid for his services to RAND PAC but was for his role in the  
9 campaign, was also the chief digital strategist for the both the leadership PAC and the  
10 Committee.<sup>109</sup> These employees' overlapping titles, and the proximity of when some actors  
11 came onto RAND PAC's payroll only to move over to the campaign quickly after, suggests that  
12 they were providing services to Rand's testing-the-waters efforts instead of, or in addition to,  
13 RAND PAC.

14 The Response denies that RAND PAC was defraying the costs of Paul's testing-the-  
15 waters efforts and asserts that the Complaint's arguments are speculative.<sup>110</sup> But the Response  
16 provides little information about how the PAC spent its money on advancing its mission, given  
17 that (1) it spent only about 10 percent of its budget on contributions to other candidates, and

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<sup>105</sup> See RAND PAC, 2013-2015 Reports.

<sup>106</sup> See *id.*

<sup>107</sup> See *id.*

<sup>108</sup> Glueck, *supra* note 58.

<sup>109</sup> See Section II.A; RAND PAC, Reports; Committee, Amended 2015 July Quarterly Report.

<sup>110</sup> Resp. at 2.

1 (2) the information above indicates that it spent funds to help Paul travel throughout the country  
2 and promote his own upcoming candidacy.<sup>111</sup>

3 Thus, the available information indicates that Paul used his RAND PAC staff and  
4 itinerary of events to explore a potential candidacy, and that the costs to RAND PAC for  
5 sponsoring Paul's activities over two or more years far exceeded the \$5,000 limit. Under these  
6 circumstances, the Commission finds reason to believe that RAND PAC violated 52 U.S.C.  
7 §§ 30104(b) and 30116(f) by making excessive, unreported in-kind contributions to the  
8 Committee, and Paul and the Committee violated the same provision by accepting and failing to  
9 report the excessive contributions.

10 **C. There is Reason to Believe RAND PAC Made Excessive In-Kind**  
11 **Contributions to Paul in Violation of 11 C.F.R. § 110.2(l)**  
12

13 In addition to alleging that Paul failed to comply with the rules governing testing-the-  
14 waters activities, the Complaint alleges that RAND PAC made excessive in-kind contributions to  
15 Paul under 11 C.F.R. § 110.2(l),<sup>112</sup> which governs certain “[p]re-candidacy expenditures by  
16 multicandidate political committees deemed in-kind contributions.”<sup>113</sup> Under this regulation, a  
17 payment by a multicandidate political committee is an in-kind contribution to, and an  
18 expenditure by, a presidential candidate, although made before he or she becomes a candidate, if  
19 three conditions are met: (1) the expenditure is made on or after January 1 of the year following  
20 the last presidential election year; (2) with respect to the goods or services involved, the  
21 candidate accepted or received them, requested or suggested their provision, or was materially

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<sup>111</sup> See RAND PAC, 2013-2015 Reports (comparing total receipts to relevant expenditures).

<sup>112</sup> Compl. at 8-10.

<sup>113</sup> 11 C.F.R. § 110.2(l).

1 involved or involved in substantial discussion about providing them; and (3) the goods or  
2 services are (a) polling expenses, (b) compensation paid to employees, consultants, or vendors  
3 for “services rendered in connection with establishing and staffing offices in States where  
4 Presidential primaries . . . are to be held, other than offices in the candidate’s home state” or  
5 Washington, D.C., or (c) administrative expenses, including rent, utilities, office supplies and  
6 equipment, in connection with establishing and staffing the offices described in subsection (b).<sup>114</sup>  
7 Travel is not a qualified expenditure under Section 110.2(l).

8 Here, the evidence suggests that RAND PAC paid for expenses on behalf of Paul that  
9 qualify as non-travel pre-candidacy expenditures under this regulation. RAND PAC announced  
10 on March 12, 2015, that Paul was planning to open a “tech office” in Austin, Texas, and Paul  
11 subsequently hired Kania to work as his Senior Field and Technology Strategist in that office.<sup>115</sup>  
12 Accordingly, RAND PAC’s payments to Kania appear to qualify as Section 110.2(l)  
13 compensation to an employee for staffing a campaign office, as Paul was involved in hiring her  
14 and was therefore materially involved in securing her services.<sup>116</sup>

15 It is also reasonable to conclude that disbursements to other employees were related to  
16 establishing and staffing offices in battleground states. RAND PAC’s reports disclose payments  
17 to Jonathan Van Norman, the Committee’s political director for Iowa, for travel and consulting  
18 in Iowa;<sup>117</sup> payments for equipment and office supplies in Florida, Virginia, and Minnesota; and

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<sup>114</sup> *Id.* § 110.2(l)(1)(i)-(iii). If a candidate, through his or her authorized committee, reimburses the multicandidate committee within 30 days of becoming a candidate, a payment by the multicandidate committee will not constitute an in-kind contribution. *Id.* § 110.2(l)(2).

<sup>115</sup> *See* Section II.A.

<sup>116</sup> *See* 11 C.F.R. § 110.2(l).

<sup>117</sup> *See, e.g.*, RAND PAC, Second Amended 2015 Mid-Year Report.



1 for payroll expenses in Ohio.<sup>118</sup> Given that Paul established RAND PAC and it was his  
2 leadership PAC, there is a substantial probability that he was materially involved in RAND  
3 PAC's provision of these goods and services to his potential campaign.<sup>119</sup>

4 Lastly, RAND PAC paid for "survey research" in 2013 and 2014, including making a  
5 \$19,571 disbursement to a vendor called "the Polling Company."<sup>120</sup> While the purpose of these  
6 surveys and polling is unclear from RAND PAC's filings, Paul referenced having polling data  
7 about the presidential election when he appeared on the Kelly File in March 2015.<sup>121</sup> Therefore,  
8 it is possible that these RAND PAC expenditures were for the benefit of Paul's testing-the-  
9 waters efforts and that Paul received them in his capacity as a potential candidate. In that case,  
10 they would qualify as Section 110.2(*l*) polling expenses.<sup>122</sup>

11 Accordingly, based on the available information and reasonable inferences from the  
12 record, the Commission finds reason to believe that RAND PAC made, and the Committee and  
13 Paul accepted, excessive in-kind contributions resulting from RAND PAC's payment of certain  
14 pre-candidacy expenses under 11 C.F.R. § 1102.(*l*), in violation of 52 U.S.C. § 30116(f).

15 **D. There is Reason to Believe that the Committee Failed to Make Timely**  
16 **Refunds of Contributions Designated for the General Election**

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<sup>118</sup> See Compl., Exh. 1.

<sup>119</sup> See 11 C.F.R. § 110.2(*l*).

<sup>120</sup> RAND PAC, Amended 2013 Year-End Report (Oct. 15, 2014); RAND PAC, Amended 2014 April Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 July Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 October Quarterly Report (Dec. 4, 2014); RAND PAC, Amended 2014 Post-General Report (Jan. 31, 2015).

<sup>121</sup> See Section II.A.

<sup>122</sup> See 11 C.F.R. § 110.2(*l*).

1           During the 2016 election cycle, an authorized committee was limited to accepting a total  
2 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.<sup>123</sup> A  
3 primary election and a general election are each considered a separate “election,” and the  
4 individual contribution limits are applied separately with respect to each election.<sup>124</sup>

5           The Commission’s regulations permit a candidate or his authorized committee to receive  
6 contributions for the general election prior to the primary election.<sup>125</sup> If, however, the candidate  
7 does not become a candidate in the general election, the committee must: (1) refund the  
8 contributions designated for the general election; (2) redesignate such contributions in  
9 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
10 accordance with 11 C.F.R. § 110.1(k)(3).<sup>126</sup> The committee must do so within 60 days of the  
11 date that the committee has actual notice of the need to redesignate, reattribute, or refund the  
12 contributions, such as the date the candidate loses the primary or withdraws from the  
13 campaign.<sup>127</sup>

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<sup>123</sup> 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 CFR §§ 110.1(a)-(b), 110.2(b)(1).

<sup>124</sup> 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

<sup>125</sup> See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

<sup>126</sup> See *id.* § 102.9(e)(3); see also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“AO 1992-15”) (“[T]he Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

<sup>127</sup> Advisory Op. 2008-04 (Dodd); AO 1992-15. The Commissions’ regulations include procedures for reattributing or redesignating a contribution. See generally 11 C.F.R. § 110.1(b), (k). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. *Id.* §§ 110.1(b)(5), 110.1(k)(3).

1 Paul announced that he was “suspending” his campaign on February 3, 2016,<sup>128</sup> but the  
2 Committee continued reporting reimbursements to those who contributed to Paul for the general  
3 election until January 2017.<sup>129</sup> The Complaint alleges that the Committee’s refunds were  
4 untimely, and RAD also referred the Committee to the Office of General Counsel for failing to  
5 refund \$257,658.65 of contributions within the applicable 60-day window.<sup>130</sup>

6 In response to the Commission’s RAD Referral asserting that the Committee’s refunds  
7 were untimely, the Committee argues that Paul remained a candidate after he “suspended” his  
8 campaign, and that suspending a campaign is different than withdrawing from a campaign.<sup>131</sup>  
9 The Committee further argues that Paul remained a candidate until Donald Trump became the  
10 Republican Party’s presidential nominee on July 19, 2016, so refunds were not due until  
11 September 19, 2016.<sup>132</sup>

12 The Committee’s arguments are unsupported and contrary to the Commission’s own  
13 guidance. First, in Advisory Opinion 2012-06 (RickPerry.org) (“AO 2012-06”), the Commission  
14 determined that the 60-day period to redesignate or refund general election contributions expires  
15 after the presidential candidate “suspended” his presidential campaign.<sup>133</sup> Thus, the Commission  
16 has not previously drawn a distinction between withdrawing from or suspending a campaign  
17 given that both terms signify that the candidate has ceased campaigning. Further, despite its

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<sup>128</sup> See RR 17L-49 Resp. at 1-2 (Apr. 18, 2018) (“RAD Referral Resp.”); Goldmacher, Isenstadt & Strauss, *supra* note 59.

<sup>129</sup> See 11 C.F.R. § 102.9(e)(3); Committee, 2017 February Monthly Report (Feb. 20, 2017).

<sup>130</sup> Compl. at 11; Referral at 1, RR 17L-49 (Dec. 20, 2017) (“RAD Referral”).

<sup>131</sup> RAD Referral Resp. at 2.

<sup>132</sup> See *id.* at 1-2.

<sup>133</sup> AO 2012-06 at 4. The Commission, however, could not agree on whether the candidate could obtain redesignations of its general election contributions to finance its activities as a non-connected committee or to fund the candidate’s state campaign committee. *Id.*

1 contention that Paul had not fully withdrawn his candidacy, the Committee’s own actions cast  
2 doubt to its argument. Beginning in March 2016, the month after Paul had suspended his  
3 presidential campaign, the Committee began the process of redesignating its 2016 general  
4 election contributions to Rand Paul for U.S. Senate 2016 (“Senate Committee”) and Rand Paul  
5 Victory Kentucky (“JFC”), which was a joint fundraising committee, comprised of the Senate  
6 Committee.<sup>134</sup>

7           Finally, even assuming that July 19, 2016 was the starting date for the 60-day window,  
8 the Committee still failed to timely remedy all of the general election contributions, having failed  
9 to refund or redesignate such contributions totaling \$165,749.09 until after September 17, 2016.  
10 Therefore, the Commission opens matter under review as to Rad Referral 17L-49, merges it with  
11 MUR 7191, and finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) and  
12 11 C.F.R. § 102.9(e)(3).

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<sup>134</sup> See Committee, 2016 April Monthly Report (disclosing \$23,025 in transfers to Senate Committee and \$186,951.46 in transfers to the JFC); Referral at 2.

MSP 2.4.19

MSP 2.6.19

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

1  
2  
3 RESPONDENTS: Rand Paul MUR 7191  
4 Freedom for All Americans (f/k/a Rand Paul for President,  
5 Inc.) and Paul Kilgore in his official capacity as treasurer  
6 Reinventing a New Direction Political Action Committee and  
7 Kevin Broghamer in his official capacity as treasurer  
8

**I. INTRODUCTION**

9  
10  
11 In April 2015, Rand Paul announced his candidacy for President of the United States and  
12 filed a Statement of Candidacy designating Rand Paul for President, Inc. and Paul Kilgore in his  
13 official capacity as treasurer (the “Committee”) as his principal campaign committee.<sup>1</sup> The  
14 Committee did not disclose any testing-the-waters expenditures on its first report to the Federal  
15 Election Commission (the “Commission”).

16 The Complaint alleges that Paul violated the Federal Election Campaign Act of 1971, as  
17 amended (the “Act”), by using his leadership political action committee (“leadership PAC”),  
18 Reinventing a New Direction Political Action Committee and Kevin Broghamer in his official  
19 capacity as treasurer (“RAND PAC”), to finance his testing-the-waters activities beginning in  
20 2013.<sup>2</sup> The Complaint also alleges that Paul became a candidate prior to April 2015, and he and  
21 the Committee therefore failed to timely register and report with the Commission.<sup>3</sup>

22 Additionally, the Complaint and a Referral from the Commission’s Reports Analysis  
23 Division (“RAD”) separately allege that, after Paul withdrew from the presidential primary, the

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<sup>1</sup> Rand Paul, Statement of Candidacy, President (Apr. 8, 2015); Statement of Organization (Apr. 7, 2015). In May 2017, the Committee converted to a multicandidate political committee and changed its name to Freedom for All Americans. *See* Freedom for All Americans, Amended Statement of Organization (May 16, 2017).

<sup>2</sup> MUR 7191 Compl. at 5-10 (Nov. 7, 2016) (“Compl.”).

<sup>3</sup> *Id.* at 5-6.

1 Committee failed to timely refund or redesignate the contributions it received for the general  
2 election.<sup>4</sup>

3 RAND PAC and the Committee submitted a joint Response denying that they violated  
4 the Act.<sup>5</sup> The Response asserts that there is no evidence that Paul was taking actions to explore a  
5 presidential run before he declared his candidacy, and that RAND PAC never contributed to his  
6 campaign or any alleged pre-candidacy efforts.<sup>6</sup> It asserts that all of RAND PAC's  
7 disbursements, from travel to research and staffing, were to advance RAND PAC's  
8 organizational mission of supporting "pro-liberty" candidates.<sup>7</sup>

## 9 **II. FACTUAL BACKGROUND**

10 On April 7, 2015, Kentucky Senator Rand Paul publicly declared his candidacy for  
11 President of the United States.<sup>8</sup> Paul filed a Statement of Candidacy on April 8, designating the  
12 Committee as his authorized campaign committee with Paul Kilgore as the Committee's  
13 treasurer.<sup>9</sup> The Committee filed its Statement of Organization on April 7.<sup>10</sup>

14

15

### 16 **A. Paul's Pre-Candidacy Activities**

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<sup>4</sup> Compl. at 4, 10-11.

<sup>5</sup> MUR 7191 Resp. (Jan. 13, 2017) ("Resp."). Paul did not file a Response in MUR 7191.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Compl. at 3 (citing Jeremy W. Peters & Alan Rappoport, *Rand Paul Announces Presidential Run*, N.Y. TIMES, Apr. 7, 2015, <https://www.nytimes.com/2015/04/08/us/politics/rand-paul-republican-presidential-nomination.html>).

<sup>9</sup> Rand Paul, Statement of Candidacy, President (Apr. 8, 2015).

<sup>10</sup> Committee, Statement of Organization (Apr. 7, 2015).

1           The Complaint asserts that, prior to declaring his presidential candidacy, Paul engaged in  
2 a number of activities that appear to be connected to a potential run. First, as identified in the  
3 Complaint, Paul made numerous statements indicating he was testing the waters for a  
4 presidential run. The Complaint first points to Paul’s Tea Party Response to President Barack  
5 Obama’s 2013 State of the Union Address.<sup>11</sup> Immediately following these February 13, 2013,  
6 remarks, Paul gave an interview in which he stated in response to a question about whether he  
7 was planning to run for President that he was “interested.”<sup>12</sup> Paul explained, “I’ve said I am  
8 interested. And we are thinking about it but probably would [sic] make a decision until 2014.”<sup>13</sup>

9           In addition, the Complaint alleges that during 2014 and 2015, Paul continued to publicly  
10 discuss his decision-making process during interviews. In January 2014, he stated that he was  
11 considering a run and that the chance he would enter the presidential race was “50-50.”<sup>14</sup> In  
12 January 2015, Paul said that he was seeing “if we think we’re in the mix . . . and can win. I don’t  
13 want to do it just to do it, we want to do it because we actually think we can win.”<sup>15</sup> He  
14 predicted that his decision would come in March or April and shared that he was still engaging in  
15 family discussions before making up his mind.<sup>16</sup>

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<sup>11</sup> Compl. at 2.

<sup>12</sup> *Id.* (quoting Interview, *Rand Paul: ‘Big Government’s Not a Friend to Those Who are Trying to Get Ahead,’* NPR POLITICS, Feb. 14, 2013, <http://www.npr.org/2013/02/14/172034468/rand-paul-big-governments-not-a-friend-to-those-who-are-trying-to-get-ahead>).

<sup>13</sup> *Id.*

<sup>14</sup> RAND PAC, FACEBOOK Post, “Sen. Paul Joins Potter Gray Elementary School 4<sup>th</sup> Grader Clay Wallace—January 26, 2014,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Jan. 28, 2014).

<sup>15</sup> Compl. at 3 (quoting Lawrence Smith, *Sen. Rand Paul Looking at Presidential Announcement in March or April*, WDRB.COM, Jan. 9, 2015, <http://www.wdrb.com/story/27803393/sen-rand-paul-looking-at-presidential-announcement-in-march-or-april>).

<sup>16</sup> *Id.*

1           As alleged in the Complaint, Paul appears to have undertaken specific activities to test  
2 the waters prior to his announcement. In 2014, Paul was a speaker at the Conservative Political  
3 Action Conference (“CPAC”), and RAND PAC engaged in a Facebook campaign to encourage  
4 attendees to vote for him in the CPAC presidential preference straw poll, using the catchphrase  
5 “Stand with Rand.”<sup>17</sup> In 2015, Paul again spoke at CPAC, where he discussed his policy  
6 positions and stated at the conclusion of his remarks that “it’s time for a new President,” asking  
7 the crowd: “Will you *stand with me*? Will you fight for freedom? Will you vote for freedom?”<sup>18</sup>

8           In addition to the statements and activities at CPAC described above, the Complaint  
9 alleges Paul traveled often to early primary states. In June 2013, he visited South Carolina to  
10 meet party activists and hold a “listening session,” explaining that his trip was meant to show  
11 that he and the Republican Party can appeal to a broad audience.<sup>19</sup> He then returned to the state  
12 at least twice in fall 2014.<sup>20</sup> In spring 2014, Paul visited New Hampshire to speak at a summit,  
13 hold a rally, and attend a private reception, and returned in October 2014, January 2015, and  
14 March 2015.<sup>21</sup> In addition, Paul went on a three-day tour of Iowa in August 2014 and returned  
15 in October 2014 and February 2015.<sup>22</sup>

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<sup>17</sup> See RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014); “Rand Paul Full Speech at CPAC 2014,” YOUTUBE, <https://www.youtube.com/watch?v=Y5DG2tKqPIM> (posted Mar. 7, 2014). Paul won the straw poll in 2013, 2014, and 2015. Compl. at 2 (citing Alexandra Jaffe, *Rand Paul Wins 2015 CPAC Straw Poll*, CNN, Feb. 28, 2015, <http://www.cnn.com/2015/02/28/politics/cpac-2015-straw-poll-results-rand-paul/>).

<sup>18</sup> *Sen. Rand Paul Speaks at Conservative Political Action Conference 2015*, RAND PAC, Feb. 27, 2015, <http://randpac.com/sen-rand-paul-speaks-conservative-political-action-conference-2015/> (emphasis added); Rand Paul CPAC 2015 Full Speech, YOUTUBE, <https://www.youtube.com/watch?v=AXJOcBfCH3s> (posted Feb. 27, 2015) (see minute 13:17).

<sup>19</sup> RAND PAC, FACEBOOK, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (“RAND PAC Facebook”).

<sup>20</sup> RAND PAC, FACEBOOK, *supra* note 26.

<sup>21</sup> *Id.*; RAND PAC, <http://randpac.com/> (last visited June 15, 2018) (“RAND PAC Website”).

<sup>22</sup> RAND PAC, FACEBOOK, *supra* note 26; RAND PAC Website, *supra* note 28.



1           The Complaint further claims that Paul’s actions to amend Kentucky’s ballot access rules  
2 were indicative of his intent to run for president and constituted testing-the-waters activities.  
3 Paul was up for reelection to the Senate in 2016, but Kentucky law prevents a candidate from  
4 appearing on the ballot for two different races.<sup>23</sup> Thus, he would have to give up his Senate seat  
5 in order to appear on the ballot as a candidate for President.<sup>24</sup> During the summer of 2014, the  
6 Kentucky State Legislature debated a bill that would have removed this prohibition on a  
7 candidate running simultaneously for President and Senate.<sup>25</sup> Contemporaneous reports  
8 maintained that “Rand Paul [was] extraordinarily involved” in the effort, and that he considered  
9 state legislators’ positions on the amendment as a factor in lending support and fundraising on  
10 their behalf.<sup>26</sup> While the Kentucky legislature ultimately declined to change its rules, the  
11 Kentucky Republican Party held a presidential caucus instead of a primary, which eliminated the  
12 issue of him appearing on the same ballot twice.<sup>27</sup>

13           Finally, the Complaint provides information indicating that, in the months immediately  
14 preceding his official announcement, Paul hired a number of individuals at RAND PAC, who  
15 then quickly transitioned into positions as paid campaign staff. For example, on January 13,  
16 2015, Paul announced the hiring of Chip Englander, and “people familiar with the hire” said that

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<sup>23</sup> Joseph Gerth, *Rand Paul May Forgo White House Ballot Measure*, COURIER-JOURNAL, Dec. 22, 2014, <http://www.courier-journal.com/story/news/politics/rand-paul/2014/12/22/rand-paul-may-forgo-white-house-ballot-measure-kentucky/20778599/>.

<sup>24</sup> *See id.*

<sup>25</sup> Compl. at 2 (citing *The Obscure Kentucky Contest that Could Alter Rand Paul’s 2016 Plans*, NAT’L J., Aug. 14, 2014, <https://www.nationaljournal.com/s/41882/obscure-kentucky-contests-that-could-alter-rand-pauls-2016-plans>).

<sup>26</sup> *Id.*

<sup>27</sup> Eugene Scott & Tal Kopan, *Rand Paul Win: Kentucky GOP Switch to Caucus*, CNN, Aug. 24, 2015, <http://www.cnn.com/2015/08/23/politics/rand-paul-kentucky-caucus/index.html>.

1 Englander “ha[d] been assured that he will manage what has become a campaign-in waiting.”<sup>28</sup>  
 2 Paul also hired advisor Chris LaCivita, who was reportedly “planning to direct Paul’s South  
 3 Carolina campaign,” and Michael Biundo, who was reportedly “set to run Paul’s New  
 4 Hampshire campaign.”<sup>29</sup>In November 2014, Paul hired Vincent Harris to be the Chief Digital  
 5 Strategist of RAND PAC.<sup>30</sup> In addition, Jonathan Van Norman, who became the Committee’s  
 6 political director for Iowa, was receiving payments from RAND PAC as of March 2015.<sup>31</sup>

### 7 **B. RAND PAC’s Activities**

8 After Paul’s initial election to the Senate in 2010, he established RAND PAC as his  
 9 leadership PAC, registering it as such with the Commission on March 9, 2011.<sup>32</sup> RAND PAC’s  
 10 stated mission is to “lead the battle for sound money, limited government, and fidelity to our  
 11 Constitution,” and to “support and elect Pro-Liberty, Pro-Constitution candidates in Kentucky  
 12 and across the country.”<sup>33</sup>

13 RAND PAC was active during the 2012, 2014, and 2016 election cycles. The chart  
 14 below summarizes its financial activities through the 2016 elections:<sup>34</sup>

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<sup>28</sup> Compl. at 3 (citing Robert Costa, *Rand Paul Announces Campaign Manager for Likely 2016 Campaign*, WASH. POST, Jan. 13, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/01/13/rand-paul-announces-campaign-manager-as-he-ramps-up-2016-campaign/>).

<sup>29</sup> *See id.* <sup>30</sup> RAND PAC, FACEBOOK Post, “RANDPAC Chief Digital Strategist Announcement,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Nov. 18, 2014).

<sup>30</sup> RAND PAC, FACEBOOK Post, “RANDPAC Chief Digital Strategist Announcement,” <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Nov. 18, 2014).

<sup>31</sup> *See* RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (itemizing travel reimbursements); Compl. at 4 (citing John Cheves, *Rand Paul’s PAC Paid Vendors Also Used by his Presidential Campaign*, LEXINGTON HERALD-LEADER, May 27, 2016, <http://www.kentucky.com/news/politics-government/article80324367.html>).

<sup>32</sup> RAND PAC, Statement of Organization (Mar. 9, 2011). On April 18, 2012, RAND PAC also registered as a multicandidate political committee. RAND PAC, Notification of Multicandidate Status (Apr. 18, 2012).

<sup>33</sup> RAND PAC Website, *supra* note 28.

<sup>34</sup> *See* RAND PAC, Committee Filings 2011-2016.

1

### RAND PAC Activities 2011-2016

Year	Receipts	Disbursements
2011	\$173,031.82	\$79,464.86
2012	\$1,688,586.70	\$1,356,655.55
2013	\$1,606,347.05	\$1,467,787.50
2014	\$2,135,791.07	\$2,539,408.96
2015	\$857,598.51	\$966,926.49
2016	\$241,900.76	\$269,001.35

2 As reflected above, RAND PAC raised and spent over \$1 million in 2012 and 2013 and its  
 3 activity peaked in 2014 when it raised and spent over \$2 million. Further, in the first half of  
 4 2015, RAND PAC raised \$723,468.96 and spent \$749,756.39.<sup>35</sup> However, after Paul declared  
 5 his candidacy for President in April 2015, the PAC's fundraising dropped to just \$134,129.55  
 6 during the period of July through December 2015 and \$241,900.76 for the entire year of 2016.<sup>36</sup>  
 7 RAND PAC's disbursements saw a drop after Paul declared his candidacy, spending only  
 8 \$217,170.10 in the latter six months of 2015 and \$269,001.35 in 2016.<sup>37</sup>

9 In the two years leading up to Paul's announcement, it appears that RAND PAC also  
 10 spent a small fraction of its funds on its stated purpose of supporting "pro-liberty" candidates. In  
 11 2013, the PAC disbursed \$130,045 to candidates and party committees, or on financing  
 12 independent expenditures, which constituted just 9% out of the \$1,467,787.50 it spent in total. In  
 13 2014, RAND PAC spent \$298,875, or 11%, on these activities out of \$2,539,408.96 in total  
 14 disbursements; and in 2015, just \$29,000, or 3%, of \$966,926.49 in total disbursements.

<sup>35</sup> RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016).

<sup>36</sup> See Rand PAC, Amended 2015 Year-End Report through 2016 Reports.

<sup>37</sup> See *id.*

1 Conversely, in 2012 RAND PAC spent \$670,500 on these activities, or 49%, of \$1,356,655.55 in  
2 total disbursements.<sup>38</sup>

3 On March 12, 2015, RAND PAC published a media advisory stating that Paul was  
4 planning to open a “tech office” in Austin, Texas on March 16.<sup>39</sup> The media advisory quoted  
5 RAND PAC personnel explaining that “Senator Rand Paul will run the most innovative, tech-  
6 forward operation of any elected official in the country” and that it will be a “crowd-sourced  
7 campaign.”<sup>40</sup> Paul hired Rachel Kania to work in the new office as his Senior Field and  
8 Technology Strategist, and Kania stated: “As the newest member of Team Rand, I look forward  
9 to leveraging the latest in campaign technology to activate our energized volunteer base. Team  
10 Rand will be the most technologically-savvy campaign in the field and his message will inspire  
11 and widen the GOP base unlike any other candidate.”<sup>41</sup> RAND PAC reported making \$5,898.90  
12 in “payroll disbursements” to Kania from March 2015 until April 3, 2015.

### 13 C. Rand Paul for President, Inc.’s Activities

14 As noted previously, Rand Paul for President, Inc. filed its Statement of Organization on  
15 April 7, 2015, the same day Paul announced his candidacy.<sup>42</sup> The day after his announcement,

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<sup>38</sup> These figures were calculated by comparing RAND PAC’s disbursements for “federal candidates/committees and other political committees” (line 23), independent expenditures (line 24), and “other disbursements (including non-federal donations)” (line 29) to RAND PAC’s overall spending. *See id.*

<sup>39</sup> Media Advisory, *Senator Rand Paul to Open Tech Office in Austin, Announces Hire of Senior Field and Tech Strategist*, RAND PAC, Mar. 12, 2015, <http://randpac.com/senator-rand-paul-to-open-tech-office-in-austin-announces-hire-of-senior-field-and-tech-strategist/>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *See* Section II.A. at 2.

1 Paul had a campaign website fully functional, including a merchandise store with 23 clothing  
2 items available for purchase, in addition to yard signs, “car décor,” and other accessories.<sup>43</sup>

3 The Committee’s first disclosure report was its July Quarterly Report.<sup>44</sup> That report  
4 disclosed that the Committee began receiving contributions for the 2016 presidential primary  
5 election on April 7, 2015.<sup>45</sup> It also stated that the Committee’s first disbursement occurred on  
6 April 2, 2015, only five days before Paul publicly announced his candidacy.<sup>46</sup> The Committee  
7 reported no reimbursements to RAND PAC.<sup>47</sup>

8 After Paul suspended his campaign on February 3, 2016,<sup>48</sup> the Committee’s disclosure  
9 reports show that it refunded contributions Paul received for the general election from February  
10 2016 through January 2017.<sup>49</sup>

### 11 III. LEGAL ANALYSIS

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<sup>43</sup> *Internet Archive*, WAYBACK MACHINE, <https://archive.org/web/web.php> (searching for “randpaul.com” and “store.randpaul.com” reveals snapshots of what Paul’s campaign website and merchandise looked like on various dates).

<sup>44</sup> *See* Committee, 2015 July Quarterly Report (July 15, 2015).

<sup>45</sup> Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016). While the report itemizes contributions dating back to July 4, 2014, those contributions were transferred from Paul’s other authorized committees: Rand Paul for US Senate 2016 and Rand Paul Victory Committee. *See id.* at Line 18 & Schedule A-P at pp. 2498-2867. The transfers occurred on and after April 2, 2015. Rand Paul for US Senate 2016, 2015 July Quarterly Report (July 15, 2015); Rand Paul Victory Committee, 2015 July Quarterly Report (July 15, 2015).

<sup>46</sup> Committee, Amended 2015 July Quarterly Report, Schedule B-P.

<sup>47</sup> *See id.*

<sup>48</sup> Compl. at 4 (citing Shane Goldmacher, Alex Isenstadt & Daniel Strauss, *Rand Paul Drops Out of White House Race*, POLITICO, Feb. 3, 2016, <http://www.politico.com/story/2016/02/rand-paul-dropping-out-of-white-house-race-218675>).

<sup>49</sup> *See* Committee, Amended 2016 March Monthly Report (Mar. 31, 2016); Committee, 2017 February Monthly Report (Feb. 20, 2017).

1                   **A.     There is Reason to Believe that Paul and the Committee Violated the**  
2                   **Testing-the-Waters Regulations**

3  
4           An individual becomes a candidate under the Act if: (a) such individual receives  
5 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her  
6 consent to another person to receive contributions or make expenditures on behalf of such  
7 individual and if such person has received such contributions or has made such expenditures in  
8 excess of \$5,000.<sup>50</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to  
9 designate a principal campaign committee by filing a Statement of Candidacy with the  
10 Commission.<sup>51</sup> The principal campaign committee must file a Statement of Organization within  
11 ten days of its designation,<sup>52</sup> and must file disclosure reports with the Commission in accordance  
12 with 52 U.S.C. § 30104(a) and (b).<sup>53</sup>

13           The Commission has established testing-the-waters exemptions that permit an individual  
14 to test the feasibility of a campaign for federal office without becoming a candidate under the  
15 Act.<sup>54</sup> These exemptions exclude from the definition of “contribution” and “expenditure” those  
16 funds received and payments made solely to determine whether an individual should become a  
17 candidate.<sup>55</sup> These regulations seek to draw a distinction between activities directed to an  
18 evaluation of the feasibility of one’s candidacy and conduct signifying that a decision to become

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<sup>50</sup> 52 U.S.C. § 30101(2).

<sup>51</sup> *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>52</sup> *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>53</sup> *See, e.g.,* Factual & Legal Analysis at 6, MUR 6735 (Sestak); Factual & Legal Analysis at 5, MUR 6449 (Bruning); Factual & Legal Analysis at 2, MUR 5363 (Sharpton).

<sup>54</sup> *See* 11 C.F.R. §§ 100.72, 100.131; Factual & Legal Analysis at 7, MUR 6775 (Clinton); Factual & Legal Analysis at 8, MUR 6776 (Innis); Factual & Legal Analysis at 6, MUR 6735.

<sup>55</sup> *See* 11 C.F.R. §§ 100.72(a), 100.131(a).

1 a candidate has been made.<sup>56</sup> Testing-the-waters activities include, but are not limited to,  
2 payments for polling, telephone calls, and travel, and only funds permissible under the Act may  
3 be used for such activities.<sup>57</sup>

4 An individual who is testing the waters need not register or file disclosure reports with  
5 the Commission unless and until the individual subsequently decides to run for federal office.<sup>58</sup>  
6 However, an individual who tests the waters must keep financial records, and if he or she  
7 becomes a candidate, all funds received, or payments made in connection with testing the waters,  
8 become contributions and expenditures under the Act and must be reported as such in the first  
9 report filed by the candidate's principal campaign committee.<sup>59</sup>

10 Prior to declaring his candidacy in April 2015, Paul did not establish a testing-the-waters  
11 account, nor does it appear that he disclosed any testing-the-waters expenses on his Committee's  
12 first report.<sup>60</sup> The available information, however, indicates that Paul may have spent funds to  
13 test the waters prior to declaring his candidacy in April 2015, but failed to report the applicable  
14 contributions and expenditures.

15 *First*, contrary to the Response's assertion that Paul made no statements that he was  
16 exploring the Republican nomination, Paul made a number of public statements acknowledging  
17 that he was considering a presidential bid and was taking steps to assess his chances of success.  
18 Paul began giving interviews in which he stated that he was considering running for President,  
19 had a timeline for making a decision, was having family conversations on the subject, and would

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<sup>56</sup> See Advisory Op. 1981-32 (Askew) at 4 ("AO 1981-32").

<sup>57</sup> *Id.* at 3.

<sup>58</sup> See *id.*; see also Advisory Op. 2015-09 (Senate Majority PAC) at 5 ("AO 2015-09").

<sup>59</sup> 11 C.F.R. § 101.3.

<sup>60</sup> See Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016).

1 only run if it looked like he could win.<sup>61</sup> Thus, the Response inaccurately asserts that there were  
2 no statements in which Paul expressed that he was exploring the Republican nomination, and, in  
3 so doing, fails to rebut the statements identified by the Complaint or their significance.<sup>62</sup>

4 Paul's extensive travel (including to key early primary states in proximity to his actual  
5 announcement) prior to his announcement that he was running for President supports the  
6 conclusion that there is reason to believe Paul incurred testing-the-waters expenses. Paul  
7 travelled to South Carolina, New Hampshire, and Iowa on multiple occasions between June 2013  
8 and March 2015

9 In advisory opinions, the Commission has stated that "travel throughout the country for  
10 speaking to political and non-political groups on a variety of public issues and meeting with  
11 opinion makers and others interested in public affairs for the purpose of determining whether  
12 potential political support exists for a national campaign" fits within testing-the-waters  
13 activities,<sup>63</sup> and that expenses for such activities should be allocated to the individual's potential  
14 candidacy.<sup>64</sup> Additionally, in MUR 5908 (Duncan Hunter), the Commission found reason to  
15 believe that a candidate's spending on travel to early primary states "to publicize his Presidential  
16 campaign, and/or gauge support for his campaign" before declaring his candidacy should have

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<sup>63</sup> AO 1981-32 at 2, 4; *see also id.* at 5 (stating that events "oriented to ascertaining whether there is an initial base of support adequate to launch a campaign effort" are testing-the-waters activities).

<sup>63</sup> AO 1981-32 at 2, 4; *see also id.* at 5 (stating that events "oriented to ascertaining whether there is an initial base of support adequate to launch a campaign effort" are testing-the-waters activities).

<sup>63</sup> AO 1981-32 at 2, 4; *see also id.* at 5 (stating that events "oriented to ascertaining whether there is an initial base of support adequate to launch a campaign effort" are testing-the-waters activities).

<sup>64</sup> *See* AO 1985-40 at 9.



1 been reported as testing-the-waters or campaign expenses.<sup>65</sup> His travel remains evidence that he  
2 was taking steps to determine whether he should run for President.<sup>66</sup>

3         It also appears that Paul may have hired staff in anticipation of an upcoming candidacy.  
4 The Commission has explained that an individual tests the waters by employing “political  
5 consultants for the purpose of assisting with advice on the potential mechanics of constructing a  
6 national campaign organization” and assessing potential support from the electorate.<sup>67</sup>  
7 Contemporaneous with Paul and RAND PAC’s other apparent testing-the-waters activities, Paul  
8 reportedly hired a number of individuals at RAND PAC who quickly transitioned into the  
9 campaign staff within months of their hiring, including Chris La Civita (as director of Paul’s  
10 South Carolina campaign), Michael Biundo (as director of Paul’s South Carolina campaign),  
11 Jonathan Van Norman (as political director in Iowa), and Vincent Harris (as chief digital  
12 strategist, and heads of operations in certain key states).<sup>68</sup> This information may also indicate  
13 that Paul was conducting activities to determine whether to become a candidate and that at least  
14 some portion of these salary expenses may have been allocated to Paul’s testing-the-waters  
15 activities.

16         Therefore, the record indicates that Paul likely incurred expenses to test-the-waters by  
17 discussing a potential candidacy and testing his policy positions, traveling to attend events and  
18 meet supporters, and hiring campaign staff. Because Paul never established a testing-the-waters

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<sup>65</sup> Factual & Legal Analysis at 4-7, MUR 5908 (Hunter). The Commission took no further action in this matter where the investigation revealed that the leadership committee’s excessive contributions to the candidate were likely *de minimis*. See Statement of Reasons, Comm’rs Petersen, Hunter, McGahn, Walther & Weintraub at 2-3, *id.*

<sup>66</sup> See Resp. at 2.<sup>67</sup> AO 1981-32 at 2-5.

<sup>67</sup> AO 1981-32 at 2-5.

<sup>68</sup> See Section II.A.

1 account, and did not report any testing-the-waters activities, the Commission finds reason to  
 2 believe that Paul violated 11 C.F.R. §§ 100.72 and 100.131 and that the Committee violated 52  
 3 U.S.C. § 30104(b) and 11 C.F.R. §§ 100.72 and 100.131.

4 **B. There is Reason to Believe RAND PAC Made, and the Committee**  
 5 **Accepted, Excessive, Unreported In-Kind Contributions**

6  
 7 Commission regulations provide that all funds raised and spent for testing-the-waters  
 8 activities are subject to the Act’s limitations and prohibitions.<sup>69</sup> Multicandidate committees,  
 9 including leadership PACs,<sup>70</sup> are limited to contributing \$5,000 per election to candidates or  
 10 their authorized committees.<sup>71</sup> The Act prohibits all committees from knowingly accepting  
 11 excessive contributions.<sup>72</sup> Further, if Paul was engaging in activities on behalf of RAND PAC  
 12 but also undertook activities relating to his own personal candidacy, he should have allocated  
 13 any expenses between RAND PAC and his potential candidacy pursuant to 11 C.F.R.  
 14 § 106.1(a).<sup>73</sup> Thus, after the appropriate allocations, if RAND PAC spent more than \$5,000 on  
 15 Paul’s testing-the-waters activities, once Paul became a candidate, RAND PAC would have

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<sup>69</sup> See 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>70</sup> The Commission’s regulations define “Leadership PAC” as, *inter alia*, “a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual.” *Id.* § 100.5(e)(6). When promulgating this rule in 2003, the Commission observed that leadership PACs are generally “formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder’s travel when campaigning for other Federal candidates,” or donated to party committees. Leadership PACs, 69 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003) (internal quotation marks omitted) (explanation and justification) (“Leadership PACs E&J”).

<sup>71</sup> 52 U.S.C. § 30116(a)(2)(A).

<sup>72</sup> *Id.* § 30116(f).

<sup>73</sup> AO 1985-40 at 8-9 (stating that a leadership PAC is required to allocate travel costs when the potential candidate holds private meetings for testing-the-waters activities in conjunction with appearances on behalf of federal candidates).

1 made excessive in-kind contributions to Paul, and the Committee would have accepted those  
2 excessive contributions.<sup>74</sup>

3 While the Commission has sought to “ensure that leadership PACs are not used  
4 improperly to support the ‘associated’ candidate’s [own] campaign,”<sup>75</sup> it has recognized that  
5 mere association is insufficient to form a conclusion that a leadership PAC contributed to the  
6 sponsoring candidate’s testing-the-waters activities.<sup>76</sup> Rather, in order to conclude that a  
7 leadership PAC contributes to a sponsoring candidate’s testing-the-waters activities, there must  
8 be a clear “nexus” between the leadership PAC and the potential candidate’s federal campaign  
9 activity.<sup>77</sup>

10 In this case, the record may support such a nexus. As discussed above, Paul has publicly  
11 acknowledged that he was exploring a potential candidacy since 2013 and engaged in numerous  
12 activities to gauge his support in the electorate, including extensively traveling throughout the  
13 country to meet voters in early primary states.<sup>78</sup> However, while Paul’s authorized committee  
14 reported no spending for such testing-the-waters activities, RAND PAC reported substantial  
15 disbursements for travel during 2013 and 2014, totaling \$500,924.90, and regularly promoted  
16 Paul’s activities on its website.<sup>79</sup>

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<sup>74</sup> Leadership PACs E&J, 69 Fed. Reg. at 67,017 (“To the extent that leadership PACs are used to pay for costs that could and should otherwise be paid for by a candidate’s authorized committee, such payments are in-kind contributions, subject to the Act’s contribution limits and reporting requirements.”).

<sup>75</sup> *Id.* at 67,014.

<sup>76</sup> First Gen. Counsel’s Rpt. at 29, MUR 5260 (Talent); Certification, *id.* (Jan. 6, 2003).

<sup>77</sup> *See* First Gen. Counsel’s Rpt. at 29, *id.*; Certification, *id.* (Jan. 6, 2003).

<sup>78</sup> *See* Section II.A.

<sup>79</sup> *See* RAND PAC Website, *supra* note 28; *see also* RAND PAC, 2013-2014 Reports (summing the total of 856 disbursements for “travel,” “travel reimbursement,” “transportation service,” “lodging,” and “mileage reimbursement”).

1           For example, the available information indicates that RAND PAC used its website and  
2 Facebook page to publicize Paul’s inclusion in the CPAC straw poll.<sup>80</sup> RAND PAC played a  
3 key role in promoting Paul’s official candidacy announcement. On March 26, 2015, RAND  
4 PAC posted a media advisory to its website stating that Paul was going to hold a “Stand with  
5 Rand” rally on April 7, 2015 (the day that Paul announced his candidacy), which would kick off  
6 a four-day tour with stops in New Hampshire, South Carolina, Iowa, and Nevada.<sup>81</sup> On April 6,  
7 2015, it posted a video again publicizing the April 7 event and discussing Paul’s  
8 accomplishments and ability to “fix Washington.”<sup>82</sup>  
9 Finally, The proximity of when some actors came onto RAND PAC’s payroll only to move over  
10 to the campaign quickly after, suggests that they were providing services to Rand’s testing-the-  
11 waters efforts instead of, or in addition to, RAND PAC.

12           The Response denies that RAND PAC was defraying the costs of Paul’s testing-the-  
13 waters efforts and asserts that the Complaint’s arguments are speculative.<sup>83</sup> But the Response  
14 provides little information about how the PAC spent its money on advancing its mission, in light

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<sup>80</sup> See RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (disclosing a \$4,000 “registration fee” to American Conservative Union, the organization that sponsors CPAC); *Sen. Rand Paul Speaks at Conservative Political Action Conference 2015*, RAND PAC, Feb. 27, 2015 <http://randpac.com/sen-rand-paul-speaks-conservative-political-action-conference-2015/> (publishing the transcript of Paul’s CPAC 2015 speech); RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014) (posting about RAND PAC’s booth at CPAC 2014, which featured a life-size cutout of Paul, and providing a link to his speech).

<sup>81</sup> Media Advisory, *National Stand with Rand Tour*, RAND PAC, Mar. 26, 2015, <http://randpac.com/national-stand-with-rand-tour/>.

<sup>82</sup> Media Advisory, *WATCH: Rand Paul, A Different Kind of Republican*, RAND PAC, Apr. 6, 2015, <http://randpac.com/watch-rand-paul-a-different-kind-of-republican/>.

<sup>83</sup> Resp. at 2.

1 of the information above, which indicates RAND PAC apparently spent funds to help Paul  
2 travel throughout the country and promote his own upcoming candidacy.<sup>84</sup>

3 Thus, the available information indicates that Paul may have used his RAND PAC staff  
4 and itinerary of events to explore a potential candidacy, and that the associated costs to RAND  
5 PAC exceeded the \$5,000 limit. Under these circumstances, the Commission finds reason to  
6 believe that RAND PAC violated 52 U.S.C. §§ 30104(b) and 30116(f) by making excessive,  
7 unreported in-kind contributions to the Committee, and Paul and the Committee violated the  
8 same provision by accepting and failing to report the excessive contributions.

9 **C. There is Reason to Believe RAND PAC Made Excessive In-Kind**  
10 **Contributions to Paul in Violation of 11 C.F.R. § 110.2(l)**  
11

12 In addition to alleging that Paul failed to comply with the rules governing testing-the-  
13 waters activities, the Complaint alleges that RAND PAC made excessive in-kind contributions to  
14 Paul under 11 C.F.R. § 110.2(l),<sup>85</sup> which governs certain “[p]re-candidacy expenditures by  
15 multicandidate political committees deemed in-kind contributions.”<sup>86</sup> Under this regulation, a  
16 payment by a multicandidate political committee is an in-kind contribution to, and an  
17 expenditure by, a presidential candidate, although made before he or she becomes a candidate, if  
18 three conditions are met: (1) the expenditure is made on or after January 1 of the year following  
19 the last presidential election year; (2) with respect to the goods or services involved, the  
20 candidate accepted or received them, requested or suggested their provision, or was materially  
21 involved or involved in substantial discussion about providing them; and (3) the goods or

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<sup>84</sup> See RAND PAC, 2013-2015 Reports (comparing total receipts to relevant expenditures).

<sup>85</sup> Compl. at 8-10.

<sup>86</sup> 11 C.F.R. § 110.2(l).

1 services are (a) polling expenses, (b) compensation paid to employees, consultants, or vendors  
2 for “services rendered in connection with establishing and staffing offices in States where  
3 Presidential primaries . . . are to be held, other than offices in the candidate’s home state” or  
4 Washington, D.C., or (c) administrative expenses, including rent, utilities, office supplies and  
5 equipment, in connection with establishing and staffing the offices described in subsection (b).<sup>87</sup>  
6 Travel is not a qualified expenditure under Section 110.2(l).

7 Here, the evidence suggests that RAND PAC paid for expenses on behalf of Paul that  
8 qualify as non-travel pre-candidacy expenditures under this regulation. RAND PAC announced  
9 on March 12, 2015, that Paul was planning to open a “tech office” in Austin, Texas, and Kania  
10 was subsequently hired to work as the Senior Field and Technology Strategist in that office.<sup>88</sup>  
11 Accordingly, RAND PAC’s payments to Kania may qualify as Section 110.2(l) compensation to  
12 an employee for staffing a campaign office, if Paul was involved in hiring her and was therefore  
13 materially involved in securing her services.<sup>89</sup>

14 It is also reasonable to conclude that disbursements to other employees were related to  
15 establishing and staffing offices in battleground states. RAND PAC’s reports disclose payments  
16 to Jonathan Van Norman, who became the Committee’s political director for Iowa, for travel and  
17 consulting in Iowa;<sup>90</sup> payments for equipment and office supplies in Florida, Virginia, and  
18 Minnesota; and for payroll expenses in Ohio.<sup>91</sup> Given that Paul established RAND PAC and it

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<sup>87</sup> *Id.* § 110.2(l)(1)(i)-(iii). If a candidate, through his or her authorized committee, reimburses the multicandidate committee within 30 days of becoming a candidate, a payment by the multicandidate committee will not constitute an in-kind contribution. *Id.* § 110.2(l)(2).

<sup>88</sup> *See* Section II.A.

<sup>89</sup> *See* 11 C.F.R. § 110.2(l).

<sup>90</sup> *See, e.g.*, RAND PAC, Second Amended 2015 Mid-Year Report.

<sup>91</sup> *See* Compl., Exh. 1.

1 was his leadership PAC, there is a substantial probability that he was materially involved in  
2 RAND PAC's provision of these goods and services to his potential campaign.<sup>92</sup>

3 Lastly, RAND PAC paid for "survey research" in 2013 and 2014, including making a  
4 \$19,571 disbursement to a vendor called "the Polling Company."<sup>93</sup> Although these  
5 disbursements were years before the first caucus or primary of the 2016 presidential season, it is  
6 possible that these RAND PAC expenditures were for the benefit of Paul's testing-the-waters  
7 efforts and that Paul received them in his capacity as a potential candidate. In that case, they  
8 would qualify as Section 110.2(*l*) polling expenses.<sup>94</sup>

9 Accordingly, based on the available information and reasonable inferences from the  
10 record, the Commission finds reason to believe that RAND PAC made, and the Committee and  
11 Paul accepted, excessive in-kind contributions resulting from RAND PAC's payment of certain  
12 pre-candidacy expenses under 11 C.F.R. § 1102.(*l*), in violation of 52 U.S.C. § 30116(f).

13 **D. There is Reason to Believe that the Committee Failed to Make Timely**  
14 **Refunds of Contributions Designated for the General Election**

15 During the 2016 election cycle, an authorized committee was limited to accepting a total  
16 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.<sup>95</sup> A  
17 primary election and a general election are each considered a separate "election," and the  
18 individual contribution limits are applied separately with respect to each election.<sup>96</sup>

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<sup>92</sup> See 11 C.F.R. § 110.2(*l*).

<sup>93</sup> RAND PAC, Amended 2013 Year-End Report (Oct. 15, 2014); RAND PAC, Amended 2014 April Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 July Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 October Quarterly Report (Dec. 4, 2014); RAND PAC, Amended 2014 Post-General Report (Jan. 31, 2015).

<sup>94</sup> See 11 C.F.R. § 110.2(*l*).

<sup>95</sup> 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 CFR §§110.1(a)-(b), 110.2(b)(1).

<sup>96</sup> 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

1           The Commission’s regulations permit a candidate or his authorized committee to receive  
2 contributions for the general election prior to the primary election.<sup>97</sup> If, however, the candidate  
3 does not become a candidate in the general election, the committee must: (1) refund the  
4 contributions designated for the general election; (2) redesignate such contributions in  
5 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
6 accordance with 11 C.F.R. § 110.1(k)(3).<sup>98</sup> The committee must do so within 60 days of the date  
7 that the committee has actual notice of the need to redesignate, reattribute, or refund the  
8 contributions, such as the date the candidate loses the primary or withdraws from the  
9 campaign.<sup>99</sup>

10           Paul announced that he was “suspending” his campaign on February 3, 2016,<sup>100</sup> but the  
11 Committee continued reporting reimbursements to those who contributed to Paul for the general  
12 election until January 2017.<sup>101</sup> The Complaint alleges that the Committee’s refunds were

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<sup>97</sup> See 11 C.F.R. § 102.9(e)(l). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

<sup>98</sup> See *id.* § 102.9(e)(3); see also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“AO 1992-15”) (“[T]he Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

<sup>99</sup> Advisory Op. 2008-04 (Dodd); AO 1992-15. The Commissions’ regulations include procedures for reattributing or redesignating a contribution. See generally 11 C.F.R. § 110.1(b), (k). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. *Id.* §§ 110.1(b)(5), 110.1(k)(3).

<sup>100</sup> See RR 17L-49 Resp. at 1-2 (Apr. 18, 2018) (“RAD Referral Resp.”); Goldmacher, Isenstadt & Strauss, *supra* note 59.

<sup>101</sup> See 11 C.F.R. § 102.9(e)(3); Committee, 2017 February Monthly Report (Feb. 20, 2017).



1 untimely, and RAD also referred the Committee to the Office of General Counsel for failing to  
2 refund \$257,658.65 of contributions within the applicable 60-day window.<sup>102</sup>

3 In response to the Commission’s RAD Referral asserting that the Committee’s refunds  
4 were untimely, the Committee argues that Paul remained a candidate after he “suspended” his  
5 campaign, and that suspending a campaign is different than withdrawing from a campaign.<sup>103</sup>  
6 The Committee further argues that Paul remained a candidate until Donald Trump became the  
7 Republican Party’s presidential nominee on July 19, 2016, so refunds were not due until  
8 September 19, 2016.<sup>104</sup>

9 Even assuming, however, that July 19, 2016 was the starting date for the 60-day window,  
10 the Committee still failed to timely remedy general election contributions totaling \$165,749.09  
11 until after September 17, 2016. Therefore, the Commission opens matter under review as to  
12 RAD Referral 17L-49, merges it with MUR 7191, and finds reason to believe that the Committee  
13 violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

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<sup>102</sup> Compl. at 11; Referral at 1, RR 17L-49 (Dec. 20, 2017) (“RAD Referral”).

<sup>103</sup> RAD Referral Resp. at 2.

<sup>104</sup> *See id.* at 1-2.

## **Senator Paul Joins Megyn Kelly on Fox News**

**March 23, 2015**

### **Megyn Kelly:**

A little awkward in the background there. You see those red shirts? That's a group of Rand Paul supporters crashing Senator Cruz's big announce. And earlier tonight I spoke to Senator Rand Paul for his exclusive first reaction. He too has a big announcement himself scheduled for April 7. Senator good to see you tonight. So a lot of Rand Paul supporters showed up today at the Ted Cruz announcement. Was that orchestrated?

### **Senator Rand Paul:**

Somebody did, I'm not sure who did orchestrate it, but I kind of remember those days because I went to Baylor University and we were all required to go to Convocation. So all of these kids are required, and some of those who were required wanted to make sure that just by having to be there they weren't expressing their support, but we were glad to see them there and organized and ah you know excited about the possibility of me running.

### **Megyn Kelly:**

What did you make of Ted Cruz's remarks today?

### **Senator Rand Paul:**

Well you know the interesting thing is I didn't find much I disagreed with. All I heard was the clip that you played—I've been traveling and busy today. But the thing is we kind of come from the same wing of the party, and if you look at our voting records you'll find we're very very similar. I guess what makes us different is probably our approach as to how we would make the party bigger. And I'm a big believer that you should stand on principle and be true to your principles, but I also think that we should take those principles and try to bring in new people with them. So I spent the last couple years trying to go places Republicans haven't

gone, and maybe not just throwing out red meat, but actually throwing out something intellectually enticing to people who haven't been listening to our message before.

**Megyn Kelly:**

Now he got out ahead of you. Ah, why weren't you first?

**Senator Rand Paul:**

Ha ha ha, we'll see. We're thinking about it, and we're pretty close to a decision, and we'll have some kind of announcement April 7. And ah you know, people can go to Rand Paul for Kentucky or Kentucky for Rand Paul .com, they can find out more about it instantaneously.

**Megyn Kelly:**

So now he's got a couple of weeks lead on you in terms of, you know, reaching out there, being out there, maybe even with respect to fundraising. Is that an advantage?

**Senator Rand Paul:**

It's a long battle and you know we've spent the last two years actually traveling the country taking the message out and we think that there's a unique brand of Republicanism, a unique brand of Conservative constitutionalism that also reaches out to new people. So I try to get along with all the wings of the party. But I also am able to take the message of liberty and of the Bill of Rights, and take it to Howard University, to the Urban League, to NAACP, to Ferguson, to Berkley and try to bring new people into the party. So it isn't just about rousing the base, it's about exciting the base by being for the principles of liberty, but it's then taking those principles of liberty, not diluting them, and taking them to new people and bringing them into the party, that's the way you win general elections.

**Megyn Kelly:**

How can you do what, with respect to your dad, failed to do?

**Senator Rand Paul:**

I think that if you see my polling, the polling that's out there so far, nobody is doing better against Hillary Clinton than myself because we're already picking up 3 to 5% or more of the independent vote above what the others are picking up—

**Megyn Kelly:**

But why do you think?

**Senator Rand Paul:**

—so I think you're already seeing that.

**Megyn Kelly:**

When you look at the, when you look at the polls ah you know right now, the Real Clear Politics Average of all polls, and the value you should know is very early, so we put that out up front. But you can see here you're behind ah Bush, Walker, Ben Carson, Mike Huckabee, and then there you're in 5<sup>th</sup> place now. You are ahead of, you know, these other guys Christie, Rubio, and Cruz.

**Senator Rand Paul:**

Sort of depends on which poll you look at. Your rival station had a poll yesterday that had me tied for the lead with Walker and Bush in a nationwide poll. So we feel pretty comfortable that there is sort of a developing first tier. Also though when you poll people not just against each other but against the other side, that shows which candidate has the best chance of picking up independent vote and right now I am the only one that beats Hillary Clinton in certain purple states. I'm

the only one that also scores above all the other Republicans in whether or not I can beat her. So they'll be a lot of Conservatives. Ted Cruz is a Conservative, but it also goes to winnability, and people will have to make a decision: which is the Republican that cannot only can excite the base but can also bring new people into the Party without giving up principles.

**Megyn Kelly:**

The interesting thing though that's going to happen, and you know it as well as I do, is that the mainstream media is going to vilify whoever the Republican candidate is. They may say nice things about you now, but if you become the nominee, they're going to rip you to shreds. And we saw some of that even from within your own party. John McCain has called you and Ted Cruz a couple of wacko birds because you don't march to the beat of the same drum as sort of the more establishment Republicans has. So it will start there, but it'll get much worse if you become the nominee.

**Senator Rand Paul:**

I think what you end up needing from any of us whoever might be the nominee is, you do want someone who's a fighter. And the thing is is that, I think we do need to go after the Clintons. I think we need to go after their corruption. I think we need to call her out for not being a consistent defender of women's rights when she's willing to take money from a country that actually would imprison a victim of rape. So there's a lot of hypocrisy on the Clinton side, there's a lot of the whole Clinton Inc. enriching themselves, and you can't let that go, and there's going to need to be somebody who will ask the tough questions about why in Benghazi that she didn't provide the security that our Ambassador needed. These are really important questions, and we won't win unless we do aggressively combat her and make sure she has to explain her record as well.

**Megyn Kelly:**

I know that you have a big announcement of some sort, we don't know which one, what it is officially, but it's on April 7, a couple weeks from now, and then a five state tour. You're going to start off in Kentucky, that's your home state, then New

Hampshire, South Carolina, Iowa, and Nevada. And we will just leave it up to the viewers to try to figure out what you might be announcing and why you might be going to those states thereafter. Senator we will be watching. Thanks for being here tonight.

**Senator Rand Paul:**

Thanks Megyn.

**Megyn Kelly:**

All the best.

## **Senator Rand Paul Joins Sean Hannity on Fox News**

**March 24, 2015**

### **Sean Hannity:**

Yesterday, Kentucky Senator Rand Paul said Republicans, in order to grow the Party, should not just toss out quote “red meat.” Instead, he said, members of the GOP should offer something quote “intellectually enticing.” Here now to explain more, the man himself, Kentucky Senator Rand Paul. Senator, good to see you.

### **Senator Rand Paul:**

Hey Sean, thanks for having me.

### **Sean Hannity:**

You said that, but you also said you didn’t see all of Ted Cruz’s speech. It was interpreted in the media that, that was your comment about his speech. Ah have you had a chance to watch it yet?

### **Senator Rand Paul:**

I think it was more a comment in general that I’d like to say my approach is one where I try to make the appeal towards the Bill of Rights and take it to a lot of audiences that really haven’t listened to Republicans before. So my goal over the last couple of years has been to take a consistent defense of liberty, but to take it to new places where it hasn’t been heard, in hopes that we can get a bigger party, and a more national party. So I’ve been to Howard, I’ve been to Bowie State, I’ve been to the Urban League, I’ve been to the NAACP, I’ve been to Berkley trying to broaden the people, and the amount of people, I bring in, and not just toss out things that may well inflame the situation and excite certain people but might turn off other people. But it will also put up my record as being conservative as anybody if not more conservative than anybody in the Congress.

**Sean Hannity:**

But just to be clear, and I think that's a good idea by the way, I think going to historically black colleges as you have been, reaching out to different groups. I think that's a good idea for any candidate. Ah I think they should go anyplace, anywhere, and ask people for their vote—my opinion. But you weren't referring to anybody in particular?

**Senator Rand Paul:**

I think more in general, in contrasting approaches and with anyone out there, and trying to say that the way you win elections you got to have a bigger party, but you can do it without diluting your message and sticking to your guns and sticking to your principles.

**Sean Hannity:**

Yeah, we had Senator Cruz on, and when you announce we'll give you an hour on this program, um and he talked about flat tax, he talked about eliminating the IRS, he talked about choice and education, securing our borders, ah he talked about choice in healthcare and reforming the health care. I mean it went to very specific items, which I think also every candidate should do, and I know you have been doing it as well, right?

**Senator Rand Paul:**

Yeah and like I say, Ted Cruz and I come from the same wing of the party. So sometimes you'll have two very conservative—two Senators who support the Constitution, and you'll have to look for nuances and differences between the two, and one of those might be winnability. When you look at polling right now, you'll find that nobody in the Republican Party does better against Hillary Clinton than myself, and I think that's because we've tried very hard to pick up independent vote and voters who haven't been voting Republican, and frankly that's how you win elections.



**Sean Hannity:**

I was really glad to see, and I frankly think more in the Republican Party should go after your comments about Hillary Clinton and the Clinton Foundation, and where they have accepted money from countries that they stone people to death for adultery, ah imprison people for adultery—the kind of thing that you would think someone for women’s rights would be standing up against. Except instead of accepting veiled bribes. Do you think that was a bribe? Do you think that money was given for the specific purpose of buying influence? The money that she got from Saudi Arabia, U.A.E., Oman, and some of these other places?

**Senator Rand Paul:**

What’s kind of unusual that a country like Saudi Arabia that will imprison a rape victim—in fact they gave 70 lashes to a rape victim for being in the car with a man who was not her husband while she was being raped. That is so beyond the pale, so unconscionable, that Hillary Clinton shouldn’t have taken that money and she should return it. But here’s the thing is, why would a country that lives with Stone Age barbarism like that, why would they give money to Hillary Clinton or to the Clinton Foundation unless they were buying influence? Why would they give it if Hillary Clinton is supporting opposite policies? The thing is that there are a lot of unsavory characters, and when they hand out money, I think by the millions, you have to wonder why Hillary Clinton would accept it, and why frankly she won’t return it.

**Sean Hannity:**

Rank hypocrisy. Ah Senator good to see you. We’ll look forward to your announcement, and ah can you give us the date yet?

**Senator Rand Paul:**

It’s coming up soon, and I keep seeing on the Internet April 7, so it might be. I don’t know, but I think it’s coming soon.

**Sean Hannity:**

You might want to have somebody on your staff, you might want to talk about that, have a meeting about that or something. But alright Senator.

**Senator Rand Paul:**

Alright, thanks.

**Sean Hannity:**

Thank you. Senator Rand Paul.