



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 1, 2021

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Russell Lloyd
600 West Main Street
Suite 100
Louisville, KY 40202

RE: MUR 7191

Dear Mr. Lloyd:

This is in reference to the complaint you filed with the Federal Election Commission on November 7, 2016, concerning allegations that Rand Paul and Freedom for All Americans f/k/a Rand Paul for President, Inc., and Paul Kilgore as treasurer (“the Committee”) accepted excessive contributions from Reinventing A New Direction Political Action Committee and Kevin Broghamer as treasurer (“RAND PAC”) and that the Committee failed to refund or redesignate general election contributions in violation of the Federal Election Campaign Act of 1971, as amended.

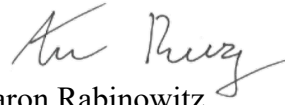
Based on that complaint, on April 25, 2019, the Commission found that there was reason to believe that: (1) RAND PAC made, and the Committee accepted, excessive in-kind contributions resulting from RAND PAC’s payment of certain pre-candidacy expenses under 11 C.F.R. § 110.2(l) in violation of 52 U.S.C. § 30116(a), (f); (2) RAND PAC and the Committee failed to properly disclose the in-kind contributions in violation of 52 U.S.C. § 30104(b); and (3) the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3) by failing to timely remedy general election contributions. The Commission then instituted an investigation of this matter. Subsequently, after considering the circumstances of this matter, the Commission on July 25, 2021, entered into a conciliation agreement with the Committee regarding violations of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3) and determined to dismiss the remaining allegations and close the file.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

The Factual and Legal Analysis, which explains the Commission’s findings, and a copy of the conciliation agreement are enclosed. If you have any questions, please contact me at (202) 694-1476.

J. Russell Lloyd
MUR 7191
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Rabinowitz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Aaron Rabinowitz
Attorney

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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

3
4 RESPONDENT: Rand Paul

MUR 7191

5
6 **I. INTRODUCTION**
7

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

13 The Complaint alleges that Paul violated the Federal Election Campaign Act of 1971, as
14 amended (the “Act”), by using his leadership political action committee (“leadership PAC”),
15 Reinventing a New Direction Political Action Committee and Kevin Broghamer in his official
16 capacity as treasurer (“RAND PAC”), to finance his testing-the-waters activities beginning in
17 2013.² The Complaint also alleges that Paul became a candidate prior to April 2015, and he and
18 the Committee therefore failed to timely register and report with the Commission.³

19 **II. FACTUAL BACKGROUND**

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

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

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

³ *Id.* at 5-6.

⁴ *Id.* at 3 (citing Jeremy W. Peters & Alan Rappoport, *Rand Paul Announces Presidential Run*, N.Y. TIMES, Apr. 7, 2015, <https://www.nytimes.com/2015/04/08/us/politics/rand-paul-republican-presidential-nomination.html>).

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

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

8 RAND PAC Activities 2011-2016

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

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

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

⁶ RAND PAC, Statement of Organization (Mar. 9, 2011). On April 18, 2012, RAND PAC also registered as a multicandidate political committee. RAND PAC, Notification of Multicandidate Status (Apr. 18, 2012).

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

⁸ See RAND PAC, Committee Filings 2011-2016.

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

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

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

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

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

¹¹ *See id.*

¹² These figures were calculated by comparing RAND PAC's disbursements for "federal candidates/committees and other political committees" (line 23), independent expenditures (line 24), and "other disbursements (including non-federal donations)" (line 29) to RAND PAC's overall spending. *See id.*

¹³ *See* RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (itemizing travel reimbursements); Compl. at 4 (citing John Cheves, *Rand Paul's PAC Paid Vendors Also Used by his Presidential Campaign*, LEXINGTON HERALD-LEADER, May 27, 2016, <http://www.kentucky.com/news/politics-government/article80324367.html>).

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

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

¹⁴ Media Advisory, *Senator Rand Paul to Open Tech Office in Austin, Announces Hire of Senior Field and Tech Strategist*, RAND PAC, Mar. 12, 2015, <http://randpac.com/senator-rand-paul-to-open-tech-office-in-austin-announces-hire-of-senior-field-and-tech-strategist/>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* Section II.

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

¹⁹ Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016). While the report itemizes contributions dating back to July 4, 2014, those contributions were transferred from Paul’s other authorized committees: Rand Paul for US Senate 2016 and Rand Paul Victory Committee. *See id.* at Line 18 & Schedule A-P at pp. 2498-2867. The transfers occurred on and after April 2, 2015. Rand Paul for US Senate 2016, 2015 July Quarterly Report (July 15, 2015); Rand Paul Victory Committee, 2015 July Quarterly Report (July 15, 2015).

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

3 **III. LEGAL ANALYSIS**

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

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

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

²¹ *See id.*

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

²³ The Commission's regulations define "Leadership PAC" as, *inter alia*, "a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual." *Id.* § 100.5(e)(6). When promulgating this rule in 2003, the Commission observed that leadership PACs are generally "formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates," or donated to party committees. Leadership PACs, 69 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003) (internal quotation marks omitted) (explanation and justification) ("Leadership PACs E&J").

²⁴ 52 U.S.C. § 30116(a)(2)(A).

²⁵ *Id.* § 30116(f).

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

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

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

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

²⁸ Compl. at 8-10.

²⁹ 11 C.F.R. § 110.2(l).

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

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

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

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

³¹ See Section II.

³² See 11 C.F.R. § 110.2(I).

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

³⁴ See Compl., Exh. 1.

³⁵ See 11 C.F.R. § 110.2(I).

³⁶ RAND PAC, Amended 2013 Year-End Report (Oct. 15, 2014); RAND PAC, Amended 2014 April Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 July Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 October Quarterly Report (Dec. 4, 2014); RAND PAC, Amended 2014 Post-General Report (Jan. 31, 2015).

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

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

³⁷ See 11 C.F.R. § 110.2(*l*).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

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

9 **I. INTRODUCTION**

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

16 The Complaint alleges that Paul violated the Federal Election Campaign Act of 1971, as
17 amended (the “Act”), by using his leadership political action committee (“leadership PAC”),
18 Reinventing a New Direction Political Action Committee and Kevin Broghamer in his official
19 capacity as treasurer (“RAND PAC”), to finance his testing-the-waters activities beginning in
20 2013.² The Complaint also alleges that Paul became a candidate prior to April 2015, and he and
21 the Committee therefore failed to timely register and report with the Commission.³

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

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

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

³ *Id.* at 5-6.

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

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

9 **II. FACTUAL BACKGROUND**

10 On April 7, 2015, Kentucky Senator Rand Paul publicly declared his candidacy for
11 President of the United States.⁸ Paul filed a Statement of Candidacy on April 8, designating the
12 Committee as his authorized campaign committee with Paul Kilgore as the Committee's
13 treasurer.⁹ After Paul's initial election to the Senate in 2010, he established RAND PAC as his
14 leadership PAC, registering it as such with the Commission on March 9, 2011.¹⁰ RAND PAC's
15 stated mission is to "lead the battle for sound money, limited government, and fidelity to our

⁴ *Id.* at 4, 10-11.

⁵ MUR 7191 Resp. (Jan. 13, 2017) ("Resp.").

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

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

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1 Constitution,” and to “support and elect Pro-Liberty, Pro-Constitution candidates in Kentucky
 2 and across the country.”¹¹

3 RAND PAC was active during the 2012, 2014, and 2016 election cycles. The chart
 4 below summarizes its financial activities through the 2016 elections.¹²

5 **RAND PAC Activities 2011-2016**

Year	Receipts	Disbursements
2011	\$173,031.82	\$79,464.86
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6 As reflected above, RAND PAC raised and spent over \$1 million in 2012 and 2013 and its
 7 activity peaked in 2014 when it raised and spent over \$2 million. Further, in the first half of
 8 2015, RAND PAC raised \$723,468.96 and spent \$749,756.39.¹³ However, after Paul declared
 9 his candidacy for President in April 2015, the PAC’s fundraising dropped to just \$134,129.55
 10 during the period of July through December 2015 and \$241,900.76 for the entire year of 2016.¹⁴
 11 RAND PAC’s disbursements also saw a drop after Paul declared his candidacy, spending only
 12 \$217,170.10 in the latter six months of 2015 and \$269,001.35 in 2016.¹⁵

13 In the two years leading up to Paul’s announcement, it appears that RAND PAC also
 14 spent a small fraction of its funds on its stated purpose of supporting “pro-liberty” candidates. In
 15 2013, the PAC disbursed \$130,045 to candidates and party committees, or on financing

¹¹ RAND PAC, <http://randpac.com/> (last visited June 15, 2018).

¹² See RAND PAC, Committee Filings 2011-2016.

¹³ RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016).

¹⁴ See Rand PAC, Amended 2015 Year-End Report through 2016 Reports.

¹⁵ See *id.*

1 independent expenditures, which constituted just 9% out of the \$1,467,787.50 it spent in total. In
2 2014, RAND PAC spent \$298,875, or 11%, on these activities out of \$2,539,408.96 in total
3 disbursements; and in 2015, just \$29,000, or 3%, of \$966,926.49 in total disbursements.
4 Conversely, in 2012 RAND PAC spent \$670,500 on these activities, or 49%, of \$1,356,655.55 in
5 total disbursements.¹⁶

6 The Complaint asserts that, prior to declaring his presidential candidacy, Paul engaged in
7 a number of activities that appear to be connected to a potential run. The Complaint provides
8 information indicating that, in the months immediately preceding his official announcement,
9 Paul hired a number of individuals at RAND PAC, who then quickly transitioned into positions
10 as paid campaign staff. In addition, Jonathan Van Norman, who became the Committee's
11 political director for Iowa, was receiving payments from RAND PAC as of March 2015.¹⁷

12 On March 12, 2015, RAND PAC published a media advisory stating that Paul was
13 planning to open a "tech office" in Austin, Texas on March 16.¹⁸ The media advisory quoted
14 RAND PAC personnel explaining that "Senator Rand Paul will run the most innovative, tech-
15 forward operation of any elected official in the country" and that it will be a "crowd-sourced
16 campaign."¹⁹ Paul hired Rachel Kania to work in the new office as his Senior Field and

¹⁶ These figures were calculated by comparing RAND PAC's disbursements for "federal candidates/committees and other political committees" (line 23), independent expenditures (line 24), and "other disbursements (including non-federal donations)" (line 29) to RAND PAC's overall spending. *See id.*

¹⁷ *See* RAND PAC, Second Amended 2015 Mid-Year Report (Mar. 9, 2016) (itemizing travel reimbursements); Compl. at 4 (citing John Cheves, *Rand Paul's PAC Paid Vendors Also Used by his Presidential Campaign*, LEXINGTON HERALD-LEADER, May 27, 2016, <http://www.kentucky.com/news/politics-government/article80324367.html>).

¹⁸ 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/>.

¹⁹ *Id.*

1 Technology Strategist, and Kania stated: “As the newest member of Team Rand, I look forward
2 to leveraging the latest in campaign technology to activate our energized volunteer base. Team
3 Rand will be the most technologically-savvy campaign in the field and his message will inspire
4 and widen the GOP base unlike any other candidate.”²⁰ RAND PAC reported making \$5,898.90
5 in “payroll disbursements” to Kania from March 2015 until April 3, 2015.

6 On April 7, 2015, the same day Paul announced his candidacy, Rand Paul for President,
7 Inc. filed its Statement of Organization.²¹ The Committee’s first disclosure report was its July
8 Quarterly Report.²² That report disclosed that the Committee began receiving contributions for
9 the 2016 presidential primary election on April 7, 2015.²³ It also stated that the Committee’s
10 first disbursement occurred on April 2, 2015, only five days before Paul publicly announced his
11 candidacy.²⁴ The Committee reported no reimbursements to RAND PAC.²⁵

²⁰ *Id.*

²¹ *See* Section II.A. at 2.

²² *See* Committee, 2015 July Quarterly Report (July 15, 2015).

²³ Committee, Amended 2015 July Quarterly Report (Mar. 31, 2016). While the report itemizes contributions dating back to July 4, 2014, those contributions were transferred from Paul’s other authorized committees: Rand Paul for US Senate 2016 and Rand Paul Victory Committee. *See id.* at Line 18 & Schedule A-P at pp. 2498-2867. The transfers occurred on and after April 2, 2015. Rand Paul for US Senate 2016, 2015 July Quarterly Report (July 15, 2015); Rand Paul Victory Committee, 2015 July Quarterly Report (July 15, 2015).

²⁴ Committee, Amended 2015 July Quarterly Report, Schedule B-P.

²⁵ *See id.*

1 After Paul suspended his campaign on February 3, 2016,²⁶ the Committee's disclosure
2 reports show that it refunded contributions Paul received for the general election from February
3 2016 through January 2017.²⁷

4 III. LEGAL ANALYSIS

5 A. There is Reason to Believe RAND PAC Made Excessive In-Kind 6 Contributions to Paul Under 11 C.F.R. § 110.2(f)

7 Commission regulations provide that all funds raised and spent for testing-the-waters
8 activities are subject to the Act's limitations and prohibitions.²⁸ Multicandidate committees,
9 including leadership PACs,²⁹ are limited to contributing \$5,000 per election to candidates or their
10 authorized committees.³⁰ The Act prohibits all candidates and committees from knowingly
11 accepting excessive contributions.³¹

12 A candidate's authorized committee must disclose the identification of each political
13 committee which makes a contribution to the reporting committee during the reporting period,

²⁶ Compl. at 4 (citing Shane Goldmacher, Alex Isenstadt & Daniel Strauss, *Rand Paul Drops Out of White House Race*, POLITICO, Feb. 3, 2016, <http://www.politico.com/story/2016/02/rand-paul-dropping-out-of-white-house-race-218675>).

²⁷ See Committee, Amended 2016 March Monthly Report (Mar. 31, 2016); Committee, 2017 February Monthly Report (Feb. 20, 2017).

²⁸ See 11 C.F.R. §§ 100.72(a), 100.131(a).

²⁹ The Commission's regulations define "Leadership PAC" as, *inter alia*, "a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual." *Id.* § 100.5(e)(6). When promulgating this rule in 2003, the Commission observed that leadership PACs are generally "formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates," or donated to party committees. Leadership PACs, 69 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003) (internal quotation marks omitted) (explanation and justification) ("Leadership PACs E&J").

³⁰ 52 U.S.C. § 30116(a)(2)(A).

³¹ *Id.* § 30116(f).

1 together with the date and amount of any such contribution.³² A political committee shall report
2 the name and address of each political committee which has received a contribution from the
3 reporting committee during the reporting period, together with the date and amount of any such
4 contribution.³³

5 The Complaint alleges that RAND PAC made excessive in-kind contributions to Paul
6 under 11 C.F.R. § 110.2(l),³⁴ which governs certain “[p]re-candidacy expenditures by
7 multicandidate political committees deemed in-kind contributions.”³⁵ Under this regulation, a
8 payment by a multicandidate political committee is an in-kind contribution to, and an
9 expenditure by, a presidential candidate, although made before he or she becomes a candidate, if
10 three conditions are met: (1) the expenditure is made on or after January 1 of the year following
11 the last presidential election year; (2) with respect to the goods or services involved, the
12 candidate accepted or received them, requested or suggested their provision, or was materially
13 involved or involved in substantial discussion about providing them; and (3) the goods or
14 services are (a) polling expenses, (b) compensation paid to employees, consultants, or vendors
15 for “services rendered in connection with establishing and staffing offices in States where
16 Presidential primaries . . . are to be held, other than offices in the candidate’s home state” or
17 Washington, D.C., or (c) administrative expenses, including rent, utilities, office supplies and

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

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

³⁴ Compl. at 8-10.

³⁵ 11 C.F.R. § 110.2(l).

1 equipment, in connection with establishing and staffing the offices described in subsection (b).³⁶

2 Travel is not a qualified expenditure under Section 110.2(*I*).

3 Here, the evidence suggests that RAND PAC paid for expenses on behalf of Paul that
4 qualify as non-travel pre-candidacy expenditures under this regulation. RAND PAC announced
5 on March 12, 2015, that Paul was planning to open a “tech office” in Austin, Texas, and Kania
6 was subsequently hired to work as the Senior Field and Technology Strategist in that office.³⁷
7 Accordingly, RAND PAC’s payments to Kania may qualify as Section 110.2(*I*) compensation to
8 an employee for staffing a campaign office, if Paul was involved in hiring her and was therefore
9 materially involved in securing her services.³⁸

10 It is also reasonable to conclude that disbursements to other employees were related to
11 establishing and staffing offices in battleground states. RAND PAC’s reports disclose payments
12 to Jonathan Van Norman, who became the Committee’s political director for Iowa, for
13 consulting in Iowa;³⁹ payments for equipment and office supplies in Florida, Virginia, and
14 Minnesota; and for payroll expenses in Ohio.⁴⁰ Given that Paul established RAND PAC and it
15 was his leadership PAC, there is a substantial probability that he was materially involved in
16 RAND PAC’s provision of these goods and services to his potential campaign.⁴¹

³⁶ *Id.* § 110.2(*I*)(1)(i)-(iii). If a candidate, through his or her authorized committee, reimburses the multicandidate committee within 30 days of becoming a candidate, a payment by the multicandidate committee will not constitute an in-kind contribution. *Id.* § 110.2(*I*)(2).

³⁷ *See* Section II.A.

³⁸ *See* 11 C.F.R. § 110.2(*I*).

³⁹ *See, e.g.*, RAND PAC, Second Amended 2015 Mid-Year Report.

⁴⁰ *See* Compl., Exh. 1.

⁴¹ *See* 11 C.F.R. § 110.2(*I*).

1 Lastly, RAND PAC paid for “survey research” in 2013 and 2014, including making a
2 \$19,571 disbursement to a vendor called “the Polling Company.”⁴² Although these
3 disbursements were years before the first caucus or primary of the 2016 presidential season, it is
4 possible that these RAND PAC expenditures were for the benefit of Paul’s pre-candidacy efforts
5 and that Paul received them in his capacity as a potential candidate. In that case, they would
6 qualify as Section 110.2(*l*) polling expenses.⁴³

7 Accordingly, based on the available information and reasonable inferences from the
8 record, the Commission finds reason to believe that RAND PAC made, and the Committee
9 accepted, excessive in-kind contributions resulting from RAND PAC’s payment of certain pre-
10 candidacy expenses under 11 C.F.R. § 110.2(*l*), in violation of 52 U.S.C. § 30116(a), (f). In
11 addition, the Commission finds reason to believe that RAND PAC and the Committee failed to
12 properly disclose the in-kind contributions, in violation of 52 U.S.C. § 30104(b).

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

15 During the 2016 election cycle, an authorized committee was limited to accepting a total
16 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.⁴⁴ A
17 primary election and a general election are each considered a separate “election,” and the
18 individual contribution limits are applied separately with respect to each election.⁴⁵

⁴² RAND PAC, Amended 2013 Year-End Report (Oct. 15, 2014); RAND PAC, Amended 2014 April Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 July Quarterly Report (Oct. 15, 2014); RAND PAC, Second Amended 2014 October Quarterly Report (Dec. 4, 2014); RAND PAC, Amended 2014 Post-General Report (Jan. 31, 2015).

⁴³ See 11 C.F.R. § 110.2(*l*).

⁴⁴ 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 C.F.R. §§ 110.1(a)-(b), 110.2(b)(1).

⁴⁵ 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

1 The Commission’s regulations permit a candidate or his or her authorized committee to
2 receive contributions for the general election prior to the primary election.⁴⁶ If, however, the
3 candidate does not become a candidate in the general election, the committee must: (1) refund
4 the contributions designated for the general election; (2) redesignate such contributions in
5 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in
6 accordance with 11 C.F.R. § 110.1(k)(3).⁴⁷ The committee must do so within 60 days of the date
7 that the committee has actual notice of the need to redesignate, reattribute, or refund the
8 contributions, such as the date the candidate loses the primary or withdraws from the campaign.⁴⁸

9 Paul announced that he was “suspending” his campaign on February 3, 2016,⁴⁹ but the
10 Committee continued reporting reimbursements to those who contributed to Paul for the general
11 election until January 2017.⁵⁰ The Complaint alleges that the Committee’s refunds were
12 untimely, and RAD also referred the Committee to the Office of General Counsel for failing to
13 refund \$257,658.65 of contributions within the applicable 60-day window.⁵¹

⁴⁶ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

⁴⁷ 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.”).

⁴⁸ Advisory Op. 2008-04 (Dodd); AO 1992-15. The Commission’s regulations include procedures for reattributing or redesignating a contribution. See 11 C.F.R. § 110.1(b), (k). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. *Id.* §§ 110.1(b)(5), 110.1(k)(3).

⁴⁹ See RR 17L-49 Resp. at 1-2 (Apr. 18, 2018) (“RAD Referral Resp.”); Goldmacher, Isenstadt & Strauss, *supra* note 26.

⁵⁰ See 11 C.F.R. § 102.9(e)(3); Committee, 2017 February Monthly Report (Feb. 20, 2017).

⁵¹ Compl. at 11; Referral at 1, RR 17L-49 (Dec. 20, 2017) (“RAD Referral”).

1 In response to the Commission’s RAD Referral asserting that the Committee’s refunds
2 were untimely, the Committee argues that Paul remained a candidate after he “suspended” his
3 campaign, and that suspending a campaign is different than withdrawing from a campaign.⁵²
4 The Committee further argues that Paul remained a candidate until Donald Trump became the
5 Republican Party’s presidential nominee on July 19, 2016, so refunds were not due until
6 September 19, 2016.⁵³

7 The Committee’s own actions negate its claims in its response. Beginning in March
8 2016, the month after Paul had suspended his presidential campaign, the Committee began the
9 process of redesignating its 2016 general election contributions to Rand Paul for U.S. Senate
10 2016 (“Senate Committee”) and Rand Paul Victory Kentucky (“JFC”), which was a joint
11 fundraising committee, comprised of the Senate Committee, RAND PAC, and the Paul’s 2016
12 Presidential Committee.⁵⁴ Even assuming *arguendo* that July 19, 2016, was the starting date for
13 the 60-day window, the Committee still failed to timely remedy general election contributions
14 totaling \$165,749.09 until after September 17, 2016. Therefore, the Commission opens a matter
15 under review as to RAD Referral 17L-49, merges it with MUR 7191, and finds reason to believe
16 that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

⁵² RAD Referral Resp. at 2.

⁵³ *See id.* at 1-2.

⁵⁴ *See* Committee, 2016 April Monthly Report (disclosing \$23,025 in transfers to Senate Committee and \$186,951.46 in transfers to the JFC); Referral at 2.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7191
Freedom for All Americans and)	
Paul Kilgore in his Official)	
Capacity as treasurer, <i>et al.</i>)	

CONCILIATION AGREEMENT

These matters were initiated pursuant to information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Freedom for All Americans (f/k/a Rand Paul for President, Inc.) and Paul Kilgore in his official capacity as treasurer (the “Committee” or “Respondent”) violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. On April 7, 2015, Kentucky Senator Rand Paul publicly declared his candidacy for President of the United States. Paul filed a Statement of Candidacy on April 8,

designating the Committee as his authorized campaign committee with Paul Kilgore as the Committee's treasurer. The Committee filed its Statement of Organization on April 7.

2. Paul announced that he was suspending his campaign on February 3, 2016, and Donald J. Trump became the Republican Party's presidential nominee on July 19, 2016.

3. During the 2016 election cycle, the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations limited an authorized committee to accepting a total of \$2,700 per election from any individual and \$5,000 from a multicandidate committee. 11 C.F.R. §§ 100.72(b), 100.131(b). A primary election and a general election are each considered a separate "election," and the individual contribution limits are applied separately with respect to each election. 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2. The Commission's regulations permit a candidate or his authorized committee to receive contributions for the general election prior to the primary election. *See* 11 C.F.R. § 102.9(e)(l).

4. If, however, the candidate does not become a candidate in the general election, the committee must: (1) refund the contributions designated for the general election; (2) redesignate such contributions in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with 11 C.F.R. § 110.1(k)(3). *See id.* § 102.9(e)(3). The committee must do so within 60 days of the date that the committee has actual notice of the need to redesignate, reattribute, or refund the contributions, such as the date the candidate loses the primary or withdraws from the campaign. *See id.* §§ 110.1(b)(3)(i), (b)(5); 110.2(b)(3)(i), (b)(5); 103.3(b)(3).

5. The Committee ultimately remedied all general election contributions, but it failed to remedy \$165,749.09 in general election contributions within 60 days after July 19, 2016.

V. Respondent violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3) by failing to timely refund, reattribute, or redesignate general election contributions, which resulted in excessive contributions.

VI. Respondent will take the following actions:

1. Respondent will cease and desist from committing further violations of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

2. Respondent will pay a civil penalty to the Commission in the amount of twenty one thousand dollars (\$21,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 90 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

