



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Sen. Rand Paul
PO Box 72928
Newport, KY 41072

MAY 17 2019

RE: MUR 7191

Dear Sen. Paul:

On November 14, 2016, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time.

Upon review of the allegations contained in the complaint, the Commission, on April 25, 2019, found reason to believe that you accepted excessive in-kind contributions resulting from the payment of certain pre-candidacy expenses by a multicandidate committee under 11 C.F.R. § 110.2(I), in violation of 52 U.S.C. § 30116(f). There was an insufficient number of votes to find reason to believe that you violated 11 C.F.R. §§ 100.72(a) and 100.131(a) in connection with testing-the-waters activities. In addition, the Commission was equally divided over whether to find reason to believe that you violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a) in connection with filing a timely Statement of Candidacy. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the

MUR 7191
Sen. Rand Paul
Page 2

matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or cpavia@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

3

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Rand Paul

MUR 7191

I. INTRODUCTION

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

The Complaint alleges that Paul violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by using his leadership political action committee (“leadership PAC”), Reinventing a New Direction Political Action Committee and Kevin Broghamer in his official capacity as treasurer (“RAND PAC”), to finance his testing-the-waters activities beginning in 2013.² The Complaint also alleges that Paul became a candidate prior to April 2015, and he and the Committee therefore failed to timely register and report with the Commission.³

II. FACTUAL BACKGROUND

On April 7, 2015, Kentucky Senator Rand Paul publicly declared his candidacy for President of the United States.⁴ Paul filed a Statement of Candidacy on April 8, designating the Committee as his authorized campaign committee with Paul Kilgore as the Committee’s

¹ 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).

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

³ *Id.* at 5-6.

⁴ *Id.* 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>).

1 treasurer.⁵ After Paul's initial election to the Senate in 2010, he established RAND PAC as his
 2 leadership PAC, registering it as such with the Commission on March 9, 2011.⁶ RAND PAC's
 3 stated mission is to "lead the battle for sound money, limited government, and fidelity to our
 4 Constitution," and to "support and elect Pro-Liberty, Pro-Constitution candidates in Kentucky
 5 and across the country."⁷

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

8 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

9 As reflected above, RAND PAC raised and spent over \$1 million in 2012 and 2013 and its
 10 activity peaked in 2014 when it raised and spent over \$2 million. Further, in the first half of
 11 2015, RAND PAC raised \$723,468.96 and spent \$749,756.39.⁹ However, after Paul declared his
 12 candidacy for President in April 2015, the PAC's fundraising dropped to just \$134,129.55 during
 13 the period of July through December 2015 and \$241,900.76 for the entire year of 2016.¹⁰ RAND

⁵ Rand Paul, Statement of Candidacy, President (Apr. 8, 2015).

⁶ 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).

⁷ RAND PAC, <http://randpac.com/> (last visited June 15, 2018).

⁸ See RAND PAC, Committee Filings 2011-2016.

⁹ RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016).

¹⁰ See Rand PAC, Amended 2015 Year-End Report through 2016 Reports.

1 PAC's disbursements also saw a drop after Paul declared his candidacy, spending only
2 \$217,170.10 in the latter six months of 2015 and \$269,001.35 in 2016.¹¹

3 In the two years leading up to Paul's announcement, it appears that RAND PAC also
4 spent a small fraction of its funds on its stated purpose of supporting "pro-liberty" candidates. In
5 2013, the PAC disbursed \$130,045 to candidates and party committees, or on financing
6 independent expenditures, which constituted just 9% out of the \$1,467,787.50 it spent in total. In
7 2014, RAND PAC spent \$298,875, or 11%, on these activities out of \$2,539,408.96 in total
8 disbursements; and in 2015, just \$29,000, or 3%, of \$966,926.49 in total disbursements.
9 Conversely, in 2012 RAND PAC spent \$670,500 on these activities, or 49%, of \$1,356,655.55 in
10 total disbursements.¹²

11 The Complaint asserts that, prior to declaring his presidential candidacy, Paul engaged in
12 a number of activities that appear to be connected to a potential run. The Complaint provides
13 information indicating that, in the months immediately preceding his official announcement,
14 Paul hired a number of individuals at RAND PAC, who then quickly transitioned into positions
15 as paid campaign staff. In addition, Jonathan Van Norman, who became the Committee's
16 political director for Iowa, was receiving payments from RAND PAC as of March 2015.¹³

¹¹ *See id.*

¹² 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.*

¹³ *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>).

1 On March 12, 2015, RAND PAC published a media advisory stating that Paul was
2 planning to open a “tech office” in Austin, Texas on March 16.¹⁴ The media advisory quoted
3 RAND PAC personnel explaining that “Senator Rand Paul will run the most innovative, tech-
4 forward operation of any elected official in the country” and that it will be a “crowd-sourced
5 campaign.”¹⁵ Paul hired Rachel Kania to work in the new office as his Senior Field and
6 Technology Strategist, and Kania stated: “As the newest member of Team Rand, I look forward
7 to leveraging the latest in campaign technology to activate our energized volunteer base. Team
8 Rand will be the most technologically-savvy campaign in the field and his message will inspire
9 and widen the GOP base unlike any other candidate.”¹⁶ RAND PAC reported making \$5,898.90
10 in “payroll disbursements” to Kania from March 2015 until April 3, 2015.

11 On April 7, 2015, the same day Paul announced his candidacy, Rand Paul for President,
12 Inc. filed its Statement of Organization.¹⁷ The Committee’s first disclosure report was its July
13 Quarterly Report.¹⁸ That report disclosed that the Committee began receiving contributions for
14 the 2016 presidential primary election on April 7, 2015.¹⁹ It also stated that the Committee’s

¹⁴ 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/>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* Section II.

¹⁸ *See* Committee, 2015 July Quarterly Report (July 15, 2015).

¹⁹ 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).

1 first disbursement occurred on April 2, 2015, only five days before Paul publicly announced his
2 candidacy.²⁰ The Committee reported no reimbursements to RAND PAC.²¹

3 **III. LEGAL ANALYSIS**

4 Commission regulations provide that all funds raised and spent for testing-the-waters
5 activities are subject to the Act's limitations and prohibitions.²² Multicandidate committees,
6 including leadership PACs,²³ are limited to contributing \$5,000 per election to candidates or their
7 authorized committees.²⁴ The Act prohibits all candidates and committees from knowingly
8 accepting excessive contributions.²⁵

9 A candidate's authorized committee must disclose the identification of each political
10 committee which makes a contribution to the reporting committee during the reporting period,
11 together with the date and amount of any such contribution.²⁶ A political committee shall report
12 the name and address of each political committee which has received a contribution from the

²⁰ Committee, Amended 2015 July Quarterly Report, Schedule B-P.

²¹ *See id.*

²² *See* 11 C.F.R. §§ 100.72(a), 100.131(a).

²³ 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").

²⁴ 52 U.S.C. § 30116(a)(2)(A).

²⁵ *Id.* § 30116(f).

²⁶ 52 U.S.C. § 30104(b)(3)(B); *see also* 11 C.F.R. § 104.3(a)(4)(ii).

1 reporting committee during the reporting period, together with the date and amount of any such
2 contribution.²⁷

3 The Complaint alleges that RAND PAC made excessive in-kind contributions to Paul
4 under 11 C.F.R. § 110.2(l),²⁸ which governs certain “[p]re-candidacy expenditures by
5 multicandidate political committees deemed in-kind contributions.”²⁹ Under this regulation, a
6 payment by a multicandidate political committee is an in-kind contribution to, and an
7 expenditure by, a presidential candidate, although made before he or she becomes a candidate, if
8 three conditions are met: (1) the expenditure is made on or after January 1 of the year following
9 the last presidential election year; (2) with respect to the goods or services involved, the
10 candidate accepted or received them, requested or suggested their provision, or was materially
11 involved or involved in substantial discussion about providing them; and (3) the goods or
12 services are (a) polling expenses, (b) compensation paid to employees, consultants, or vendors
13 for “services rendered in connection with establishing and staffing offices in States where
14 Presidential primaries . . . are to be held, other than offices in the candidate’s home state” or
15 Washington, D.C., or (c) administrative expenses, including rent, utilities, office supplies and
16 equipment, in connection with establishing and staffing the offices described in subsection (b).³⁰
17 Travel is not a qualified expenditure under Section 110.2(l).

²⁷ 52 U.S.C. § 30104(b)(6)(B)(i); *see also* 11 C.F.R. § 104.3(b)(3)(v) (further requiring, in the case of an authorized committee, the candidate’s name and office sought).

²⁸ Compl. at 8-10.

²⁹ 11 C.F.R. § 110.2(l).

³⁰ *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).

1 Here, the evidence suggests that RAND PAC paid for expenses on behalf of Paul that
2 qualify as non-travel pre-candidacy expenditures under this regulation. RAND PAC announced
3 on March 12, 2015, that Paul was planning to open a “tech office” in Austin, Texas, and Kania
4 was subsequently hired to work as the Senior Field and Technology Strategist in that office.³¹
5 Accordingly, RAND PAC’s payments to Kania may qualify as Section 110.2(I) compensation to
6 an employee for staffing a campaign office, if Paul was involved in hiring her and was therefore
7 materially involved in securing her services.³²

8 It is also reasonable to conclude that disbursements to other employees were related to
9 establishing and staffing offices in battleground states. RAND PAC’s reports disclose payments
10 to Jonathan Van Norman, who became the Committee’s political director for Iowa, for
11 consulting in Iowa;³³ payments for equipment and office supplies in Florida, Virginia, and
12 Minnesota; and for payroll expenses in Ohio.³⁴ Given that Paul established RAND PAC and it
13 was his leadership PAC, there is a substantial probability that he was materially involved in
14 RAND PAC’s provision of these goods and services to his potential campaign.³⁵

15 Lastly, RAND PAC paid for “survey research” in 2013 and 2014, including making a
16 \$19,571 disbursement to a vendor called “the Polling Company.”³⁶ Although these

³¹ *See* Section II.

³² *See* 11 C.F.R. § 110.2(I).

³³ *See, e.g.*, RAND PAC, Second Amended 2015 Mid-Year Report.

³⁴ *See* Compl., Exh. 1.

³⁵ *See* 11 C.F.R. § 110.2(I).

³⁶ 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).

1 disbursements were years before the first caucus or primary of the 2016 presidential season, it is
2 possible that these RAND PAC expenditures were for the benefit of Paul's pre-candidacy efforts
3 and that Paul received them in his capacity as a potential candidate. In that case, they would
4 qualify as Section 110.2(*l*) polling expenses.³⁷

5 Accordingly, based on the available information and reasonable inferences from the
6 record, the Commission finds reason to believe that Paul accepted excessive in-kind
7 contributions resulting from RAND PAC's payment of certain pre-candidacy expenses under
8 11 C.F.R. § 110.2(*l*), in violation of 52 U.S.C. § 30116(f).

³⁷ See 11 C.F.R. § 110.2(*l*).