



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

September 13, 2021

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Claudia Barber  
1629 K Street, NW, Suite 300  
Washington, DC 20006

RE: MUR 7390

Dear Mr. Barber:

The Federal Election Commission has considered the allegations contained in your complaint dated May 21, 2018. On September 2, 2021, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to find no reason to believe that Make America Great Again PAC f/k/a Donald J. Trump for President and Bradley T. Crate in his official capacity as treasurer and Donald J. Trump violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2(e) by converting campaign funds to personal use, dismiss the allegation that the Republican National Committee and Ronald C. Kaufman in his official capacity as treasurer made prohibited expenditures in violation of 52 U.S.C. § 30116(f), and closed its file in this matter. The Factual and Legal Analyses, which more fully explains the basis for the Commission's decision, are enclosed.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

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MUR 7390 (Donald J. Trump, *et al.*)

*Jin Lee*  
BY: Jin Lee  
Acting Assistant General Counsel

Enclosures  
Factual and Legal Analyses

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

RESPONDENTS: Donald J. Trump MUR 7390  
Make America Great Again  
PAC f/k/a Donald J. Trump  
for President and Bradley T. Crate  
in his official capacity as treasurer

## I. INTRODUCTION

14        This matter was generated by a complaint filed with the Federal Election Commission  
15        (the “Commission”), which makes allegations relating to payments by Make America Great  
16        Again PAC f/k/a Donald J. Trump for President and Bradley T. Crate in his official capacity as  
17        treasurer (the “Trump Committee”) for the legal expenses of Donald J. Trump and his son,  
18        Donald Trump, Jr. in connection with the Department of Justice (“DOJ”) investigation into  
19        Russian interference with the 2016 election. The Complaint cites to Maryland state law,  
20        asserting that “campaign funds cannot be used for expenses arising from criminal investigations,  
21        or for any expenses that arise after the campaign is over.”<sup>1</sup> Though the Complaint does not  
22        directly cite to the Federal Election Campaign Act of 1971, as amended (the “Act”), its factual  
23        substance raises allegations concerning the conversion of campaign funds to personal use. The  
24        Trump Committee argues in its response that the complaint fails to state facts that raise a  
25        violation of the Act or Commission regulations.<sup>2</sup>

26 As discussed below, it appears that the Trump Committee was permitted to make the  
27 payments for legal expenses relating to DOJ and Congressional investigations of Russian

<sup>1</sup> Compl. ¶ 7 (May 21, 2018); *see id.* at 2-3 (arguing that charges involving misconduct “are not campaign-related” and therefore any related payments should be “disallowed”).

<sup>2</sup> Trump Comm. Resp. (July 5, 2018).

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1 election interference raised by the Complaint because these payments were for expenses that  
2 would not exist irrespective of campaign activities and thus did not result in the conversion of  
3 campaign funds to personal use. Therefore, the Commission finds no reason to believe that the  
4 Trump Committee and Trump violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2(e) by  
5 converting campaign funds to personal use.

6 **II. FACTUAL BACKGROUND**

7 The payments at issue in this matter were reportedly for legal expenses incurred by the  
8 Trump Committee, Trump, and Trump Jr. in connection with DOJ’s investigation into Russian  
9 interference with the 2016 presidential election and related congressional investigations. The  
10 order that outlines the scope of DOJ’s investigation provides that “to ensure a full and thorough  
11 investigation of the Russian government’s efforts to interfere in the 2016 presidential election,”  
12 the Special Counsel shall be appointed to investigate “any links and/or coordination between the  
13 Russian government and individuals associated with the campaign of President Donald Trump”  
14 as well as “any matters that arose or may arise directly from the investigation.”<sup>3</sup> The Complaint  
15 attaches a *Reuters* article, dated September 19, 2017 (“Reuters article”), which states that the  
16 Special Counsel extended the investigation beyond the 2016 campaign and into the issue of  
17 whether Trump, as President, obstructed justice by firing former FBI Director James Comey,  
18 among other things.<sup>4</sup> In addition, several committees of the U.S. House of Representatives and

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<sup>3</sup> Office of the Deputy Att’y Gen., Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters ¶¶ (a), (b)(i)-(ii) (May 17, 2017), <https://www.justice.gov/archives/opa/press-release/file/967231/download> (“Special Counsel Order”).

<sup>4</sup> Karen Freifeld and Ginger Gibson, *Trump Using Campaign, RNC Funds to Pay Legal Bills From Russia Probe: Sources*, REUTERS (Sept. 19, 2017), <https://www.reuters.com/article/us-usa-trump-lawyers-exclusive/trump-using-campaign-rnc-funds-to-pay-legal-bills-from-russia-probe-sources-idUSKCN1BU2OS> (“Reuters Article”), Compl., Attach. On April 18, 2019, DOJ publicly released a redacted version of the Special Counsel’s final report.

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1 U.S. Senate examined similar activity to that examined by DOJ and sought interviews with or  
 2 documents from Trump and Trump Jr.<sup>5</sup> The congressional and DOJ investigations explored,  
 3 among other activity, Trump and Trump Jr.’s involvement in a meeting with Russians on June 9,  
 4 2016, at Trump Tower in order to obtain negative information on Trump’s election opponent  
 5 Hillary Clinton.<sup>6</sup> As discussed below, costs paid for by the Trump Committee in connection  
 6 with representing Trump and Trump Jr. in these congressional investigations are also raised by  
 7 the Complaint in this matter.

8                   **A.        Trump Campaign Payments**

9                   According to the Reuters article, as of September 2017, the Trump Committee had paid  
 10 \$4 million to the Jones Day law firm, “mostly for routine campaign legal expenses,” but also for  
 11 responding to “Russia-related inquiries on behalf of the campaign by, for example, providing  
 12 documents to Congress,” according to “people familiar with the matter.”<sup>7</sup> The Complaint also

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Robert S. Mueller, III, Special Counsel, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (“Special Counsel Report”) (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

<sup>5</sup>               See, e.g., U.S. SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOL 5: COUNTERINTELLIGENCE THREATS AND VULNERABILITIES at 4 (Aug. 18, 2020) (“Senate Intelligence Comm. Report”), [https://www.intelligence.senate.gov/sites/default/files/documents/report\\_volume5.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf) (explaining that the committee approached the activity with a counterintelligence, rather than criminal, focus); U.S. HOUSE PERMANENT SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES (Mar. 22, 2018) (“House Intelligence Comm. Report”), [https://docs.house.gov/meetings/IG/IG00/20180322/108023/HRPT-115-1\\_1-p1-U3.pdf](https://docs.house.gov/meetings/IG/IG00/20180322/108023/HRPT-115-1_1-p1-U3.pdf); Minority Members of the House Permanent Select Comm. on Intelligence, MINORITY VIEWS TO THE MAJORITY-PRODUCED “REPORT ON RUSSIAN ACTIVE MEASURES” (Mar. 26, 2018), <https://intelligence.house.gov/uploadedfiles/minorityviews.pdf>; Letter from Elijah Cummings, Ranking Member, U.S. House Comm. on Oversight and Gov’t Reform, to Donald J. Trump, Jr., *et al.* (July 11, 2017), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-07-11.EEC%20to%20Donald%20Jr%20et%20al\\_0.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-07-11.EEC%20to%20Donald%20Jr%20et%20al_0.pdf).

<sup>6</sup>               Senate Intelligence Comm. Report at 322-371; House Intelligence Comm. Report Volume I at 79-83; Special Counsel Report Volume I at 110-123.

<sup>7</sup>               Compl. ¶ 5; Reuters Article. The Trump Committee reported that between the Special Counsel’s appointment and the end of 2018, it paid Jones Day approximately \$4 million for “Legal Consulting.” Trump

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1 points to a \$50,000 payment the Trump Committee reported making on June 27, 2017, to the  
 2 Law Offices of Alan S. Futerfas, an attorney reportedly representing Trump Jr. in connection  
 3 with the Russia-related investigations.<sup>8</sup> The Trump Committee reported additional payments to  
 4 Futerfas on July 14, 2017 (\$89,259), and August 2, 2017 (\$148,665), that are not specifically  
 5 referenced by the Complaint or the Reuters article.<sup>9</sup> Publicly available transcripts show that  
 6 Futerfas appeared as counsel for Trump Jr. at his interviews with the Senate Judiciary Committee  
 7 and the House Intelligence Committee in those committees' 2017 investigations of Russian  
 8 interference with the 2016 election.<sup>10</sup>

9           **B. The Complaint and Responses**

10           Based on the reporting in the Reuters news article it attaches, the Complaint alleges that  
 11 the foregoing use of campaign funds for legal fees was improper. The Complaint contends that,  
 12 under Maryland law, “investigations or charges involving misconduct are NOT campaign-  
 13 related, even if the charges first come to light as a result of the individual’s decision to run for  
 14 elected office,” and argues that “[t]hese campaign expenditures should be disallowed and a

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Comm. Disbursements, [https://www.fec.gov/data/disbursements/?committee\\_id=C00580100&data\\_type=processed&recipient\\_name=jones+day&min\\_date=05%2F17%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?committee_id=C00580100&data_type=processed&recipient_name=jones+day&min_date=05%2F17%2F2017&max_date=12%2F31%2F2018).

<sup>8</sup>           Compl. ¶ 8; Reuters Article; Trump Comm. Amend. 2017 July Quarterly Rpt. at 4,341 (July 15, 2018) (for “Legal Consulting”).

<sup>9</sup>           Trump Comm. Amend. 2017 Oct. Quarterly Rpt. at 10,817 (Dec. 11, 2017) (for “Legal Consulting”).

<sup>10</sup>           Trans. of Interview with Trump Jr. by H. Intelligence Comm. at 3 (Dec. 6, 2017), <https://intelligence.house.gov/uploadedfiles/dt55.pdf>; Trans. of Interview with Trump Jr. by S. Judiciary Comm. at 3:9 (Sept. 7, 2017), [https://www.judiciary.senate.gov/imo/media/doc/Trump%20Jr%20Transcript\\_redacted.pdf](https://www.judiciary.senate.gov/imo/media/doc/Trump%20Jr%20Transcript_redacted.pdf).

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1 notice given to these political campaigns that if the monies are not reimbursed, the cases will be  
 2 referred to state prosecutors and federal prosecutors.”<sup>11</sup>

3 The Trump Committee’s one-paragraph Response argues that the Complaint should be  
 4 dismissed because its reliance on Maryland state law is misguided and “fails to recognize that the  
 5 Committee operates under federal law and that the Doctrine of Preemption applies.”<sup>12</sup>

6 **III. LEGAL ANALYSIS**

7 Candidates and their authorized committees are permitted to use campaign funds for a  
 8 variety of specific purposes, including otherwise-authorized expenditures in connection with the  
 9 candidate’s campaign for federal office, ordinary and necessary expenses incurred in connection  
 10 with the duties of a federal officeholder, and “any other lawful purpose,” but the Act prohibits  
 11 any person from converting campaign funds to “personal use.”<sup>13</sup> Conversion to personal use  
 12 occurs when campaign funds are used to fulfill any commitment, obligation, or expense of any  
 13 person “that would exist irrespective of the candidate’s election campaign or individual’s duties  
 14 as a holder of Federal office.”<sup>14</sup> The Act and Commission regulations provide a non-exhaustive  
 15 list of uses of campaign funds that are *per se* personal use, including rent, home mortgage,  
 16 household food items, and tuition.<sup>15</sup> For other uses of campaign funds, including payments for

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<sup>11</sup> Compl. at 2-3.

<sup>12</sup> Trump Comm. Resp. at 1.

<sup>13</sup> 52 U.S.C. § 30114(a)-(b); 11 C.F.R. §§ 113.1(g), 113.2; *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995) (explaining that “candidates have wide discretion over the use of campaign funds”).

<sup>14</sup> 52 U.S.C. § 30114(b)(2); *see* 11 C.F.R. § 113.1(g).

<sup>15</sup> 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

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1 legal expenses, the Commission determines on a “case-by-case basis” whether the use is a  
 2 prohibited personal use, that is, whether the expenses would exist irrespective of the candidate’s  
 3 campaign or federal officeholder duties.<sup>16</sup>

4 The Commission has explained that ““campaign funds may be used to pay for legal  
 5 expenses incurred in proceedings that directly relate to the candidate’s campaign activities or  
 6 officeholder duties.””<sup>17</sup> Legal fees and expenses, however, “will not be treated as though they  
 7 are campaign or officeholder related merely because the underlying proceedings have some  
 8 impact on the campaign or the officeholder’s status.”<sup>18</sup> In a number of advisory opinions, the  
 9 Commission has addressed legal fees incurred in criminal and congressional investigations and  
 10 concluded that the use of campaign funds for such legal fees and expenses does not constitute  
 11 personal use when the legal proceedings involve allegations directly relating to the candidate’s  
 12 campaign activities or duties as a Federal officeholder.<sup>19</sup>

13 The Commission has recognized that legal proceedings involving political campaigns  
 14 “are often litigated after the election, and . . . has never barred the use of campaign funds . . . on  
 15 this temporal ground.”<sup>20</sup> The Commission has applied the same rule to the use of campaign

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<sup>16</sup> 11 C.F.R. § 113.1(g)(1)(ii)(A); Advisory Op. 2018-09 (Clements) at 2-3 (“AO 2018-09”).

<sup>17</sup> AO 2018-09 at 3 (quoting Advisory Op. 2013-11 (Citizens for Joe Miller) at 3 (“AO 2013-11”)).

<sup>18</sup> Personal Use E&J, 60 Fed. Reg. at 7,868; *see also FEC v. Craig for US Senate*, 933 F. Supp. 2d 111, 119 (D.D.C. 2013) (finding that the Commission plausibly alleged that legal expenses related to “actions undertaken in the privacy and anonymity of a restroom stall” while traveling from home state to Washington, D.C., did not implicate defendant’s officeholder duties).

<sup>19</sup> *See, e.g.*, Advisory Op. 2009-20 (Visclosky for Congress) (“AO 2009-20”); Advisory Op. 2009-12 (Coleman); Advisory Op. 2009-10 (Visclosky I); Advisory Op. 2008-07 (Vitter); Advisory Op. 2006-35 (Kolbe); Advisory Op. 2005-11 (Cunningham); Advisory Op. 2003-17 (Treffinger); Advisory Op. 1997-12 (Costello); *cf.* Advisory Op. 2000-40 (McDermott) at 4 (“AO 2000-40”).

<sup>20</sup> AO 2013-11 at 4.

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1 funds to pay for the legal expenses of campaign staff and consultants. For example, it has  
 2 approved using campaign funds to pay legal expenses of a campaign consultant defending a  
 3 lawsuit alleging that the consultant defamed a member of the opposing candidate's staff<sup>21</sup> as well  
 4 as the legal expenses of former congressional staffers in connection with a federal investigation  
 5 regarding campaign contributions.<sup>22</sup>

6 To the extent that a portion of the Trump Committee's payments to Jones Day — the  
 7 committee's primary compliance law firm — and its \$50,000 payment to The Law Offices of  
 8 Alan S. Futerfas — the law firm representing Trump Jr. — were for representation of Trump or  
 9 Trump Jr. in connection with congressional and DOJ investigations as alleged in the Complaint,  
 10 it appears that such payments would not exist irrespective of Trump's 2016 presidential  
 11 campaign activity and Trump's duties as a federal officeholder.<sup>23</sup> Although the available  
 12 information does not make clear the exact scope of Jones Day's and Futerfas's representation of  
 13 Trump and Trump Jr., respectively, in the DOJ investigation, the main focus of the DOJ  
 14 investigation, by its stated terms, concerned alleged coordination between the Russian  
 15 government and “individuals associated with the *campaign* of President Donald Trump.”<sup>24</sup>

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<sup>21</sup> Advisory Op. 2011-07 (Fleischmann for Congress) at 2 (“AO 2011-07”).

<sup>22</sup> AO 2009-20 at 4.

<sup>23</sup> To the extent the Complaint alleges that all of the Trump Committee's payments to Jones Day, including those for compliance with the Act, represent a conversion of campaign funds to personal use, such an allegation is speculative and unsupported. *See* Reuters Article (reporting that the \$4 million paid to Jones Day was “mostly” for campaign-related expenses such as ballot access disputes, vendor contracts, human resources, and compliance, but also for “Russia-related inquiries,” though not specifying the amount of the Russia-related payments); Advisory Op. 1995-23 (Shays) (concluding that the payment of legal fees for compliance with the Act does not constitute personal use).

<sup>24</sup> Special Counsel Order (emphasis added). The Complaint does not allege with any specificity that the Trump Committee's payments to Jones Day concerned representation of Trump in connection with his officeholder duties, such as, for example, by representing Trump in DOJ's investigation of the firing of FBI Director James Comey. *See* Reuters Article (noting that Jones Day provided documents to Congress, not to DOJ); Special Counsel

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1 Congressional transcripts show that Futerfas represented Trump Jr. in investigations concerning  
 2 the meeting with Russians on June 9, 2016, at Trump Tower in order to obtain negative  
 3 information on Hillary Clinton.<sup>25</sup> The investigation of this activity by both Congress and DOJ is  
 4 similar to activity the Commission has considered in Advisory Opinion 2000-40 (McDermott), in  
 5 which the Commission concluded that use of campaign funds for legal fees to defend a House  
 6 member in a civil suit alleging illegal conduct related to his role in the House Ethics Committee  
 7 would not constitute personal use.<sup>26</sup>

8 Accordingly, to the extent the legal fee payments were made to the attorneys representing  
 9 Trump and Trump Jr. in connection with congressional and DOJ investigations as alleged in the  
 10 Complaint, it appears that such payments directly related to investigations of campaign activity  
 11 and thus would not exist irrespective of the campaign.<sup>27</sup> The Commission therefore finds no  
 12 reason to believe that Trump or the Trump Committee violated 52 U.S.C. § 30114(b) and  
 13 11 C.F.R. § 113.2(e) by converting campaign funds to personal use.

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Report Volume II at 62-77. To the extent that the Trump Committee paid Jones Day for representing Trump in DOJ or congressional investigations into alleged abuse of his duties as a federal officeholder, such a payment would not constitute personal use. *See* AO 2000-40 (concluding that use of campaign funds for legal fees concerning alleged wrongdoing in the conducting of officeholder duties would be permissible because it would entail the use of campaign funds for an expense that would not exist irrespective of duties as a federal officeholder).

<sup>25</sup> *Supra* n.10; *see also* Trans. of Interview of Trump Jr. by S. Judiciary Comm. at 14, 21 (generally explaining Trump Jr.'s work for Trump's campaign).

<sup>26</sup> AO 2000-40 at 4-5 (concluding that donation of campaign funds to legal defense fund to defend civil suit concerning officeholder's alleged disclosure of phone call involving another congressman was permissible because such conduct "resulted directly" from activities relating to his position on the House Ethics Committee).

<sup>27</sup> *See, e.g.*, Interview of Trump Jr. by S. Judiciary Comm. at 14, 21 (Sept. 7, 2017) (generally explaining Trump Jr.'s work for Trump's campaign). The Commission has approved the use of campaign funds to pay for legal expenses on behalf of individuals other than the candidate or officeholder relating to their work for the candidate or officeholder. *E.g.*, AO 2011-07 at 4 (campaign consultant); AO 2009-20 at 4 (current and former congressional staffers).

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**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Republican National Committee MUR 7390  
and Ronald C. Kaufman in his  
in his official capacity as treasurer

## I. INTRODUCTION

12        This matter was generated by a complaint filed with the Federal Election Commission  
13        (the “Commission”), which makes allegations relating to payments by the Republican National  
14        Committee and Ronald C. Kaufman in his official capacity as treasurer (“RNC”) for the legal  
15        expenses of Donald J. Trump and his son, Donald Trump, Jr. in connection with the Department  
16        of Justice (“DOJ”) investigation into Russian interference with the 2016 election. The  
17        Complaint cites to Maryland state law, asserting that “campaign funds cannot be used for  
18        expenses arising from criminal investigations, or for any expenses that arise after the campaign is  
19        over.”<sup>1</sup> Though the Complaint does not directly cite to the Federal Election Campaign Act of  
20        1971, as amended (the “Act”), its factual substance raises allegations concerning the use of the  
21        RNC’s segregated fund to defray legal expenses for Trump and Trump Jr. The RNC argues that  
22        its payments were permissible under 52 U.S.C. § 30116(a)(9)(C), which governs the use of a  
23        separate segregated account by national party committees to ““defray expenses incurred with  
24        respect to the preparation for and the conduct of election recounts and contests and other legal  
25        proceedings.”<sup>2</sup>

<sup>1</sup> Compl. ¶ 7 (May 21, 2018); *see id.* at 2-3 (arguing that charges involving misconduct “are not campaign-related” and therefore any related payments should be “disallowed”).

<sup>2</sup> RNC Resp. at 2 (July 11, 2018) (quoting 52 U.S.C. § 30116(a)(9)(C)).

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1        The RNC’s use of its segregated account implicates novel and complex legal issues

2        regarding relatively-new statutory text for which the Commission has yet to provide guidance.

3        Therefore, the Commission will dismiss as a matter of prosecutorial discretion the allegation that

4        the RNC violated 52 U.S.C. § 30116(f) by making improper expenditures from its segregated

5        account.

6        **II.      FACTUAL BACKGROUND**

7        The payments at issue in this matter were reportedly for legal expenses incurred by

8        Trump, his authorized committee, and Trump Jr. in connection with DOJ’s investigation into

9        Russian interference with the 2016 presidential election and related congressional investigations.

10       The order that outlines the scope of DOJ’s investigation provides that “to ensure a full and

11       thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential

12       election,” the Special Counsel shall be appointed to investigate “any links and/or coordination

13       between the Russian government and individuals associated with the campaign of President

14       Donald Trump” as well as “any matters that arose or may arise directly from the investigation.”<sup>3</sup>

15       The Complaint attaches a *Reuters* article, dated September 19, 2017 (“Reuters article”), which

16       states that the Special Counsel extended the investigation beyond the 2016 campaign and into the

17       issue of whether Trump, as President, obstructed justice by firing former FBI Director James

18       Comey, among other things.<sup>4</sup> In addition, several committees of the U.S. House of

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<sup>3</sup>       Office of the Deputy Att’y Gen., Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters ¶¶ (a), (b)(i)-(ii) (May 17, 2017), <https://www.justice.gov/archives/opa/press-release/file/967231/download> (“Special Counsel Order”).

<sup>4</sup>       Karen Freifeld and Ginger Gibson, *Trump Using Campaign, RNC Funds to Pay Legal Bills From Russia Probe: Sources*, REUTERS (Sept. 19, 2017), <https://www.reuters.com/article/us-usa-trump-lawyers-exclusive/trump-using-campaign-rnc-funds-to-pay-legal-bills-from-russia-probe-sources-idUSKCN1BU2OS> (“Reuters Article”), Compl., Attach. On April 18, 2019, DOJ publicly released a redacted version of the Special Counsel’s final report.

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1 Representatives and U.S. Senate examined similar activity to that examined by DOJ and sought  
 2 interviews with or documents from Trump and Trump Jr.<sup>5</sup> The congressional and DOJ  
 3 investigations explored, among other activity, Trump and Trump Jr.’s involvement in a meeting  
 4 with Russians on June 9, 2016, at Trump Tower in order to obtain negative information on  
 5 Trump’s election opponent Hillary Clinton.<sup>6</sup> As discussed below, costs paid for by the RNC in  
 6 connection with representing Trump and Trump Jr. in these congressional investigations are also  
 7 raised by the Complaint in this matter.

8                   **A.       RNC Payments**

9                   The Complaint also cites to and relies upon the Reuters article regarding a set of  
 10 payments by the RNC to attorneys reportedly serving as counsel for Trump in connection with  
 11 the Russia investigations. On August 25, 2017, the RNC reportedly paid \$100,000 to John  
 12 Dowd and \$131,250 to The Constitutional Litigation & Advocacy Group, P.C., identified by the

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Robert S. Mueller, III, Special Counsel, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (“Special Counsel Report”) (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

<sup>5</sup>               See, e.g., U.S. SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOL 5: COUNTERINTELLIGENCE THREATS AND VULNERABILITIES at 4 (Aug. 18, 2020) (“Senate Intelligence Comm. Report”), [https://www.intelligence.senate.gov/sites/default/files/documents/report\\_volume5.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf) (explaining that the committee approached the activity with a counterintelligence, rather than criminal, focus); U.S. HOUSE PERMANENT SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES (Mar. 22, 2018) (“House Intelligence Comm. Report”), [https://docs.house.gov/meetings/IG/IG00/20180322/108023/HRPT-115-1\\_1-p1-U3.pdf](https://docs.house.gov/meetings/IG/IG00/20180322/108023/HRPT-115-1_1-p1-U3.pdf); Minority Members of the House Permanent Select Comm. on Intelligence, MINORITY VIEWS TO THE MAJORITY-PRODUCED “REPORT ON RUSSIAN ACTIVE MEASURES” (Mar. 26, 2018), <https://intelligence.house.gov/uploadedfiles/minorityviews.pdf>; Letter from Elijah Cummings, Ranking Member, U.S. House Comm. on Oversight and Gov’t Reform, to Donald J. Trump, Jr., et al. (July 11, 2017), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-07-11.EEC%20to%20Donald%20Jr%20et%20al\\_0.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-07-11.EEC%20to%20Donald%20Jr%20et%20al_0.pdf).

<sup>6</sup>               Senate Intelligence Comm. Report at 322-371; House Intelligence Comm. Report Volume I at 79-83; Special Counsel Report Volume I at 110-123.

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1 article as the law firm where Jay Sekulow is a partner.<sup>7</sup> Various news reports indicate that Dowd  
 2 and Sekulow represented Trump in connection with DOJ's Russia investigation.<sup>8</sup> Further,  
 3 according to news reports, the RNC also made payments to attorneys reportedly serving as  
 4 counsel for Trump Jr. in connection with the Russia investigations. On September 18, 2017, the  
 5 RNC reported paying \$166,526.50 to Alan S. Futerfas and \$30,102.90 to the law firm Williams  
 6 & Jensen.<sup>9</sup> As described above, Futerfas appeared on behalf of Trump Jr. at his interview with  
 7 the Senate Judiciary and House Intelligence Committees on matters related to Russian  
 8 interference with the 2016 election. Karina Lynch of Williams & Jensen also appeared on behalf  
 9 of Trump Jr. before both committees.<sup>10</sup>

10 The RNC reported each of the disbursements to Dowd, The Constitutional Litigation &  
 11 Advocacy Group, Futerfas, and Williams & Jensen, allegedly on behalf of Trump and Trump Jr.,  
 12 as expenditures for "Legal and Compliance Services" coming from the RNC's "Legal

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<sup>7</sup> Compl. ¶¶ 2-3; Reuters Article (reporting that these RNC payments covered "some of Trump's legal fees related to the probe" of "alleged Russian interference in the U.S. election"); RNC Amend. 2017 Sept. Monthly Rpt. at 6,172 (Dec. 29, 2017).

<sup>8</sup> E.g., Rosalind S. Helderman, *In Secret Memo, Trump's Lawyers Argued He Has Complete Power over Justice Investigations and Could not Have Committed Obstruction*, WASH. POST (June 2, 2018), [https://www.washingtonpost.com/politics/in-secret-memo-trumps-lawyers-argued-he-has-complete-power-over-justice-investigations-and-could-not-have-committed-obstruction/2018/06/02/f609dc4a-6697-11e8-a768-ed043e33f1dc\\_story.html](https://www.washingtonpost.com/politics/in-secret-memo-trumps-lawyers-argued-he-has-complete-power-over-justice-investigations-and-could-not-have-committed-obstruction/2018/06/02/f609dc4a-6697-11e8-a768-ed043e33f1dc_story.html); Michael S. Schmidt and Maggie Haberman, *Trump's Lawyer Resigns as President Adopts Aggressive Approach in Russia Inquiry*, N.Y. TIMES (Mar. 22, 2018), <https://www.nytimes.com/2018/03/22/us/politics/john-dowd-resigns-trump-lawyer.html>.

<sup>9</sup> RNC Amend. 2017 Oct. Monthly Rpt. at 12,280 (Nov. 20, 2017); Jeremy Diamond, *RNC Covering More than \$230,000 in Trump Legal Fees*, CNN (Sept. 19, 2017), <https://www.cnn.com/2017/09/19/politics/donald-trump-legal-fees-rnc/index.html> (reporting that these payments were for "Trump Jr.'s legal bills related to the Russia investigation") ("CNN Article"). The CNN article followed up on initial reporting by *Reuters* and is directly referenced by the second *Reuters* article attached to the Complaint. *Reuters Article*.

<sup>10</sup> Trans. of Interview with Trump Jr. by H. Intelligence Comm. at 4; Trans. of Interview with Trump Jr. by S. Judiciary Comm. at 3:10.

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1 Proceedings Account.”<sup>11</sup> The RNC did not report the disbursements as coordinated party  
 2 expenditures, nor did Trump’s authorized committee report the transactions on its own FEC  
 3 reports as in-kind contributions.

4 **B. The Complaint and Responses**

5 Based on the reporting in the Reuters news article it attaches, the Complaint alleges that  
 6 the foregoing use of campaign funds for legal fees was improper. The Complaint contends that,  
 7 under Maryland law, “investigations or charges involving misconduct are NOT campaign-  
 8 related, even if the charges first come to light as a result of the individual’s decision to run for  
 9 elected office,” and argues that “[t]hese campaign expenditures should be disallowed and a  
 10 notice given to these political campaigns that if the monies are not reimbursed, the cases will be  
 11 referred to state prosecutors and federal prosecutors.”<sup>12</sup>

12 The RNC’s Response argues that the Complaint should be dismissed because it is only  
 13 partially sworn<sup>13</sup> and argues that the Complaint’s reliance on state law makes it deficient.<sup>14</sup> As  
 14 to the merits of the RNC’s use of funds from its segregated account, the RNC argues that “the  
 15 Commission repeatedly has approved the use of campaign funds to pay legal fees incurred in  
 16 connection with” investigations by law enforcement and grand jury investigations, as well as  
 17 “legal proceedings arising out of such investigations, where the allegations relate to the

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<sup>11</sup> RNC Amend. 2017 Sept. Monthly Rpt. at 6,172 (Dec. 29, 2017) (John Dowd and the Constitutional Litigation & Advocacy Group); RNC Amend. 2017 Oct. Monthly Rpt. at 12,280 (Nov. 20, 2017) (Futerfas).

<sup>12</sup> Compl. at 2-3.

<sup>13</sup> RNC Resp. at 1. With respect to the RNC’s argument that unsworn legal analysis in the Complaint should not be considered, the analysis below considers only the sworn numbered paragraphs setting forth the factual basis for the Complaint, as well as the attached news article, which contain sufficient factual allegations upon which to analyze the potential violations at issue.

<sup>14</sup> *Id.* at 1-2.

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1 candidate's campaign or duties as a federal officeholder, and where the legal fees would not have  
 2 been incurred but for the candidate's campaign or duties as a federal officeholder.”<sup>15</sup> Because  
 3 the legal fees at issue arose out of an investigation, the RNC argues that no violation occurred  
 4 and the Complaint should be dismissed.<sup>16</sup>

5 **III. LEGAL ANALYSIS**

6 The Consolidated and Further Continuing Appropriations Act of 2015 amended the part  
 7 of the Act codified at 52 U.S.C. § 30116 to allow national party committees to create a  
 8 segregated account “to defray expenses incurred with respect to the preparation for and the  
 9 conduct of election recounts and contests and other legal proceedings.”<sup>17</sup> Such accounts are in  
 10 addition to any other federal accounts maintained by a national party committee and are subject  
 11 to contribution limits equal to 300% of the otherwise-applicable contribution limit to national  
 12 party committees.<sup>18</sup> In addition, disbursements from such accounts are not subject to  
 13 coordinated party expenditure limits.<sup>19</sup>

14 Since the 1970s, the Commission has recognized that recounts are not themselves  
 15 elections and thus funds received and spent for them are not “contributions” or “expenditures.”<sup>20</sup>

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<sup>15</sup> *Id.* at 2 (citing Commission advisory opinions).

<sup>16</sup> *Id.*

<sup>17</sup> Pub. L. No. 113-235, 101, 128 Stat. 2130, 2772-73 (2014) (codified at 52 U.S.C. § 30116(a)(9)(C)). In addition, disbursements from such accounts are not subject to coordinated party expenditure limits. 52 U.S.C. § 30116(d)(5); *see also* 11 C.F.R. §§ 109.30, 109.32(a)(1).

<sup>18</sup> 52 U.S.C. § 30116(a)(1)(B), (2)(B).

<sup>19</sup> 52 U.S.C. § 30116(d)(5); *see also* 11 C.F.R. §§ 109.30, 109.32(a)(1).

<sup>20</sup> *See* 11 C.F.R. § 100.91 (“A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.20 and part 114 apply.”); *see also* Advisory

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1 In a series of advisory opinions, the Commission further explained that a national party  
 2 committee “may establish a recount fund, separate from its other accounts and subject to a  
 3 separate limit on amounts received, and use that fund to pay expenses incurred in connection  
 4 with recounts and election contests of Federal elections.”<sup>21</sup> The Commission made clear that  
 5 funds in such recount accounts cannot “be used for campaign activities” and that “recount  
 6 activities paid for by the recount fund must have no relation to campaign activities.”<sup>22</sup>  
 7 Subsequent to the 2015 amendment, the Commission reaffirmed that funds raised by a candidate  
 8 to pay for recounts and “lawsuits directly related to the counting and recounting of ballots” are  
 9 subject to the Act’s limitations, prohibitions, and reporting requirements but are not aggregated  
 10 with contributions for the general election and “must have no relation to campaign activities” and  
 11 “may not be used in any manner that would constitute a contribution or expenditure under the  
 12 Act or regulations.”<sup>23</sup> As relevant here, the question presented is whether the phrase “other legal  
 13 proceedings” includes the DOJ and related congressional investigations such that the RNC could  
 14 permissibly spend funds from its segregated account established to defray costs of “election

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Op. 1978-92 (Miller) at 2 (explaining that Commission regulations provide that “gifts, or loans or payments of money or anything of value that are made solely for the purpose of defraying the expenses of a Federal election recount are not contributions or expenditures under the Act and Commission regulations” and are therefore not subject to the contribution limits).

<sup>21</sup> Advisory Op. 2009-04 (Franken/DSCC) at 2-3 (“AO 2009-04”) (citing Advisory Op. 2006-24 (National Republican Senatorial Committee and Democratic Senatorial Campaign Committee)).

<sup>22</sup> Advisory Op. 2010-14 (DSCC) at 3, 5 (citing AO 1978-92 (“[I]n view of the special treatment and exemption accorded funds received and spent for recount purposes, any resulting surplus of funds may not be used in any manner that would constitute a contribution or expenditure under the Act or regulations.”)). Thereafter, in one instance, the Commission further permitted national party committees to use funds in their recount accounts to pay for litigation seeking the disgorgement of primarily soft-money contributions that had been made prior to the enactment of BCRA. Advisory Op. 2011-03 (DSCC, RNC, NRCC, DCCC, and NRSC) at 3-4.

<sup>23</sup> Advisory Op. 2019-02 (Nelson) at 2-3 (“AO 2019-02”).

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1 recounts and contests and other legal proceedings” for legal fees incurred by Trump and Trump  
2 Jr. as a result of those investigations. .

3 Here, it appears to be undisputed that the RNC used its segregated account for election  
4 recounts and contests and other legal proceedings to make the payments at issue. The payments  
5 were itemized on the RNC’s FEC reports with “Legal and Compliance Services” listed as the  
6 purpose and “Legal Proceedings Account” listed on the memo line.<sup>24</sup> Moreover, the Response  
7 filed by the RNC acknowledges that the payments were made from the committee’s account for  
8 election recounts and contests and other legal proceedings.<sup>25</sup>

9 The purpose of the payments, according to the available information, however, was  
10 related to campaign activities. News reports and other official documents show that the law  
11 firms and attorneys in question were paid from the RNC’s segregated account for representation  
12 of Trump and Trump Jr. in connection with the DOJ and congressional Russia investigations.<sup>26</sup>  
13 Furthermore, there is nothing to suggest that, with respect to the payments at issue, either Trump  
14 or Trump Jr. were involved in an election recount, contest, or other such proceeding with “no

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<sup>24</sup> The Commission released interim reporting guidance indicating that national party committees “should identify these disbursements by entering ‘Recount Account’ in the Purpose of Disbursement field along with the required purpose of the disbursement (e.g., ‘Recount Account – Legal Services’).” Press Release, FEC, *FEC Issues Interim Reporting Guidance for National Party Committee Account* (Feb. 13, 2015). The RNC’s reporting of the challenged payments does not directly match the phrasing presented in the interim guidance, but “Legal Proceedings Account” clearly refers to the RNC account for “election recounts and contests and other legal proceedings,” as opposed to its separate accounts for conventions or headquarter buildings. *See* 52 U.S.C. § 30116(a)(9)(A)-(B) (detailing the two other segregated accounts).

<sup>25</sup> *See* RNC Resp. at 2 (arguing that the payments were legally permitted under 52 U.S.C. § 30116(a)(9)(C)).

<sup>26</sup> An RNC spokesperson “confirmed” the payments to Dowd and the Constitutional Litigation and Advocacy Group were to Trump’s attorneys. Reuters Article. Additionally, “two RNC officials” stated that the payments to Futerfas and Williams & Jensen were to Trump Jr.’s attorneys. CNN Article; *see also supra* nn.35-37 and accompanying text.

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1 relation to campaign activities.”<sup>27</sup> The Responses do not dispute that the payments were for  
 2 Trump’s and Trump Jr.’s personal attorneys or that the proceedings at issue related to the Russia  
 3 investigations.<sup>28</sup> In fact, the RNC argues that it was permitted to pay the legal expenses under  
 4 the Commission’s long history of advisory opinions permitting the payment of legal fees that  
 5 “would not have been incurred but for the candidate’s campaign or duties as a federal  
 6 officeholder,” appearing to concede that the payments were related to campaign activities.<sup>29</sup>

7 The Commission has yet to provide guidance to the regulated community on the scope of  
 8 permissible uses of these accounts under 52 U.S.C. § 30116(a)(9)(C) or the effect of payments  
 9 from these accounts under 52 U.S.C. § 30101(8)(A)(ii). For these reasons, the Commission will  
 10 dismiss these allegations as a matter of prosecutorial discretion.<sup>30</sup> Accordingly, the Commission  
 11 will dismiss the allegations that the RNC violated 52 U.S.C. § 30116(f).<sup>31</sup>

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<sup>27</sup> AO 2019-02; *see also* AO 2006-24.

<sup>28</sup> The RNC argues that the payments were permissible under the “other legal proceedings” language of section 30116(a)(9)(C). RNC Resp. at 2.

<sup>29</sup> *Id.* (citing several personal use advisory opinions, none of which involve funds from the segregated account established by section 30116(a)(9)(C) or funds otherwise designated for recount purposes). The RNC, as a national party committee rather than a candidate committee, is not subject to the personal use restrictions at 52 U.S.C. § 30114(b) that were analyzed in the advisory opinions it cites.

<sup>30</sup> *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

<sup>31</sup> The RNC’s use of its segregated account to pay the legal fees also raises the question of whether such payments constituted unreported excessive contributions from the RNC to Trump’s authorized committee. While payments properly made from the segregated account are not subject to the limits on coordinated party expenditures, the Commission has not issued guidance as to the effect on payments *improperly* made from such accounts. *See* 52 U.S.C. § 30116(d)(5). Because the Commission will dismiss the allegations that the RNC misused its segregated account in making these payments due to lack of notice, this analysis does not address whether the RNC made excessive or unreported contributions through its payment of Trump and Trump Jr.’s legal expenses.