

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

**MUR 7220**

DATE COMPLAINT FILED: Mar. 2, 2017

DATE OF FIRST NOTIFICATION: Mar. 8, 2017

DATE OF LAST NOTIFICATION: Aug. 1, 2017

DATE OF LAST RESPONSE: Aug. 15, 2017

DATE ACTIVATED: Aug. 16, 2017

SOL EXPIRATION: Nov. 9, 2021/Apr. 15, 2022

ELECTION CYCLES: 2016, 2020

**COMPLAINANTS:**Campaign Legal Center  
Common Cause**RESPONDENTS:**Make America Great Again PAC, f/k/a Donald J.  
Trump for President, Inc., and Bradley T.  
Crate in his official capacity as treasurer  
Donald J. Trump  
Trump Make America Great Again Committee and  
Bradley T. Crate in his official capacity as  
treasurer**RELEVANT STATUTES  
AND REGULATIONS:**52 U.S.C. § 30102(e)  
52 U.S.C. § 30104(b)  
52 U.S.C. § 30116(a), (f)  
11 C.F.R. § 101.1(a)  
11 C.F.R. § 102.12(a)  
11 C.F.R. § 102.17  
11 C.F.R. § 104.3(a)  
11 C.F.R. § 104.11  
11 C.F.R. § 110.1(b)  
11 C.F.R. § 110.2(b)**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint in this matter alleges that Make America Great Again PAC, f/k/a Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the

1 “Trump Committee”) and Trump Make America Great Again Committee and Bradley T. Crate  
2 in his official capacity as treasurer (the “JFC”), a joint fundraising committee between the Trump  
3 Committee and the Republican National Committee (the “RNC”), violated the Federal Election  
4 Campaign Act of 1971, as amended (the “Act”), by improperly raising millions of dollars in  
5 contributions after the 2016 general election when the Trump Committee reported no outstanding  
6 debts.<sup>1</sup> In particular, the Complaint alleges that the Trump Committee knowingly and willfully  
7 filed reports with the Commission that falsely attributed millions of dollars in contributions to  
8 2016 general election debt retirement and failed to timely redesignate or refund contributions  
9 received after the 2016 general election. The Complaint finally alleges that Donald J. Trump and  
10 the Trump Committee failed to timely register for the 2020 election.

11 Trump, the Trump Committee, and the JFC (collectively, “Respondents”) assert that  
12 because on Election Day, November 8, 2016, the Trump Committee was aware of approximately  
13 \$19 million in debts, which exceeded its \$15 million in cash on hand, the Trump Committee was  
14 permitted to continue raising funds after that date.<sup>2</sup> Nevertheless, they state that the Trump  
15 Committee chose to “reallocate” contributions it received after Election Day from the 2016  
16 general debt retirement to the 2020 primary election.<sup>3</sup> Respondents further deny that Trump  
17 failed to timely register for the 2020 Presidential election.<sup>4</sup>

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<sup>1</sup> Compl. at 4 (Mar. 2, 2017). The JFC filed its Response on August 15, 2017, in which it expressly joined in the Trump Committee’s Response. JFC Resp. at 1 (Aug. 15, 2017).

<sup>2</sup> Trump and Trump Committee Resp. at 2 (May 9, 2017) (“Trump Committee Resp.”); *see also* JFC Resp. at 1 (Aug. 15, 2017) (expressly joining in the Trump Committee Response).

<sup>3</sup> Trump Committee Resp. at 1.

<sup>4</sup> *Id.* at 4-5.

1           The Trump Committee's disclosure reports indicate that *after* Election Day, the Trump  
2 Committee received over \$5 million in contributions designated for the 2016 general election  
3 and also made disbursements totaling over \$23 million, designated for that election. As  
4 discussed below, the Trump Committee's reported receipts and disbursements suggest that it  
5 may have had sufficient net debts outstanding after the 2016 general election to accept  
6 contributions after that election. Although the Complaint does raise questions as to whether  
7 many of Trump Committee's 2016-designated disbursements were legitimately for the 2016  
8 election, we do not believe it would be a prudent use of Commission resources to conduct the  
9 lengthy and detailed investigation necessary to determine these facts. Accordingly, we  
10 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations  
11 that the Trump Committee and JFC accepted contributions in excess of the Trump Committee's  
12 net debts outstanding and that the Trump Committee knowingly and willfully misreported 2020  
13 receipts as 2016 receipts.<sup>5</sup>

14           Nonetheless, because the Trump Committee only disclosed \$766,756.67 in debt in its  
15 reports filed after the 2016 election but acknowledged that it was aware of \$19 million in debts  
16 on Election Day, it appears that the Trump Committee failed to accurately report its debts as  
17 required by the Act. We therefore recommend that the Commission find reason to believe that  
18 the Trump Committee violated its obligation to file accurate reports of its debts under 52 U.S.C.  
19 § 30104(b)(8) and 11 C.F.R. § 104.3(d) and seek to remedy this violation through pre-probable  
20 cause conciliation.

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<sup>5</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

1           We further recommend that the Commission find no reason to believe the Trump  
2 Committee violated 11 C.F.R. § 102.9(e)(1) by failing to employ acceptable accounting methods  
3 to distinguish between contributions received for different elections. Finally, we recommend  
4 that the Commission dismiss as a matter of prosecutorial discretion the allegations that Trump  
5 violated 52 U.S.C. § 30102(e) by failing to timely file his Statement of Candidacy and that the  
6 Trump Committee violated 52 U.S.C. § 30103(a) by failing to timely file its Statement of  
7 Organization.<sup>6</sup>

## 8   **II.   FACTUAL BACKGROUND**

9           Donald J. Trump was a candidate for President in the 2016 election cycle, and the Trump  
10 Committee was his principal campaign committee.<sup>7</sup> On November 8, 2016, Trump won the  
11 2016 presidential election. On January 20, 2017, Trump filed his Statement of Candidacy for the  
12 2020 election and designated the Trump Committee as his principal campaign committee for that  
13 election.<sup>8</sup> The JFC registered as a joint fundraising committee on May 25, 2016, and it raised  
14 funds for both the 2016 and 2020 election cycles.

### 15           **A.   The Trump Committee's Post-2016 General Election Fundraising Activities**

16           The Complaint alleges that the Trump Committee and the JFC began soliciting  
17 contributions for the 2020 election immediately after the 2016 general election. According to the  
18 Complaint, on November 10, 2016, the Trump Committee's website included the following  
19 statement on its "donate" page: "[t]he maximum amount an individual may contribute is \$2,700

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<sup>6</sup>       *Id.*

<sup>7</sup>       Trump Committee Resp. at 1. The Trump Committee's website for the 2016 and 2020 election cycles was [www.donaldjtrump.com](http://www.donaldjtrump.com). Compl. at 3.

<sup>8</sup>       Trump Committee Resp. at 1. The Trump Committee amended both its name and committee type after the 2020 election. Make America Great Again PAC, Amended Statement of Organization, (Feb. 27, 2021)

1 per election. Your contribution (up to \$2,700) will be allocated first to 2016 General Election  
2 Debt Retirement until such debt is retired. The next \$2,700 will be designated to the 2020  
3 Primary Election.”<sup>9</sup>

4 The JFC raised funds via a webpage hosted on the Trump Committee’s website.<sup>10</sup> The  
5 website included its fundraising notice, including the allocation formula, which was modified on  
6 November 10, 2016, to state that “up to a maximum of \$2,700” of the Trump Committee’s share  
7 of each contribution “[would] be designated toward the 2016 general election.”<sup>11</sup> The JFC  
8 notice indicated that the Trump Committee would receive 80% of contributions and the RNC  
9 would receive the remaining 20%.<sup>12</sup> More specifically, the notice stated that the Trump  
10 Committee would receive 80% of contributions up to the allowable amounts of \$2,700 per  
11 election for individuals and \$5,000 for multicandidate political committees, and the RNC would  
12 receive up to a maximum of \$33,400 per election or \$15,000 for multicandidate political  
13 committees.<sup>13</sup>

14 The Trump Committee’s disclosure reports reflect that the Trump Committee raised  
15 substantial funds immediately after the 2016 general election. Between November 9, 2016, and  
16 November 28, 2016, the Trump Committee reported raising \$929,245.54 in “general after

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<sup>9</sup> Compl. at 3; *see* [https://web.archive.org/web/20161110080051/https://secure.donaldjtrump.com/we-made-history?amount=150&utm\\_campaign=djt\\_website\\_donate&utm\\_source=website&utm\\_medium=web&utm\\_content=top\\_nav](https://web.archive.org/web/20161110080051/https://secure.donaldjtrump.com/we-made-history?amount=150&utm_campaign=djt_website_donate&utm_source=website&utm_medium=web&utm_content=top_nav) (archived Nov. 10, 2016).

<sup>10</sup> *See* <https://web.archive.org/web/20161108080228/donate.donaldjtrump.com/founding-member> (archived Nov. 8, 2016).

<sup>11</sup> Compl. at 4; *see* <https://web.archive.org/web/20161110080054/donate.donaldjtrump.com/founding-member> (archived Nov. 10, 2016).

<sup>12</sup> *See* Compl. at 4; <https://web.archive.org/web/20161108080228/donate.donaldjtrump.com/founding-member> (archived Nov. 8, 2016).

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

1 general” funds — *i.e.*, contributions designated for the general election that were received after  
2 the general election.<sup>14</sup> Of that amount, \$405,311.63 were contributions made directly to the  
3 Trump Committee, and the remaining \$523,933.91 came from a JFC transfer dated November 8,  
4 2016, that included contributions dated both before and after November 8th.<sup>15</sup> Subsequently,  
5 between November 29 and December 31, 2016, the Trump Committee raised another  
6 \$3,987,970.08 in general after general contributions, the vast majority of which it received from  
7 the JFC.<sup>16</sup> In its 2016 Year End Report, the Trump Committee reported that “[a]ll contributions  
8 received after 11/8 designated for General 2016 were designated for 2016 General Debt  
9 Retirement.”<sup>17</sup>

10 According to the Trump Committee’s 2017 April Quarterly Report, however, on January  
11 20, 2017, the Trump Committee redesignated \$4,403,336.82 in contributions received after the  
12 2016 general election, which were previously designated for 2016 debt retirement, to the 2020  
13 primary. On March 31, 2017, the Trump Committee received an additional \$163,330.12 in  
14 general after general contributions from Trump Victory, another joint fundraising committee  
15 comprised of the Trump Committee, the RNC, and 21 state party committees.<sup>18</sup> In sum, the

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<sup>14</sup> Trump Committee, Amended 2016 Post-General Report, (May 12, 2017).

<sup>15</sup> *Id.* The JFC transfer dated November 8, 2016, which was designated to the 2016 general, totaled \$2,324,999.32, with \$523,933.91 in general after general funds. According to the JFC’s 2016 Post-General Report, the JFC received the \$523,933.91 between November 9 and 17, 2016. The Trump Committee later redesignated the general after general contributions to the 2020 primary. *See* Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017).

<sup>16</sup> Trump Committee, Amended 2016 Year-End Report (July 20, 2017).

<sup>17</sup> Trump Committee, Amended 2016 Year-End Report at 8 (May 20, 2021); *see also* Compl. at 5-6.

<sup>18</sup> Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017). The Trump Committee appears to have redesignated each of these contributions to the 2020 primary on the April Quarterly Report. *See* Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017). Trump Victory is not a respondent in this matter.

1 Trump Committee reported raising \$5,080,545.74 in contributions designated for the 2016  
2 general election after Election Day, although most of those funds were subsequently  
3 redesignated for the 2020 primary.

4 **B. The Trump Committee's Post-2016 General Election Debt Reporting and**  
5 **Spending**

6 According to the Trump Committee's 2016 Post-General Report, which covers the period  
7 of October 20, 2016, through November 28, 2016, the Trump Committee reported \$766,756.67  
8 in outstanding debts,<sup>19</sup> which consisted of one contested debt from a polling consultant.<sup>20</sup> The  
9 Trump Committee reported paying the vendor in question, Fabrizio, Lee & Associates, \$450,000  
10 for polling expenses on December 6, 2016, and thereafter reported no outstanding or contested  
11 debts from the 2016 election.<sup>21</sup> The Trump Committee's 2016 Year-End Report reflected no  
12 outstanding debts.<sup>22</sup>

13 Nonetheless, the Trump Committee also reported spending millions of dollars in  
14 disbursements after the 2016 general election for expenses relating to that election. The Trump  
15 Committee reported making \$11,581,633.26 in disbursements between November 9 and 28,  
16 2016, and an additional \$9,598,876.14 between November 29 and December 31, 2016<sup>23</sup> — all of

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<sup>19</sup> Trump Committee, Amended 2016 Post-General Report (Apr. 21, 2021).

<sup>20</sup> Trump Committee, 2016 Post-General Report, (Dec. 8, 2016). The Trump Committee filed the original Post-General Report on December 8, 2016 and subsequently amended it five times, most recently on June 28, 2019, but the cash on hand and total debt figures were not altered.

<sup>21</sup> *See* Trump Committee, Amended 2016 Year-End Report at 24428 (Jan. 31, 2017).

<sup>22</sup> The Trump Committee has amended the Year-End Report four times but did not alter the cash on hand or total debt figures.

<sup>23</sup> Trump Committee, Amended 2016 Post-General Report (May 12, 2017); Trump Committee, Amended 2016 Year-End Report (May 20, 2021).

1 which were designated for the 2016 general election.<sup>24</sup> On its April 2017 Quarterly Report, the  
2 Trump Committee reported making over \$1.9 million in disbursements for the 2016 general  
3 election.<sup>25</sup>

4 The Complaint alleges that some of the post-election disbursements the Trump  
5 Committee reported making for the 2016 general election may have been made for 2020 election  
6 activity. For example, the Complaint identifies \$483,865.87 of the Trump Committee's  
7 disbursements designated for the 2016 general election for eight "Trump USA Thank You Tour"  
8 events from December 1 through 17, 2016, that, according to the Complaint, should have been  
9 attributed to the 2020 election.<sup>26</sup> The Complaint also connects the following disbursements with  
10 a rally held by the Trump Committee on December 1, 2016 in Cincinnati, Ohio: (1) payment of  
11 \$45,000 on November 29, 2016, to Arena Management Holdings for facility rental; (2) payment  
12 of \$41,700.36 on December 13, 2016, to Loud and Clear Inc. for audio visual services; and  
13 (3) payment of \$43,332.74 on December 14, 2016, to Arena Management Holdings for facility  
14 rental. Similarly, the Complaint connects disbursements to vendors that may be related to Thank  
15 You Tour rallies held in Fayetteville, North Carolina; Des Moines, Iowa; Grand Rapids,  
16 Michigan; West Allis, Wisconsin; Hershey, Pennsylvania; Orlando, Florida; and Mobile,  
17 Alabama.<sup>27</sup>

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<sup>24</sup> Trump Committee, Amended 2016 Post-General Report (May 12, 2017); Trump Committee, Amended 2016 Year-End Report (May 20, 2021).

<sup>25</sup> Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017).

<sup>26</sup> Compl. at 7, 11-12, Appendix (providing a rounded figure of \$483,860); *see* Trump Committee, 2016 Amended Year-End Report (May 20, 2021).

<sup>27</sup> Compl., Appendix.



1           The Complaint also identifies other large disbursements reported by the Trump  
2 Committee on its 2016 Year-End Report as 2016 general election expenses that allegedly may  
3 have been for 2020 activity.<sup>28</sup> According to the Complaint, the following payments may have  
4 been for 2020 activity: \$696,078 total for private air travel, \$510,641 total to Giles-Parscale for  
5 digital consulting and online advertising, \$312,500 to Cambridge Analytica for data  
6 management, and \$183,756 total for rent, catering, and lodging payments paid to properties  
7 affiliated with Trump.<sup>29</sup>

### 8   **III.   LEGAL ANALYSIS**

#### 9           **A.    The Commission Should Dismiss the Allegations that the Trump Committee** 10           **and the JFC Improperly Accepted and Reported Contributions Received** 11           **after the 2016 General Election**

12           The Act defines the term “contribution” as “any gift, subscription, loan, advance, or  
13 deposit of money or anything of value made by any person for the purpose of influencing any  
14 election for Federal office.”<sup>30</sup> No person may make a contribution that exceeds the limits of the  
15 Act to any candidate and his or her authorized committee, which were \$2,700 per election for  
16 individuals and \$5,000 per election for multicandidate political committees during the 2016  
17 election cycle.<sup>31</sup> Candidates and political committees are prohibited from knowingly accepting  
18 contributions in excess of these limits.<sup>32</sup>

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<sup>28</sup> Compl. at 11.

<sup>29</sup> *Id.* at 11-12.

<sup>30</sup> 52 U.S.C. § 30101(8)(A).

<sup>31</sup> *See id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Individuals were permitted to contribute no more than \$33,400 per calendar year to national party committees for the 2015-2016 election cycle. *See* 52 U.S.C. § 30116(a)(1)(B); 11 C.F.R. § 110.1(c)(1); Price Index Adjustments for Contributions & Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-52 (Feb. 3, 2015).

<sup>32</sup> *See* 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

1           Once an election is over, an authorized committee cannot accept contributions for that  
2 election that exceed its net debts outstanding or from a contributor who has exceeded the Act's  
3 contribution limits for that election.<sup>33</sup> Net debts outstanding are calculated as of the date of the  
4 election and defined as "the total amount of unpaid debts and obligations incurred with respect to  
5 the election" minus a number of things, including contributions from that election.<sup>34</sup> The amount  
6 of net debts outstanding shall be adjusted as additional funds are received and expenditures are  
7 made.<sup>35</sup>

8           If the treasurer of a committee determines that contributions for a prior election cannot be  
9 accepted because they would exceed net debts outstanding, the treasurer may either: (1) deposit  
10 the contributions and obtain redesignations from the contributors within 60 days; or (2) return or  
11 refund the contributions.<sup>36</sup> Further, for contributions that are received after the election and  
12 deposited in a campaign depository despite appearing to be illegal because they exceed net debts  
13 outstanding, the treasurer must include a statement in the relevant report, noting that the legality  
14 of the contributions is in question.<sup>37</sup> A contribution shall be considered to be redesignated for

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<sup>33</sup> 11 C.F.R. § 110.1(b)(3)(i), (iii)(B); Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) ("Limitations E&J") ("The Commission believes that funds given to a candidate after an election is over cannot meet the Act's requirements that contributions be made with respect to and for the purpose of influencing that election unless they could be used to retire outstanding debts from that election."); *see* Factual & Legal Analysis at 5, MUR 4947 (Kemp for Vice President) (finding reason to believe that committee violated 52 U.S.C. § 30116 (then 2 U.S.C. § 441a) and 11 C.F.R. § 110.1(b)(3)(i) when it received contributions in excess of its net debts outstanding because "[f]unds given to a candidate after an election is over cannot meet the Act's requirements that contributions be made with respect to and for the purpose of influencing that election unless they could be used to retire outstanding debts from that election").

<sup>34</sup> 11 C.F.R. § 110.1(b)(3)(ii)(A); *see* Limitations E&J, 52 Fed. Reg. at 762 (stating that treasurer should first calculate total amount of debts and obligations and then subtract cash on hand and receivables from total debts).

<sup>35</sup> *See* 11 C.F.R. § 110.1(b)(3)(iii); AO 1990-17 at 2.

<sup>36</sup> 11 C.F.R. §§ 103.3(b)(3), 110.1(b)(3).

<sup>37</sup> *Id.* § 103.3(b)(5).

1 another election if: (1) the treasurer of the recipient political committee requests that the  
2 contributor provide a written redesignation of the contribution and informs the contributor that  
3 the contributor may request a refund of the contribution as an alternative to providing a written  
4 redesignation; and (2) within 60 days after the treasurer's receipt of the contribution, the  
5 contributor provides the treasurer with a written and signed redesignation of the contribution for  
6 another election.<sup>38</sup>

7 The Act and Commission regulations permit candidates and political committees to  
8 engage in joint fundraising activities by establishing a separate political committee to act as their  
9 joint fundraising representative.<sup>39</sup> Participants must enter into a written agreement that identifies  
10 this representative and states the formula for the allocation of fundraising proceeds and  
11 expenses.<sup>40</sup> A contributor may make a contribution to the joint fundraising committee that  
12 "represents the total amount that the contributor could contribute to all of the participants under  
13 the applicable [contribution] limits."<sup>41</sup> Candidates and political committees are prohibited from  
14 knowingly accepting contributions in excess of these limits.<sup>42</sup> In the context of joint fundraising,

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<sup>38</sup> *Id.* § 110.1(b)(5)(ii) (contributions by persons other than multicandidate political committees); *id.* § 110.2(b)(5)(ii) (contributions by multicandidate political committees).

<sup>39</sup> *See* 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

<sup>40</sup> 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.* Commission regulations also require that the representative establish a separate depository account to be used solely for the receipt and disbursement of joint fundraising proceeds and deposit those proceeds in this account within ten days of receipt. *Id.* § 102.17(c)(3)(i)-(iii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i). All solicitations in connection with a joint fundraising effort must include a notice that identifies all participating committees, describes the allocation formula, informs contributors that they may choose to designate their contributions for a particular committee, and states that the allocation formula may change if a contributor makes a contribution that is excessive relative to any participant. *Id.* § 102.17(c)(2)(i).

<sup>41</sup> *Id.* § 102.17(c)(5).

<sup>42</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

1 the representative is responsible for screening all contributions to ensure that they comply with  
2 the Act's source prohibitions and amount limitations, collecting contributions, paying  
3 fundraising costs, and distributing net proceeds to each participant.<sup>43</sup> If application of the joint  
4 fundraising committee's allocation formula results in a violation of the contribution limits, the  
5 joint fundraising committee may reallocate the excess funds to the other participant  
6 committees.<sup>44</sup>

7 Under 11 C.F.R. § 102.17(c), the JFC, which served as the fundraising representative for  
8 the joint fundraising effort of the Trump Committee and RNC, could accept post-election  
9 contributions for the Trump Committee if the Trump Committee had net debts outstanding. If  
10 the Trump Committee raised post-election funds via the JFC solely to retire its outstanding debts,  
11 the JFC was required to include a notice to contributors in its disclaimer that the allocation  
12 formula could change if a participating committee received sufficient funds to pay its  
13 outstanding debts.<sup>45</sup> Further, if the JFC was raising funds for the Trump Committee's retirement  
14 of debts related to the 2016 general election, it could distribute proceeds to the Trump

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<sup>43</sup> 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

<sup>44</sup> *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii). A joint fundraising representative must report all funds received in the reporting period they are received and all disbursements in the reporting period they are made. *Id.* § 102.17(c)(8)(i)-(iii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over \$200 and the total amount of receipts and disbursements. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b). The date a contribution is received by the joint fundraising representative is the date that the participating political committee must report as the date the contribution was received, even if it is disbursed by the joint fundraising representative at a later date and even though the participating political committee is only required to report the proceeds once the funds have been received from the fundraising representative. *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A). After the joint fundraising representative distributes the net proceeds, the participating committee must report its share received as a transfer-in from the fundraising representative and also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from original contributors as required by 11 C.F.R. § 104.3(a). *See id.* § 102.17(c)(8)(i)(B).

<sup>45</sup> 11 C.F.R. § 102.17(c)(2)(ii)(A).

1 Committee only so long as the proceeds did not exceed the Trump Committee's outstanding  
2 debts.<sup>46</sup>

3         The Trump Committee accepted over \$5 million in contributions, directly and through  
4 the JFC, designated for the 2016 general election after Election Day and reported that those  
5 contributions were to be used for debt retirement.<sup>47</sup> As of the Trump Committee's 12-Day Pre-  
6 General Report, it reported accepting roughly \$134.76 million in contributions for the 2016  
7 general election and disbursing over \$151 million for the same election. Crediting the accuracy  
8 of this and subsequent Trump Committee reports, it is possible that the Trump Committee had,  
9 as of Election Day 2016, general election debts in excess of its receipts. If that were the case, it  
10 could accept contributions designated for the 2016 general election after Election Day to the  
11 extent it continued to have net debts outstanding.

12         However, the available information raises questions as to whether the Trump Committee  
13 accurately designated all post-Election Day disbursements it reported as designated to the 2016  
14 general election. In particular, the 2016-designated disbursements identified in the Complaint  
15 for the "Trump USA Thank You Tour," which was held from December 1 through 17, 2016,<sup>48</sup>  
16 do not appear to concern 2016 election debts or obligations. The Complaint contends that

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<sup>46</sup> 11 C.F.R. § 102.17(c)(6)(i). Contributions received by the JFC that exceeded the Trump Committee's outstanding debts could be reallocated to the RNC so long as individual contributors had not exceeded their contribution limits to the RNC. However, if the individual contributors exceeded their contribution limits to the RNC, the JFC was required to refund the excessive portion of the respective contributions. *Id.* § 102.17(c)(6)(ii).

<sup>47</sup> *See* Trump Committee, Amended 2016 Post-General Report (Apr. 20, 2021); Trump Committee, Amended 2016 Year-End Report (May 20, 2021); Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017).

<sup>48</sup> Compl. at 11-12, Appendix.

1 facility rental and event planning for the tour alone appeared to have cost \$483,865.87, which did  
2 not include costs for payroll, travel, lodging, security, and other expenses.<sup>49</sup>

3         Moreover, the Trump Committee did not report outstanding debts or obligations during  
4 several reporting periods in which it accepted general-after-general contributions, as discussed  
5 further below. And, the Trump Committee stated that it decided to “reallocate” all of the post-  
6 Election Day contributions to the 2020 primary election.<sup>50</sup> According to the Trump Committee’s  
7 2017 April Quarterly Report, filed after Respondents received notice of the Complaint, the  
8 Trump Committee on January 20, 2017, apparently redesignated approximately \$4.4 million in  
9 general after general contributions to the 2020 primary.<sup>51</sup> Accordingly, the Trump Committee’s  
10 ability to redesignate purportedly all of the contributions designated for 2016 general election  
11 debt retirement in January 2017 calls into question Respondents’ contention that the Trump  
12 Committee had net debts outstanding at all on Election Day.

13         Nonetheless, given the age of the allegations and the recommendation below to proceed  
14 to pre-probable cause conciliation on another allegation, we do not recommend that the  
15 Commission expend its limited resources to conduct an extensive investigation that would  
16 involve verifying each post-election disbursement, especially given that the Trump Committee’s  
17 reports on their face indicate that, even excluding disbursements for the “Trump USA Thank  
18 You Tour,” the Committee may have had net debts outstanding. Accordingly, we recommend

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<sup>49</sup> *Id.*

<sup>50</sup> Trump Committee Resp. at 1.

<sup>51</sup> The remaining \$677,077.92 in general after general contributions may not have been redesignated by the Trump Committee and is unaccounted for at this time. In addition, the Trump Committee reported disbursing \$729,007.88 in refunds for 2016 general contributions on the Year-End Report, but we do not know whether refunds for general after general contributions were included.

1 that the Commission exercise its prosecutorial discretion to dismiss the allegations that the  
2 Trump Committee violated 52 U.S.C. §§ 30116(f) and 30104(b) by knowingly accepting and  
3 knowingly and willfully misreporting contributions after the 2016 general election in excess of  
4 the Trump Committee's net debts outstanding and that the JFC violated 52 U.S.C. § 30116(f) and  
5 11 C.F.R. § 102.17(c)(6)(i) by knowingly accepting and allocating such contributions.<sup>52</sup>

6 **B. The Commission Should Find Reason to Believe That the Trump Committee**  
7 **Misreported its Debts and Obligations**

8 The Act requires political committees to file reports accurately disclosing their receipts,  
9 disbursements, and debts.<sup>53</sup> In addition, political committees must accurately itemize  
10 contributions and disbursements for each election cycle and must also indicate the amount and  
11 nature of outstanding debts and obligations until those debts are extinguished.<sup>54</sup> Under  
12 Commission regulations, a debt or obligation of \$500 or less must be reported as of the time that  
13 payment is made or within sixty days of the date on which the political committee incurs the  
14 debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that  
15 covers the date on which the debt was incurred.<sup>55</sup> If the exact amount of a debt or obligation is  
16 not known, the report shall state that the amount reported is an estimate.<sup>56</sup> Once the exact  
17 amount is determined, a political committee must either: (1) amend the report(s) containing the

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<sup>52</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>53</sup> See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

<sup>54</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

<sup>55</sup> See 11 C.F.R. § 104.11(b).

<sup>56</sup> *Id.*

1 estimate; or (2) indicate the correct amount on the report for the reporting period in which such  
2 amount is determined.<sup>57</sup>

3           The Complaint alleges that the Trump Committee failed to report its debts.<sup>58</sup> The Trump  
4 Committee disclosed only \$766,756.67 in outstanding debts from the 2016 general election on its  
5 2016 Post-General Report,<sup>59</sup> and it disclosed no outstanding 2016 election debts on its  
6 subsequent 2016 Year-End Report<sup>60</sup> and 2017 April Quarterly Report.<sup>61</sup> Yet the Trump  
7 Committee submitted an affidavit from its current treasurer, who became treasurer on January  
8 20, 2017, that on Election Day, it “knew of approximately \$19 million in outstanding liabilities”  
9 including a \$10 million loan to the Trump Committee from Trump, which it states it planned to  
10 repay within twenty days of the election using its available cash on hand.<sup>62</sup> Moreover, the  
11 Trump Committee’s disclosure reports indicate that, between November 9, 2016, and March 31,  
12 2017, it spent \$23,090,572.11 in 2016 general election disbursements — *after* the election.<sup>63</sup>  
13 Although the Trump Committee’s Response contends that some of these disbursements were for

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

<sup>58</sup> *See* Compl. at ¶ 3.

<sup>59</sup> Trump Committee, Amended 2016 Post-General Report (May 12, 2017) (covering the period of October 20, 2016 through November 28, 2016).

<sup>60</sup> Trump Committee, Amended 2016 Year-End Report (July 20, 2017) (covering the period of November 29, 2016 through December 31, 2016).

<sup>61</sup> Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017) (covering the period of January 1, 2017 through March 31, 2017).

<sup>62</sup> *Id.*, Ex. A ¶¶ 4-6 (Affidavit of Bradley T. Crate); *see id.* at 2-3; *see* 11 C.F.R. § 116.11(c)(1). The debts here are distinguishable from the debts at issue in MUR 6732 (North Carolina Democratic Party), where the respondent committee contended that it had a “good faith belief” that invoices it planned on paying promptly would not have to be disclosed as outstanding debt. First Gen. Counsel’s Rpt. at 3, MUR 6732 (Commission was divided on recommendation to find reason to believe that respondent failed to report outstanding debts in violation of 52 U.S.C. § 30104(b)). In this matter, the Trump Committee indicates that it had knowledge of outstanding debts.

<sup>63</sup> *See supra* notes 23-25 and associated text; *see also* Trump Committee Resp. at 3 (stating that the Trump Committee made \$15 million in 2016 general election disbursements between November 9 and December 31, 2016).



1 “certain litigation costs and costs incurred in connection with the general election recount efforts  
2 conducted in various states in December 2016,”<sup>64</sup> those costs appear to total only \$365,639.69.

3 Thus, the available information indicates that the Trump Committee failed to accurately  
4 disclose its debts and obligations. Given the Trump Committee’s acknowledgement that it was  
5 aware that it had millions of dollars in debts on Election Day and the millions of dollars in  
6 disbursements the Committee designated having made for the 2016 general election in numerous  
7 reports filed after the election, the Committee should have disclosed actual or estimated debts  
8 and obligations but failed to do so.

9 The record is unclear, however, on the overall amount of debt that should have been  
10 disclosed. As discussed above, the Trump Committee’s filed reports disclose payments of over  
11 \$23 million for 2016 election activity after the 2016 election. Approximately \$11.5 million of  
12 these disbursements were reported on the 2016 Post-General Report as paid less than a month  
13 after the election and therefore may not necessarily have represented previously unreported debt.  
14 Moreover, there is a possibility that the Trump Committee incurred additional expenses in late  
15 2016 that were related to the 2016 election, such as legal expenses for recounts. At a minimum,  
16 however, the \$1,910,071.71 of 2016-designated disbursements that the Trump Committee  
17 reported for the period covering the first quarter of 2017 should have been previously reported in  
18 the 30-Day Post-General or 2016 Year-End Reports as debts or obligations, actual or estimated.  
19 The Response argues that the Trump Committee “continued to be invoiced well into January  
20 2017 for significant expenses it incurred on or before election day.”<sup>65</sup> However, unpaid

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<sup>64</sup> Trump Committee Resp. at 3.

<sup>65</sup> *Id.*

1 expenses over \$500 generally must be reported as debt in the reporting period during which they  
2 are incurred.<sup>66</sup> It appears from the Trump Committee's Response and reports that it assumed  
3 \$1,910,071.71 in debts or obligations for the 2016 election at some point in 2016, but failed to  
4 properly disclose them at that time.

5 Therefore, we recommend that the Commission find reason to believe that the Trump  
6 Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to accurately  
7 disclose its debts and obligations. Given the age of the allegations, we do not recommend that  
8 the Commission expend further resources to conduct an extensive investigation to establish when  
9 each post-election disbursement was a reportable debt and obligation, if at all. We instead  
10 recommend that the Commission enter into pre-probable cause conciliation focused on the subset  
11 of post-election disbursements that were reported in the third post-election reporting period but  
12 never reported as debts or obligations in earlier reports.

13 **C. The Commission Should Find No Reason to Believe that the Trump**  
14 **Committee Violated the Rule on Using Acceptable Accounting Methods**

15 The Complaint alleges that the Trump Committee violated 11 C.F.R. § 102.9(e) when it  
16 failed to use acceptable accounting methods to distinguish between contributions received for  
17 different elections.<sup>67</sup> Section 102.9(e) provides that if a candidate or committee receives  
18 contributions designated for the general election prior to the date of the primary election, the  
19 candidate or committee must use acceptable accounting methods to distinguish between  
20 contributions received for the primary election and contributions received for the general

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<sup>66</sup> See 11 C.F.R. § 104.11(b).

<sup>67</sup> Compl. at 13.

1 election.<sup>68</sup> This provision, however, appears to be limited to contributions received prior to a  
2 primary election that are designated for an upcoming general election within the same election  
3 cycle, and the Commission has stated that 11 C.F.R. § 102.9(e) is “designed to ensure that  
4 candidates . . . do not use general election contributions for the primary election.”<sup>69</sup> Subsection  
5 102.9(e)(3) supports this understanding given that it provides that if a candidate is not a  
6 candidate in the general election, he or she must refund the contributions designated to the  
7 general election.<sup>70</sup> Here, the circumstances differ in that contributions were received after a  
8 general election to be used for the primary in the following election cycle. Therefore, we  
9 recommend that the Commission find no reason to believe that the Trump Committee violated  
10 11 C.F.R. § 102.9(e)(1).

11 **D. The Commission Should Dismiss the Allegation that Trump and the Trump**  
12 **Committee Failed to Timely Register for the 2020 Election**

13 An individual becomes a candidate under the Act if: (a) such individual receives  
14 contributions or makes expenditures in excess of \$5,000; or (b) such individual gives his or her  
15 consent to another person to receive contributions or make expenditures on behalf of such  
16 individual and if such person has received such contributions or has made such expenditures in  
17 excess of \$5,000.<sup>71</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to

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<sup>68</sup> 11 C.F.R. § 102.9(e)(1).

<sup>69</sup> Advisory Op. 1992-15 at 2 (Russo for Congress Committee); *see also* Factual and Legal Analysis at 3-5, MUR 6057 (Jennifer Horn for Congress) (finding no reason to believe committee violated 11 C.F.R. § 102.9(e) where available record indicated that committee had sufficient funds for its primary expenses).

<sup>70</sup> 11 C.F.R. § 102.9(e)(3).

<sup>71</sup> 52 U.S.C. § 30101(2);

*see e.g.*, Factual & Legal Analysis at 2, MUR 6954 (Gilmore for America, *et al.*) (finding no reason to believe that respondent filed Statement of Candidacy late where respondent filed it once he crossed the \$5,000 threshold).

1 designate a principal campaign committee by filing a Statement of Candidacy (FEC Form 2)  
2 with the Commission.<sup>72</sup> The principal campaign committee must file a Statement of  
3 Organization (FEC Form 1) within ten days of its designation,<sup>73</sup> and it must file disclosure  
4 reports with the Commission in accordance with 52 U.S.C. § 30104(a) and (b).<sup>74</sup> Although the  
5 Commission has established limited “testing the waters” exemptions that permit an individual to  
6 test the feasibility of a campaign for federal office without becoming a candidate under the Act,<sup>75</sup>  
7 the exemptions are not available to individuals who have made a decision to become a  
8 candidate.<sup>76</sup>

9       The available record indicates that Trump became a candidate for the 2020 election  
10 shortly after the Election Day in 2016. Although the Response contends that Trump and the  
11 Trump Committee only filed their updated Forms 1 and 2 on January 20, 2017, Inauguration  
12 Day, in “an abundance of caution” because the President has not made a formal decision to run,<sup>77</sup>  
13 the facts suggest otherwise. The Trump Committee acknowledges that it modified the disclaimer

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<sup>72</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>73</sup> *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>74</sup> *See, e.g.*, Factual & Legal Analysis at 6, MUR 6735 (Joseph A. Sestak); Factual & Legal Analysis at 5, MUR 6449 (Jon Bruning); Factual & Legal Analysis at 2, MUR 5363 (Alfred C. Sharpton).

<sup>75</sup> *See* 11 C.F.R. §§ 100.72 and 100.131; Factual & Legal Analysis at 7, MUR 6775 (Hillary Clinton); Factual & Legal Analysis at 8, MUR 6776 (Niger Innis); Factual & Legal Analysis at 6, MUR 6735 (Joseph A. Sestak).

<sup>76</sup> *See* Advisory Op. 2015-09 (Senate Majority PAC, *et al.*); *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”). Commission regulations set forth a non-exhaustive list of activities indicating that an individual has decided to become a candidate, including (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>77</sup> Trump Committee Resp. at 4.

1 language for its donation webpage on November 9, 2016, to state that contributions would “be  
2 allocated to the 2016 General Election Debt Retirement until such debt is retired” and that “the  
3 next \$2,700 [would] be designated to the 2020 Primary Election.”<sup>78</sup> Thus, the Trump  
4 Committee’s solicitation of funds for the 2020 primary supports a reasonable inference that  
5 Trump had made a decision to seek office in 2020 immediately after the election in November  
6 2016. Further, by November 9, 2016, the Trump Committee accepted at least \$5,000 that did not  
7 go towards retiring the debts but towards the 2020 primary election.<sup>79</sup> The Trump Committee  
8 also states that “[t]his matter does not involve a ‘testing the waters’ scenario.”<sup>80</sup> Accordingly,  
9 the facts indicate that Trump and the Trump Committee failed to timely register for the 2020  
10 election.

11           Nevertheless, we do not believe that these allegations warrant further enforcement. As  
12 referenced by Respondents, in MURs 7020 and 7021 (Paul Babeu for Congress), the  
13 Commission dismissed the allegations that those respondents failed to timely file a statement of  
14 candidacy and a statement of organization because they took corrective action and filed the  
15 required disclosure reports.<sup>81</sup> Here, on January 20, 2017, more than three years before the 2020  
16 general election, Trump filed his Statement of Candidacy, and the Trump Committee filed its

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<sup>78</sup> *Id.* at 2.

<sup>79</sup> As noted above, the Trump Committee has chosen to redesignate all general after general contributions to the 2020 primary.

<sup>80</sup> Trump Committee Resp. at 4-5.

<sup>81</sup> *See, e.g.*, Factual & Legal Analysis at 2-3, MUR 7033 (Crane for Congress) (dismissing allegation where Statement of Candidacy was at least 50 days late, Statement of Organization was at least 40 days late, and first required disclosure report was timely filed); Factual & Legal Analysis at 7, MUR 6815 (New Hampshire for Scott Brown) (dismissing allegation where complaint alleged that Statements of Candidacy and Organization were filed less than 30 days late and first required disclosure report was timely filed); Factual & Legal Analysis at 2-7, MUR 6533 (Perry Haney) (dismissing allegation where first required disclosure report was timely filed).

1 updated Statement of Organization. Thus, under these circumstances, we recommend that the  
2 Commission dismiss as a matter of prosecutorial discretion the allegations that Trump violated  
3 52 U.S.C. § 30102(e) by failing to timely file his Statement of Candidacy for the 2020 election  
4 and that the Trump Committee violated 52 U.S.C. § 30103(a) by failing to timely file its  
5 Statement of Organization.<sup>82</sup>

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<sup>82</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1     **V.     RECOMMENDATIONS**

- 2           1. Dismiss the allegation that Make American Great Again PAC, f/k/a Donald J. Trump  
3           for President, Inc., and Bradley T. Crate in his official capacity as treasurer violated  
4           52 U.S.C. §§ 30104(b) and 30116(f) by knowingly accepting and failing to properly  
5           report contributions received after the 2016 general election in excess of the Trump  
6           Committee's net debts outstanding;
- 7           2. Dismiss the allegation that Trump Make America Great Again Committee and  
8           Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30116(f)  
9           and 11 C.F.R. § 102.17(c)(6)(i) by knowingly accepting and allocating contributions  
10          after the 2016 general election in excess of the Trump Committee's net debts  
11          outstanding;
- 12          3. Find reason to believe that Make America Great Again PAC, f/k/a Donald J. Trump  
13          for President, Inc., and Bradley T. Crate in his official capacity as treasurer violated  
14          52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to accurately disclose its  
15          debts and obligations;
- 16          4. Find no reason to believe that Make American Great Again PAC, f/k/a Donald J.  
17          Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer  
18          violated 11 C.F.R. § 102.9(e)(1) by failing to employ acceptable accounting methods  
19          to distinguish between contributions received for different elections;
- 20          5. Dismiss the allegation that Donald J. Trump violated 52 U.S.C. § 30102(e) by failing  
21          to timely file his Statement of Candidacy;
- 22          6. Dismiss the allegation that Make American Great Again PAC, f/k/a Donald J. Trump  
23          for President, Inc., and Bradley T. Crate in his official capacity as treasurer violated  
24          52 U.S.C. § 30103(a) by failing to timely file its Statement of Organization;
- 25          7. Approve the attached Factual and Legal Analysis;
- 26          8. Enter into conciliation with Make American Great Again PAC, f/k/a Donald J. Trump  
27          for President, Inc., and Bradley T. Crate in his official capacity as treasurer prior to a  
28          finding of probable cause to believe;
- 29          9. Approve the attached proposed Conciliation Agreement; and
- 30          10. Approve the appropriate letters.

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Lisa J. Stevenson  
Acting General Counsel

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July 13, 2021  
Date

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*Charles Kitcher*  

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Charles Kitcher  
Acting Associate General Counsel for  
Enforcement

*Jin Lee*  

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Jin Lee  
Acting Assistant General Counsel

*Amanda Andrade*  

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Amanda Andrade  
Attorney

Previously Assigned: Anne Robinson

Attachments:

1. Factual and Legal Analysis



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

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7 RESPONDENTS: Make America Great Again PAC, f/k/a MUR 7220  
8 Donald J. Trump for President, Inc.  
9 and Bradley T. Crate in his official  
10 capacity as treasurer  
11 Donald J. Trump  
12 Trump Make America Great Again  
13 Committee and Bradley T. Crate  
14 in his official capacity as treasurer  
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**I. INTRODUCTION**

16  
17 The Complaint in this matter alleges that Make America Great Again PAC, f/k/a Donald  
18 J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the  
19 “Trump Committee”) and Trump Make America Great Again Committee and Bradley T. Crate  
20 in his official capacity as treasurer (the “JFC”), a joint fundraising committee between the Trump  
21 Committee and the Republican National Committee (the “RNC”), violated the Federal Election  
22 Campaign Act of 1971, as amended (the “Act”), by improperly raising millions of dollars in  
23 contributions after the 2016 general election when the Trump Committee reported no outstanding  
24 debts.<sup>1</sup> In particular, the Complaint alleges that the Trump Committee knowingly and willfully  
25 filed reports with the Commission that falsely attributed millions of dollars in contributions to  
26 2016 general election debt retirement and failed to timely redesignate or refund contributions  
27 received after the 2016 general election. The Complaint finally alleges that Donald J. Trump and  
28 the Trump Committee failed to timely register for the 2020 election.

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<sup>1</sup> Compl. at 4 (Mar. 2, 2017). The JFC filed its Response on August 15, 2017, in which it expressly joined in the Trump Committee’s Response. JFC Resp. at 1 (Aug. 15, 2017).

1 Trump, the Trump Committee, and the JFC (collectively, “Respondents”) assert that  
2 because on Election Day, November 8, 2016, the Trump Committee was aware of approximately  
3 \$19 million in debts, which exceeded its \$15 million in cash on hand, the Trump Committee was  
4 permitted to continue raising funds after that date.<sup>2</sup> Nevertheless, they state that the Trump  
5 Committee chose to “reallocate” contributions it received after Election Day from the 2016  
6 general debt retirement to the 2020 primary election.<sup>3</sup> Respondents further deny that Trump  
7 failed to timely register for the 2020 Presidential election.<sup>4</sup>

8 The Trump Committee’s disclosure reports indicate that *after* Election Day, the Trump  
9 Committee received over \$5 million in contributions designated for the 2016 general election  
10 and also made disbursements totaling over \$23 million, designated for that election. As  
11 discussed below, the Trump Committee’s reported receipts and disbursements suggest that it  
12 may have had sufficient net debts outstanding after the 2016 general election to accept  
13 contributions after that election. Although the Complaint does raise questions as to whether  
14 many of Trump Committee’s 2016-designated disbursements were legitimately for the 2016  
15 election, it would not be a prudent use of Commission resources to conduct the lengthy and  
16 detailed investigation necessary to determine these facts. Accordingly, the Commission  
17 exercises its prosecutorial discretion to dismiss the allegations that the Trump Committee and

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<sup>2</sup> Trump and Trump Committee Resp. at 2 (May 9, 2017) (“Trump Committee Resp.”); *see also* JFC Resp. at 1 (Aug. 15, 2017) (expressly joining in the Trump Committee Response).

<sup>3</sup> Trump Committee Resp. at 1.

<sup>4</sup> *Id.* at 4-5.

1 JFC accepted contributions in excess of the Trump Committee's net debts outstanding and that  
2 the Trump Committee knowingly and willfully misreported 2020 receipts as 2016 receipts.<sup>5</sup>

3 Nonetheless, because the Trump Committee only disclosed \$766,756.67 in debt in its  
4 reports filed after the 2016 election but acknowledged that it was aware of \$19 million in debts  
5 on Election Day, it appears that the Trump Committee failed to accurately report its debts as  
6 required by the Act. The Commission therefore finds reason to believe that the Trump  
7 Committee violated its obligation to file accurate reports of its debts under 52 U.S.C.  
8 § 30104(b)(8) and 11 C.F.R. § 104.3(d).

9 The Commission finds no reason to believe the Trump Committee violated 11 C.F.R.  
10 § 102.9(e)(1) by failing to employ acceptable accounting methods to distinguish between  
11 contributions received for different elections. Finally, the Commission dismisses as a matter of  
12 prosecutorial discretion the allegations that Trump violated 52 U.S.C. § 30102(e) by failing to  
13 timely file his Statement of Candidacy and that the Trump Committee violated 52 U.S.C.  
14 § 30103(a) by failing to timely file its Statement of Organization.<sup>6</sup>

## 15 **II. FACTUAL BACKGROUND**

16 Donald J. Trump was a candidate for President in the 2016 election cycle, and the Trump  
17 Committee was his principal campaign committee.<sup>7</sup> On November 8, 2016, Trump won the  
18 2016 presidential election. On January 20, 2017, Trump filed his Statement of Candidacy for the  
19 2020 election and designated the Trump Committee as his principal campaign committee for that

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<sup>5</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>6</sup> *Id.*

<sup>7</sup> Trump Committee Resp. at 1. The Trump Committee's website for the 2016 and 2020 election cycles was [www.donaldjtrump.com](http://www.donaldjtrump.com). Compl. at 3.

1 election.<sup>8</sup> The JFC registered as a joint fundraising committee on May 25, 2016, and it raised  
2 funds for both the 2016 and 2020 election cycles.

3 **A. The Trump Committee’s Post-2016 General Election Fundraising Activities**

4 The Complaint alleges that the Trump Committee and the JFC began soliciting  
5 contributions for the 2020 election immediately after the 2016 general election. According to the  
6 Complaint, on November 10, 2016, the Trump Committee’s website included the following  
7 statement on its “donate” page: “[t]he maximum amount an individual may contribute is \$2,700  
8 per election. Your contribution (up to \$2,700) will be allocated first to 2016 General Election  
9 Debt Retirement until such debt is retired. The next \$2,700 will be designated to the 2020  
10 Primary Election.”<sup>9</sup>

11 The JFC raised funds via a webpage hosted on the Trump Committee’s website.<sup>10</sup> The  
12 website included its fundraising notice, including the allocation formula, which was modified on  
13 November 10, 2016, to state that “up to a maximum of \$2,700” of the Trump Committee’s share  
14 of each contribution “[would] be designated toward the 2016 general election.”<sup>11</sup> The JFC  
15 notice indicated that the Trump Committee would receive 80% of contributions and the RNC

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<sup>8</sup> Trump Committee Resp. at 1. The Trump Committee amended both its name and committee type after the 2020 election. Make America Great Again PAC, Amended Statement of Organization, (Feb. 27, 2021)

<sup>9</sup> Compl. at 3; *see* [https://web.archive.org/web/20161110080051/https://secure.donaldjtrump.com/we-made-history?amount=150&utm\\_campaign=djt\\_website\\_donate&utm\\_source=website&utm\\_medium=web&utm\\_content=top\\_nav](https://web.archive.org/web/20161110080051/https://secure.donaldjtrump.com/we-made-history?amount=150&utm_campaign=djt_website_donate&utm_source=website&utm_medium=web&utm_content=top_nav) (archived Nov. 10, 2016).

<sup>10</sup> *See* <https://web.archive.org/web/20161108080228/donate.donaldjtrump.com/founding-member> (archived Nov. 8, 2016).

<sup>11</sup> Compl. at 4; *see* <https://web.archive.org/web/20161110080054/donate.donaldjtrump.com/founding-member> (archived Nov. 10, 2016).

1 would receive the remaining 20%.<sup>12</sup> More specifically, the notice stated that the Trump  
2 Committee would receive 80% of contributions up to the allowable amounts of \$2,700 per  
3 election for individuals and \$5,000 for multicandidate political committees, and the RNC would  
4 receive up to a maximum of \$33,400 per election or \$15,000 for multicandidate political  
5 committees.<sup>13</sup>

6 The Trump Committee's disclosure reports reflect that the Trump Committee raised  
7 substantial funds immediately after the 2016 general election. Between November 9, 2016, and  
8 November 28, 2016, the Trump Committee reported raising \$929,245.54 in "general after  
9 general" funds — *i.e.*, contributions designated for the general election that were received after  
10 the general election.<sup>14</sup> Of that amount, \$405,311.63 were contributions made directly to the  
11 Trump Committee, and the remaining \$523,933.91 came from a JFC transfer dated November 8,  
12 2016, that included contributions dated both before and after November 8th.<sup>15</sup> Subsequently,  
13 between November 29 and December 31, 2016, the Trump Committee raised another  
14 \$3,987,970.08 in general after general contributions, the vast majority of which it received from  
15 the JFC.<sup>16</sup> In its 2016 Year End Report, the Trump Committee reported that "[a]ll contributions

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<sup>12</sup> See Compl. at 4; <https://web.archive.org/web/20161108080228/donate.donaldjtrump.com/founding-member> (archived Nov. 8, 2016).

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

<sup>14</sup> Trump Committee, Amended 2016 Post-General Report, (May 12, 2017).

<sup>15</sup> *Id.* The JFC transfer dated November 8, 2016, which was designated to the 2016 general, totaled \$2,324,999.32, with \$523,933.91 in general after general funds. According to the JFC's 2016 Post-General Report, the JFC received the \$523,933.91 between November 9 and 17, 2016. The Trump Committee later redesignated the general after general contributions to the 2020 primary. See Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017).

<sup>16</sup> Trump Committee, Amended 2016 Year-End Report (July 20, 2017).

1 received after 11/8 designated for General 2016 were designated for 2016 General Debt  
2 Retirement.”<sup>17</sup>

3 According to the Trump Committee’s 2017 April Quarterly Report, however, on January  
4 20, 2017, the Trump Committee redesignated \$4,403,336.82 in contributions received after the  
5 2016 general election, which were previously designated for 2016 debt retirement, to the 2020  
6 primary. On March 31, 2017, the Trump Committee received an additional \$163,330.12 in  
7 general after general contributions from Trump Victory, another joint fundraising committee  
8 comprised of the Trump Committee, the RNC, and 21 state party committees.<sup>18</sup> In sum, the  
9 Trump Committee reported raising \$5,080,545.74 in contributions designated for the 2016  
10 general election after Election Day, although most of those funds were subsequently  
11 redesignated for the 2020 primary.

12 **B. The Trump Committee’s Post-2016 General Election Debt Reporting and**  
13 **Spending**

14 According to the Trump Committee’s 2016 Post-General Report, which covers the period  
15 of October 20, 2016, through November 28, 2016, the Trump Committee reported \$766,756.67  
16 in outstanding debts,<sup>19</sup> which consisted of one contested debt from a polling consultant.<sup>20</sup> The  
17 Trump Committee reported paying the vendor in question, Fabrizio, Lee & Associates, \$450,000

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<sup>17</sup> Trump Committee, Amended 2016 Year-End Report at 8 (May 20, 2021); *see also* Compl. at 5-6.

<sup>18</sup> Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017). The Trump Committee appears to have redesignated each of these contributions to the 2020 primary on the April Quarterly Report. *See* Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017). Trump Victory is not a respondent in this matter.

<sup>19</sup> Trump Committee, Amended 2016 Post-General Report (Apr. 21, 2021).

<sup>20</sup> Trump Committee, 2016 Post-General Report, (Dec. 8, 2016). The Trump Committee filed the original Post-General Report on December 8, 2016 and subsequently amended it five times, most recently on June 28, 2019, but the cash on hand and total debt figures were not altered.

1 for polling expenses on December 6, 2016, and thereafter reported no outstanding or contested  
2 debts from the 2016 election.<sup>21</sup> The Trump Committee’s 2016 Year-End Report reflected no  
3 outstanding debts.<sup>22</sup>

4 Nonetheless, the Trump Committee also reported spending millions of dollars in  
5 disbursements after the 2016 general election for expenses relating to that election. The Trump  
6 Committee reported making \$11,581,633.26 in disbursements between November 9 and 28,  
7 2016, and an additional \$9,598,876.14 between November 29 and December 31, 2016<sup>23</sup> — all of  
8 which were designated for the 2016 general election.<sup>24</sup> On its April 2017 Quarterly Report, the  
9 Trump Committee reported making over \$1.9 million in disbursements for the 2016 general  
10 election.<sup>25</sup>

11 The Complaint alleges that some of the post-election disbursements the Trump  
12 Committee reported making for the 2016 general election may have been made for 2020 election  
13 activity. For example, the Complaint identifies \$483,865.87 of the Trump Committee’s  
14 disbursements designated for the 2016 general election for eight “Trump USA Thank You Tour”  
15 events from December 1 through 17, 2016, that, according to the Complaint, should have been

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<sup>21</sup> See Trump Committee, Amended 2016 Year-End Report at 24428 (Jan. 31, 2017).

<sup>22</sup> The Trump Committee has amended the Year-End Report four times but did not alter the cash on hand or total debt figures.

<sup>23</sup> Trump Committee, Amended 2016 Post-General Report (May 12, 2017); Trump Committee, Amended 2016 Year-End Report (May 20, 2021).

<sup>24</sup> Trump Committee, Amended 2016 Post-General Report (May 12, 2017); Trump Committee, Amended 2016 Year-End Report (May 20, 2021).

<sup>25</sup> Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017).

1 attributed to the 2020 election.<sup>26</sup> The Complaint also connects the following disbursements with  
2 a rally held by the Trump Committee on December 1, 2016 in Cincinnati, Ohio: (1) payment of  
3 \$45,000 on November 29, 2016, to Arena Management Holdings for facility rental; (2) payment  
4 of \$41,700.36 on December 13, 2016, to Loud and Clear Inc. for audio visual services; and  
5 (3) payment of \$43,332.74 on December 14, 2016, to Arena Management Holdings for facility  
6 rental. Similarly, the Complaint connects disbursements to vendors that may be related to Thank  
7 You Tour rallies held in Fayetteville, North Carolina; Des Moines, Iowa; Grand Rapids,  
8 Michigan; West Allis, Wisconsin; Hershey, Pennsylvania; Orlando, Florida; and Mobile,  
9 Alabama.<sup>27</sup>

10 The Complaint also identifies other large disbursements reported by the Trump  
11 Committee on its 2016 Year-End Report as 2016 general election expenses that allegedly may  
12 have been for 2020 activity.<sup>28</sup> According to the Complaint, the following payments may have  
13 been for 2020 activity: \$696,078 total for private air travel, \$510,641 total to Giles-Parscale for  
14 digital consulting and online advertising, \$312,500 to Cambridge Analytica for data  
15 management, and \$183,756 total for rent, catering, and lodging payments paid to properties  
16 affiliated with Trump.<sup>29</sup>

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<sup>26</sup> Compl. at 7, 11-12, Appendix (providing a rounded figure of \$483,860); *see* Trump Committee, 2016 Amended Year-End Report (May 20, 2021).

<sup>27</sup> Compl., Appendix.

<sup>28</sup> Compl. at 11.

<sup>29</sup> *Id.* at 11-12.



1 **III. LEGAL ANALYSIS**

2 **A. The Commission Dismisses the Allegations that the Trump Committee and**  
3 **the JFC Improperly Accepted and Reported Contributions Received after**  
4 **the 2016 General Election**

5 The Act defines the term “contribution” as “any gift, subscription, loan, advance, or  
6 deposit of money or anything of value made by any person for the purpose of influencing any  
7 election for Federal office.”<sup>30</sup> No person may make a contribution that exceeds the limits of the  
8 Act to any candidate and his or her authorized committee, which were \$2,700 per election for  
9 individuals and \$5,000 per election for multicandidate political committees during the 2016  
10 election cycle.<sup>31</sup> Candidates and political committees are prohibited from knowingly accepting  
11 contributions in excess of these limits.<sup>32</sup>

12 Once an election is over, an authorized committee cannot accept contributions for that  
13 election that exceed its net debts outstanding or from a contributor who has exceeded the Act’s  
14 contribution limits for that election.<sup>33</sup> Net debts outstanding are calculated as of the date of the

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<sup>30</sup> 52 U.S.C. § 30101(8)(A).

<sup>31</sup> *See id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Individuals were permitted to contribute no more than \$33,400 per calendar year to national party committees for the 2015-2016 election cycle. *See* 52 U.S.C. § 30116(a)(1)(B); 11 C.F.R. § 110.1(c)(1); Price Index Adjustments for Contributions & Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-52 (Feb. 3, 2015).

<sup>32</sup> *See* 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>33</sup> 11 C.F.R. § 110.1(b)(3)(i), (iii)(B); Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) (“Limitations E&J”) (“The Commission believes that funds given to a candidate after an election is over cannot meet the Act’s requirements that contributions be made with respect to and for the purpose of influencing that election unless they could be used to retire outstanding debts from that election.”); *see* Factual & Legal Analysis at 5, MUR 4947 (Kemp for Vice President) (finding reason to believe that committee violated 52 U.S.C. § 30116 (then 2 U.S.C. § 441a) and 11 C.F.R. § 110.1(b)(3)(i) when it received contributions in excess of its net debts outstanding because “[f]unds given to a candidate after an election is over cannot meet the Act’s requirements that contributions be made with respect to and for the purpose of influencing that election unless they could be used to retire outstanding debts from that election”).

1 election and defined as “the total amount of unpaid debts and obligations incurred with respect to  
2 the election” minus a number of things, including contributions from that election.<sup>34</sup> The amount  
3 of net debts outstanding shall be adjusted as additional funds are received and expenditures are  
4 made.<sup>35</sup>

5 If the treasurer of a committee determines that contributions for a prior election cannot be  
6 accepted because they would exceed net debts outstanding, the treasurer may either: (1) deposit  
7 the contributions and obtain redesignations from the contributors within 60 days; or (2) return or  
8 refund the contributions.<sup>36</sup> Further, for contributions that are received after the election and  
9 deposited in a campaign depository despite appearing to be illegal because they exceed net debts  
10 outstanding, the treasurer must include a statement in the relevant report, noting that the legality  
11 of the contributions is in question.<sup>37</sup> A contribution shall be considered to be redesignated for  
12 another election if: (1) the treasurer of the recipient political committee requests that the  
13 contributor provide a written redesignation of the contribution and informs the contributor that  
14 the contributor may request a refund of the contribution as an alternative to providing a written  
15 redesignation; and (2) within 60 days after the treasurer’s receipt of the contribution, the  
16 contributor provides the treasurer with a written and signed redesignation of the contribution for  
17 another election.<sup>38</sup>

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<sup>34</sup> 11 C.F.R. § 110.1(b)(3)(ii)(A); *see* Limitations E&J, 52 Fed. Reg. at 762 (stating that treasurer should first calculate total amount of debts and obligations and then subtract cash on hand and receivables from total debts).

<sup>35</sup> *See* 11 C.F.R. § 110.1(b)(3)(iii); AO 1990-17 at 2.

<sup>36</sup> 11 C.F.R. §§ 103.3(b)(3), 110.1(b)(3).

<sup>37</sup> *Id.* § 103.3(b)(5).

<sup>38</sup> *Id.* § 110.1(b)(5)(ii) (contributions by persons other than multicandidate political committees); *id.* § 110.2(b)(5)(ii) (contributions by multicandidate political committees).

1           The Act and Commission regulations permit candidates and political committees to  
2 engage in joint fundraising activities by establishing a separate political committee to act as their  
3 joint fundraising representative.<sup>39</sup> Participants must enter into a written agreement that identifies  
4 this representative and states the formula for the allocation of fundraising proceeds and  
5 expenses.<sup>40</sup> A contributor may make a contribution to the joint fundraising committee that  
6 “represents the total amount that the contributor could contribute to all of the participants under  
7 the applicable [contribution] limits.”<sup>41</sup> Candidates and political committees are prohibited from  
8 knowingly accepting contributions in excess of these limits.<sup>42</sup> In the context of joint fundraising,  
9 the representative is responsible for screening all contributions to ensure that they comply with  
10 the Act’s source prohibitions and amount limitations, collecting contributions, paying  
11 fundraising costs, and distributing net proceeds to each participant.<sup>43</sup> If application of the joint  
12 fundraising committee’s allocation formula results in a violation of the contribution limits, the

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<sup>39</sup> See 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

<sup>40</sup> 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.* Commission regulations also require that the representative establish a separate depository account to be used solely for the receipt and disbursement of joint fundraising proceeds and deposit those proceeds in this account within ten days of receipt. *Id.* § 102.17(c)(3)(i)-(iii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i). All solicitations in connection with a joint fundraising effort must include a notice that identifies all participating committees, describes the allocation formula, informs contributors that they may choose to designate their contributions for a particular committee, and states that the allocation formula may change if a contributor makes a contribution that is excessive relative to any participant. *Id.* § 102.17(c)(2)(i).

<sup>41</sup> *Id.* § 102.17(c)(5).

<sup>42</sup> 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

<sup>43</sup> 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

1 joint fundraising committee may reallocate the excess funds to the other participant  
2 committees.<sup>44</sup>

3 Under 11 C.F.R. § 102.17(c), the JFC, which served as the fundraising representative for  
4 the joint fundraising effort of the Trump Committee and RNC, could accept post-election  
5 contributions for the Trump Committee if the Trump Committee had net debts outstanding. If  
6 the Trump Committee raised post-election funds via the JFC solely to retire its outstanding debts,  
7 the JFC was required to include a notice to contributors in its disclaimer that the allocation  
8 formula could change if a participating committee received sufficient funds to pay its  
9 outstanding debts.<sup>45</sup> Further, if the JFC was raising funds for the Trump Committee's retirement  
10 of debts related to the 2016 general election, it could distribute proceeds to the Trump  
11 Committee only so long as the proceeds did not exceed the Trump Committee's outstanding  
12 debts.<sup>46</sup>

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<sup>44</sup> *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii). A joint fundraising representative must report all funds received in the reporting period they are received and all disbursements in the reporting period they are made. *Id.* § 102.17(c)(8)(i)-(iii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over \$200 and the total amount of receipts and disbursements. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b). The date a contribution is received by the joint fundraising representative is the date that the participating political committee must report as the date the contribution was received, even if it is disbursed by the joint fundraising representative at a later date and even though the participating political committee is only required to report the proceeds once the funds have been received from the fundraising representative. *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A). After the joint fundraising representative distributes the net proceeds, the participating committee must report its share received as a transfer-in from the fundraising representative and also file a memo entry on Schedule A itemizing its share of gross receipts as contributions from original contributors as required by 11 C.F.R. § 104.3(a). *See id.* § 102.17(c)(8)(i)(B).

<sup>45</sup> 11 C.F.R. § 102.17(c)(2)(ii)(A).

<sup>46</sup> 11 C.F.R. § 102.17(c)(6)(i). Contributions received by the JFC that exceeded the Trump Committee's outstanding debts could be reallocated to the RNC so long as individual contributors had not exceeded their contribution limits to the RNC. However, if the individual contributors exceeded their contribution limits to the RNC, the JFC was required to refund the excessive portion of the respective contributions. *Id.* § 102.17(c)(6)(ii).

1           The Trump Committee accepted over \$5 million in contributions, directly and through  
2 the JFC, designated for the 2016 general election after Election Day and reported that those  
3 contributions were to be used for debt retirement.<sup>47</sup> As of the Trump Committee’s 12-Day Pre-  
4 General Report, it reported accepting roughly \$134.76 million in contributions for the 2016  
5 general election and disbursing over \$151 million for the same election. Crediting the accuracy  
6 of this and subsequent Trump Committee reports, it is possible that the Trump Committee had,  
7 as of Election Day 2016, general election debts in excess of its receipts. If that were the case, it  
8 could accept contributions designated for the 2016 general election after Election Day to the  
9 extent it continued to have net debts outstanding.

10           However, the available information raises questions as to whether the Trump Committee  
11 accurately designated all post-Election Day disbursements it reported as designated to the 2016  
12 general election. In particular, the 2016-designated disbursements identified in the Complaint  
13 for the “Trump USA Thank You Tour,” which was held from December 1 through 17, 2016,<sup>48</sup>  
14 do not appear to concern 2016 election debts or obligations. The Complaint contends that  
15 facility rental and event planning for the tour alone appeared to have cost \$483,865.87, which did  
16 not include costs for payroll, travel, lodging, security, and other expenses.<sup>49</sup>

17           Moreover, the Trump Committee did not report outstanding debts or obligations during  
18 several reporting periods in which it accepted general-after-general contributions, as discussed  
19 further below. And, the Trump Committee stated that it decided to “reallocate” all of the post-

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<sup>47</sup> See Trump Committee, Amended 2016 Post-General Report (Apr. 20, 2021); Trump Committee, Amended 2016 Year-End Report (May 20, 2021); Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017).

<sup>48</sup> Compl. at 11-12, Appendix.

<sup>49</sup> *Id.*

1 Election Day contributions to the 2020 primary election.<sup>50</sup> According to the Trump Committee’s  
2 2017 April Quarterly Report, filed after Respondents received notice of the Complaint, the  
3 Trump Committee on January 20, 2017, apparently redesignated approximately \$4.4 million in  
4 general after general contributions to the 2020 primary.<sup>51</sup> Accordingly, the Trump Committee’s  
5 ability to redesignate purportedly all of the contributions designated for 2016 general election  
6 debt retirement in January 2017 calls into question Respondents’ contention that the Trump  
7 Committee had net debts outstanding at all on Election Day.

8           Nonetheless, given the age of the allegations and the decision below to find reason to  
9 believe that the Trump Committee violated the Act on a separate theory, it would not be a  
10 prudent use of Commission resources to conduct an extensive investigation that would involve  
11 verifying each post-election disbursement, especially given that the Trump Committee’s reports  
12 on their face indicate that, even excluding disbursements for the “Trump USA Thank You Tour,”  
13 the Committee may have had net debts outstanding. Accordingly, the Commission exercises its  
14 prosecutorial discretion to dismiss the allegations that the Trump Committee violated 52 U.S.C.  
15 §§ 30116(f) and 30104(b) by knowingly accepting and knowingly and willfully misreporting  
16 contributions after the 2016 general election in excess of the Trump Committee’s net debts  
17 outstanding and that the JFC violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.17(c)(6)(i) by  
18 knowingly accepting and allocating such contributions.<sup>52</sup>

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<sup>50</sup> Trump Committee Resp. at 1.

<sup>51</sup> The remaining \$677,077.92 in general after general contributions may not have been redesignated by the Trump Committee and is unaccounted for at this time. In addition, the Trump Committee reported disbursing \$729,007.88 in refunds for 2016 general contributions on the Year-End Report, but it is not clear whether refunds for general after general contributions were included.

<sup>52</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1           **B.       The Commission Finds Reason to Believe That the Trump Committee**  
2           **Misreported its Debts and Obligations**

3           The Act requires political committees to file reports accurately disclosing their receipts,  
4           disbursements, and debts.<sup>53</sup> In addition, political committees must accurately itemize  
5           contributions and disbursements for each election cycle and must also indicate the amount and  
6           nature of outstanding debts and obligations until those debts are extinguished.<sup>54</sup> Under  
7           Commission regulations, a debt or obligation of \$500 or less must be reported as of the time that  
8           payment is made or within sixty days of the date on which the political committee incurs the  
9           debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that  
10          covers the date on which the debt was incurred.<sup>55</sup> If the exact amount of a debt or obligation is  
11          not known, the report shall state that the amount reported is an estimate.<sup>56</sup> Once the exact  
12          amount is determined, a political committee must either: (1) amend the report(s) containing the  
13          estimate; or (2) indicate the correct amount on the report for the reporting period in which such  
14          amount is determined.<sup>57</sup>

15          The Complaint alleges that the Trump Committee failed to report its debts.<sup>58</sup> The Trump  
16          Committee disclosed only \$766,756.67 in outstanding debts from the 2016 general election on its

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<sup>53</sup>        *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

<sup>54</sup>        52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

<sup>55</sup>        *See* 11 C.F.R. § 104.11(b).

<sup>56</sup>        *Id.*

<sup>57</sup>        *Id.*

<sup>58</sup>        *See* Compl. at ¶ 3.

1 2016 Post-General Report,<sup>59</sup> and it disclosed no outstanding 2016 election debts on its  
2 subsequent 2016 Year-End Report<sup>60</sup> and 2017 April Quarterly Report.<sup>61</sup> Yet the Trump  
3 Committee submitted an affidavit from its current treasurer, who became treasurer on January  
4 20, 2017, that on Election Day, it “knew of approximately \$19 million in outstanding liabilities”  
5 including a \$10 million loan to the Trump Committee from Trump, which it states it planned to  
6 repay within twenty days of the election using its available cash on hand.<sup>62</sup> Moreover, the  
7 Trump Committee’s disclosure reports indicate that, between November 9, 2016, and March 31,  
8 2017, it spent \$23,090,572.11 in 2016 general election disbursements — *after* the election.<sup>63</sup>  
9 Although the Trump Committee’s Response contends that some of these disbursements were for  
10 “certain litigation costs and costs incurred in connection with the general election recount efforts  
11 conducted in various states in December 2016,”<sup>64</sup> those costs appear to total only \$365,639.69.

12 Thus, the available information indicates that the Trump Committee failed to accurately  
13 disclose its debts and obligations. Given the Trump Committee’s acknowledgement that it was

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<sup>59</sup> Trump Committee, Amended 2016 Post-General Report (May 12, 2017) (covering the period of October 20, 2016 through November 28, 2016).

<sup>60</sup> Trump Committee, Amended 2016 Year-End Report (July 20, 2017) (covering the period of November 29, 2016 through December 31, 2016).

<sup>61</sup> Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017) (covering the period of January 1, 2017 through March 31, 2017).

<sup>62</sup> *Id.*, Ex. A ¶¶ 4-6 (Affidavit of Bradley T. Crate); *see id.* at 2-3; *see* 11 C.F.R. § 116.11(c)(1). The debts here are distinguishable from the debts at issue in MUR 6732 (North Carolina Democratic Party), where the respondent committee contended that it had a “good faith belief” that invoices it planned on paying promptly would not have to be disclosed as outstanding debt. First Gen. Counsel’s Rpt. at 3, MUR 6732 (Commission was divided on recommendation to find reason to believe that respondent failed to report outstanding debts in violation of 52 U.S.C. § 30104(b)). In this matter, the Trump Committee indicates that it had knowledge of outstanding debts.

<sup>63</sup> *See supra* notes 23-25 and associated text; *see also* Trump Committee Resp. at 3 (stating that the Trump Committee made \$15 million in 2016 general election disbursements between November 9 and December 31, 2016).

<sup>64</sup> Trump Committee Resp. at 3.



1 aware that it had millions of dollars in debts on Election Day and the millions of dollars in  
2 disbursements the Committee designated having made for the 2016 general election in numerous  
3 reports filed after the election, the Committee should have disclosed actual or estimated debts  
4 and obligations but failed to do so.

5         The record is unclear, however, on the overall amount of debt that should have been  
6 disclosed. As discussed above, the Trump Committee's filed reports disclose payments of over  
7 \$23 million for 2016 election activity after the 2016 election. Approximately \$11.5 million of  
8 these disbursements were reported on the 2016 Post-General Report as paid less than a month  
9 after the election and therefore may not necessarily have represented previously unreported debt.  
10 Moreover, there is a possibility that the Trump Committee incurred additional expenses in late  
11 2016 that were related to the 2016 election, such as legal expenses for recounts. At a minimum,  
12 however, the \$1,910,071.71 of 2016-designated disbursements that the Trump Committee  
13 reported for the period covering the first quarter of 2017 should have been previously reported in  
14 the 30-Day Post-General or 2016 Year-End Reports as debts or obligations, actual or estimated.  
15 The Response argues that the Trump Committee "continued to be invoiced well into January  
16 2017 for significant expenses it incurred on or before election day."<sup>65</sup> However, unpaid  
17 expenses over \$500 generally must be reported as debt in the reporting period during which they  
18 are incurred.<sup>66</sup> It appears from the Trump Committee's Response and reports that it assumed  
19 \$1,910,071.71 in debts or obligations for the 2016 election at some point in 2016, but failed to  
20 properly disclose them at that time.

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<sup>65</sup> *Id.*

<sup>66</sup> *See* 11 C.F.R. § 104.11(b).

1           Therefore, the Commission finds reason to believe that the Trump Committee violated  
2 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.3(d) by failing to accurately disclose its debts and  
3 obligations.

4           **C.       The Commission Finds No Reason to Believe that the Trump Committee**  
5           **Violated the Rule on Using Acceptable Accounting Methods**

6           The Complaint alleges that the Trump Committee violated 11 C.F.R. § 102.9(e) when it  
7 failed to use acceptable accounting methods to distinguish between contributions received for  
8 different elections.<sup>67</sup> Section 102.9(e) provides that if a candidate or committee receives  
9 contributions designated for the general election prior to the date of the primary election, the  
10 candidate or committee must use acceptable accounting methods to distinguish between  
11 contributions received for the primary election and contributions received for the general  
12 election.<sup>68</sup> This provision, however, appears to be limited to contributions received prior to a  
13 primary election that are designated for an upcoming general election within the same election  
14 cycle, and the Commission has stated that 11 C.F.R. § 102.9(e) is “designed to ensure that  
15 candidates . . . do not use general election contributions for the primary election.”<sup>69</sup> Subsection  
16 102.9(e)(3) supports this understanding given that it provides that if a candidate is not a  
17 candidate in the general election, he or she must refund the contributions designated to the  
18 general election.<sup>70</sup> Here, the circumstances differ in that contributions were received after a

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<sup>67</sup> Compl. at 13.

<sup>68</sup> 11 C.F.R. § 102.9(e)(1).

<sup>69</sup> Advisory Op. 1992-15 at 2 (Russo for Congress Committee); *see also* Factual and Legal Analysis at 3-5, MUR 6057 (Jennifer Horn for Congress) (finding no reason to believe committee violated 11 C.F.R. § 102.9(e) where available record indicated that committee had sufficient funds for its primary expenses).

<sup>70</sup> 11 C.F.R. § 102.9(e)(3).

1 general election to be used for the primary in the following election cycle. Therefore, the  
2 Commission finds no reason to believe that the Trump Committee violated 11 C.F.R.  
3 § 102.9(e)(1).

4 **D. The Commission Dismisses the Allegation that Trump and the Trump**  
5 **Committee Failed to Timely Register for the 2020 Election**

6 An individual becomes a candidate under the Act if: (a) such individual receives  
7 contributions or makes expenditures in excess of \$5,000; or (b) such individual gives his or her  
8 consent to another person to receive contributions or make expenditures on behalf of such  
9 individual and if such person has received such contributions or has made such expenditures in  
10 excess of \$5,000.<sup>71</sup> Once the \$5,000 threshold has been met, the candidate has fifteen days to  
11 designate a principal campaign committee by filing a Statement of Candidacy (FEC Form 2)  
12 with the Commission.<sup>72</sup> The principal campaign committee must file a Statement of  
13 Organization (FEC Form 1) within ten days of its designation,<sup>73</sup> and it must file disclosure  
14 reports with the Commission in accordance with 52 U.S.C. § 30104(a) and (b).<sup>74</sup> Although the  
15 Commission has established limited “testing the waters” exemptions that permit an individual to  
16 test the feasibility of a campaign for federal office without becoming a candidate under the Act,<sup>75</sup>

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<sup>71</sup> 52 U.S.C. § 30101(2); *see e.g.*, Factual & Legal Analysis at 2, MUR 6954 (Gilmore for America, *et al.*) (finding no reason to believe that respondent filed Statement of Candidacy late where respondent filed it once he crossed the \$5,000 threshold).

<sup>72</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>73</sup> *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>74</sup> *See, e.g.*, Factual & Legal Analysis at 6, MUR 6735 (Joseph A. Sestak); Factual & Legal Analysis at 5, MUR 6449 (Jon Bruning); Factual & Legal Analysis at 2, MUR 5363 (Alfred C. Sharpton).

<sup>75</sup> *See* 11 C.F.R. §§ 100.72 and 100.131; Factual & Legal Analysis at 7, MUR 6775 (Hillary Clinton); Factual & Legal Analysis at 8, MUR 6776 (Niger Innis); Factual & Legal Analysis at 6, MUR 6735 (Joseph A. Sestak).

1 the exemptions are not available to individuals who have made a decision to become a  
2 candidate.<sup>76</sup>

3 The available record indicates that Trump became a candidate for the 2020 election  
4 shortly after the Election Day in 2016. Although the Response contends that Trump and the  
5 Trump Committee only filed their updated Forms 1 and 2 on January 20, 2017, Inauguration  
6 Day, in “an abundance of caution” because the President has not made a formal decision to run,<sup>77</sup>  
7 the facts suggest otherwise. The Trump Committee acknowledges that it modified the disclaimer  
8 language for its donation webpage on November 9, 2016, to state that contributions would “be  
9 allocated to the 2016 General Election Debt Retirement until such debt is retired” and that “the  
10 next \$2,700 [would] be designated to the 2020 Primary Election.”<sup>78</sup> Thus, the Trump  
11 Committee’s solicitation of funds for the 2020 primary supports a reasonable inference that  
12 Trump had made a decision to seek office in 2020 immediately after the election in November  
13 2016. Further, by November 9, 2016, the Trump Committee accepted at least \$5,000 that did not  
14 go towards retiring the debts but towards the 2020 primary election.<sup>79</sup> The Trump Committee

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<sup>76</sup> See Advisory Op. 2015-09 (Senate Majority PAC, *et al.*); *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”). Commission regulations set forth a non-exhaustive list of activities indicating that an individual has decided to become a candidate, including (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>77</sup> Trump Committee Resp. at 4.

<sup>78</sup> *Id.* at 2.

<sup>79</sup> As noted above, the Trump Committee has chosen to redesignate all general after general contributions to the 2020 primary.

1 also states that “[t]his matter does not involve a ‘testing the waters’ scenario.”<sup>80</sup> Accordingly,  
2 the facts indicate that Trump and the Trump Committee failed to timely register for the 2020  
3 election.

4 Nevertheless, these allegations do not warrant further enforcement. As referenced by  
5 Respondents, in MURs 7020 and 7021 (Paul Babeu for Congress), the Commission dismissed  
6 the allegations that those respondents failed to timely file a statement of candidacy and a  
7 statement of organization because they took corrective action and filed the required disclosure  
8 reports.<sup>81</sup> Here, on January 20, 2017, more than three years before the 2020 general election,  
9 Trump filed his Statement of Candidacy, and the Trump Committee filed its updated Statement  
10 of Organization. Thus, under these circumstances, the Commission dismisses as a matter of  
11 prosecutorial discretion the allegations that Trump violated 52 U.S.C. § 30102(e) by failing to  
12 timely file his Statement of Candidacy for the 2020 election and that the Trump Committee  
13 violated 52 U.S.C. § 30103(a) by failing to timely file its Statement of Organization.<sup>82</sup>

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<sup>80</sup> Trump Committee Resp. at 4-5.

<sup>81</sup> *See, e.g.*, Factual & Legal Analysis at 2-3, MUR 7033 (Crane for Congress) (dismissing allegation where Statement of Candidacy was at least 50 days late, Statement of Organization was at least 40 days late, and first required disclosure report was timely filed); Factual & Legal Analysis at 7, MUR 6815 (New Hampshire for Scott Brown) (dismissing allegation where complaint alleged that Statements of Candidacy and Organization were filed less than 30 days late and first required disclosure report was timely filed); Factual & Legal Analysis at 2-7, MUR 6533 (Perry Haney) (dismissing allegation where first required disclosure report was timely filed).

<sup>82</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).