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**BEFORE THE FEDERAL ELECTION COMMISSION**

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) **MUR 7220**  
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**RESPONSE OF DONALD J. TRUMP AND DONALD J. TRUMP FOR PRESIDENT, INC. AND BRADLEY T. CRATE, AS TREASURER, TO THE COMPLAINT**

Donald J. Trump and Donald J. Trump for President, Inc. and its Treasurer, Bradley Crate (collectively, “the Committee” or “Respondents”), by and through undersigned counsel, respond to the Complaint in the above-captioned Matter Under Review. For the reasons set forth below, the Commission should dismiss the Complaint and close the file.

**I. CONTRIBUTIONS RECEIVED AFTER ELECTION DAY 2016**

The bulk of the Complaint’s allegations arise from the Committee’s reporting of contributions received after November 8, 2016 (“Election Day”) as being designated toward the retirement of the Committee’s 2016 general election debt. *See* Am. 2016 Post-General Report (Dec. 8, 2016); Am. 2016 Year-End Report (Mar. 16, 2017).<sup>1</sup> Since its 2016 post-election report and before the filing of this MUR, President Trump submitted a 2020 FEC Form 2 (Statement of Candidacy) and the Committee filed an updated FEC Form 1 (Statement of Organization) that again designated it as his principal campaign committee, and the Committee then chose to reallocate *all* post-Election Day contributions toward the 2020 primary election, as it advised contributors it might do when it solicited the contributions. *See* 2017 April Quarterly Report (April 4, 2017). Because the contributions have all been designated to the 2020 primary election, no contributors who gave to the Committee after Election Day could be deemed to have increased their 2020

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<sup>1</sup> The Committee’s originally filed 2016 Year-End Report incorrectly reported many contributions it received before or on Election Day as being designated toward 2016 debt retirement. Given their timing, such receipts were 2016 contributions, having nothing to do with the Committee’s post-election debt-retirement efforts. The Committee amended its filing to fix these incorrect entries and clarify the public record.

primary limits as the Complaint erroneously alleges, and the Complaint's allegations should be dismissed for lack of merit.

The Committee, both directly and through the Trump Make America Great Again Committee joint fundraising committee ("the JFC"), began soliciting contributions to retire 2016 general election debt in the early morning hours of November 9, 2016, after Hillary Clinton conceded to President Trump. The designations resulted from language contained in the fundraising notices on the websites and mailers that solicited the contributions. *See* Compl. ¶¶ 7–8. The Complaint takes no issue with the efficacy of this disclaimer language to effectuate the designations. Nevertheless, it asserts that the Committee somehow filed "false" reports by disclosing the contributions it received in response to these solicitations as being so designated. Accurately reporting the designation of a contribution clearly cannot constitute *false* reporting – in fact, even when a political committee cannot raise contributions for a prior election, it must disclose any such contributions it receives consistent with their designation until they are either redesignated or refunded, *see* 11 C.F.R. §§ 104.8(d)(2); 110.1(b)(3).

In this case, the Committee had the right to raise debt-retirement funds under the FEC's regulations because at the time it had "net debts outstanding," as defined in 11 C.F.R. § 110.1(b)(3)(ii). In the days after the 2016 general election, the Committee made no immediate decision as to whether it would continue its operations or look to wind down and terminate. In any event, the Committee's known and anticipated outstanding debts on Election Day far exceeded its cash on hand. *See id.* § 110.1(b)(3)(i). The Complaint focuses on mere snapshots in time from the Committee's reports to contend that the Committee lacked net debts; however, as of Election Day, the Committee had approximately \$15 million in cash on hand and *knew* of approximately \$19 million in outstanding liabilities it owed, including a \$10 million then-unforgiven loan from the candidate which the Committee intended to repay within 20 days using its cash on hand after

Election Day (*id.* § 116.11(c)(1)). *See* Ex. A (Affidavit of Brad Crate) ¶¶ 4–5. Although President Trump forgave his loan later that month (as reflected on the Committee’s Post-General Report), the Committee continued to be invoiced well into January 2017 for significant expenses it incurred on or before Election Day. In fact, from November 9, 2016 to December 31, 2016, the Committee disbursed approximately \$15 million to pay such expenses. *See id.* ¶ 6. And this does not account for many other expenses directly attributable to the 2016 general election, including certain litigation costs and costs incurred in connection with the general election recount efforts conducted in various states in December 2016. *See* Advisory Opinion 1990-17 (Burns Committee) (permitting committee that had net debts outstanding on election day to raise 1988 general election contributions in 1990 in order to pay anticipated legal expenses attributable to the over two-year old election).

Nevertheless, once President Trump submitted the updated FEC Forms 1 and 2 on January 20, 2017, it became clear that the Committee would not be terminating. The Committee accordingly chose to redesignate all contributions received after Election Day toward the 2020 primary election, as if it never had net outstanding debts. *See* 2017 April Quarterly Report. The same fundraising notices that the Complaint credits with effectuating the designations toward 2016 general election debt retirement also reserved and gave contributors notice of the Committee’s right to reallocate such funds toward the 2020 primary election. The Committee’s website, for instance, provided that once the Committee retired its 2016 general election debt, any contribution would “be designated to the 2020 Primary Election.” *See* Compl. ¶ 7. The JFC’s fundraising notice, likewise, stated that the allocation of any contribution would change if the contribution were deemed to exceed the contributor’s applicable contribution limit (*see id.* ¶ 8 n.9<sup>2</sup>) – such as a contribution designated toward a past election but given after extinguishment of the committee’s net debts outstanding from that

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<sup>2</sup> Footnote 9 in the Complaint cites to an archive of the disclaimer language: <http://web.archive.org/web/20161110080054/https://donate.donaldjtrump.com/founding-member>.

election,<sup>3</sup> *see, e.g.*, MUR 4947 (Kemp for Vice President), First General Counsel’s Report at 3 (treating as excessive any contributions received by a committee toward a past election when committee has no net debts outstanding from that election); Compl. ¶¶ 16–18.

With all of post-Election Day contributions now allocated toward the 2020 election, the principal concern underpinning the Complaint’s allegations – that contributors may increase their 2020 contribution limits – is fully allayed, regardless of the Committee’s debt position in the period after Election Day. As such, the Commission, in turn, should promptly dismiss these allegations.

## II. TIMELINESS OF THE FILING OF UPDATED FEC FORMS 1 AND 2

The Complaint additionally faults Respondents for an alleged delay in the filing of President Trump’s 2020 FEC Form 2 and the Committee’s updated FEC Form 1 on January 20, 2017, Inauguration Day. The updated filings were more than sufficiently timely, and the Commission should dismiss these allegations.

With the first 2020 Republican presidential primary election over three years away, and President Trump not having made any formal decision or announcement to seek re-election, it is not clear that Respondents even needed to file updated FEC Forms 1 and 2 so early in the 2020 cycle. Out of an abundance of caution and in the name of transparency, however, Respondents chose to do so on the very day President Trump took office.

Furthermore, it is unclear what interests the Complaint aims to advance through these allegations. This matter does not involve a “testing the waters” scenario. The Committee has been registered with and reporting to the FEC, and thus raising exclusively federally compliant funds,

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<sup>3</sup> This issue was considered when drafting the fundraising notice that the JFC implemented on November 9, 2016. It was known that there would come a time when the Committee would no longer have net debts outstanding and thus could only raise funds for 2020 through the JFC. It was determined that additional language in the JFC’s already wordy fundraising notice noting the potential for redesignation of contributions to the Committee’s 2020 primary account would only confuse contributors and prove superfluous to the fundraising notice’s statement allowing for the reallocation of contributions to ensure they comply with the law’s limits.

since June 2015. President Trump, moreover, is a first-term President; consequently, regardless of the status of his FEC Form 2, the basic public presumption is that he – like all but only a small handful of former Presidents in the same position (and none since Lyndon Johnson) – will seek re-election. *See, e.g.*, MURs 7020 & 7021 (Paul Babeu for Congress), Dismissal Report at 2 (Apr. 7, 2017) (dismissing complaint alleging candidate’s untimely filing of Form 2 where the public was on notice of candidacy and all committee disclosure reports had been filed timely).

\* \* \*

For the foregoing reasons, Respondents respectfully request that the Commission promptly dismiss the Complaint in this matter and close the file.

Respectfully submitted,



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*Counsel for Donald J. Trump and Donald  
J. Trump for President, Inc. and Bradley T.  
Crate as Treasurer*

# **EXHIBIT A**

Commonwealth of Massachusetts  
County of Essex

**AFFIDAVIT OF BRADLEY T. CRATE**

I, Bradley T. Crate, attest under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief:

1. I am the President of Red Curve Solutions, LLC ("Red Curve"), a full service consulting firm that provides treasury and accounting services to political committees registered with the Federal Election Commission ("FEC") as well as other entities.

2. Red Curve has provided compliance and treasury services to Donald J. Trump for President, Inc. (the "Committee") from the Committee's registration with the FEC in June 2015 to the present.

3. During the 2016 election, as President of Red Curve, I led the team responsible for providing treasury and accounting services to the Committee. I became FEC Treasurer of the Campaign on January 20, 2017, and am the custodian of the Committee's records.

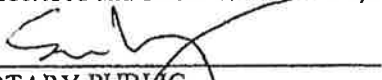
4. As of November 8, 2016 ("Election Day"), the Committee had "net debts outstanding" from the general election, as that term is defined under 11 C.F.R. 110.1(b)(3)(ii).

5. The Committee's cash-on-hand balance on Election Day was approximately \$15 million, while the Committee knew of approximately \$19 million in outstanding liabilities, including a \$10 million then-unforgiven loan from President Trump that the Committee intended to repay within 20 days of the election using its cash on hand after Election Day.

6. The Committee also continued to receive invoices for significant additional expenses incurred with respect to the general election after Election Day, and paid approximately \$15 million to defray such costs between November 9, 2016, and December 31, 2016.

  
\_\_\_\_\_  
Bradley T. Crate

Subscribed and sworn to before me, this 5<sup>th</sup> day of May, 2017.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: 6/22, 2018.

SEAL:

