

**BEFORE THE FEDERAL ELECTION COMMISSION**

1  
2  
3 In the Matter of )  
4 ) MUR 7191  
5 Freedom for All Americans and )  
6 Paul Kilgore in his Official )  
7 Capacity as treasurer, *et al.* )  
8  
9

**SECOND GENERAL COUNSEL'S REPORT**

**TABLE OF CONTENTS**

13	I.	ACTIONS RECOMMENDED.....	2
14	II.	INTRODUCTION .....	3
15	III.	INVESTIGATION.....	7
16	A.	Establishment of RAND PAC .....	7
17	B.	RAND PAC's Support of Paul's Pre-Candidacy Activities .....	8
18		1. Hiring of Campaign Staff.....	11
19		2. Payments for Polling.....	15
20		3. Payments for Travel.....	16
21		4. Other Payments.....	19
22	C.	Announcement of Paul's Candidacy.....	19
23	IV.	ANALYSIS.....	21
24	A.	The Commission Should Dismiss but Send a Letter of Caution as to the Allegations that	
25		RAND PAC Paid for Expenses that Are Deemed In-Kind Contributions Under 11 C.F.R.	
26		§ 110.2(l) .....	21
27		1. Legal Standard .....	21
28		2. RAND PAC Made Pre-Candidacy Expenditures that Qualify as In-Kind Contributions	
29		Under 11 C.F.R. § 110.2(l).....	23
30	B.	The Commission Should Dismiss but Send a Letter of Caution as to the Allegations that	
31		RAND PAC Made Excessive Contributions to Paul's Campaign in the Form of Payments for	
32		Paul's Testing-The-Waters Activities.....	27

1	1. Legal Standard .....	27
2	2. RAND PAC's Payments for Staffing, Polling, and Travel Were Excessive In-Kind	
3	Contributions to Paul and the Committee.....	30
4	C. The Commission Should Dismiss but Send a Letter of Caution as to the Allegations that	
5	the Respondents Failed to Disclose Paul's Testing-the-Waters Activities and RAND PAC's	
6	Contributions to the Campaign .....	38
7	D. There Is Insufficient Evidence to Warrant Finding Reason to Believe that Paul Filed His	
8	Statement of Candidacy Late .....	40
9	E. The Available Evidence Demonstrates that the Committee Failed to Timely Refund or	
10	Redesignate Contributions for the General Election .....	41
11	V.	
12	VI. RECOMMENDATIONS .....	44
13	<b>I. ACTIONS RECOMMENDED</b>	
14	We recommend that the Commission: (1) dismiss with caution the allegations that	
15	Reinventing a New Direction Political Action Committee and Kevin Broghamer in his official	
16	capacity as treasurer ("RAND PAC") made, and Rand Paul and Freedom for All Americans	
17	(f/k/a Rand Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer (the	
18	"Committee") accepted, excessive in-kind contributions — as deemed under 11 C.F.R. § 110.2(l)	
19	and in the form of payments for testing-the-waters expenses — in violation of 52 U.S.C.	
20	§ 30116(a), (f) and 11 C.F.R. §§ 100.72(a), 100.131(a); (2) dismiss with caution the allegations	
21	that RAND PAC and the Committee violated 52 U.S.C. § 30104 and 11 C.F.R. §§ 100.72,	
22	100.131 by failing to report RAND PAC's support for Paul's testing-the-waters activities;	
23	(3) dismiss the allegations that Rand Paul violated 52 U.S.C. §§ 30102(e)(1), 30116(f) and	
24	11 C.F.R. §§ 100.72(a), 100.131(a), 101.1(a) by accepting excessive contributions in the form of	
25	in-kind payments for testing-the-waters expenses and late-filing his statement of candidacy but	

1 send a letter of caution with respect to the alleged violations of 52 U.S.C. § 30116(f) and  
2 11 C.F.R. §§ 100.72(a), 100.131(a); (4) enter into pre-probable cause conciliation with the  
3 Committee regarding its failure to timely refund or redesignate general election contributions in  
4 violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3); and (5) approve the attached  
5 conciliation agreement.

## 6 **II. INTRODUCTION**

7 The Complaint in MUR 7191 alleges that: (1) Paul improperly used RAND PAC to  
8 finance his testing-the-waters activities in advance of his official announcement of candidacy;  
9 (2) Paul became a candidate prior to April 2015 and that he and the Committee therefore failed  
10 to timely register and report with the Commission; and (3) the Committee failed to timely refund  
11 or redesignate general election contributions after Paul withdrew from the presidential primary  
12 race on February 3, 2016.<sup>1</sup> The Committee and RAND PAC filed a joint Response on January  
13 12, 2017, arguing that RAND PAC's disbursements advanced its organizational mission to  
14 support "pro-liberty" candidates, denying that Paul had made public statements acknowledging  
15 that he was conducting exploratory activity prior to declaring his candidacy, and denying that  
16 RAND PAC made expenditures in support of testing-the-waters efforts by Paul.<sup>2</sup> The Response  
17 further claimed that the Committee had remedied all general election contributions through

---

<sup>1</sup> Compl. at 5–10 (Nov. 7, 2016). The Commission's Reports Analysis Division ("RAD") also referred the issue of untimely general election contribution refunds to the Office of General Counsel. Referral at 1, RR 17L-49 (Dec. 20, 2017) ("RAD Referral").

<sup>2</sup> RAND PAC and Committee Resp. at 1–2 (Jan. 12, 2017) ("Resp."). Paul did not file a Response in MUR 7191.

1 redesignation or refund by the time of the filing of the Response.<sup>3</sup> Although the Commission  
2 also notified Paul individually as a respondent, he did not submit a response.

3 RAD also referred the Committee to the Office of General Counsel for failing to refund  
4 \$257,658.65 of contributions within the applicable 60-day window.<sup>4</sup> The Committee argued in  
5 its Response that Paul remained a candidate after he “suspended” his campaign until Donald  
6 Trump became the Republican Party’s presidential nominee on July 19, 2016, triggering the 60-  
7 day refund window at that time.<sup>5</sup> However, according to the Committee’s disclosure reports, it  
8 failed to refund or redesignate contributions totaling \$165,749.09 until after September 17,  
9 2016.<sup>6</sup>

10 The First General Counsel’s Report in MUR 7191 recommended finding reason to  
11 believe that RAND PAC, Paul, and the Committee violated the Act when RAND PAC paid for  
12 Paul’s testing-the-waters expenses and that the Committee failed to timely refund or redesignate  
13 general election contributions.<sup>7</sup>

14 On April 25, 2019, the Commission found reason to believe that: (1) RAND PAC made,  
15 and the Committee accepted, excessive in-kind contributions resulting from RAND PAC’s  
16 payment of certain pre-candidacy expenses under 11 C.F.R. § 110.2(l) in violation of 52 U.S.C.

---

<sup>3</sup> *Id.* at 2.

<sup>4</sup> RAD Referral at 1.

<sup>5</sup> Resp. at 1–2, RR 17L-49 (Apr. 18, 2018) (“RAD Referral Resp.”).

<sup>6</sup> *See* Factual and Legal Analysis at 11 (Apr. 25, 2019) (“F&LA”).

<sup>7</sup> First Gen. Counsel’s Rpt. at 4–5 (“FGCR”). The Report recommended that the Commission take no action at that time with respect to the allegations that Paul and the Committee violated the Act by filing a late Statement of Candidacy and Statement of Organization, respectively. *Id.*

1 § 30116(a), (f); (2) RAND PAC and the Committee failed to properly disclose the in-kind  
2 contributions in violation of 52 U.S.C. § 30104(b); and (3) the Committee violated 52 U.S.C.  
3 § 30116(f) and 11 C.F.R. § 102.9(e)(3) by failing to timely remedy general election  
4 contributions.<sup>8</sup> The Commission also merged the RAD referral, RR 17L-49, with MUR 7191.<sup>9</sup>  
5 Two Commissioners voted to approve, and two voted against the recommendations that the  
6 Commission find reason to believe that the Committee violated 11 C.F.R. §§ 100.72(a),  
7 100.131(a) by failing to establish a testing-the-waters account and by failing to report any  
8 testing-the-waters activities with the Commission.<sup>10</sup> The Commission also equally divided over  
9 whether there was reason to believe that Paul violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R.  
10 § 101.1 and the Committee violated 52 U.S.C. §§ 30103(a), 30104 in connection with filing a  
11 timely Statement of Candidacy, Statement of Organization and filing disclosure reports.<sup>11</sup> And  
12 there were insufficient votes to find reason to believe that RAND PAC made, and the Committee  
13 accepted, excessive in-kind contributions in connection with Paul's testing-the-waters activities  
14 in violation of 52 U.S.C. § 30116(a) and (f).<sup>12</sup>

15 Based upon the Commission's reason-to-believe findings, this Office conducted an  
16 investigation to determine whether RAND PAC made pre-candidacy expenditures that would be  
17 deemed as in-kind contributions under section 110.2(l). As discussed below, the investigation

---

<sup>8</sup> Amend. Certification (Apr. 25, 2019); F&LA at 9, 11.

<sup>9</sup> Amend. Certification.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

1 confirmed that RAND PAC made pre-candidacy expenditures for staffing that qualified as in-  
2 kind contributions under 11 C.F.R. § 110.2(l). In addition, information provided by RAND PAC  
3 in connection with discovery regarding the allegations on which the Commission voted to find  
4 reason to believe revealed additional evidence that Rand Paul engaged in testing-the-waters  
5 activities, many of which RAND PAC paid for, and that RAND PAC thereby made excessive in-  
6 kind contributions to Paul and the Committee. Specifically, the completed investigation  
7 indicates that RAND PAC paid for the costs of polling and staffing that benefited Paul's later  
8 campaign and that did not otherwise benefit RAND PAC. And, in the years before Paul entered  
9 the 2016 presidential race, RAND PAC paid for extensive travel by Paul with the aim, at least in  
10 part, of increasing public interest in his future presidential campaign. RAND PAC staff also  
11 provided support for, and promoted, Paul's 2014 and 2015 speeches at the Conservative Political  
12 Action Conference ("CPAC"), both of which promoted Paul as a potential presidential candidate,  
13 and RAND PAC paid approximately \$47,000 in travel expenses in the lead-up to those events.  
14 Moreover, Paul hired a campaign manager in January 2015 for his 2016 presidential campaign.

15 We recommend that the Commission enter into pre-probable cause conciliation with the  
16 Committee and require it to pay a civil penalty for the failure to timely refund or redesignate  
17 general election contributions. We recommend that the Commission dismiss but send a letter of  
18 caution as to the substantive violations of the contributions limits and related reporting violations  
19 by RAND PAC and the Committee and as to Paul because the statute of limitations has run with  
20 respect to the monetary penalties available to the Commission for these violations and decline to  
21 pursue equitable remedies because the expenditures at issue, although not reported as testing-the-  
22 waters activity, were disclosed on RAND PAC's filings with the Commission and appear to have

1 been made with funds that were collected in accordance with the source restrictions and amount  
2 limitations of the Act.

### 3 **III. INVESTIGATION**

4 The investigation in this matter included subpoenas for documents and answers to written  
5 questions to RAND PAC, the Committee, and Paul; a deposition of Douglass Stafford, RAND  
6 PAC's Executive Director and Chief Strategist for Paul's presidential campaign;<sup>13</sup> and informal  
7 discovery. We conducted an informal telephonic interview with Rachel Kania, a former staffer  
8 for Paul's campaign and RAND PAC in Austin, Texas. We also sought discovery on an  
9 informal basis from Victory Phones, Inc. and Wenzel Strategies, LLC, two vendors that provided  
10 polling to RAND PAC.

#### 11 **A. Establishment of RAND PAC**

12 Paul established RAND PAC as his leadership PAC after he was first elected to the  
13 Senate in 2010, registering it with the Commission on March 9, 2011.<sup>14</sup> RAND PAC's stated  
14 "mission is to lead the battle for sound money, limited government, and fidelity to our  
15 Constitution" and to "help support and elect Pro-Liberty, Pro-Constitution candidates in  
16 Kentucky and across the country."<sup>15</sup>

---

<sup>13</sup> Deposition of Douglass Stafford at 24:8-10 (Jan. 14, 2020) ("Stafford Dep. Part I"); Affidavit of Douglass Stafford ¶ 1 (Oct. 15, 2019) ("Stafford Aff."). To accommodate the deponent's scheduling needs, Stafford's deposition was split between two separate days.

<sup>14</sup> RAND PAC, Statement of Organization, FEC Form 1 (Mar. 9, 2011).

<sup>15</sup> RAND PAC, <https://randpac.com/> (last visited Mar. 15, 2021); *see also* Stafford Dep. Part I at 32:4-6 (testifying that Rand PAC was formed "to help others like-minded [to Paul] to get elected, to travel in support of both them and [Paul's] ideas, to . . . further [Paul's] political ideas").

1           Stafford, who has been RAND PAC's Executive Director since 2013,<sup>16</sup> helped form  
2           RAND PAC, along with Kevin Broghamer, the PAC's treasurer.<sup>17</sup> At that time, Stafford  
3           fundraised for the PAC and helped select which candidates it would support.<sup>18</sup> Stafford testified  
4           that the purpose of RAND PAC was to help other "like-minded . . . liberty republicans" get  
5           elected and to finance travel to support those candidates as well as to further Paul's own ideas.<sup>19</sup>  
6           According to Stafford, one of RAND PAC's key functions was to pay for Paul's travels so that  
7           he could make speeches to advance his ideas on subjects such as socialism and foreign policy.<sup>20</sup>  
8           Between RAND PAC's inception and the announcement of Paul's campaign, the record  
9           indicates that Paul traveled extensively for speeches and events, and RAND PAC paid many of  
10          the associated expenses.<sup>21</sup>

#### 11           **B.        RAND PAC's Support of Paul's Pre-Candidacy Activities**

12          The Commission's subpoena to RAND PAC specifically sought information pertaining to  
13          whether RAND PAC had made pre-candidacy expenditures that would qualify as in-kind  
14          contributions under section 110.2(1).<sup>22</sup> As further described below, documents produced in

---

<sup>16</sup>       Stafford Aff. ¶ 1; Stafford Dep. Part I at 21:4–11.

<sup>17</sup>       Stafford Dep. Part I at 27:16–20.

<sup>18</sup>       *Id.* at 22:2–7.

<sup>19</sup>       *Id.* at 32:2–16 ("It is to help others like-minded to get elected, to travel in support of both them and his ideas, to basically further his political ideas.").

<sup>20</sup>       *Id.*

<sup>21</sup>       *See infra* n.74 and accompanying text (chart of travel-related disbursements by RAND PAC).

<sup>22</sup>       Subpoena to Produce Documents and Order to Submit Written Answers to RAND PAC and Freedom for All Americans (f/k/a Rand Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer (Aug. 16, 2019).



1 response to that subpoena not only evidenced such expenditures in the form of salary payments  
2 but also revealed payments by RAND PAC that were made in order to support Paul's testing-the-  
3 water activities. In addition, consistent with the documentary evidence, Stafford provided  
4 deposition testimony that Paul began considering running for president as early as his election to  
5 the Senate and that Stafford, as Paul's closest advisor, had multiple conversations with Paul  
6 about running prior to January 2015.<sup>23</sup>

7 As discussed in the First General Counsel's Report, Paul made statements to the press in  
8 early 2015, indicating that he had been considering a presidential run prior to his formal  
9 announcement.<sup>24</sup> He stated in an interview with Megyn Kelly on March 23, 2015: "We're  
10 thinking about it, and we're pretty close to a decision, and we'll have some kind of  
11 announcement April 7."<sup>25</sup> On March 24, 2015, Paul stated in an interview with Sean Hannity:  
12 "When you look at polling right now, you'll find that nobody in the Republican Party does better  
13 against Hillary Clinton than myself, and I think that's because we've tried very hard to pick up  
14 the independent vote and voters who haven't been voting Republican, and frankly that's how you  
15 win elections."<sup>26</sup> When asked when his announcement would be, Paul stated, "[i]t's coming up

---

<sup>23</sup> See Stafford Dep. Part I at 69:11–17 ("Q: Is there any point in the process when the focus shifted and he was no longer looking for attention but was, in fact, thinking of running for President himself? A: Thinking of it? I mean, that's every U.S. Senator from the time they first run for office, so . . . [.]"). See also *id.* at 69:11–17, 149:15–150:7.

<sup>24</sup> FGCR at 6–8.

<sup>25</sup> Fox News, *Sen. Paul Joins Megyn Kelly on Fox News- March 23, 2015* at 0:41, YOUTUBE (Mar. 23, 2015) [https://www.youtube.com/watch?v=E\\_kLSs9MDmc&feature=youtu.be](https://www.youtube.com/watch?v=E_kLSs9MDmc&feature=youtu.be).

<sup>26</sup> See Fox News, *Sen. Rand Paul Joins Sean Hannity on Fox News- March 24, 2015* at 2:31, YOUTUBE (Mar. 25, 2015), [https://www.youtube.com/watch?v=u1PS-R5\\_\\_dw](https://www.youtube.com/watch?v=u1PS-R5__dw).

1 soon, and I keep seeing on the Internet April 7, so it might be. I don't know, but I think it's  
2 coming soon."<sup>27</sup>

3 The evidence developed in the investigation, in tandem with information previously  
4 available, demonstrates that RAND PAC's payments were not limited to furthering its stated  
5 mission of supporting "like minded . . . liberty candidates" but were also made for various  
6 activities to test the waters of a likely presidential campaign by Paul. RAND PAC's disclosures  
7 reflect significant fundraising in the years after its inception, which tapered off after Paul began  
8 his presidential campaign.<sup>28</sup> For the years 2012 to 2014, RAND PAC raised between  
9 approximately \$1.6 million and \$2.1 million and disbursed between approximately \$1.3 million  
10 and \$2.5 million.<sup>29</sup> In 2015, RAND PAC's activity declined to approximately \$850,000 in  
11 receipts and \$950,000 in disbursements, the vast majority of which occurred before Paul  
12 announced his presidential run.<sup>30</sup> RAND PAC's activity continued to decline in 2016, when it  
13 raised approximately \$240,000 and disbursed approximately \$270,000.<sup>31</sup> The investigation

---

<sup>27</sup> *Id.* at 4:14. Paul also stated in a February 13, 2013, interview that he was "interested" in response to a question about whether he was planning to run for President. 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>.

According to an email produced by the Respondents, as far back as October 9, 2012, Stafford appears to have been anticipating Paul's 2016 presidential run, writing that "Randpaul2016 has a nice ring to it." Doug Stafford email at RP\_117-124, 117 (Oct. 9, 2012). The email recipient responded: "Nice ring, indeed. Now I don't know if I want Obama to lose or not. In any case, for what it's worth, I am thrilled you guys are going to embark on this," *id.*, indicating that he also understood Stafford to be referring to a 2016 presidential run by Paul, rather than Paul's 2016 Senate race.

<sup>28</sup> FGCR at 12-13.

<sup>29</sup> *See* F&LA at 2 (citing RAND PAC 2011-2016 Disclosure Reports).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

1 revealed additional details regarding this funding and RAND PAC's activities in support of  
2 Paul's testing-the-waters activities, as detailed below.

3 1. Hiring of Campaign Staff

4 In anticipation of a future presidential campaign, in late 2014 and early 2015, RAND  
5 PAC hired a number of individuals who assumed various roles in Paul's presidential campaign  
6 after Paul official declared his candidacy in April 2015. The investigation revealed that in early  
7 January 2015, RAND PAC hired Chip Englander to be Paul's campaign manager for his future  
8 2016 presidential campaign. On March 7, 2015, Englander sent a mass-email to introduce  
9 himself to Paul's and RAND PAC's largest supporters and various Senate aides and inform them  
10 that he was "now working closely with Senator Rand Paul's campaign and PAC."<sup>32</sup> He touted  
11 Paul's win in the 2015 CPAC presidential straw poll, stating that the participants of CPAC "sent  
12 a strong message voting for Rand after hearing from everyone, Scott Walker, Jeb Bush, etc."<sup>33</sup>  
13 Englander also attached a January 13, 2015, Washington Post article "from when [he] came on  
14 board" that discussed Paul's plans for an upcoming campaign.<sup>34</sup> The article stated: "Sen. Rand  
15 Paul (R-Ky.) on Tuesday announced the hiring of a campaign manager for his likely 2016  
16 presidential bid, part of an aggressive effort to build a national political team as the race for the  
17 White House heats up."<sup>35</sup> The article also quoted Stafford who explained that Englander would  
18 be responsible for "'day-to-day execution' of Paul's operation" and reported that although

---

<sup>32</sup> Email from Chip Englander at RP\_156-159 (Mar. 7, 2015) ("Englander Email").

<sup>33</sup> *Id.* at RP\_156.

<sup>34</sup> *Id.* at RP\_156-159 (attaching Robert Costa, *Rand Paul Announces Campaign Manager for Likely 2016 Campaign*, WASH. POST (Jan. 13, 2015)).

<sup>35</sup> *Id.*

1 Englander held the title of “senior adviser at Paul’s PAC,” Englander was assured that he would  
2 manage “what has become a campaign-in-waiting.”<sup>36</sup>

3 One prior donor to RAND PAC responded to Englander that his March 2015 email “‘fills  
4 in the blank’ created by Rand’s visit to Nevada on Jan. 17-19, 2015” regarding whether he would  
5 enter the 2016 presidential race.<sup>37</sup> The donor added that he had “spoke[n] at length with” a  
6 member of RAND PAC’s staff in mid-January 2015 and had “gained some insight into [Paul’s]  
7 approach for a campaign.”<sup>38</sup>

8 During his deposition, Stafford confirmed that he had hired Englander as a senior advisor  
9 to RAND PAC in or about January 2015, in consultation with Paul, and gave Englander  
10 assurances that Englander would be Paul’s campaign manager if Paul entered the 2016  
11 presidential race.<sup>39</sup> Englander ultimately went on to become Paul’s campaign manager after Paul  
12 formally announced his campaign.<sup>40</sup>

---

<sup>36</sup> *Id.*

<sup>37</sup> Email Chain at RP\_215–16 (Mar. 7, 2015). The donor further elaborated: “By ‘blank’ I am referring to the many questions that arose in discussions between my wife and I [sic.] about Rand’s contemplation of a possible 2016 presidential campaign after meeting him on that trip.” *Id.*

<sup>38</sup> *Id.* (“I spoke at length with Amanda Weaver during the dinner, and gained some insight into his approach for a campaign. I see in your email that you were engaged by Rand shortly before he left on the 4 state tour that week.”)

<sup>39</sup> Deposition of Doug Stafford (Feb. 11, 2020) (“Stafford Dep. Part II”) at 206:7–208:3, 210:4–16. Although Stafford acknowledged that Englander was hired by RAND PAC in approximately late 2014 or early 2015, *id.* at 200:1–9, we have not found evidence that the PAC paid him a salary during this time. Stafford acknowledged that he may have been paid through a consulting firm, *id.* at 204:14–205:5, but we have not identified an entity paid by RAND PAC during that time that was associated with Englander.

<sup>40</sup> *E.g.*, Katie Zezima, *Meet the People Who Will Try to Get Rand Paul Elected President in 2016*, WASH. POST (Apr. 7, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2015/04/07/meet-the-people-who-will-try-to-get-rand-paul-elected-president-in-2016/>.

1           In addition, as previously discussed in the First General Counsel's Report, RAND PAC  
2 announced the hiring of Rachel Kania on March 12, 2015, in a media advisory that reported she  
3 was to open a "tech office" in Austin, Texas.<sup>41</sup> In that advisory, Kania stated: "As the newest  
4 member of Team Rand, I look forward to leveraging the latest in campaign technology to  
5 activate our energized volunteer base. Team Rand will be the most technologically-savvy  
6 campaign in the field and his message will inspire and widen the GOP base unlike any other  
7 candidate."<sup>42</sup>

8           According to evidence collected during the investigation, RAND PAC hired Kania in  
9 August 2014 as a Senior Field and Tech Strategist.<sup>43</sup> Kania worked out of single-person office  
10 in Austin, Texas, located in a shared work space, from that point through her time working on  
11 the campaign.<sup>44</sup> While working for RAND PAC, she helped support fundraisers and an event  
12 held in March during the 2015 South by Southwest festival at which Paul spoke.<sup>45</sup> Although  
13 Kania stated during her interview with this Office that she only learned of rumors of an  
14 anticipated campaign in March 2015,<sup>46</sup> documentary evidence indicates that she was engaged in  
15 assisting with Paul's testing-the-water efforts before that time. For example, on February 12,

---

<sup>41</sup> FGCR at 13 (citing 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/> (last visited Mar. 15, 2021) ("Media Advisory")).

<sup>42</sup> *Id.*

<sup>43</sup> Email Chain at RP\_129–31 (Sep. 15, 2014); Report of Investigation, Telephone Interview with Rachel Kania at 1 (Feb. 6, 2020) ("Kania Interview").

<sup>44</sup> Kania Interview at 1; Stafford Dep. Part II at 193:10–16.

<sup>45</sup> Kania Interview at 1; Stafford Dep. Part II at 186:2–187:11, 192:10–17.

<sup>46</sup> Kania Interview at 2.

1 2015, she forwarded to Stafford a draft bio, stating that she would “head up the Austin office if  
2 Senator Rand Paul chooses to launch a presidential campaign” and identifying herself as the  
3 campaign’s “Director of Field and Technology Integration.”<sup>47</sup> Further, while she stated in her  
4 interview that she did not know of or work with Englander,<sup>48</sup> email communications indicate that  
5 Kania reached out to Englander on January 15, 2015, after RAND PAC had hired him in  
6 anticipation of Paul’s future campaign.<sup>49</sup>

7 Also, in early 2015, RAND PAC hired Vincent Harris, Sergio Gor, Michael Biundo,  
8 Mike Rothford, and Rex Elsass, with the expectation that they would be placed in positions in  
9 Paul’s anticipated presidential campaign.<sup>50</sup> Jonathan Van Norman, who assisted in organizing  
10 events for Paul in Kentucky and Iowa, began receiving payments from RAND PAC in March,  
11 2015, and went on to become the Committee’s political director for Iowa.<sup>51</sup> Stafford also  
12 communicated with Paul regarding several of these hiring decisions.<sup>52</sup> Ultimately, all of these  
13 individuals who were hired by RAND PAC in the first quarter of 2015 transitioned to the

---

<sup>47</sup> Email Chain at RP\_569–637, 621 (Mar. 11, 2015) (“Kania Bio Email”).

<sup>48</sup> Kania Interview at 2.

<sup>49</sup> Kania emailed Englander asking to speak over the phone regarding “my role and where we stand on a few things.” Email Chain at RP\_114–15 (Jan. 15, 2015).

<sup>50</sup> Stafford Dep. Part I at 138:5–10, 156:16–21; Stafford Dep. Part II at 211:14–212:20; Kania Bio Email at RP\_625 (Feb. 12, 2015).

<sup>51</sup> Stafford Dep. Part I at 77:14–79:6; F&LA at 3 (citing RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016); 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>52</sup> Stafford Dep. Part II at 210:4–21, 212:16–213:15.

1 campaign once it began in early April.<sup>53</sup> The campaign also hired Stafford as its Chief Strategist  
2 soon after formation.<sup>54</sup>

3           2.     Payments for Polling

4           RAND PAC also paid for polling in 2014 and 2015, including polls conducted by Victory  
5 Phones in Iowa and New Hampshire in February, 2015 — before Paul announced he would enter  
6 the presidential race — which asked about Paul's general favorability and relative standing  
7 among announced and anticipated 2016 Republican presidential primary candidates.<sup>55</sup> Among  
8 other questions, the first poll by Victory Phones, titled the “2016 Iowa Caucus Poll,” asked:  
9 “looking ahead to next year, in the election for the Republican nomination for President, who are  
10 you most likely to support?”<sup>56</sup> Rand Paul was one of the results among other primary  
11 candidates.<sup>57</sup> Stafford acknowledged that RAND PAC chose Iowa for this poll because it was  
12 the first state to hold a Republican presidential primary in 2016<sup>58</sup> and that RAND PAC  
13 purchased polling to “test Rand's message and popularity in general.”<sup>59</sup> Stafford also

---

<sup>53</sup> Stafford Dep. Part I at 146:2–6; Stafford Dep. Part II at 210:4–13, 212:1–213:2; Robert Costa, *Rand Paul Announces Campaign Manager for Likely 2016 Campaign*, WASH. POST (Jan. 13, 2015).

<sup>54</sup> Stafford Dep. Part I at 24:2–16.

<sup>55</sup> Victory Phones, *2016 Iowa Caucus Poll Results* at RP\_1000–6 (“2016 Iowa Caucus Poll Results”); Victory Phones, *New Hampshire GOP Poll Results* at RP\_1446–51, 1447 (“New Hampshire GOP Poll Results”).

<sup>56</sup> 2016 Iowa Caucus Poll Results.

<sup>57</sup> *Id.* The poll also included a “Candidate Images” section that included a question asking how favorably the respondent viewed Rand Paul. *Id.* at RP\_1001. The poll results featured a series of “Cross Tabs” that identified the relative support of the potential candidates listed in the poll, including Paul, by political ideology, gender, age, and marital status. *Id.* at RP\_1003–4. It included another section titled “Rand Paul Image” that listed the relative favorability of Paul based on the same self-reported characteristics of the respondents. *Id.* at RP\_1005–6.

<sup>58</sup> Stafford Dep. Part I at 106:10–12.

<sup>59</sup> *Id.* at 94:12–18.

1 acknowledged that polling to determine the relative standing of putative republican presidential  
2 primary candidates was not relevant to RAND PAC's work.<sup>60</sup> Victory Phone's New Hampshire  
3 polling asked similar questions, including whether the respondent viewed Rand Paul and other  
4 putative presidential primary candidates favorably.<sup>61</sup> RAND PAC paid \$2,000 each — \$4,000 in  
5 total — for the two polls.<sup>62</sup>

### 6 3. Payments for Travel

7 Between RAND PAC's inception and the announcement of Paul's campaign, Paul  
8 traveled extensively for speeches and events, and RAND PAC paid many of the associated  
9 expenses. RAND PAC paid for Paul's travel with the goal of raising awareness of, and support  
10 for, Paul himself by promoting his speeches and travel so that Paul could "make himself a bigger  
11 player on [his] ideas."<sup>63</sup> RAND PAC and Paul believed that this increased attention and support  
12 for Paul would, in turn, increase support for the ideas that Paul and RAND PAC promoted.<sup>64</sup>  
13 Following that strategy, Paul traveled to early primary states to garner press attention and interest

---

<sup>60</sup> *Id.* at 118:17–119:19.

<sup>61</sup> New Hampshire GOP Poll Results at RP\_1447. The New Hampshire poll also asked "[i]f the presidential primary were held today and candidates were as follows, for whom would you vote?" *Id.* at RP\_1446. Rand Paul was listed as one such candidate. *Id.*

<sup>62</sup> Victory Phones, Invoice to RAND PAC at RP\_1910 (Feb. 18, 2015).

<sup>63</sup> Stafford Dep. Part I at 33:8–10, 60:22–61:4, 67:21–69:3 (Q: We talked before how New Hampshire was somewhat of a focus; is that right? A: He had been there multiple times, yeah. Q: And why was that? A: That's where you get attention if you're going to talk politics. And that's what he wanted, attention with his ideas and, you know, make himself a bigger player on those ideas. Q: And why did that get him attention? A: Because the political press covers it. Q: Why? A: Because that's where people go to, you know, potentially run for President, so the press covers them.").

<sup>64</sup> *Id.* at 60:22–61:4, 67:21–69:3, 159:12–160:5.



1 in a potential 2016 presidential run,<sup>65</sup> which, as Stafford acknowledged in his deposition, helped  
2 Paul's eventual campaign.<sup>66</sup>

3 Along with travel to early primary states, Paul spoke at CPAC in 2014 at which time  
4 RAND PAC encouraged attendees to "Stand with Rand" by voting for him in the CPAC  
5 presidential preference straw poll.<sup>67</sup> Paul again spoke at CPAC in 2015, concluding his remarks  
6 by stating that "it's time for a new President" and asking the crowd: "Will you stand with me?  
7 Will you fight for freedom? Will you vote for freedom?"<sup>68</sup> The audience chanted "President  
8 Paul" in response.<sup>69</sup> In the days leading up to Paul's speech at CPAC in 2014, RAND PAC  
9 made approximately \$30,000 in disbursements related to travel; it likewise spent approximately  
10 \$17,000 related to travel ahead of CPAC in 2015.<sup>70</sup>

---

<sup>65</sup> *Id.* at 45:7–14, 67:2–68:12. Stafford stated that Paul also traveled to Iowa, South Carolina, and Florida to generate media speculation regarding his potentially running in 2016 in order to generate further attention toward Paul. *Id.* at 69:22–70:12.

<sup>66</sup> *Id.* at 162:22–163:15 ("MR. RABINOWITZ: Okay. Would those speeches that were more issue focused, they would still help him in this hypothetical or in this world that you were in where he hadn't decided to become a candidate yet? THE WITNESS: Right. MR. RABINOWITZ: These issue-based speeches in early primary states would still help him if he ultimately ran, wouldn't they? THE WITNESS: I mean, so is being a U.S. Senator or being born Ron Paul's son. I mean, it's just — they all go around the country giving speeches and it — it — would it help later? I mean, I guess if more people know who he is, it can help. But, I mean, it also helps him as a Senator, it helps him as a political messenger.").

<sup>67</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 (Mar. 7, 2014), <https://www.youtube.com/watch?v=Y5DG2tKqPIM> ("2014 CPAC Speech"). 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>68</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/> (last visited Mar. 15, 2021).

<sup>69</sup> Rand Paul CPAC 2015 Full Speech 13:17, YOUTUBE (Feb. 27, 2015), <https://www.youtube.com/watch?v=AXJOcBfcH3s> ("2015 CPAC Speech").

<sup>70</sup> RAND PAC Amend. Apr. 2014 Quarterly Report (Oct. 15, 2014); RAND PAC Second Amend. 2015 Mid-Year Report (Mar. 9, 2016).

1           Emails with donors further indicate that Paul's travels paid for by RAND PAC promoted  
 2 his future candidacy. For example, as previously described, one donor referenced Paul's travel  
 3 to Nevada in January 2015, where the donor had met with Paul and spoken at length with a  
 4 member of RAND PAC regarding Paul's campaign.<sup>71</sup> In response to Englander's email  
 5 introducing himself as Paul's campaign manager, another long-time donor to Paul expressed  
 6 eagerness to help Paul's pre-candidacy efforts during an upcoming trip to Austin in March 2015  
 7 and suggested that Paul could do a large event to create "as much buzz as possible" and  
 8 "[d]eliver a knock out speech."<sup>72</sup>

9           Consistent with Stafford's testimony that a principal purpose of RAND PAC was to pay  
 10 for Paul's travel,<sup>73</sup> RAND PAC's disclosure reports show that it reported spending hundreds of  
 11 thousands of dollars associated with travel during the relevant time, as reflected in the following  
 12 chart:

<b>Year</b>	<b>Travel Disbursements<sup>74</sup></b>
2012	\$85,430.14
2013	\$140,671.44

---

<sup>71</sup> *Supra* n.37 and accompanying text.

<sup>72</sup> Email Chain at RP\_164 ("Chip, Great to hear from you. I have been planning to reach out to you or the Senator. Congrats on the CPAC victory and your position as campaign manager, of course I'm following it closely. I'm available in August all next weekend to help the Senator as needed. My thoughts: #1. I think Rand should do a big breakfast on Monday. Invite all legislature, staff and the lobby. . . . This could be his signature event for his trip to Austin. Create as much buzz as possible. Deliver a key knock out speech."); Stafford Dep. Part II at 217 (describing sender of email as "one of Senator Paul's oldest and largest donors.").

<sup>73</sup> *Supra* n.63 and accompanying text.

<sup>74</sup> RAND PAC 2011–2015 Disclosure Reports. The following categories of disbursements, and variations thereof, were included in the above chart: CREDIT: LODGING; CREDIT: TRAVEL; FOOD/BEVERAGE/TRAVEL REIMBURSEMENT; MILEAGE REIMBURSEMENT; LODGING; TRANSPORTATION; TRANSPORTATION SERVICES; TRAVEL; TRAVEL LUGGAGE; TRAVEL REIMBURSEMENT. A spreadsheet reflecting these disbursements is available on VBM.

<b>Year</b>	<b>Travel Disbursements<sup>74</sup></b>
2014	\$360,253.46
2015 (January 1 - April 6)	\$137,595.84
2015 (April 7 - December 31)	\$33,129.73

1 These payments for travel largely relate to the events and speeches given by Paul as described  
 2 above.<sup>75</sup> And, based on the evidence obtained during the investigation, at least a portion of the  
 3 payments made by RAND PAC went to events and speeches that supported Paul's future  
 4 presidential campaign.

#### 5 4. Other Payments

6 In the months leading up to Paul's presidential campaign announcement, RAND PAC  
 7 paid for certain office expenses in early primary states, including payroll expenses in Ohio and  
 8 payments for equipment and office supplies in Florida, Virginia, and Minnesota.<sup>76</sup> Stafford  
 9 testified that RAND PAC's disclosures regarding these payments reflected the headquarters of  
 10 the recipient and that in these specific instances listed above the office supplies were not  
 11 purchased for use in those states.<sup>77</sup>

#### 12 C. **Announcement of Paul's Candidacy**

13 Paul announced his campaign at an April 7, 2015 event that was organized by RAND  
 14 PAC staff, including Stafford, Kilgore, and others.<sup>78</sup> Immediately after his announcement, the

---

<sup>75</sup> Stafford Dep. Part I at 59:16–18.

<sup>76</sup> F&LA at 7 (citing Compl., Ex. 1).

<sup>77</sup> See Stafford Dep. Part I at 75:12–19.

<sup>78</sup> Email Chain at RP\_429–565 (Apr. 2, 2015); see also F&LA at 1 (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>) (discussing announcement).

1 campaign also launched a “Stand with Rand” tour of New Hampshire, South Carolina, Iowa and  
 2 Nevada.<sup>79</sup> The slogan “Stand with Rand” was placed at the top of the front page of Paul’s  
 3 campaign website in the largest font:



4  
 5 The campaign also sold merchandise featuring the same slogan.<sup>81</sup> Paul suspended his campaign  
 6 on February 3, 2016.<sup>82</sup> The Committee’s disclosure reports show that it continued refunding  
 7 contributions Paul received for the general election from February 2016 through January 2017.<sup>83</sup>

---

<sup>79</sup> Katie Zezima and Robert Costa, *Rand Paul Launches 2016 White House Bid: ‘We Have Come to Take Our Country Back,’* WASH. POST (Apr. 7, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/04/07/rand-paul-set-to-announce-presidential-run/>.

<sup>80</sup> [www.randpaul.com](https://web.archive.org/web/20150412061919/https://www.randpaul.com/) (Apr. 12, 2015), *archived at* <https://web.archive.org/web/20150412061919/https://www.randpaul.com/>.

<sup>81</sup> [www.store.randpaul.com](https://web.archive.org/web/20150408185420/https://store.randpaul.com/index.php/fun-stuff.html) (Apr. 12, 2015), *archived at* <https://web.archive.org/web/20150408185420/https://store.randpaul.com/index.php/fun-stuff.html>.

<sup>82</sup> F&LA at 6 (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>83</sup> *See* Committee, Amend. 2016 March Monthly Report (Mar. 31, 2016); Committee, 2017 February Monthly Report (Feb. 20, 2017).

1 **IV. ANALYSIS**

2 **A. The Commission Should Dismiss but Send a Letter of Caution as to the**  
3 **Allegations that RAND PAC Paid for Expenses that Are Deemed In-Kind**  
4 **Contributions Under 11 C.F.R. § 110.2(l)**

5 1. Legal Standard

6 11 C.F.R. § 110.2(l) sets forth specific categories of “[p]re-candidacy expenditures by  
7 multicandidate political committees [that are] deemed in-kind contributions.”<sup>84</sup> To be deemed  
8 an in-kind contribution under section 110.2(l), pre-candidacy expenditures by a multicandidate  
9 political committee must be received or requested by the candidate, or the candidate must have  
10 been “materially involved in the decision to provide them, or [have been] involved in substantial  
11 discussions about their provision.”<sup>85</sup> The expenditure also must be “made on or after January 1  
12 of the year immediately following the last Presidential election year.”<sup>86</sup> In addition, 11 C.F.R.  
13 § 110.2(l) only covers certain categories of expenses; the payments at issue must be: (a) for  
14 polling that tests the favorability or relative standing of the candidate; (b) compensation paid to  
15 employees, consultants, or vendors for “services rendered in connection with establishing and  
16 staffing offices in States where Presidential primaries . . . are to be held, other than offices in the  
17 candidate’s home state” or near Washington, D.C.; or (c) administrative expenses, including rent,  
18 utilities, office supplies and equipment, in connection with establishing and staffing the offices  
19 described in subsection (b).<sup>87</sup> Travel is not a qualified expenditure under section 110.2(l). If a

---

<sup>84</sup> 11 C.F.R. § 110.2(l).

<sup>85</sup> *Id.* § 110.2(l)(1)(ii).

<sup>86</sup> *Id.* § 110.2(l)(1)(i).

<sup>87</sup> *Id.* § 110.2(l)(1)(iii)(A)–(C).

1 candidate, through his or her authorized committee, reimburses the multicandidate committee  
2 within 30 days of becoming a candidate, a payment by the multicandidate committee will not  
3 constitute an in-kind contribution.<sup>88</sup>

4 Pre-candidacy payments by multicandidate political committees that do not meet the  
5 elements of 11 C.F.R. § 110.2(l), while not “deemed” an in-kind contribution under that  
6 regulation, may still otherwise meet the definition of a “contribution” under the Act.<sup>89</sup> Thus, a  
7 political committee’s payment made during the testing-the-waters period that does not meet the  
8 enumerated criteria of section 110.2(l) is analyzed under “the general provisions describing in-  
9 kind contributions,”<sup>90</sup> because an individual testing the waters may use “[o]nly funds permissible  
10 under the Act.”<sup>91</sup>

---

<sup>88</sup> *Id.* § 110.2(l)(2); *see also* Factual and Legal Analysis at 9-10, MUR 6926 (Martin O’Malley) (finding that authorized committee reimbursed multicandidate committee for pre-candidacy expenditures within 30 days as required by section 110.2(l)).

<sup>89</sup> *See* 52 U.S.C. § 30101(8)(A) (defining “contribution” as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or . . . the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.”); *see also* *Public Financing of Presidential Candidates and Nominating Conventions*, 68 Fed. Reg. 47,386, 47,407 (Aug. 8, 2003) (“Pre-Candidacy Payments by Multicandidate PACs E&J”) (stating that related regulations applying to publically financed candidates were originally designed to address all situations “where unauthorized political committees closely associated with a particular individual planning to run for President defray costs that are properly treated as in-kind contributions unless reimbursed by the Presidential campaign,” but were changed to “narrow their focus so they are clearer in application and better targeted to the situations that truly present the potential for evasion of the contribution and spending limits.”); *id.* at 47,387 (stating rationale described above applies to 11 C.F.R. § 110.2(l)); *id.* at 47,386 (“[f]or other situations not addressed in new [section] 110.2(l) . . . the general provisions describing in-kind contributions at 11 CFR 100.52(a) and (d), 109.20, 109.21, 109.23, and 109.37 would apply.”).

<sup>90</sup> Pre-Candidacy Payments by Multicandidate PACs E&J at 47,407.

<sup>91</sup> 11 C.F.R. § 100.72(a).

1                   2.       RAND PAC Made Pre-Candidacy Expenditures that Qualify as In-Kind  
2                                   Contributions Under 11 C.F.R. § 110.2(l)

3                   The investigation established that RAND PAC paid for staffing expenses that meet the  
4 definition of section 110.2(l). There is insufficient evidence, however, to establish that RAND  
5 PAC's payments for polling and the purchase of office supplies meet the elements of section  
6 110.2(l).

7                   RAND PAC paid for expenses that are deemed in-kind contributions under section  
8 110.2(l) in connection with staffing an office in Texas. Specifically, Kania worked for RAND  
9 PAC from August, 2014, through April, 2015, during which time she supported fundraising  
10 events and a speech by Paul at the 2015 South by Southwest festival.<sup>92</sup> Kania worked out of an  
11 office space in Austin, Texas, that RAND PAC described in a media advisory as its anticipated  
12 "tech office,"<sup>93</sup> and that space became the Committee's Texas office after Paul announced his  
13 candidacy.<sup>94</sup> There is thus sufficient evidence to surmise that Kania's office space served as  
14 RAND PAC's office while she worked for the PAC. There is also evidence that Paul was

---

<sup>92</sup> Stafford Dep. Part II at 179:1–180:5, 186:2–187:11, 192:10–17; Kania Interview at 1; Email Chain at RP\_129–30; RAND PAC Disclosure Reports.

<sup>93</sup> See Media Advisory (announcing Kania's hiring and described "plans to open a tech-oriented office in Austin, Texas"); Stafford Dep. Part II at 182:18–185:19 (testifying that Kania worked out of an office in Austin, Texas located in a facility called the Capital Factory, but stating that he was unable to remember if she worked there while working for RAND PAC or only after she joined Paul's presidential campaign); Kania Interview at 1 (acknowledging that she worked out of the Austin, Texas, office at the Capital Factory location while working for RAND PAC); *but see* Stafford Dep. Part II at 193:3–194:10 (acknowledging that the media advisory referred to the office space at the Capital Factory, but disputing that RAND PAC had an office in Texas).

<sup>94</sup> Committee Disclosure Reports. The fact that Kania, rather than RAND PAC, paid rent for this office space when she worked for RAND PAC is consistent with evaluating the space as RAND PAC's office, as office expenses are covered under section 110.2(l) "to the extent they relate to activities in states where Presidential primaries, caucuses, or preference polls are yet to be conducted," *Pre-Candidacy Payments by Multicandidate PACs E&J*, 68 Fed. Reg. at 47,407, and it is undisputed that Kania's duties for RAND PAC related to activities in Texas, which had yet to conduct its primary election for the upcoming presidential election.

1 involved in the provision of services by Kania, as he personally spoke at the events she  
2 arranged.<sup>95</sup> RAND PAC's payments to Kania for the purpose of staffing this Texas office also  
3 meet the timing element of section 110.2(1), because they were made "after January 1 of the year  
4 immediately following the last Presidential election year"<sup>96</sup> and Texas had yet to hold its  
5 presidential primary for the 2016 presidential election, which occurred on March 1, 2016.<sup>97</sup>  
6 There is also no evidence that the Committee refunded the relevant payments to RAND PAC  
7 within 30 days of Paul becoming a candidate. Under section 110.2(1), then, RAND PAC's  
8 payments for staffing in Texas, including its payments to Kania, are deemed in-kind  
9 contributions to Paul's campaign.

10 RAND PAC also made payments in March and April 2015 to Van Norman, who became  
11 the campaign's political director for Iowa.<sup>98</sup> However, the investigation did not establish that  
12 Van Norman was paid in connection with staffing a RAND PAC office in Iowa. Stafford  
13 testified that Van Norman was likely being paid to do "advance" work for events in Kentucky  
14 and Iowa,<sup>99</sup> but we are not aware of evidence that RAND PAC maintained an Iowa office during  
15 this time.

---

<sup>95</sup> Stafford Dep. Part II at 192:1–17. Stafford also testified that he generally discusses RAND PAC business with Paul on a weekly basis. Stafford Dep. Part I at 34:10–35:5.

<sup>96</sup> 11 C.F.R. § 110.2(1)(1)(i).

<sup>97</sup> Office of the Texas Secretary of State, 2016 Republican Party Primary Election, [https://elections.sos.state.tx.us/elchist273\\_state.htm](https://elections.sos.state.tx.us/elchist273_state.htm).

<sup>98</sup> F&LA at 3.

<sup>99</sup> This does not fall within the categories of payments described in section 110.2(1), but the available evidence indicates that the PAC's payments to Van Norman were a contribution to the campaign because the only relevant events Paul attended after RAND PAC's payments to Van Norman were Paul's announcement of his campaign in Kentucky on April 7, 2015, and his first campaign rally in Iowa April 10. *See infra* Section V.B.2.



1           RAND PAC engaged Victory Phone to conduct polling in Iowa and New Hampshire in  
2 February, 2015. This falls within the definition in section 110.2(l) of polling to “determin[e] the  
3 favorability, name recognition, or relative support level of the candidate involved.”<sup>100</sup> In fact,  
4 the polls directly asked how “favorably” the respondents viewed Rand Paul.<sup>101</sup> However,  
5 section 110.2(l) also requires that “the *candidate* accepted or received [the goods or services in  
6 question], requested or suggested their provision, was materially involved in the decision to  
7 provide them or was involved in substantial discussions about their provision.”<sup>102</sup> While other  
8 provisions of Commission regulations explicitly state that conduct by a candidate’s agent could  
9 result in the candidate’s acceptance of an in-kind contribution, the text of section 110.2(l)(1)(ii)  
10 indicates that only the direct involvement of a candidate is sufficient to deem the payment an in-  
11 kind contribution.<sup>103</sup> Here, although there is evidence that individuals at RAND PAC who went  
12 on to senior positions in Paul’s presidential campaign received the poll results and used them to  
13 benefit Paul’s eventual presidential campaign,<sup>104</sup> we have not found evidence that Paul himself

---

<sup>100</sup> 11 C.F.R. § 110.2(l)(1)(iii)(A).

<sup>101</sup> 2016 Iowa Caucus Poll Results at RP\_1001; New Hampshire Poll Results at RP\_1447. The polls also asked the question: “looking ahead to next year, in the election for the Republican nomination for President, who are you most likely to support?” 2016 Iowa Caucus Poll Results at RP\_1000.

<sup>102</sup> 11 C.F.R. § 110.2(l)(1)(ii) (emphasis added).

<sup>103</sup> The Pre-Candidacy Payments by Multicandidate PACs E&J explains that the restriction “approach was driven, in part, by the fact that the Commission did not in these rules want to try to differentiate between various types of multicandidate committees, such as those commonly referred to as ‘leadership PACs.’ However, without some nexus with a particular benefiting candidate, the rules would reach too broadly.” *Pre-Candidacy Payments by Multicandidate PACs E&J*, 68 Fed. Reg. at 47,408. It further cites to section 106.4(b), which, in contrast to section 110.2(l), specifically references acceptance of poll results “by a candidate or a candidate’s authorized political committee or agent,” and section 109.21(d), which, also in contrast to section 110.2(l), describes the request, suggestion, or material involvement of a “candidate, authorized committee, or political party committee,” in coordinated communications. *Id.*

<sup>104</sup> *See supra* Section III.B.2.

1 received the polls or was materially involved in the decision to seek them.<sup>105</sup> Other polling that  
2 RAND PAC purchased during the relevant time period also does not appear to meet the elements  
3 of section 110.2(l).<sup>106</sup>

4 RAND PAC also made disbursements for payroll expenses in Ohio and office supplies in  
5 Florida, Virginia, and Minnesota.<sup>107</sup> It appears, however, that the disclosures at issue reflect the  
6 corporate headquarters of the recipient regardless of the location in which the payment  
7 occurred.<sup>108</sup> Other payments for office supplies for which RAND PAC listed the location as a  
8 state with an upcoming primary or caucus similarly do not appear to have furthered the  
9 establishment of offices in those states.<sup>109</sup>

10 All told, the evidence developed in the investigation confirms that RAND PAC paid for  
11 certain expenses related to staffing that are deemed in-kind contributions to Paul's campaign

---

<sup>105</sup> See 11 C.F.R. § 110.2(l)(1)(ii).

<sup>106</sup> Specifically, the available evidence suggests the polling purchased by RAND PAC from The Polling Company was issue based and did not test Paul's favorability or relative support among 2016 presidential candidates, *see* Stafford Dep. Part I at 98:6–99:12, and while we lack direct evidence of the content of the polling conducted by Wenzel Strategies, the polling appears to have taken place more than two years before the 2016 election and related to RAND PAC's activities, *see* RAND PAC Disclosure Reports (reflecting disbursements to Wenzel Strategies in 2012–2014); Stafford Dep. Part I at 94:4–7.

<sup>107</sup> F&LA at 7 (citing Compl., Ex. 1.); *see also* RAND PAC Disclosure Reports.

<sup>108</sup> *See* RAND PAC Disclosure Reports (listing Florida as the location of disbursements to Office Depot and Minnesota as the location of disbursements to Best Buy).

<sup>109</sup> RAND PAC made disbursements to Victory Enterprises — a political consulting firm that provided direct mail campaigns, consulting services, and website maintenance for RAND PAC — for printing that listed the location of the disbursement as Iowa because that is where Victory is headquartered and likely printed materials; the actual fundraising mailing was not specifically in Iowa. Stafford Dep. Part I at 71:15–73:9, 75:12–76:16. Disbursements to RightOn Strategies listed New Hampshire, its headquarters, as the location of the disbursement, but the company's work for RAND PAC — consulting on messaging and strategy — was not specific to that state. Stafford Dep. Part I at 79:21–80:22. RAND PAC's disbursements in Virginia for payroll and office equipment appears to relate to the PAC's DC office. *See* RAND PAC Disclosure Reports (reflecting purchases of "office equipment" from Apple store in Arlington, Virginia).

1 under 11 C.F.R. § 110.2(l). Given that RAND PAC paid Kania \$24,441.69 for payroll and  
2 expenses during the relevant time, it appears that those in-kind contributions were in excess of  
3 the applicable contribution limits.<sup>110</sup> However, because the statute of limitations has run with  
4 respect to the Commission's ability to pursue a civil penalty for excessive contributions during  
5 the pre-candidacy period,<sup>111</sup> we recommend that the Commission dismiss these allegations but  
6 send a letter of caution.

7 **B. The Commission Should Dismiss but Send a Letter of Caution as to the**  
8 **Allegations that RAND PAC Made Excessive Contributions to Paul's**  
9 **Campaign in the Form of Payments for Paul's Testing-The-Waters Activities**

10 1. Legal Standard

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>112</sup> The Commission, however, has established a limited exception whereby an  
16 individual may engage in certain testing-the-waters activities to evaluate the feasibility of a  
17 campaign for federal office without becoming a candidate under the Act.<sup>113</sup> The exception

---

<sup>110</sup> RAND PAC 2014–2015 Disclosure Reports. Rand PAC was limited to making \$5,000 in contributions per election to Paul and the Committee. 52 U.S.C. § 30116(a)(2)(A).

<sup>111</sup> Because those activities took place before Paul announced his candidacy on April 7, 2015, the five-year statute of limitations at 28 U.S.C. § 2462 bars the Commission from seeking a monetary penalty as to these violations.

<sup>112</sup> 52 U.S.C. § 30101(2).

<sup>113</sup> See 11 C.F.R. §§ 100.72 and 100.131; Factual and Legal Analysis at 7, MUR 6775 (Hillary Clinton); Factual and Legal Analysis at 8, MUR 6776 (Niger Innis); Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Sestak).

1 excludes from the definitions of “contribution” and “expenditure” those funds received and  
2 payments made solely to determine whether an individual should become a candidate.<sup>114</sup> The  
3 regulations are designed to distinguish activities aimed at evaluating the feasibility of candidacy  
4 from conduct signifying that the individual has decided to become a candidate.<sup>115</sup>

5 Testing-the-waters activities “include, but are not limited to, conducting a poll, telephone  
6 calls, and travel.”<sup>116</sup> The Commission has previously explained that “travel throughout the  
7 country for speaking to political and non-political groups on a variety of public issues and  
8 meeting with opinion makers and others interested in public affairs for the purpose of  
9 determining whether potential political support exists for a national campaign” is testing-the-  
10 waters activity,<sup>117</sup> and that expenses for such activities should be allocated to the individual’s  
11 potential candidacy.<sup>118</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>119</sup>

---

<sup>114</sup> 11 C.F.R. §§ 100.72(a); 100.131(a).

<sup>115</sup> *See* Advisory Op. 1981-32 (Askew) (“AO 1981-32”).

<sup>116</sup> 11 C.F.R. §§ 100.72(a); 100.131(a).

<sup>117</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>118</sup> *See* Advisory Op. 1985-40 (Republican Majority Fund) at 9 (“AO 1985-40”); *see also* Factual and Legal Analysis at 4–7, MUR 5908 (Hunter) (finding reason to believe that a candidate’s spending on travel to early primary states “to publicize his Presidential campaign, and/or gauge support for his campaign” before declaring his candidacy should have been reported as testing-the-waters or campaign expenses).

<sup>119</sup> AO 1985-40 at 9; *see also* Advisory Op. 2015-09 (Senate Maj. PAC, *et al.*) (“AO 2015-09”). The testing-the-waters exemption is not available to individuals who have made a decision to become a candidate. 11 C.F.R. §§ 100.72(b), 100.131(b); *see also* AO 2015-09 at 5; *Payments Received for Testing the Waters Activities*, 50 Fed. Reg. 9,992, 9,993 (Mar. 13, 1985) (exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”).

1 However, an individual who tests the waters must keep financial records and, if he or she  
2 becomes a candidate, all funds received or payments made in connection with testing the waters  
3 become contributions and expenditures under the Act and must be reported as such in the first  
4 report filed by the candidate's principal campaign committee.<sup>120</sup>

5 Commission regulations provide that all funds raised and spent for testing-the-waters  
6 activities are subject to the Act's limitations and prohibitions.<sup>121</sup> Multicandidate committees,  
7 including leadership PACs,<sup>122</sup> are limited to \$5,000 in contributions per election to candidates or  
8 their authorized committees.<sup>123</sup> The Act prohibits all committees from knowingly accepting  
9 excessive contributions.<sup>124</sup> Further, if a candidate engages in activities on behalf of a  
10 multicandidate political committee that also supported his or her candidacy, the candidate must  
11 allocate any expenses between the multicandidate committee and the candidate's campaign  
12 committee pursuant to 11 C.F.R. § 106.1(a).<sup>125</sup> A potential candidate need not allocate expenses

---

<sup>120</sup> 11 C.F.R. § 101.3.

<sup>121</sup> *See* 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>122</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*, 68 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003) (internal quotation marks omitted) ("Leadership PACs E&J").

<sup>123</sup> 52 U.S.C. § 30116(a)(2)(A).

<sup>124</sup> *Id.* § 30116(f).

<sup>125</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 where references to any potential candidacy “will be made ‘in an incidental manner or in  
 2 response to questions by the public or press.’”<sup>126</sup> However, an individual’s “incidental”  
 3 references to a potential candidacy “should be narrowly interpreted to apply only to incidental  
 4 contacts and incidental remarks, such as those in response to questions.”<sup>127</sup> Thus, the  
 5 Commission has determined that it would not consider as incidental “public statements” referring  
 6 to an individual’s possible intent to campaign for federal office and activities such as “soliciting  
 7 funds [or] holding meetings (which constitute more than incidental contacts) with individuals or  
 8 the press regarding such a potential candidacy.”<sup>128</sup>

9           2.       RAND PAC’s Payments for Staffing, Polling, and Travel Were Excessive  
 10                   In-Kind Contributions to Paul and the Committee

11           The First General Counsel’s Report described information indicating that Paul was  
 12 testing the waters of a possible 2016 presidential run,<sup>129</sup> but there were not sufficient  
 13 Commissioner votes to find reason to believe that violations had occurred.<sup>130</sup> During the course  
 14 of investigating the above-described allegations relating to section 110.2(l), we discovered  
 15 additional information that — in contrast to the representations of RAND PAC and the  
 16 Committee in their Response<sup>131</sup> — Paul began evaluating entering the 2016 presidential race  
 17 well before his April 7, 2015, announcement of candidacy and that, in this pre-candidacy period,

---

<sup>126</sup> Advisory Op. 1986-06 (Fund for America’s Future) at 4 (“AO 1986-06”).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> FGCR at 4–5.

<sup>130</sup> Amend. Certification.

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

1 RAND PAC paid for various expenses, including staffing, polling, and travel, for the purpose of  
 2 testing the waters of a possible presidential run by Paul.<sup>132</sup>

3 Evidence provided by Respondents during the investigation confirms that Paul began  
 4 testing the waters of a run for president before April 7, 2015. Paul's closest advisor, Douglass  
 5 Stafford, testified that he had multiple conversations with Paul regarding a potential presidential  
 6 run prior to 2015.<sup>133</sup> Moreover, as discussed further below, RAND PAC, in conversation with  
 7 Paul, began hiring individuals in early 2015 in anticipation of a likely upcoming campaign.<sup>134</sup>  
 8 This new information adds to the information previously known at the reason to believe stage,  
 9 including statements by Paul acknowledging that he was considering a run.<sup>135</sup> Accordingly,

---

<sup>132</sup> Polling and staffing expenses that do not meet the elements of section 110.2(l) are not "deemed" in-kind contributions under that regulation, but nothing in the text or history of section 110.2(l) suggests that a payment for polling or staffing by a multicandidate committee during the testing-the-waters period cannot otherwise meet the broader definition of a "contribution" as defined in the Act. Instead, section 110.2(l) establishes that certain categories of payments by multicandidate PACs fall within the definition of "contribution" without needing to otherwise determine their purpose. Moreover, the Pre-Candidacy Payments by Multicandidate PACs E&J explains that a pre-candidacy payment by a multicandidate PAC not falling under section 110.2(l) is analyzed under "the general provisions describing in-kind contributions." 68 Fed. Reg. at 47,407. Section 110.2(l) also creates a mechanism whereby payments by a multicandidate PAC can be excluded from the definition of a contribution if reimbursed within 30 days, whereas other payments by that PAC that supported a candidate's testing the waters would be contributions (with the corresponding reporting requirements and aggregate contribution restrictions) regardless of whether they were reimbursed. *See* Factual and Legal Analysis at 10-11, MUR 6926 (Martin O'Malley) (analyzing payments by a multicandidate PAC that do not "qualify for reimbursement under section 110.2(l)" as contributions but finding they were remedied under the 60 day period for reimbursement of excessive contributions as set forth in 11 C.F.R. § 103.3(b)(3)).

<sup>133</sup> Stafford Dep. Part I at 69:11–17 ("Q: Is there any point in the process when the focus shifted and he was no longer looking for attention but was, in fact, thinking of running for President himself? A: Thinking of it? I mean, that's every U.S. Senator from the time they first run for office[.]"); *id.* at 149:15–150:16 (MS. LEE: You said you got a lot of press inquiries in January of 2015. THE WITNESS: Uh-huh. MS. LEE: Can you tell us why? THE WITNESS: Senator Paul was getting a lot of attention for the possibility that he would run. MS. LEE: Was he thinking about it at the time? THE WITNESS: Was he thinking about it, sure. MS. LEE: Did you have conversations with him about possibly running? THE WITNESS: Sure. MS. LEE: You did? THE WITNESS: Uh-huh.").

<sup>134</sup> *Infra* nn.137–142 and accompanying text.

<sup>135</sup> Compl. at 2 (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>) (stating "I've said I am interested. And we are thinking about it

1 these public statements, responses to interview questions, and private conversations establish that  
 2 Paul was evaluating a presidential run for years prior to his announcement of candidacy.<sup>136</sup>  
 3 New evidence demonstrates that RAND PAC hired staff to prepare for a likely campaign  
 4 and to facilitate Paul's testing the waters. When RAND PAC hired Englander in January, 2015,  
 5 Stafford assured Englander that he would be Paul's campaign manager if Paul decided to run.<sup>137</sup>  
 6 Then, on March 7, 2015, Englander emailed prior donors to Paul and RAND PAC and various  
 7 Senate aides to represent that he was "now working closely with Senator Rand Paul's campaign  
 8 and PAC," and that Paul's win in the 2015 CPAC presidential straw poll "sent a strong  
 9 message."<sup>138</sup> Englander also attached the "Washington Post article . . . from when [he] came on  
 10 board" that discussed Paul's plans for an upcoming campaign.<sup>139</sup> Biundo, Harris, Rothfield, and

---

but probably would [sic] make a decision until 2014."); RAND PAC, Facebook Post, *Sen. Paul Joins Potter Gray Elementary School 4th Grader Clay Wallace—January 26, 2014* (Jan. 28, 2014), <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (statement by Paul that that the chances he would enter the presidential race were "50-50."); 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>) (statement by Paul that that he was seeing "if we think we're in the mix . . . and can win. I don't want to do it just to do it, we want to do it because we actually think we can win."); *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) (suggesting in interview that his announcement of candidacy would be on April 7); *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) (same)).

<sup>136</sup> AO 1981-32 at 2, 4; *see also* AO 1985-40 at 6-7 (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). In MUR 6501 (Brunner), three Commissioners agreed with OGC's assessment that a candidate's statement that he was "very serious" and "ready to jump right in" were indicative of testing the waters, but not candidate status. *See* Certification, MUR 6501 (Brunner) (Jan. 31, 2013); First Gen. Counsel's Rpt. at 7, MUR 6501 (Brunner). The other two Commissioners disagreed not because the statements failed to indicate testing-the-waters status, but because they believed those statements went further and demonstrated that the respondent had become a candidate. Statement of Reasons, Comm'rs Weintraub and Walther at 3 (Mar. 4, 2013).

<sup>137</sup> Stafford Dep. at 210:4-13, 215:9-12.

<sup>138</sup> Englander Email.

<sup>139</sup> *Id.*



1 Elsass all received similar assurances that they would be placed in positions in Paul's anticipated  
2 campaign when they were hired by RAND PAC in 2015.<sup>140</sup> Stafford also communicated with  
3 Paul regarding several of these hiring decisions.<sup>141</sup> Some of these individuals appear to have  
4 done minimal work for RAND PAC. In particular, filings with the Commission reflect that  
5 RAND PAC reported paying Van Norman \$3,459.50 in March and April of 2015 for consulting  
6 and travel expenses in connection with campaign events that took place after Paul announced his  
7 candidacy.<sup>142</sup> The Commission has advised that expenditures for salaries, fees, and  
8 administrative expenses must be classified in the same manner as the underlying activities to  
9 which they relate.<sup>143</sup> Therefore, salaries for staff who work on testing-the-waters activities  
10 constitute testing-the-waters expenditures. In addition, under Commission precedent, the  
11 employment of "political consultants for the purpose of assisting with advice on the potential  
12 mechanics of constructing a national campaign organization" constitutes testing-the-waters  
13 activity.<sup>144</sup>

---

<sup>140</sup> *Id.* at 212:1–213:15.

<sup>141</sup> *Id.* at 210:4–21, 212:16–213:15.

<sup>142</sup> *See* RAND PAC, Amend. 2015 July Mid-Year Report, FEC Form 3X (Mar. 9, 2016). According to Stafford, Van Norman's role was to prepare in advance of speeches and events in Kentucky and Iowa. Stafford Dep. Part I at 78:15–79:5. But, according to available information, Paul did not speak in either state until his April 7 presidential announcement speech in Kentucky and a campaign speech in Iowa three days later. *See* Jennifer Jacobs, *Rand Paul to Court Young Voters at First Official Campaign Rally in Iowa*, DES MOINES REGISTER (Mar. 24, 2015), <https://www.desmoinesregister.com/story/news/elections/presidential/caucus/2015/03/24/rand-paul-court-young-voters-first-official-campaign-rally-iowa/70365624/>.

<sup>143</sup> *See* AO 1985-40 at 10–11.

<sup>144</sup> AO 1981-32 at 2–4 (concluding that hiring political consultants to assist with advice on the potential and mechanics of constructing a national campaign organization and employing a specialist in opinion research to conduct polls for the purpose of determining the feasibility of a national campaign were within the scope of the testing-the-waters exemption as long as the prospective candidate conducted the activities while continuing to deliberate his decision to become a candidate); *see also* F&LA at 5–6, MUR 6196 (Kennedy) (concluding that

1           RAND PAC also engaged polling in support of Paul's testing-the-waters efforts. As  
2 described above, RAND PAC paid for polling designed to test the favorability of Paul and his  
3 relative standing among other 2016 Republican presidential primary candidates, which was  
4 received and analyzed by individuals at RAND PAC who went on to senior positions in Paul's  
5 campaign.<sup>145</sup> Stafford also acknowledged that RAND PAC itself had no use for such polling.<sup>146</sup>  
6 The Commission has previously explained that an individual tests the waters by employing "a  
7 specialist in opinion research to conduct polls for the purpose of determining the feasibility of a  
8 national campaign."<sup>147</sup>

9           Paul engaged in extensive travel throughout the country prior to his announcement of  
10 candidacy. While some of Paul's travel appears to have been for other purposes, Paul also  
11 traveled for speeches that were for the purpose of evaluating the feasibility of, and generating  
12 support for, a potential presidential run. In particular, new information reveals that Paul's  
13 advisors saw his CPAC speech as a major opportunity to bolster his standing as a presidential  
14 candidate. On February 21, 2015, Englander wrote to others at RAND PAC, regarding another  
15 Republican primary candidate's recent speech: "The power of a good speech — let's nail  
16 CPAC!"<sup>148</sup> Paul ultimately won the straw poll in both 2014 and 2015, which Englander used to  
17 raise awareness of Paul's anticipated campaign in emails sent in March 2015, writing to potential

---

having discussions with political consultants to determine the viability of a potential candidacy and commissioning a poll to assess name recognition were within the testing-the-waters exemption).

<sup>145</sup> *See supra* Section IV.A.2.

<sup>146</sup> Stafford Dep. Part I at 118:17–119:19.

<sup>147</sup> AO 1981-32 at 2-4.

<sup>148</sup> Email Chain at RP\_1432 (Feb. 21, 2015).

1 donors that the win “sent a strong message.”<sup>149</sup> As discussed in the First General Counsel’s  
2 Report, the content of Paul’s speeches at CPAC in 2014 and 2015 evidences that they — along  
3 with RAND PAC’s promotion of Paul’s attendance at those events, including efforts to  
4 encourage CPAC attendees to vote for Paul in the CPAC presidential preference straw poll<sup>150</sup> —  
5 were testing-the-waters activities.<sup>151</sup>

6 In the years preceding his campaign announcement, Paul also traveled to early primary  
7 states for the purpose of generating media speculation about whether he would run for  
8 president.<sup>152</sup> Stafford testified that Paul engaged in this travel for the specific purpose of  
9 generating interest in himself as a presidential candidate, and Stafford acknowledged that the  
10 travel ultimately benefited Paul’s campaign.<sup>153</sup> As discussed in the First General Counsel’s

---

<sup>149</sup> *E.g.*, Englander Email.

<sup>150</sup> *See* RAND PAC, FACEBOOK Post, <https://www.facebook.com/pg/ReinventingANewDirectionPAC/posts/> (posted Mar. 8, 2014).

<sup>151</sup> FGCR at 20–22. During Paul’s 2014 CPAC speech, he made numerous statements to the audience promoting himself as a potential future presidential candidate. In particular, Paul asked the audience to “[i]magine a time when the White House is once again occupied by a friend of liberty.” 2014 CPAC Speech at 1:14. While not directly referring to himself in this instance, Paul has consistently described his political position as promoting “liberty.” Stafford Dep. Part I at 32:2–12. In his 2015 CPAC speech, Paul outlined his major policy positions and then said to the audience, “[i]t’s time for a new way, a new set of ideas, a new leader, one you can trust, one who works for you, and above all it’s time for a new president,” which was met with a prolonged chant by the audience of “President Paul.” 2015 CPAC Speech at 13:35. As in 2014, Paul concluded his speech by asking the audience to “stand with” him. *Id.* at 15:11. Paul’s repeated request that the audience “stand with” him invoked what became one of the primary slogans of his campaign: “Stand with Rand,” which featured prominently on his campaign website, was printed on merchandise, and became the name of a campaign tour. *See supra* Section III.C. Paul has not spoken at CPAC in any year since he entered the presidential race in 2015. *See* <https://www.washingtonpost.com/news/post-politics/wp/2016/03/01/rand-paul-wont-attend-cpac/> (2016); <https://www.businessinsider.com/libertarians-cpac-2017-absent-rand-ron-paul-2017-2> (2017); <https://www.foxnews.com/politics/who-to-watch-at-cpac-agenda-includes-trump-pence-cruz-and-more> (2018); <https://www.newsweek.com/cpac-2019-full-schedule-live-stream-how-watch-speakers-when-donald-trump-1348116> (2019); <https://www.foxnews.com/politics/cpac-2020-whos-speaking-at-this-years-conservative-conference> (2020).

<sup>152</sup> Stafford Dep. Part I at 157:22–160:7.

<sup>153</sup> Stafford Dep. Part I at 60:22–61:4, 67:21–69:3.

1 Report, Paul traveled to 32 states in 2013 and 2014 including repeated trips to South Carolina,  
 2 New Hampshire, and Iowa for rallies, “listening sessions,” and private receptions.<sup>154</sup> Such travel  
 3 for speeches and events with “political and non-political groups on a variety of public issues and  
 4 meeting with opinion makers and others interested in public affairs for the purpose of  
 5 determining whether potential political support exists for a national campaign” constitutes  
 6 testing-the-waters activity.<sup>155</sup>

7 RAND PAC’s expenditures that benefited Paul’s testing the waters of a presidential run  
 8 qualify as contributions in part or in whole, and the PAC was required to allocate expenses to  
 9 account for these contributions.<sup>156</sup> For example, RAND PAC appears to have made at least  
 10 \$47,000 payments to enable Paul and RAND PAC staff promoting and supporting Paul to attend

---

<sup>154</sup> FGCR at 9 (citing among others *Rand Paul Testing 2016 Waters During SC Visit*, WDRB.COM, Jun. 28, 2013, *archived at* <https://web.archive.org/web/20131008070808/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); RAND PAC, <http://randpac.com/> (last visited Mar. 15, 2012); 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/>. Due to the limited nature of our investigation, however, other than Paul’s speeches at CPAC in 2014 and 2015, we did not identify specific events during this travel that furthered Paul’s testing-the-waters efforts.

<sup>155</sup> AO 1981-32 at 2, 4; *accord* AO 1986-06 at 4 (costs for “holding meetings (which constitute more than incidental contacts) with individuals or the press regarding . . . a potential candidacy” can constitute in-kind contributions to the potential candidate) (citing AO 1985-40); AO 1981-32 at 5 (activity “oriented to ascertaining whether there is an initial base of support adequate to launch a campaign effort” is testing the waters); F&LA at 4–7, MUR 5908 (finding reason to believe that a candidate’s spending on travel to early primary states “to publicize his Presidential campaign, and/or gauge support for his campaign” before declaring his candidacy should have been reported as testing-the-waters or campaign expenses).

<sup>156</sup> *Leadership PACs E&J*, 68 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.”).

1 Paul's CPAC speeches, thereby supporting his testing-the-waters activity.<sup>157</sup> Moreover, as  
2 described above, RAND PAC paid for \$4,000 in polling by Victory Phones that benefitted Paul's  
3 eventual campaign but did not benefit RAND PAC.<sup>158</sup> It appears to have paid Van Norman  
4 \$3,459.50 to provide support for campaign speeches.<sup>159</sup> Stafford also supported RAND PAC's  
5 efforts to further Paul's testing the waters, including by overseeing hiring, polling, and other  
6 facets of RAND PAC's activities.<sup>160</sup> Given the volume of payments by RAND PAC that  
7 benefitted Paul's testing-the-waters activities, it appears that RAND PAC made in-kind  
8 contributions to Paul's presidential campaign in excess of the \$5,000 limit set forth in 52 U.S.C.  
9 § 30116(a)(2)(A). Accordingly, the factual record indicates that RAND PAC violated 52 U.S.C.  
10 § 30116(a) by making excessive in-kind contributions in the form of payments for Paul's testing-  
11 the-waters expenses and that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R.  
12 §§ 100.72(a) and 100.131(a) by accepting excessive in-kind contributions. However, because  
13 the statute of limitations has expired with respect to the available monetary remedies for these  
14 violations,<sup>161</sup> we recommend that the Commission dismiss these allegations but send a letter of  
15 caution.

---

<sup>157</sup> *See supra* Section III.B.3.

<sup>158</sup> *See supra* Section IV.A.2.

<sup>159</sup> *Id.*

<sup>160</sup> *See supra* Sections III.B.1–3.

<sup>161</sup> *See supra* n.111 and accompanying text.

1           **C.     The Commission Should Dismiss but Send a Letter of Caution as to the**  
2           **Allegations that the Respondents Failed to Disclose Paul's Testing-the-**  
3           **Waters Activities and RAND PAC's Contributions to the Campaign**

4           When an individual who had been testing the waters subsequently becomes a candidate,  
5 funds received and payments made for testing-the-waters activity become contributions and  
6 expenditures subject to the reporting requirements of the Act.<sup>162</sup> The Act requires the principal  
7 campaign committee of a candidate for President to file reports disclosing, among other things,  
8 all receipts and disbursements.<sup>163</sup> Contributions and expenditures relating to testing-the-waters  
9 activity must be reported by the candidate's principal campaign committee in its first report filed,  
10 regardless of the date the funds were received or the payments made by the candidate while  
11 testing the waters.<sup>164</sup> Likewise, multicandidate political committees must disclose in their  
12 reports all contributions made, including in-kind contributions.<sup>165</sup>

13           Once Paul became a candidate, the Committee was required to report all receipts and  
14 disbursements from Paul's testing-the-waters period. The Committee filed its first report on July  
15 15, 2015, covering the period from April 1, 2015, to June 30, 2015, yet in that report it did not  
16 disclose any disbursements prior to April, 2015, despite the extensive testing-the-waters activity  
17 described above.<sup>166</sup> And it has not disclosed any contributions received from RAND PAC.<sup>167</sup>

---

<sup>162</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>163</sup> 52 U.S.C. § 30104(a)(3), (b).

<sup>164</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>165</sup> 52 U.S.C. § 30104(a)(4), (b).

<sup>166</sup> *See* Committee, Amend. 2015 July Quarterly Report (Mar. 31, 2016).

<sup>167</sup> *See generally* Committee Disclosure Reports.

1 RAND PAC, likewise, has not disclosed any in-kind contributions to Paul or the Committee.<sup>168</sup>  
 2 The evidence therefore establishes that the Committee violated 52 U.S.C. § 30104(b), and  
 3 11 C.F.R. §§ 100.72 and 100.131, and RAND PAC violated 52 U.S.C. § 30104(b).

4 However, the statute of limitations has run with respect to the Commission's ability to  
 5 pursue a civil penalty for these reporting violations.<sup>169</sup> Although the Commission is not barred  
 6 from pursuing injunctive relief, including requiring RAND PAC and the Committee to amend  
 7 their prior reports to accurately reflect the testing-the-waters activity described above,<sup>170</sup> we do  
 8 not recommend that the Commission pursue conciliation regarding these reporting violations.  
 9 Although RAND PAC's in-kind contributions to the campaign under 11 C.F.R. § 110.2(l) and  
 10 expenditures in support of Paul's testing the waters were not reported as such, the underlying  
 11 activity was reported in RAND PAC's disclosure reports, and the payments at issue appear to  
 12 have been made with funds that complied with the restrictions and limitations of the Act.<sup>171</sup> We

---

<sup>168</sup> See generally RAND PAC Disclosure Reports.

<sup>169</sup> See *supra* n.111 and accompanying text. The Committee's deadline to file its first disclosure report after Paul's April 7, 2015, announcement of candidacy is also outside the applicable five-year statute of limitations.

<sup>170</sup> See 26 U.S.C. § 2462 (barring the recovery of "any civil fine, penalty, or forfeiture, pecuniary or otherwise" if an action is not commenced within five years); *FEC v. Christian Coal.*, 965 F. Supp. 66, 71 (D.D.C. 1997) ("Construing this statute of limitation narrowly, as the Court must, and in light of its plain text, . . . this general statute of limitation [at 28 U.S.C. § 2462] provides no such shield from declaratory or injunctive relief."); *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 20–21 (D.D.C. 1995) (same); Conciliation Agreement, MUR 6538R (Americans for Job Security) (requiring respondent to register and report as a political committee after expiration of statute of limitations for suit seeking civil penalty). Although the foregoing precedent supports the Commission's pursuit of equitable remedies here, we note that the district court in *FEC v. Nat'l Right to Work Comm., Inc.* denied equitable relief on the basis that the relief sought, a prohibition on future similar conduct, was concurrent with the expired legal remedy and because there was no reason to expect the defendant would repeat its behavior. 916 F. Supp. 10, 15 (D.D.C. 1996); see also *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n.*, 236 F. Supp. 3d 378, 392 (D.D.C. 2017), *aff'd*, 892 F.3d 434 (D.C. Cir. 2018) (noting that there is "a split of authority" regarding whether the FEC retains the ability to pursue an injunction against future harm after the expiration of the statute of limitations at 26 U.S.C. § 2462 (citing *Nat'l Right to Work Comm.*, 916 F. Supp. at 15)).

<sup>171</sup> Compare Statement of Reasons of Chair Ellen L. Weintraub, Vice Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Steven T. Walther at 2-3, MUR 7263 (Allen Lucas "Luke" Messer, *et al.*),

1 therefore recommend that the proper ordering of the Commission's priorities and use of its  
 2 resources would best be served by dismissing these allegations in an exercise of prosecutorial  
 3 discretion<sup>172</sup> but sending a letter of caution.

4 **D. There Is Insufficient Evidence to Warrant Finding Reason to Believe that**  
 5 **Paul Filed His Statement of Candidacy Late**

6 An individual becomes a candidate if he or she receives contributions or makes  
 7 expenditures in excess of \$5,000 or consents to another person doing so on his or her behalf and  
 8 the other person so acts.<sup>173</sup> The testing-the-waters exemption is not available to individuals who  
 9 have made a decision to become a candidate.<sup>174</sup> Commission regulations set forth a non-  
 10 exhaustive list of activities that indicate that an individual is no longer testing the waters and has  
 11 decided to become a candidate. Such indicia include: (1) using general public political  
 12 advertising to publicize his or her intention to campaign for federal office; (2) raising funds in  
 13 excess of what could reasonably be expected to be used for exploratory activities or undertaking  
 14 activity designed to amass campaign funds that would be spent after he or she becomes a

---

MUR 7264 (Theodore "Todd" Rokita, *et al.*) (June 20, 2019) (dismissing as a matter of prosecutorial discretion allegations that entities failed to report expenditures in support of testing-the-waters activities due to a lack of notice and because "[t]here is no allegation that respondents failed to comply with the regulations that require that testing-the-waters activities be funded with money that complies with the restrictions and limitations of the Act," and "[a]lthough the testing-the-waters activities were not clearly identified as such in the disclosure reports, the underlying activity was reported."); *with* Factual and Legal Analysis, MURs 6917 and 6929 (Scott Walker, *et al.*) (finding reason to believe that 527 organization made unreported and excessive in-kind contributions to candidate in the form of payments for testing-the-waters expenditures); Factual and Legal Analysis, MURs 6955 and 6983 (John R. Kasich, *et al.*) (same).

<sup>172</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985).

<sup>173</sup> See *supra* Section III.A; 52 U.S.C. § 30101(2).

<sup>174</sup> See AO 2015-09 at 5; see also *Payments Received for Testing the Waters Activities*, 50 Fed Reg. 9,992, 9,993 (Mar. 13, 1985) (exemption "explicitly limited 'solely' to activities designed to evaluate a potential candidacy").



1 candidate; (3) making or authorizing written or oral statements that refer to him or her as a  
2 candidate for a particular office; (4) conducting activities in close proximity to the election or  
3 over a protracted period of time; and (5) taking action to qualify for the ballot under state law.<sup>175</sup>

4 While there is some evidence that Paul had decided to enter the race prior to his April 7,  
5 2015, announcement, the available evidence overall does not support finding reason to believe  
6 that Paul violated the Act regarding this allegation. The hiring of staff in anticipation of a future  
7 campaign and polling that occurred here is akin to the conduct considered to be pre-candidacy  
8 activity described in 11 C.F.R. § 110.2(l). Likewise, Paul's travel in advance of the campaign,  
9 including his speeches at CPAC in 2014 and 2015, is consistent with traveling "for the purpose  
10 of determining whether potential political support exists for a national campaign," which the  
11 Commission has previously explained to be testing-the-waters activities.<sup>176</sup> We therefore  
12 recommend dismissing the allegations that Paul violated 52 U.S.C. § 30102(e)(1) by failing to  
13 timely file a Statement of Candidacy and designate a principal campaign committee and that the  
14 Committee violated 52 U.S.C. §§ 30103(a) and 30104 by failing to timely file a Statement of  
15 Organization and disclosure reports.

16 **E. The Available Evidence Demonstrates that the Committee Failed to Timely**  
17 **Refund or Redesignate Contributions for the General Election**

18 During the 2016 election cycle, an authorized committee was limited to accepting a total  
19 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.<sup>177</sup> A

---

<sup>175</sup> 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>176</sup> *Supra* nn.117-118, 155 and accompanying text.

<sup>177</sup> 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 C.F.R. §§110.1(a)–(b), 110.2(b)(1).

1 primary election and a general election are each considered a separate “election,” and the  
2 individual contribution limits are applied separately with respect to each election.<sup>178</sup> The  
3 Commission’s regulations permit a candidate or his authorized committee to receive  
4 contributions for the general election prior to the primary election.<sup>179</sup> If, however, the candidate  
5 does not become a candidate in the general election, the committee must: (1) refund the  
6 contributions designated for the general election; (2) redesignate such contributions in  
7 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
8 accordance with 11 C.F.R. § 110.1(k)(3).<sup>180</sup> The committee must do so within 60 days of the  
9 date that the committee has actual notice of the need to redesignate, reattribute, or refund the  
10 contributions, such as the date the candidate loses the primary or withdraws from the  
11 campaign.<sup>181</sup> The Commission has previously found reason to believe that committees  
12 knowingly accepted excessive contributions in cases involving untimely redesignations,  
13 reattributions, or refunds.<sup>182</sup>

---

<sup>178</sup> 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

<sup>179</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>180</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>181</sup> Advisory Op. 2008-04 (Dodd) (citing 11 C.F.R. §§ 110.1(b)(3)(i), (b)(5); 110.2(b)(3)(i), (b)(5); 103.3(b)(3)). 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), (k)(3).

<sup>182</sup> See Factual and Legal Analysis, MUR 7075 (Strong Country for Today & Tomorrow (“SCOTTPAC”)) (finding reason to believe the principal campaign committee, failed to timely refund, reattribute, or redesignate

1           After Paul announced that he was “suspending” his campaign on February 3, 2016,<sup>183</sup> the  
2   Committee continued reporting reimbursements to those who contributed to Paul for the general  
3   election until January 2017.<sup>184</sup> The Committee has argued that Paul remained a candidate after  
4   suspending his campaign until Donald J. Trump became the Republican Party’s presidential  
5   nominee on July 19, 2016.<sup>185</sup> However, the Commission has previously explained that, “[e]ven  
6   assuming *arguendo* that July 19, 2016, was the starting date for the 60-day window, the  
7   Committee still failed to timely remedy general election contributions totaling \$165,749.09 until  
8   after September 17, 2016.”<sup>186</sup>

9           It thus appears that the Committee failed to refund \$165,749.09 in general election  
10   contributions within the applicable 60-day window.<sup>187</sup> Therefore, we recommend that the  
11   Commission enter into pre-probable cause conciliation regarding the Committee’s apparent  
12   violations of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

---

excessive contributions totaling \$62,800 from 27 individuals and one political committee); *see also* Conciliation Agreement, MUR 7075 (SCOTTPAC); Factual and Legal Analysis at 5, MUR 6887 (McCotter Congressional Committee) (finding reason to believe that the committee failed to timely refund \$60,500 in general election contributions within 60 days of candidate’s withdrawal from the primary election).

<sup>183</sup>       *See* RAD Referral Resp. at 1–2; Leigh Ann Caldwell, *Kentucky Sen. Rand Paul Suspends Republican Presidential Campaign*, NBC NEWS (Feb. 3, 2016), <https://www.nbcnews.com/politics/2016-election/kentucky-sen-rand-paul-drop-republican-presidential-bid-n510336>.

<sup>184</sup>       *See* 11 C.F.R. § 102.9(e)(3); Committee, 2017 February Monthly Report (Feb. 20, 2017).

<sup>185</sup>       RAD Referral Resp. at 2.

<sup>186</sup>       F&LA at 11.

<sup>187</sup>       *Id.*; Committee 2015–2016 Disclosure Reports.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

15 **VI. RECOMMENDATIONS**

- 16 1. Dismiss with caution the allegation that Reinventing a New Direction Political  
17 Action Committee and Kevin Broghamer in his official capacity as treasurer  
18 violated 52 U.S.C. § 30116(a)(2)(A) by making excessive in-kind contributions  
19 during the pre-candidacy period under 11 C.F.R. § 110.2(l);
- 20 2. Dismiss with caution the allegation that Reinventing a New Direction Political  
21 Action Committee and Kevin Broghamer in his official capacity as treasurer  
22 violated 52 U.S.C. § 30116(a)(2)(A) by making excessive in-kind contributions in  
23 the form of payments for testing-the-waters expenses;

---

<sup>188</sup> See, e.g., First Gen. Counsel's Rpt. at 7, MUR 7075 (SCOTTPAC); Second Gen. Counsel's Rpt. at 9, MUR 6078 (Obama for America).

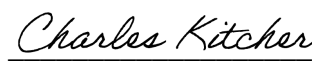
- 1           3.           Dismiss with caution the allegations that Reinventing a New Direction Political  
2                   Action Committee and Kevin Broghamer in his official capacity as treasurer  
3                   violated 52 U.S.C. § 30104(b) by failing to report making in-kind contributions;
- 4           4.           Dismiss with caution the allegations that Freedom for All Americans (f/k/a Rand  
5                   Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer  
6                   violated 52 U.S.C. § 30116(f) by accepting excessive in-kind contributions during  
7                   the pre-candidacy period under 11 C.F.R. § 110.2(l);
- 8           5.           Dismiss with caution the allegations that Freedom for All Americans (f/k/a Rand  
9                   Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer  
10                  violated 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 100.72(a), 100.131(a) by accepting  
11                  excessive in-kind contributions in the form of payments for testing-the-waters  
12                  expenses;
- 13          6.           Dismiss with caution the allegations that Freedom for All Americans (f/k/a Rand  
14                   Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer  
15                   violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 100.72(a), 100.131(a) by failing to  
16                   report receipt of in-kind contributions;
- 17          7.           Dismiss the allegation that Freedom for All Americans (f/k/a Rand Paul for  
18                   President, Inc.) and Paul Kilgore in his official capacity as treasurer violated  
19                   52 U.S.C. §§ 30103(a) and 30104, in connection with filing a timely Statement of  
20                   Organization and related disclosure reports;
- 21          8.           Dismiss the allegation that Rand Paul violated 52 U.S.C. § 30102(e)(1) by failing  
22                   to file a timely Statement of Candidacy;
- 23          9.           Dismiss with caution the allegations that Rand Paul violated 52 U.S.C. § 30116(f)  
24                   and 11 C.F.R. §§ 100.72(a), 100.131(a) by accepting excessive in-kind  
25                   contributions in the form of pre-candidacy payments under 11 C.F.R. § 110.2(l)  
26                   and for testing-the-waters expenses;
- 27          10.          Enter into pre-probable cause conciliation with Freedom for All Americans (f/k/a  
28                   Rand Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer;
- 29          11.          Approve the attached Conciliation Agreement; and
- 30          12.          Approve the appropriate letters.

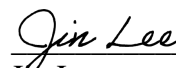
31  
32  
33

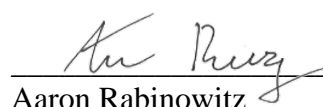
Lisa J. Stevenson  
Acting General Counsel

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

Date: March 16, 2021

  
\_\_\_\_\_  
Charles Kitcher  
Acting Associate General Counsel  
for Enforcement

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

  
\_\_\_\_\_  
Aaron Rabinowitz  
Attorney