

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **PRE-MUR: 611**

6 DATE RECEIVED: June 15, 2018

7 DATE ACTIVATED: November 6, 2018

8
9 EXPIRATION OF SOL: January 28, 2021 / May 31, 2021

10 ELECTION CYCLE: 2016

11
12 **SOURCE:**

New York Attorney General's Office

13
14 **RESPONDENTS:**

Donald J. Trump Foundation

Donald J. Trump for President, Inc. and

Bradley T. Crate in his official capacity as treasurer

Donald J. Trump

Trump Organization

Corey Lewandowski

Allen Weisselberg

Jeff McConney

Madeline Campbell Burr

Hope Hicks

Stuart Jolly

Brad Parscale

Ivanka Trump

Eric Trump

Donald Trump, Jr.

29
30 **MUR: 7425**

31 DATE COMPLAINT FILED: July 12, 2018

32 DATE OF NOTIFICATIONS: July 18, 2018

33 LAST RESPONSE RECEIVED: September 11, 2018

34 DATE ACTIVATED: November 6, 2018

35
36 EXPIRATION OF SOL: January 28, 2021 / May 31, 2021

37 ELECTION CYCLE: 2018

38
39 **COMPLAINANTS:**

Campaign Legal Center

Sandhya Bathija

Brendan M. Fischer

40
41
42
43 **RESPONDENTS:**

Donald J. Trump Foundation

Donald J. Trump for President, Inc. and

Bradley T. Crate in his official capacity as treasurer

Donald J. Trump

1 Corey Lewandowski
 2 Allen Weisselberg
 3 Jeff McConney
 4 Madeline Campbell Burr
 5 Brad Parscale
 6 Ivanka Trump
 7 Eric Trump
 8 Donald Trump, Jr.
 9

10 **RELEVANT STATUTES** 52 U.S.C. § 30116(a), (f)
 11 **AND REGULATIONS:** 52 U.S.C. § 30118(a)
 12 52 U.S.C. § 30125(e)
 13 11 C.F.R. § 300.2(c), (m), (n)
 14 11 C.F.R. § 300.60
 15 11 C.F.R. § 300.61
 16 11 C.F.R. § 300.65
 17

18 **INTERNAL REPORTS** Disclosure Reports
 19 **CHECKED:**

20
 21 **AGENCIES CHECKED:** None
 22

23 I. INTRODUCTION

24 These matters stem from a referral from the Charities Bureau of the New York State
 25 Attorney General's Office (the "OAG Referral") and a Complaint filed with the Commission
 26 alleging that Republican primary candidate for President, Donald J. Trump, his principal
 27 campaign committee, Donald J. Trump for President, Inc. and Bradley T. Crate in his official
 28 capacity as treasurer (the "Committee"), and his eponymous foundation, Donald J. Trump
 29 Foundation (the "Foundation"), violated provisions of the Federal Election Campaign Act of
 30 1971, as amended (the "Act"), regulating the solicitation, receipt, and disbursement of soft
 31 money — *i.e.*, funds not subject to the Act's source prohibitions and amount limitations. These
 32 matters also allege that the Trump Organization and agents of both the Committee and the
 33 Foundation participated in the soft money violations. The identified agents of the Committee are
 34 Corey Lewandowski, Madeline Campbell Burr, Hope Hicks, Stuart Jolly, and Brad Parscale; the

1 identified agents of the Foundation are Ivanka Trump, Eric Trump, Donald Trump, Jr.,¹ Allen
2 Weisselberg, and Jeff McConney. The facts set forth in the OAG Referral were discovered
3 during that office's investigation of the Foundation that began in June 2016. The Complaint,
4 which was received almost one month after the OAG Referral, attaches as an exhibit the OAG
5 Referral, which was publicly available at the time, and largely reiterates its findings.

6 Both matters arise out of the solicitation, receipt, and disbursement of funds in
7 connection with a campaign rally-style fundraiser sponsored by the Committee (the
8 "Fundraiser") and held shortly before the February 1, 2016, Iowa caucuses. The Fundraiser
9 raised approximately \$5.6 million, which was received either in the 24 hours leading up to the
10 event, during the event, or subsequent to it. Half of the \$5.6 million was initially deposited into
11 the Foundation's bank account and disbursed to charitable organizations at the direction of
12 Trump and the Committee over the next three months. In several instances, Trump presented
13 \$100,000 ceremonial checks from the Foundation to veterans' organizations at campaign rallies.
14 The remainder of the \$5.6 million, including \$1 million from Trump personally, was given
15 directly to veterans' organizations.

16 In response, the Committee argues that it was permitted, under 52 U.S.C.
17 § 30125(e)(4)(A), to make general solicitations of donations to charities that do not have a
18 principal purpose of engaging in certain federal election activity (the "Charitable Exclusion").
19 The Committee argues that the funds were "temporarily" deposited with the Foundation while
20 recipient veterans' organizations were identified, which purportedly should not affect the

¹ Ivanka Trump, Eric Trump, and Donald Trump, Jr. — Trump's children — were members of the board of directors of the Foundation, but also had informal roles as advisors to the Committee.

1 application of the Charitable Exclusion. Further, the Committee argues that the donations to
2 veterans' organizations were not "for the purpose of influencing" a federal election.

3 For the reasons set forth below, we recommend that the Commission find reason to
4 believe that Trump, the Committee, and the Foundation violated 52 U.S.C. § 30125(e) by
5 soliciting, receiving, directing, transferring, or spending funds not subject to the source
6 limitations, amount prohibitions, and reporting requirements of the Act in connection with the
7 2016 presidential election. We recommend that the Commission take no action at this time with
8 respect to the allegations that the remaining respondents violated 52 U.S.C. § 30125(e). We also
9 recommend that the Commission find no reason to believe that Trump and the Foundation
10 violated the Act with respect to a donation in connection with a state election that the Foundation
11 made in 2013 before Trump was a federal candidate.

12 **II. FACTUAL BACKGROUND**

13 During the 2016 election cycle, Trump was a Republican candidate for President of the
14 United States, and Donald J. Trump for President, Inc., was his principal campaign committee.
15 Trump incorporated the Foundation as a tax-exempt Internal Revenue Code section 501(c)(3)
16 private foundation on February 2, 1987.² Trump was President of the Foundation from its
17 inception through January 23, 2017, when he stepped down.³ As set forth in the OAG Referral,
18 Trump had sole authority to sign checks on behalf of the Foundation during that period.⁴ The

² OAG Referral at 2, PMUR 611 (June 15, 2018), Shiffman Aff., Ex. 2. The first Exhibit to the OAG Referral is the New York State Verified Petition filed on June 14, 2018, which was verified and sworn to by Steven Shiffman of the OAG. It does not contain an exhibit number. Attached thereto is the Affirmation of AAG Steven Shiffman in Support of the Verified Petition, which contains several numbered exhibits starting with "1." All references in this Report to numbered exhibits are to the exhibits attached to the Shiffman Affirmation.

³ OAG Referral, Verified Petition ¶ 8.

⁴ *Id.* ¶ 27.

1 Foundation did not have any employees and instead delegated its day-to-day operations to the
2 Trump Corporation, an entity that provided support services to businesses within the Trump
3 Organization.⁵

4 On January 28, 2016, shortly before the February 1, 2016, Iowa Republican caucuses,
5 Trump declined an invitation to participate in a Republican primary debate in favor of hosting
6 the Fundraiser on that date, which the press described as a competing event and the Committee
7 described in its response as a “campaign event.”⁶ Committee staffers organized the Fundraiser
8 with “administrative assistance” from the Foundation, including the creation of a website,
9 www.DonaldTrumpForVets.com (the “Fundraiser Website”), to solicit and receive funds to the
10 Foundation.⁷ The Foundation reported that it did not have any disbursements in connection with
11 the Fundraiser, while the Committee reported a disbursement of \$5,000 for the Fundraiser’s
12 venue.⁸

⁵ *Id.* ¶ 25.

⁶ OAG Referral at 2-3, n.7 (citing Phillip Rucker *et al.*, *Trump Says He Won’t Participate in GOP Debate on Fox News*, WASH. POST, Jan. 26, 2016, https://www.washingtonpost.com/politics/trump-says-he-wont-participate-in-gop-debate-on-fox-news/2016/01/26/58fa0b2e-c490-11e5-a4aa-f25866ba0dc6_story.html); Trump Committee Resp. at 1 (Sept. 11, 2018) (“Resp.”); *see also* Compl. at 4, n.8, MUR 7425 (July 11, 2018) (citing *Presidential Candidate Donald Trump Rally in Des Moines, Iowa*, C-SPAN, (Jan. 28, 2016), <https://www.c-span.org/video/?403832-1/presidential-candidate-donald-trump-rally-des-moines-iowa> (the “Fundraiser Video”)); OAG Referral at 4, n.18 (same)). C-SPAN covered the event, captioning it as a “CAMPAIGN RALLY IN DES MOINES, IOWA.” In addition to the Committee’s response to both PMUR 611 and MUR 7425, Respondent Hicks submitted a response to PMUR 611; no other respondent submitted a response. All references to the “Response” in this report refer to the Committee’s response.

⁷ OAG Referral at 3. Although the OAG Referral does not elaborate on the term “administrative assistance,” it appears to refer to the Foundation’s help with the construction of the website and the issuance of checks following the Fundraiser.

⁸ OAG Referral, Shiffman Aff., Ex. 3, Addendum to Tax Return; *see also* Donald J. Trump for President February 2016 Monthly Report at 402 (Feb. 20, 2016). It is unclear from the Committee’s disclosure reports whether the Committee had additional disbursements for the Fundraiser.

1 Trump stated that, in the 24 hours leading up to the Fundraiser, he “raised over \$5 million
2 in one day,” including \$500,000 raised through the Fundraiser Website.⁹ Trump further
3 recounted at the Fundraiser how he personally solicited funds from his friends: “So, Carl Icahn
4 gave \$500,000. One quick phone call. Would \$500,000 be OK?”¹⁰ With regard to a donor
5 Trump called anonymous at the Fundraiser, but information in the OAG Referral indicates was
6 Stewart J. Rahr acting through his own eponymous foundation, Trump stated: “Now I said, ‘Do
7 me a favor, could you give me a million bucks for this?’ He said, ‘What?’ I said, ‘Don’t worry
8 about it just give me a million.’ He said, ‘No, no, at least tell me.’ I said, ‘It’s for the vets.’ He
9 said, ‘You got it.’”¹¹ Trump also solicited funds through the Fundraiser Website.¹²

10 Although ostensibly a charitable fundraiser, the Fundraiser was styled in the manner of a
11 campaign rally. The podium contained a placard in the same colors and font as Trump’s official
12 campaign placard with Trump’s name, the Fundraiser Website, and Trump’s campaign slogan
13 “MAKE AMERICA GREAT AGAIN!” as indicated in the image OAG provided below:¹³

⁹ Fundraiser Video at 2:57-3:00, 3:50-3:52, 4:00-4:10, cited in MUR 7425 Compl. at 4, n.8 & OAG Referral at 4, n.18, *supra* n.6.

¹⁰ *Id.* at 4:45-4:50.

¹¹ *Id.* at 5:48-5:55; *see also* OAG Referral, Ex. 20.

¹² Fundraiser Video at 3:58-4:15, *supra* n.6.

¹³ OAG Referral, Shiffman Aff. Ex. 1 ¶ 38.



1
2 Trump was introduced as “the next President of the United States.”¹⁴ In addition to
3 appearing at the event, Trump also invited Republican primary candidate opponents Mike
4 Huckabee and Rick Santorum and internet personalities Diamond & Silk onstage to address the
5 crowd.¹⁵ Diamond & Silk, who made multiple appearances in support of Trump during the 2016
6 campaign, supported Trump’s campaign during their presentation, stating “I want you all to
7 know that it is imperative that you get out and caucus for Donald J. Trump and vote for Donald
8 J. Trump And it is up to all of us to help Donald J. Trump make America great again.”¹⁶

9 The Fundraiser raised approximately \$5.6 million.¹⁷ Of that amount, the Foundation
10 received \$2.8 million directly,¹⁸ donors gave approximately \$1.8 million payable directly to
11 veterans’ organizations, and Trump personally pledged to give \$1 million to veterans’

¹⁴ Fundraiser Video at 0.04-0.05, *supra* n.6.

¹⁵ *Id.* at 17:41-25:16.

¹⁶ *Id.* at 50:50-51:30.

¹⁷ OAG Referral at 3, Ex. 14.

¹⁸ *Id.* The Foundation received four checks totaling \$1.2 million, and \$1.6 million in online donations in undisclosed amounts and sources. The four checks were in the following amounts: \$50,000 from JJ Cafaro, \$50,000 from Steven Roth, \$1,000,000 from Phil Ruffin, and \$100,000 from Ivanka Trump. *Id.* At least 15,000 donors made up the online donations. *Id.*, Ex. 7, McConney Dep. Tr. 139:7-11.

1 organizations.¹⁹ Most of the funds payable directly to veterans' organizations were from donors
2 who had received a Trump solicitation to the Foundation but expressed concern about giving to
3 the Foundation due to IRS restrictions on transfers from one private foundation to another.²⁰ For
4 example, a representative of the Richard S. and Karen LeFrak Charitable Foundation informed
5 the Foundation via email that LeFrak "cannot donate from his foundation to a private
6 foundation."²¹ Ivanka Trump informed the Foundation that Carl Icahn was in a similar
7 situation.²² Given these donors' understanding of a prohibition on donations between private
8 foundations, Ivanka Trump recommended that the Foundation ask donors to send the physical
9 checks to the Foundation, but make the checks payable to a veterans' organization selected from
10 a list provided by the Foundation, and the Foundation would bundle and send similar donations
11 "on behalf of [Donald Trump]."²³ Thus, on February 16, 2016, the Foundation received a check
12 from the LeFrak family foundation made payable to Intrepid Fallen Heroes Fund for \$100,000.²⁴
13 Although it is unclear whether other donors similarly sent to the Foundation checks payable to
14 veterans' organizations, an email sent from Campbell Burr on behalf of the Committee to agents
15 of both the Committee and the Foundation provided the following accounting of funds solicited
16 and raised by the Fundraiser that were provided directly to the veterans' organizations:²⁵

¹⁹ OAG Referral at 3, Ex. 14. Trump's \$1 million did not flow through the Foundation. OAG Referral, Verified Petition ¶ 57, n.4.

²⁰ OAG Referral, Ex. 27.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ OAG Referral, Exs. 19-20.

²⁵ OAG Referral, Ex. 20 (referring to the recipients as "Team").

Donor	Charity	Amount
Ben Lebow (Howard Lorber's partner)	Navy SEAL Foundation	\$50,000
Carl C. Icahn Foundation	Green Beret Foundation	\$250,000
Carl C. Icahn Foundation	Navy SEAL Foundation	\$250,000
Richard S. and Karen LeFrak Charitable Foundation, Inc.	Intrepid Fallen Heroes Fund	\$100,000
Stewart J. Rahr Foundation	Fisher House Foundation	\$100,000
Stewart J. Rahr Foundation	Folds of Honor Foundation	\$200,000
Stewart J. Rahr Foundation	Homes for Our Troops	\$50,000
Stewart J. Rahr Foundation	Hope for the Warriors	\$50,000
Stewart J. Rahr Foundation	K9s for Warriors	\$50,000
Stewart J. Rahr Foundation	Liberty House Inc.	\$100,000
Stewart J. Rahr Foundation	22Kill	\$200,000
Stewart J. Rahr Foundation	Navy SEAL Foundation	\$100,000
Stewart J. Rahr Foundation	Operation Homefront	\$50,000
Stewart J. Rahr Foundation	Task Force Dagger Foundation	\$50,000
Stewart J. Rahr Foundation	Warriors for Freedom Foundation	\$50,000
	Total	\$1,650,000 ²⁶

1 Documents provided by OAG demonstrate that, following the Fundraiser, the Committee
 2 directed the Foundation how to disburse Fundraiser proceeds the Foundation had collected in its
 3 bank account, including the timing, amounts, and recipients of the disbursements.²⁷ On multiple
 4 occasions, the Committee timed disbursements from the Foundation with campaign events. For
 5 example, on January 29, 2016, three days before the February 1, 2016, Iowa caucuses, Trump's
 6 campaign manager, Corey Lewandowski, emailed Allen Weisselberg, Trump Organization
 7 Executive Vice President and CFO who also performed tasks for the Foundation, to ask: "Is
 8 there any way we can make some disbursements [from the proceeds of the Fundraiser] this week

²⁶ The OAG Referral attaches two charts that appear to have been created by the Committee or the Foundation with slightly different numbers. One chart calculated \$1,775,000 of donations payable to charitable organizations while the other chart shows \$1,650,000 of donations payable to charity. *Compare* OAGA Referral, Ex. 14, *with* Ex. 20. It is unclear what accounts for the discrepancy.

²⁷ OAG Referral at 4.

1 while in Iowa? Specifically on Saturday.”²⁸ Weisselberg replied to the email, asking
2 Lewandowski “to put together a list of the Iowa veteran organizations you have in mind along
3 with dollar amounts. Once received I will cut the check and give them to the boss.”²⁹
4 Lewandowski provided a list later that day that metadata indicates was compiled by the
5 Committee’s staff.³⁰

6 In the days leading up to the Iowa caucuses, Trump presented ceremonial, enlarged
7 \$100,000 checks in the Foundation’s name to veterans’ organizations at campaign rallies.³¹ On
8 January 29, 2016, Trump presented Partners for Patriots with a ceremonial check for \$100,000.³²
9 The OAG investigation revealed that the Foundation was unaware that Trump had presented this
10 ceremonial check to Partners for Patriots, and did not actually issue a negotiable check until
11 February 10, 2016, after the Committee requested that the Foundation issue the check.³³ At a
12 campaign rally in Siouxland, Iowa on January 31, 2016, Trump presented Support Siouxland
13 Soldiers with a \$100,000 enlarged ceremonial check with the name and address of the
14 Foundation at the top, and the name “TRUMP” in all capital letters and the Trump campaign’s
15 slogan “MAKE AMERICA GREAT AGAIN!” included across the bottom, as indicated in the
16 image OAG provided below:³⁴

²⁸ OAG Referral, Ex. 15.

²⁹ *Id.* Weisselberg informed Lewandowski that the money would come from “Donald’s \$1,000,000” because the funds from the online donations would not be available for “7 days.” It is unknown which individual disbursements came from Trump’s personal \$1 million pledge as opposed to the funds raised online.

³⁰ OAG Referral, Ex. 16.

³¹ OAG Referral at 4-5.

³² *Id.* at 4.

³³ *Id.* at 4-5.

³⁴ OAG Referral at 4, Verified Petition ¶ 50.



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2 In total, the OAG Referral identifies five campaign rallies between January 29 and February 1,
 3 2016, in which Trump presented \$100,000 ceremonial checks drawn on Foundation funds to
 4 different charitable organizations selected by the Committee.³⁵

5 Documents provided by OAG also indicate that, following the Iowa caucuses, the
 6 Foundation continued to seek direction from the Committee for instructions on how to disburse
 7 the funds.³⁶ On February 16, 2016, Jeff McConney sent an email on behalf of the Foundation to
 8 Lewandowski, asking “Currently we have \$1,664,000 left in DJT’s foundation to distribute to the
 9 Vets Do you have a list of which veterans charities you want these funds sent to and how
 10 much for each charity?? . . . Lastly, how much longer do you want to keep the TrumpForVets
 11 website up and running?”³⁷ On March 22, 2016, Lewandowski asked Weisselberg, “Do we have

³⁵ OAG Referral at 4-5.

³⁶ OAG Referral at 5, Ex. 19.

³⁷ *Id.*

1 the ability to give a check to these guys [a veterans' organization] from the Foundation?"³⁸

2 Weisselberg responded that he would overnight a check to Trump for his signature.³⁹

3 The Committee continued to promote its role in raising funds for charity through the
4 spring of 2016 while, at the same time, it directed the Foundation on how to disburse the funds.

5 On May 24, 2016, the Committee posted an updated press release to its website entitled
6 "Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups."⁴⁰

7 Several days later, on May 30, 2016, the Committee posted a press release to its website
8 consisting of a chart identifying recipients of \$5.6 million in disbursements from the "Donald J.
9 Trump Veteran Fundraiser."⁴¹ After repeated press inquiries about the distribution of Fundraiser
10 proceeds, including Trump's personal pledge of \$1 million, Trump held a press conference on
11 May 31, 2016, at a podium displaying his campaign's "MAKE AMERICA GREAT AGAIN!"

³⁸ OAG Referral, Ex. 21.

³⁹ *Id.*

⁴⁰ OAG Referral at 6-7; Donald J. Trump, *Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups*, available at <http://web.archive.org/web/20160730101140/http://www.donaldjtrump.com:80/media/lewandowski-trump-campaign-gave-between-5.5-6-million-to-veterans-groups> (snapshot from July 30, 2016, showing release dated May 24, 2016).

⁴¹ OAG Referral at 6-7; Donald J. Trump, *Donald J. Trump Veteran Fundraiser*, available at <http://web.archive.org/web/20160601080540/https://www.donaldjtrump.com/press-releases/donald-j.-trump-veteran-fundraiser> (snapshot from June 1, 2016, showing release dated May 30, 2016).

1 slogan, in which Trump compared his charitable giving to that of his opponent, Hillary Clinton,
2 and talked about his poll numbers.⁴²

3 The OAG Referral identifies one other allegedly impermissible transaction, which it does
4 not allege to be related to the 2016 Fundraiser. On September 9, 2013, the Foundation donated
5 \$25,000 to And Justice for All, a Florida organization that supported the re-election of Pam
6 Bondi for Florida Attorney General.⁴³

7 In response to the principal allegations in the OAG Referral and Complaint relating to its
8 activities in 2016, the Committee contends that the Charitable Exclusion exempts all the funds
9 from the soft money restrictions of the Act.⁴⁴ The Committee asserts that its general solicitations
10 were permissible because there is no allegation that the veterans' organizations conducted federal
11 election activity. The Committee further contends that any funds deposited with the Foundation
12 were only deposited temporarily while "deserving charities could be identified."⁴⁵ The
13 Committee maintains that the funds were not raised for the Foundation and were required to be
14 transferred to veterans' organizations in accordance with donor intent, and thus should not be
15 treated any differently than if those funds were donated directly to those veterans' organizations.

⁴² OAG Referral at 6, n.30-31 (citing David Fahrenthold and Jose A. DelReal, *Trump Rails Against Scrutiny Over Delayed Donation to Veterans Groups*, WASH. POST, May 31, 2016, https://www.washingtonpost.com/news/post-politics/wp/2016/05/31/trump-rails-against-scrutiny-over-delayed-donations-to-veterans-groups/?utm_term=.fb95a8826013, and citing Fox 10 Phoenix, FULL PRESS CONFERENCE: Donald Trump Discusses Donations to Veterans, BLASTS Political Media (FNN), YOUTUBE (May 31, 2016), <https://www.youtube.com/watch?v=pgPhBlohFfY> ("May 31, 2016 Press Conference Video")). According to the article, Trump did not in fact give his pledged \$1 million until May 23, 2016, following repeated inquiries from the press.

⁴³ OAG Referral at 7.

⁴⁴ Resp. at 3.

⁴⁵ *Id.* at 2.

1 The Committee additionally contends that the receipts were not for the purpose of influencing a
2 federal election and, therefore, were not expenditures or contributions under the Act.⁴⁶

3 **III. LEGAL ANALYSIS**

4 5 **A. There is Reason to Believe that Trump, the Committee, and the Foundation** 6 **Violated the Soft Money Provisions of the Act**

7 Under the Act and Commission regulations, federal candidates and officeholders; agents
8 of federal candidates and officeholders; and entities directly or indirectly established, financed,
9 maintained, or controlled (“EFMC’d”) by, or acting on behalf of, federal candidates or
10 officeholders cannot solicit, receive, direct, transfer, or spend funds in connection with an
11 election for federal office, including funds for any federal election activity, unless the funds are
12 subject to the limitations, prohibitions, and reporting requirements of the Act.⁴⁷ Funds that are
13 subject to the Act’s amount limitations, source prohibitions, and reporting requirements, also
14 known as “federal” or “hard money,”⁴⁸ are treated differently under the Act than “nonfederal” or
15 “soft money” that is not subject to these same prohibitions and limitations. The legislative
16 history indicates that a “compelling purpose” of the Act’s regulation of solicitation of soft money
17 set forth in section 30125(e) was to “deter any possibility that solicitations of large sums from
18 corporations, unions, and wealthy private interests will corrupt or appear to corrupt our Federal
19 Government or undermine our political system with the taint of impropriety.”⁴⁹ The Act’s soft
20 money provisions, among others enacted as part of the Bipartisan Campaign Reform Act of

⁴⁶ *Id.* at 4.

⁴⁷ *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

⁴⁸ *McConnell v. FEC*, 540 U.S. 93, 122 (2003).

⁴⁹ 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Sen. McCain); *see also* Advisory Op. (“AO”) 2004-25 (Corzine).

1 2002, were designed to “plug the soft-money loophole,”⁵⁰ which had “led to a meltdown of the
2 campaign finance system that had been intended to keep corporate, union and large individual
3 contributions from influencing the electoral process.”⁵¹

4 As set forth below, the current record indicates that the Fundraiser was in connection
5 with the 2016 presidential election, that Trump EFMC'd the Trump Foundation, and that Trump,
6 the Committee, and the Foundation solicited, received, directed, transferred or spent soft money
7 in connection with the Fundraiser in contravention of section 30125(e).

8 1. The Fundraiser Was in Connection with an Election for Federal Office

9 A threshold issue in analyzing a potential section 30125(e) violation is whether the funds
10 solicited, received, directed, transferred or spent are “in connection with a federal or non-federal
11 election.”⁵² As the Commission has previously stated, if the funds are not “in connection with an
12 election, then the funds do not fall within the scope of Section [30125(e)].”⁵³ Relevant factors
13 the Commission has considered in this analysis when funds are raised in connection with a
14 particular event or activity include the timing of the event or activity with respect to the next
15 election, whether the event or activity contains express advocacy or federal election activity,

⁵⁰ *McConnell*, 540 U.S. at 133.

⁵¹ *Id.* at 129 (internal quotation marks omitted).

⁵² AO 2003-20 at 2 (Reyes) (citing AO 2003-12 (Flake)).

⁵³ *Id.*; AO 2009-26 at 5 (State Representative Coulson).

1 whether contributions are solicited to the candidate's federal committee, and the extent to which
2 campaign materials are displayed.⁵⁴

3 Here, the circumstances indicate that the Fundraiser and the distribution of the donations
4 were in connection with the 2016 presidential election.⁵⁵ The timing of the Fundraiser was in
5 connection with the election because Trump declined to participate in a Republican primary
6 debate just days before the Iowa caucuses and instead held the Fundraiser as a competing event
7 that the Committee refers to in its Response as a "campaign event."⁵⁶ The record indicates that
8 the Committee organized the Fundraiser, paid for the venue, and created the website that
9 solicited and accepted donations to the Foundation. Trump was introduced as the next President
10 of the United States and the podium at the Fundraiser had a pro-Trump placard with his
11 campaign slogan, "MAKE AMERICA GREAT AGAIN!"⁵⁷ Further, the televised portion of the
12 Fundraiser had the hallmarks of a campaign rally, including remarks by the candidate to an

⁵⁴ See, e.g., AO 2009-26 at 5 (State Representative Coulson) (concluding that a federal candidate may spend funds in her state committee's account for costs associated with a charitable event because the event was not "in connection with an election"); AO 2004-14 (Davis) (concluding that communications to raise funds solely for charitable purposes, where the communication did not contain express advocacy, reference candidate status, or display "any signs, banners, or activities related to" the election were not in connection with an election) (superseded in part on other grounds); AO 2003-20 (Reyes) (determining that funds raised for charitable organization scholarship fund in candidate's name were neither contributions nor in "connection with an election" so long as scholarship recipients do not engage in activity in connection with an election as part of or in exchange for scholarship); *cf.* AO 1999-34 (Bilirakis) (analyzing whether candidate's co-hosting of fundraising event, and his committee's payments for event costs, are for campaign or charitable purposes under "for the purpose of influencing a federal election" clause of the definition of "contribution").

⁵⁵ *Cf.* AO 1999-34 (Bilirakis) at 5 ("The question of whether the [purported charitable] event or your participation in the event is also for the purpose of promoting your candidacy may be answered by considering the various features of the event and its promotion, and the role of the Committee."); Factual & Legal Analysis ("F&LA") at 13, MUR 6494 (Schmidt for Congress) (finding that a candidate's acceptance of free legal services to defend litigation arising out of statements during the campaign was "in connection with a federal election").

⁵⁶ Resp. at 1.

⁵⁷ Fundraiser Video at 0.04-0.05, *supra* n.6; *see also* 11 C.F.R. § 100.22(a) (including, campaign slogans in definition of express advocacy).

1 audience, the location and timing in Iowa just days before voters would participate in the Iowa
2 caucuses, and the inclusion of statements from campaign surrogates Diamond & Silk expressly
3 advocating that participants in the Iowa caucuses vote for Trump.⁵⁸

4 The record also indicates that the Committee directed the Foundation's disbursement of
5 funds from the Fundraiser, and made those disbursements to maximize the political benefit to
6 Trump, actions which indicate the event was in connection with an election.⁵⁹ The record
7 appears to reflect a pattern that the Committee, often by way of email from Trump's then-
8 Campaign Manager Lewandowski, dictated the timing, value, and recipients of the
9 disbursements — not the Foundation. Trump presented five \$100,000 ceremonial checks
10 bearing Trump's campaign slogan to veterans' organizations at campaign rallies just days before
11 the Iowa caucuses. In presenting at least one of the ceremonial checks at a campaign rally on
12 February 1, 2016, the day of the Iowa caucus, the OAG Referral noted that Trump linked the
13 distribution of proceeds from the Fundraiser to his campaign's polling, first stating that they had
14 "so many of these checks" to hand out and then stating "the poll numbers just came down from
15 New Hampshire, I went through the roof."⁶⁰

⁵⁸ See generally Fundraiser Video, *supra* n.6; *cf.* AO 1999-34 (Bilirakis) at 5-6 (explaining facts relevant to determination that charitable fundraising event is not a campaign event, including: "persons invited to speak, or to make a presentation at, the event will not make reference to the campaign or Committee;" "neither you nor any agents of your Committee or campaign will use the event as an opportunity to discuss the campaign or to campaign for re-election").

⁵⁹ *Cf.* AO 1999-34 (Bilirakis) at 5-6 (explaining facts relevant to determination that charitable fundraising event is not a campaign event, including: "no funds will be made payable to the campaign or accepted by the campaign and that the disbursements of the proceeds will be controlled by each benefiting" charitable organization; and "the Committee will not obtain any list of donors to the event and will not use such a list for campaign purposes").

⁶⁰ OAG Referral, Verified Petition ¶ 54.

1 Following the Iowa caucuses, the Foundation continued to seek instructions from the
2 Committee, and specifically Lewandowski, on how to disburse the funds. On May 30, 2016, the
3 Committee posted a chart on its website identifying recipients of disbursements from the
4 “Donald J. Trump Veteran Fundraiser,” and posted an update to its website explicitly taking
5 credit for the charitable giving resulting from the Fundraiser.⁶¹ At a campaign press conference
6 on May 31, 2016, Trump noted that he raised \$6 million for veterans’ organizations through the
7 Fundraiser and contrasted that with another candidate’s actions, stating, “Find out how much
8 Hillary Clinton is giving to the veterans. Nothing.”⁶²

9 Accordingly, the record indicates that the Fundraiser and disbursement of Fundraiser
10 proceeds were inextricably intertwined with the Committee and Trump’s campaign appearances,
11 and that the funds solicited, received, directed, transferred, or spent from the Fundraiser were in
12 connection with a federal election.

13 2. Trump Established, Financed, Maintained, or Controlled the Foundation

14 In addition to establishing that the Fundraiser was in connection with a federal election,
15 the current record also indicates that Trump EFMC’d the Trump Foundation. Whether Trump
16 EFMC’d the Foundation relates to the issue of liability under section 30125(e), particularly the
17 application of the Charitable Exclusion for solicitations discussed below.

⁶¹ OAG Referral at 6-7 (citing Donald J. Trump, *Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups*, available at <http://web.archive.org/web/20160730101140/http://www.donaldjtrump.com:80/media/lewandowski-trump-campaign-gave-between-5.5-6-million-to-veterans-groups> (snapshot from July 30, 2016, showing release dated May 24, 2016); Donald J. Trump, *Donald J. Trump Veteran Fundraiser*, available at <http://web.archive.org/web/20160601080540/https://www.donaldjtrump.com/press-releases/donald-j.-trump-veteran-fundraiser> (snapshot from June 1, 2016, showing release dated May 30, 2016)).

⁶² May 31, 2016 Press Conference Video at 16:27-30, *supra* n.42.

1 To determine whether a candidate or his or her agent “directly or indirectly” EFMC’d an
2 entity, the Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R.
3 § 300.2(c)(2), as well as any other relevant factors, in the context of the overall relationship
4 between the federal candidate or officeholder and the entity.⁶³ Among those factors are whether
5 the candidate “provides goods in a significant amount or an ongoing basis to the entity,” “causes
6 or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity,”
7 “directly or through its agent, had an active or significant role in the formation of the entity,”
8 “has the authority or ability to direct or participate in the governance of the entity,” or whether
9 the entity “has common or overlapping officers or employees with the entity that indicates a
10 formal or ongoing relationship.”⁶⁴

11 The available record suggests that Trump EFMC’d the Foundation while he was a federal
12 candidate by maintaining, controlling, or financing the Foundation.⁶⁵ First, the record shows that
13 Trump “maintained” and “controlled” the Foundation while he was a candidate. The Foundation
14 is named after Trump, suggesting his control over the organization.⁶⁶ Trump participated in the
15 governance of the Foundation by serving as President of the Foundation from its inception
16 through all times relevant to these matters, and he was the only individual with authority to sign

⁶³ See AO 2006-04 (Tancredo) at 3.

⁶⁴ 11 C.F.R. § 300.2(c)(2)(ii), (v), (vii), (viii), (ix).

⁶⁵ The record indicates that Trump established the Foundation in 1987, prior to the adoption of section 30125(e). Accordingly, his establishment of the organization falls within a safe harbor for actions or activities predating the adoption of section 30125(e) on November 6, 2002. See 11 C.F.R. § 300.2(c)(3); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002) (explaining non-retroactive nature of rule and clarifying that such entities’ actions after the effective date would be relevant to EFMC analysis).

⁶⁶ See F&LA at 7, MUR 6957 (Isadore Hall III) (“The name of Hall’s Ballot Measure Committee includes a representation that Hall controls it . . .”).

1 the Foundation's checks.⁶⁷ While the Foundation itself did not have any employees, employees
2 of the Trump Organization, Trump's single-member LLC, an entity he also EFMC'd,⁶⁸
3 performed the day-to-day tasks on an ongoing basis to support the operations of the Foundation.
4 Furthermore, there are numerous common or overlapping officers between the Trump
5 Organization and the Foundation, including Trump, three of Trump's children (who also served
6 as members of the board of directors of the Foundation and informal advisers to the Committee),
7 Weisselberg, and McConney. Taken together, these circumstances indicate that Trump
8 maintained and controlled the Foundation while he was a federal candidate.

9 Second, the record indicates that Trump also "financed" the Foundation while he was a
10 federal candidate. Trump provided funds, or arranged or caused for funds to be provided, to the
11 Foundation in a significant amount or on an ongoing basis.⁶⁹ The Commission has approached
12 the question of what constitutes a significant amount on a case-by-case basis in view of all the
13 relevant circumstances. It has stated that "amounts that are so large or . . . that comprise such a
14 substantial percentage of the organization's receipts" would be considered "financing" a
15 committee under 11 CFR 300.2.⁷⁰ The Commission has concluded that a donation of 50 percent

⁶⁷ See OAG Referral, Verified Petition ¶¶ 25, 27 (describing Foundation board as "shell" and describing its operations as per Trump's "whim"); Shiffman Aff. ¶¶ 13-16 (same, and providing additional detail as to Trump's control of Foundation's operations); *cf.* F&LA at 8, MUR 6280 (Berman) (finding no reason to believe a violation had occurred where candidate did not have formal executive position and did not have the ability to "hire, appoint, demote, or otherwise control the officers").

⁶⁸ See Donald J. Trump, United States Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Record, OGE Form 278e (March 2014) (June 14, 2015) ("listing position held as Chairman and President/Member").

⁶⁹ 11 C.F.R. § 300.2(c)(2)(vii)-(viii); *see also* F&LA at 4-6, MUR 5367 (Issa) (finding that a candidate EFMC'd an organization by directly donating, and soliciting from third parties more than 60% of its funding); AO 2004-29 (Akin) at 3 n.4; AO 2004-25 (Corzine) at 4.

⁷⁰ AO 2006-04 (Tancredo) at 3.

1 of the total receipts of an organization constitutes “financing,” while donations of 25 percent, in
2 conjunction with other factors indicating a closeness of the entities such as the sharing of polling
3 and strategy, would also constitute “financing.”⁷¹

4 In 2016, Trump indirectly financed the Foundation by soliciting \$2.8 million that was
5 directly deposited into the Foundation’s bank account in connection with the Fundraiser. This
6 amount accounted for more than 95% of the \$2.9 million in income the Foundation reported in
7 2016 and approximately 75% of the Foundation’s income from 2015 to 2016, and was more than
8 the Foundation had previously raised in every year except 2007.⁷² Moreover, the Trump
9 Organization provided administrative services to the Foundation on an ongoing basis, Trump is
10 the namesake of the Foundation, and was the public face of its fundraising campaign throughout
11 the Fundraiser and throughout the lifetime of the Foundation. All of these circumstances

⁷¹ *Id.* at 4-5.

⁷² See F&LA at 7-8, MUR 5367 (Issa) (finding that third party solicitations to an organization EFMC’d by candidate, in part, created basis for finding reason to believe that soft money provisions were violated); David A. Fahrenthold, *How Donald Trump Retooled His Charity to Spend Other People’s Money*, WASH. POST, Sept. 10, 2016; see also OAG Referral, Exs. 3-4 (showing donor portions of Foundation tax returns from 1987 to 2016). Trump also directly and indirectly financed the Foundation prior to his federal candidacy. For example, news reports indicate that Trump personally solicited a total of \$150,000 in donations to the Foundation in 2009 and 2010 from the Charles Evans Foundation, and that since 2008 Trump directed over \$2.3 million in funds to the Foundation from individuals and companies that owed money to Trump or his businesses. See Shiffman Aff. ¶¶ 19, 62-63 (detailing Foundation’s raising of outside funds as part of self-dealing transaction); David A. Fahrenthold, *How Donald Trump Retooled his Charity to Spend other People’s Money*, WASH. POST, Sept. 10, 2016, https://www.washingtonpost.com/politics/how-donald-trump-retooled-his-charity-to-spend-other-peoples-money/2016/09/10/da8cce64-75df-11e6-8149-b8d05321db62_story.html?noredirect=on&utm_term=.dd3c3b26a9d8; David A. Fahrenthold, *Trump Directed \$2.3 Million Owed to Him to His Tax-Exempt Foundation Instead*, WASH. POST, Sept. 26, 2016, https://www.washingtonpost.com/politics/trump-directed-23-million-owed-to-him-to-his-charity-instead/2016/09/26/7a9e9fac-8352-11e6-ac72-a29979381495_story.html?utm_term=.b5c9ac6565ae. The \$2.3 million that news reports indicate Trump caused to be transferred to the Foundation, which accounted for half of the donations to the Foundations since 2008, included \$400,000 that Comedy Central owed to Trump from his participation in a 2011 “roast” and \$1.9 million between 2011 and 2014 from Richard Ebers, an individual who bought goods for services from Trump or his businesses. The Trump campaign acknowledged that Trump directed the \$400,000 from Comedy Central to the Foundation but did not confirm whether Trump personally directed the donations from Ebers. See David A. Fahrenthold, *Trump Directed \$2.3 Million Owed to Him to His Tax-Exempt Foundation Instead*, WASH. POST, Sept. 26, 2016.

1 indicate that Trump, directly or indirectly, financed the Foundation while he was a federal
2 candidate by providing funds, or arranging or causing for funds to be provided, to the Foundation
3 in a significant amount or on an ongoing basis.

4 3. Trump, the Committee, and the Foundation Solicited, Received, Directed,
5 Transferred, or Spent Non-federal Funds

6 In light of the available information regarding the Fundraiser's connection with a federal
7 election and that the Foundation is an entity EFMC'd by Trump, the current record indicates that
8 Trump, the Committee, and his Foundation appear to have contravened the Act's soft money
9 provisions set forth in section 30125(e). Under the Act, corporations are prohibited from making
10 contributions to candidates and their authorized committees.⁷³ The Act also prohibits any person
11 from making, and any candidate or committee from accepting or receiving, excessive or
12 prohibited contributions.⁷⁴ During the 2016 election cycle, the per-election limit for an
13 individual's contributions to a candidate or their authorized committee was \$2,700.⁷⁵ It is
14 unlawful for candidates and political committees to knowingly accept a prohibited or excessive
15 contribution.⁷⁶ Commission regulations define "to solicit" to mean "to ask, request, or

⁷³ See 52 U.S.C. § 30118(a).

⁷⁴ 52 U.S.C. § 30116(a), (f).

⁷⁵ See 52 U.S.C. § 30116(a); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg 5750, 5752 (Feb. 3, 2015) (adjusting the contributions limits under 52 U.S.C. § 30116(a) for inflation up to \$2,700 per election for the 2016 cycle).

⁷⁶ See 52 U.S.C. §§ 30116(f), 30118(a).

1 recommend, explicitly or implicitly, that another person make a contribution, donation, transfer
2 of funds, or otherwise provide anything of value.”⁷⁷

3 Respondents do not dispute that Trump solicited nonfederal funds in connection with the
4 Fundraiser through individual phone calls, statements made during the Fundraiser, and through
5 the Fundraiser's website. The available information indicates that Trump solicited, and the
6 Foundation directly received, four checks totaling \$1.2 million in the following amounts, all in
7 excess of the Act's amount limitation of \$2,700: \$1,000,000 from Phil Ruffin, \$100,000 from
8 Ivanka Trump, \$50,000 from JJ Cafaro, and \$50,000 from Steven Roth.⁷⁸ The record also
9 indicates that Trump solicited, and the Foundation directly received, \$1.6 million in online
10 donations from unknown sources and in unknown amounts.⁷⁹

11 The available record also indicates that Trump solicited nonfederal funds to the
12 Foundation that were either ultimately made payable and delivered directly to other charities or
13 were made payable to other charities but delivered to the Foundation. For example, Trump
14 stated at the Fundraiser that he asked his friend to “give him a million,” which Stewart J. Rahr
15 ultimately gave directly to several veterans' organizations through his private foundation.
16 Trump similarly solicited donations of nonfederal funds to the Foundation from Icahn and
17 LeFrak, who ultimately gave \$500,000 and \$100,000, respectively, directly to veterans'

⁷⁷ 11 C.F.R. § 300.2(m).

⁷⁸ OAG Referral, Ex. 14; Fundraising Video at 10:10-11:50; *see*, F&LA at 7, MUR 6957 (Isadore Hall III) (finding reason to believe that respondents violated the act by “soliciting” and “receiving” nonfederal funds).

⁷⁹ OAG Referral, Ex. 14; *see also* Donald Trump for Vets, *I Want to Support Our Veterans*, available at <https://web.archive.org/web/20160217203848/https://www.donaldtrumpforvets.com/> (snapshot of donation page from Feb. 17, 2016).

⁸⁰ Fundraiser Video at 5:48-5:55, *supra* n.6.

1 organizations in Trump's name through their private foundations.⁸¹ The Committee took credit
2 for raising these funds through the Fundraiser.⁸²

3 The Committee and Trump also "directed" the Foundation how to "spend" the \$2.8
4 million in funds that the Foundation had received by identifying the recipient charities.

5 Commission regulations define "to direct" as:

6 to guide, directly or indirectly, a person who has expressed an intent
7 to make a contribution, donation, transfer of funds, or otherwise
8 provide anything of value, by identifying a candidate, political
9 committee or organization, for the receipt of such funds, or things
10 of value. The contribution, donation, transfer, or thing of value may
11 be made or provided directly or through a conduit or intermediary.⁸³
12

13 Trump presented five \$100,000 ceremonial checks to veterans' organizations at political
14 campaign rallies days before the Iowa caucuses. Following the Iowa caucuses, Lewandowski
15 continued to instruct Weisselberg and McConney how to spend the Foundation's funds, and
16 Weisselberg and McConney looked to the Committee for direction. On February 16, 2016,
17 McConney emailed Lewandowski, asking "Currently we have \$1,664,000 left in DJTs
18 foundation to distribute to the Vets Do you have a list of which veterans charities you want
19 these funds sent to and how much for each charity??"⁸⁴ Trump signed each of the checks from
20 the Foundation because he had sole signing authority over the Foundation's bank account.⁸⁵ The
21 Committee further "directed" the donations of Icahn and LeFrak by providing a list of veterans'

⁸¹ OAG Referral, Exs. 20, 27.

⁸² OAG Referral at 6-7; Donald J. Trump, *Donald J. Trump Veteran Fundraiser*, available at <http://web.archive.org/web/20160601080540/https://www.donaldjtrump.com/press-releases/donald-j.-trump-veteran-fundraiser> (snapshot from June 1, 2016, showing release dated May 30, 2016).

⁸³ 11 C.F.R. § 300.2(m).

⁸⁴ OAG Referral, Ex. 19.

⁸⁵ OAG Referral, Ex. 22.

1 organizations, and asking them to make the donation in Trump's name. These circumstances
2 indicate that Trump, the Committee, and the Foundation solicited, received, disbursed, directed
3 or transferred nonfederal funds in violation of section 30125(e).

4 While the Committee does not dispute that Trump and some agents solicited nonfederal
5 funds in connection with the Fundraiser, it contends that the solicitations were permissible
6 general solicitations under the Charitable Exclusion. The Committee further argues that the
7 Charitable Exclusion should apply despite the fact that the funds were "temporarily" deposited
8 with the Foundation. These arguments are unpersuasive.

9 The Act and Commission regulations allow a federal candidate, or agent acting on behalf
10 of the candidate, to make a "general solicitation" of nonfederal funds for a tax-exempt section
11 501(c) organization that either (i) does not engage in activities in connection with an election,
12 including certain federal election activity described at 11 C.F.R. § 300.65(c); or (ii) that conducts
13 activities in connection with an election but that does not have a principal purpose to conduct
14 certain federal election activity described at 11 C.F.R. § 300.65(c), so long as the solicitation is
15 not to obtain funds in connection with an election or such federal election activity.⁸⁶ When the
16 conditions for its exercise are met, this "general solicitation" provision operates "as a total
17 exclusion from the solicitation restrictions on Federal candidates and officeholders contained in
18 [52 U.S.C. § 30125(e)(1)]."⁸⁷ The Commission has explained that the Charitable Exclusion

⁸⁶ 52 U.S.C. § 30125(e)(4)(A) (describing general solicitations that do not "specify how the funds will or should be spent"); 11 C.F.R. § 300.65(a). The Act and Commission regulations have a similar exclusion for certain "specific solicitations" made only to individuals for a tax-exempt section 501(c) organization to obtain nonfederal funds to carry out federal election activity. *See* 52 U.S.C. § 30125(e)(4)(B); 11 C.F.R. § 300.65(b).

⁸⁷ AO 2003-12 (Flake) at 11 (referencing previous codification of 52 U.S.C. § 30125(e)(1)).

1 “should not be misinterpreted to prohibit candidates, officeholders, or their agents from soliciting
2 funds for a 501(c) organization that engages in no election activity, such as the Red Cross.”⁸⁸

3 The Charitable Exclusion does not apply here, however, because Trump solicited funds
4 for an entity he EFMC'd, the Foundation, and as an entity EFMC'd by Trump, the Foundation is
5 independently restricted under the text of the Act's soft money provisions in its solicitation,
6 receipt, direction, transfer, spending, or disbursing of funds in connection with a federal
7 election.⁸⁹ The Commission confronted a similar issue in Advisory Opinion 2003-12 (Flake), in
8 which then-Representative Jeff Flake and a non-profit he established, Stop Taxpayer Money for
9 Politicians Committee (“STMP”), requested an advisory opinion concerning the extent to which
10 Flake could fundraise for STMP. The Commission concluded that because Flake established
11 STMP, “he and STMP may only solicit up to \$5,000 per calendar year for STMP from any
12 permissible donor.”⁹⁰ The Commission's analysis in Advisory Opinion 2003-12 (Flake) accords
13 with the circumstances here, particularly with respect to the funds collected by the Foundation.
14 Although funds that Trump solicited directly to veterans' organizations and that were actually
15 given directly to veterans' organizations could qualify for the Charitable Exclusion under other
16 circumstances, as discussed above, there is no information in the record that Trump solicited
17 funds directly to or for such organizations as provided under the Act.

⁸⁸ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. at 49,109.

⁸⁹ See 52 U.S.C. § 30125(e)(1)(A) (defining entities EFMC'd by candidates within scope of soft money rules); 11 C.F.R. § 300.60(d) (same); 11 C.F.R. § 300.61 (incorporating full scope of covered persons in soft money restriction); AO 2003-12 (Flake) at 11 n.14 (“The provisions of [52 U.S.C. § 30125(e)(4)] only apply to those 501(c) organizations that are not ‘established, financed, maintained or controlled’ by a covered individual.”).

⁹⁰ AO 2003-12 (Flake) at 12. STMP was a multicandidate committee organized as a section 527 organization, though Flake also asked whether any legal analysis would change if it became a section 501(c) organization. The Commission concluded that, because the entity was EFMC'd by the candidate, the limitations to only federal fund solicitations would not change.

1 Instead, the available record indicates that the Charitable Exclusion does not apply to the
2 Fundraiser for several reasons. First, similar to the circumstances in AO 2003-12, Trump
3 EFMC'd the Foundation, and both Trump and the Foundation were therefore required to raise
4 only federal funds, including funds raised for the Foundation itself, in connection with a federal
5 election.⁹¹ Additionally, Trump did not make a general solicitation to a third party charitable
6 organization similar to, for example, Intrepid Fallen Heroes. The record instead supports the
7 conclusion that he solicited funds directly to the Foundation, into a bank account over which he
8 had sole signing authority, stating that the funds would later be disbursed to yet to be identified
9 veterans' organizations. Moreover, the Committee took credit for the donations, claiming in a
10 post to its website on May 25, 2016, that the "Trump Campaign Gave Between \$5.5 - \$6 Million
11 to Veterans Groups,"⁹² undermining its argument that these were general solicitations for
12 donations directly between third parties.

13 Second, the Charitable Exclusion does not apply because, under Commission regulations,
14 the solicitation must be for an organization that either does not engage in activities in connection
15 with an election, including federal election activity, or the solicitation is "not to obtain funds for
16 activities in connection with an election."⁹³ As discussed above, the funds Trump solicited were
17 for activities in connection with an election. The Committee described the event as a "campaign

⁹¹ *Id.*

⁹² OAG Referral at 6-7, n.33 (citing Donald J. Trump, *Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups*, available at <http://web.archive.org/web/20160730101140/http://www.donaldjtrump.com:80/media/lewandowski-trump-campaign-gave-between-5.5-6-million-to-veterans-groups> (snapshot from July 30, 2016, showing release dated May 24, 2016); *cf.* AO 1999-34 (Bilirakis) at 5-6 (concluding that solicitation, receipt, or acceptance of funds by campaign, or campaign's control of disbursements of fundraising proceeds, can indicate an event is for campaign purposes rather than charitable fundraising).

⁹³ 11 C.F.R. § 300.65(a)(1), (a)(2)(ii).

1 event,” and the proceeds of the Fundraiser were disbursed at the direction of the Committee to
2 Trump’s political benefit, including the presentation of five \$100,000 ceremonial checks
3 referencing Trump’s campaign slogan to veterans’ organizations at campaign rallies immediately
4 preceding the Iowa caucuses. In its Response, the Committee mistakenly focuses only on
5 whether the veterans’ organizations engaged in federal election activity, ignoring the Foundation
6 in its analysis. However, as outlined above, the funds were not solicited directly to the veterans’
7 organizations, but were instead solicited to, and in some instances received by, the Foundation.
8 The funds were obtained for, and spent to further, activities in connection with Trump’s election
9 and, therefore, the Charitable Exclusion does not apply.

10 Finally, the Charitable Exclusion applies only to “solicitations.” The Committee’s
11 arguments regarding the Charitable Exclusion do not apply to receiving, directing, transferring,
12 or spending the \$2.8 million that was deposited directly into the Foundation’s bank account or
13 the \$600,000 in donations from Icahn and LeFrak.⁹⁴ The Committee does not address these
14 additional actions in its Response, which in any event provide separate bases for liability under
15 section 30125(e).⁹⁵

16 In sum, based on the available information, Trump, the Committee, and the Foundation
17 — an entity Trump EFMC’d — solicited, received, directed, transferred, or spent funds outside
18 the source and amount limitations of the Act in connection with a federal election, *i.e.*, Trump’s
19 candidacy for President of the United States. Accordingly, we recommend that the Commission

⁹⁴ The \$1 million donation from Rahr may also fall into this category; however, the record is less developed as to whether Trump only solicited this donation or also directed this donation to particular charities similar to the Icahn and LeFrak donations.

⁹⁵ *See, e.g.*, F&LA at 7, MUR 6957 (Isadore Hall III) (finding reason to believe that respondents violated the act by “receiving” nonfederal funds).

1 find reason to believe that Trump, the Committee, and the Foundation violated 52 U.S.C.
2 § 30125(e).⁹⁶

3 **B. The Commission Should Take No Action at this Time With Respect to the**
4 **Other Respondents**

5 Other than the Trump Organization, the remaining respondents are individual agents of
6 either the Committee, the Foundation, the Trump Organization, or some combination of the
7 three. Alleged individual agents of the Committee include Corey Lewandowski, Madeline
8 Campbell Burr, Hope Hicks, Stuart Jolly, and Brad Parscale. Alleged individual agents of the
9 Foundation and the Trump Organization include Weisselberg, McConney, Ivanka Trump, Eric
10 Trump, and Donald Trump, Jr. Although the provisions of 52 U.S.C. § 30125(e) apply to agents
11 of federal candidates and entities they EFMC, we recommend taking no action at this time
12 regarding the remaining respondents, including the Trump Organization, pending the results of
13 the proposed investigation because it is unclear at this time whether (or to what degree) any one
14 agent sufficiently participated in the potential violations.

15 **C. There Is No Reason to Believe that the Foundation's \$25,000 Donation to**
16 **And Justice for All in September 2013 Violated the Act**

17 In addition to the funds solicited, received, directed, transferred, or spent in connection
18 with the Fundraiser, the OAG Referral also determined that in September 2013 the Foundation
19 made a \$25,000 payment to And Justice for All, “a Florida political organization that supported

⁹⁶ The OAG Referral also alleges that, for the subset of Fundraiser funds received and disbursed by the Foundation (in the amount of \$2.8 million), the Foundation made, and the Committee accepted, a prohibited in-kind contribution in the form of coordinated expenditures in violation of 52 U.S.C. § 30116 and 11 C.F.R. § 109.20. Because this \$2.8 million in alleged coordinated expenditures, however, is entirely subsumed within the amount in violation for which this report recommends reason to believe there is a violation under section 30125(e) as a prohibited nonfederal receipt and spending of funds by both the Committee and the Foundation, this report makes no independent recommendation on the coordinated expenditure theory of liability.

1 the re-election of Pam Bondi to the position of Florida Attorney General.”⁹⁷ Because Trump was
2 not a federal candidate at the time that the Foundation made the state election donation, the
3 restrictions of section 30125(e)(1)(B), which applies to soft money in non-federal elections,
4 would not apply to the Foundation’s activity at that time. In addition, the activity is beyond the
5 applicable five year statute of limitations. Accordingly, we recommend that the Commission
6 find no reason to believe that Respondents violated the Act in connection with the 2013
7 donation.

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18 **V. RECOMMENDATIONS**

19 1. Open a Matter Under Review with respect to Pre-MUR 611 and merge it into MUR
20 7425;

21 2. Find reason to believe that Donald J. Trump, Donald J. Trump for President, Inc. and
22 Bradley T. Crate in his official capacity as treasurer, and the Donald J. Trump
23 Foundation violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing,
24 transferring, or spending soft money in connection with the Fundraiser during the

⁹⁷ OAG Referral at 7.

- 1 2016 election cycle;
- 2 3. Take no action at this time with respect to the allegations that Corey Lewandowski,
 3 Madeline Campbell Burr, Hope Hicks, Stuart Jolly, Brad Parscale, Ivanka Trump,
 4 Eric Trump, Donald Trump, Jr., Allen Weisselberg, Jeff McConney, and the Trump
 5 Organization violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing,
 6 transferring, or spending soft money in connection with the Fundraiser during the
 7 2016 election cycle;
- 8 4. Find no reason to believe that Donald J. Trump and Donald J. Trump Foundation
 9 violated the Act in connection with the \$25,000 donation to And Justice for All;
- 10 5. Approve the attached Factual and Legal Analysis;
- 11 6. Approve compulsory process; and
- 12 7. Approve the appropriate letters.

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18 May 30, 2019

19 Date

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34 Attachment:

35 Factual and Legal Analysis

Lisa J. Stevenson
 Acting General Counsel


 Charles Kitcher
 Acting Associate General Counsel
 For Enforcement


 Lynn Y. Tran
 Assistant General Counsel
 For Enforcement


 Nicholas I. Bamman
 Attorney

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Donald J. Trump Foundation MUR: 7425
4 Donald J. Trump for President and
5 Bradley T. Crate in his official capacity
6 as treasurer
7 Donald J. Trump
8

9 **I. INTRODUCTION**

10 This matter was generated by a referral from the New York State Attorney General's
11 Office ("OAG Referral") and a Complaint filed with the Federal Election Commission by the
12 Campaign Legal Center, Sandhya Bathija and Brendan M. Fischer. *See* 52 U.S.C. § 30109(a)(1).
13 These matters allege that Republican primary candidate for President, Donald J. Trump, his
14 principal campaign committee, Donald J. Trump for President, Inc. and Bradley T. Crate in his
15 official capacity as treasurer (the "Committee"), and his eponymous foundation, Donald J.
16 Trump Foundation (the "Foundation"), violated provisions of the Federal Election Campaign Act
17 of 1971, as amended (the "Act"), regulating the solicitation, receipt, and disbursement of soft
18 money — *i.e.*, funds not subject to the Act's source prohibitions and amount limitations. The
19 facts set forth in the OAG Referral were discovered during that office's investigation of the
20 Foundation that began in June 2016. The Complaint, which was received almost one month after
21 the OAG Referral, attaches as an exhibit the OAG Referral, which was publicly available at the
22 time, and largely reiterates its findings.

23 Both matters arise out of the solicitation, receipt, and disbursement of funds in
24 connection with a campaign rally-style fundraiser sponsored by the Committee (the
25 "Fundraiser") and held shortly before the February 1, 2016, Iowa caucuses. The Fundraiser
26 raised approximately \$5.6 million, which was received either in the 24 hours leading up to the

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1 event, during the event, or subsequent to it. Half of the \$5.6 million was initially deposited into
2 the Foundation's bank account and disbursed to charitable organizations at the direction of
3 Trump and the Committee over the next three months. In several instances, Trump presented
4 \$100,000 ceremonial checks from the Foundation to veterans' organizations at campaign rallies.
5 The remainder of the \$5.6 million, including \$1 million from Trump personally, was given
6 directly to veterans' organizations.

7 In response, the Committee argues that it was permitted, under 52 U.S.C.
8 § 30125(e)(4)(A), to make general solicitations of donations to charities that do not have a
9 principal purpose of engaging in certain federal election activity (the "Charitable Exclusion").
10 The Committee argues that the funds were "temporarily" deposited with the Foundation while
11 recipient veterans' organizations were identified, which purportedly should not affect the
12 application of the Charitable Exclusion. Further, the Committee argues that the donations to
13 veterans' organizations were not "for the purpose of influencing" a federal election.

14 For the reasons set forth below, the Commission finds reason to believe that Trump, the
15 Committee, and the Foundation violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing,
16 transferring, or spending funds not subject to the source limitations, amount prohibitions, and
17 reporting requirements of the Act in connection with the 2016 presidential election. The
18 Commission further finds no reason to believe that Trump and the Foundation violated the Act
19 with respect to a donation in connection with a state election that the Foundation made in 2013
20 before Trump was a federal candidate.

21 **II. FACTUAL BACKGROUND**

22 During the 2016 election cycle, Trump was a Republican candidate for President of the
23 United States, and Donald J. Trump for President, Inc., was his principal campaign committee.

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1 Trump incorporated the Foundation as a tax-exempt Internal Revenue Code section 501(c)(3)
2 private foundation on February 2, 1987.¹ Trump was President of the Foundation from its
3 inception through January 23, 2017, when he stepped down.² As set forth in the OAG Referral,
4 Trump had sole authority to sign checks on behalf of the Foundation during that period.³ The
5 Foundation did not have any employees and instead delegated its day-to-day operations to the
6 Trump Corporation, an entity that provided support services to businesses within the Trump
7 Organization.⁴

8 On January 28, 2016, shortly before the February 1, 2016, Iowa Republican caucuses,
9 Trump declined an invitation to participate in a Republican primary debate in favor of hosting
10 the Fundraiser on that date, which the press described as a competing event and the Committee
11 described in its response as a “campaign event.”⁵ Committee staffers organized the Fundraiser
12 with “administrative assistance” from the Foundation, including the creation of a website,

¹ OAG Referral at 2, PMUR 611 (June 15, 2018), Shiffman Aff., Ex. 2. The first Exhibit to the OAG Referral is the New York State Verified Petition filed on June 14, 2018, which was verified and sworn to by Steven Shiffman of the OAG. It does not contain an exhibit number. Attached thereto is the Affirmation of AAG Steven Shiffman in Support of the Verified Petition, which contains several numbered exhibits starting with “1.” All references in this Report to numbered exhibits are to the exhibits attached to the Shiffman Affirmation.

² OAG Referral, Verified Petition ¶ 8.

³ *Id.* ¶ 27.

⁴ *Id.* ¶ 25.

⁵ OAG Referral at 2-3, n.7 (citing Phillip Rucker *et al.*, *Trump Says He Won’t Participate in GOP Debate on Fox News*, WASH. POST, Jan. 26, 2016, https://www.washingtonpost.com/politics/trump-says-he-wont-participate-in-gop-debate-on-fox-news/2016/01/26/58fa0b2e-c490-11e5-a4aa-f25866ba0dc6_story.html); Trump Committee Resp. at 1 (Sept. 11, 2018) (“Resp.”); *see also* Compl. at 4, n.8, MUR 7425 (July 11, 2018) (citing *Presidential Candidate Donald Trump Rally in Des Moines, Iowa*, C-SPAN, (Jan. 28, 2016), <https://www.c-span.org/video/?403832-1/presidential-candidate-donald-trump-rally-des-moines-iowa> (the “Fundraiser Video”); OAG Referral at 4, n.18 (same)). C-SPAN covered the event, captioning it as a “CAMPAIGN RALLY IN DES MOINES, IOWA.” In addition to the Committee’s response to both PMUR 611 and MUR 7425, Respondent Hicks submitted a response to PMUR 611; no other respondent submitted a response. All references to the “Response” in this report refer to the Committee’s response.

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1 www.DonaldTrumpForVets.com (the “Fundraiser Website”), to solicit and receive funds to the
2 Foundation.⁶ The Foundation reported that it did not have any disbursements in connection with
3 the Fundraiser, while the Committee reported a disbursement of \$5,000 for the Fundraiser’s
4 venue.⁷

5 Trump stated that, in the 24 hours leading up to the Fundraiser, he “raised over \$5 million
6 in one day,” including \$500,000 raised through the Fundraiser Website.⁸ Trump further
7 recounted at the Fundraiser how he personally solicited funds from his friends: “So, Carl Icahn
8 gave \$500,000. One quick phone call. Would \$500,000 be OK?”⁹ With regard to a donor
9 Trump called anonymous at the Fundraiser, but information in the OAG Referral indicates was
10 Stewart J. Rahr acting through his own eponymous foundation, Trump stated: “Now I said, ‘Do
11 me a favor, could you give me a million bucks for this?’ He said, ‘What?’ I said, ‘Don’t worry
12 about it just give me a million.’ He said, ‘No, no, at least tell me.’ I said, ‘It’s for the vets.’ He
13 said, ‘You got it.’”¹⁰ Trump also solicited funds through the Fundraiser Website.¹¹

14 Although ostensibly a charitable fundraiser, the Fundraiser was styled in the manner of a
15 campaign rally. The podium contained a placard in the same colors and font as Trump’s official

⁶ OAG Referral at 3. Although the OAG Referral does not elaborate on the term “administrative assistance,” it appears to refer to the Foundation’s help with the construction of the website and the issuance of checks following the Fundraiser.

⁷ OAG Referral, Shiffman Aff., Ex. 3, Addendum to Tax Return; *see also* Donald J. Trump for President February 2016 Monthly Report at 402 (Feb. 20, 2016). It is unclear from the Committee’s disclosure reports whether the Committee had additional disbursements for the Fundraiser.

⁸ Fundraiser Video at 2:57-3:00, 3:50-3:52, 4:00-4:10, cited in MUR 7425 Compl. at 4, n.8 & OAG Referral at 4, n.18, *supra* n.6.

⁹ *Id.* at 4:45-4:50.

¹⁰ *Id.* at 5:48-5:55; *see also* OAG Referral, Ex. 20.

¹¹ Fundraiser Video at 3:58-4:15, *supra* n.6.

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- 1 campaign placard with Trump’s name, the Fundraiser Website, and Trump’s campaign slogan
2 “MAKE AMERICA GREAT AGAIN!” as indicated in the image OAG provided below:¹²



3
4 Trump was introduced as “the next President of the United States.”¹³ In addition to
5 appearing at the event, Trump also invited Republican primary candidate opponents Mike
6 Huckabee and Rick Santorum and internet personalities Diamond & Silk onstage to address the
7 crowd.¹⁴ Diamond & Silk, who made multiple appearances in support of Trump during the 2016
8 campaign, supported Trump’s campaign during their presentation, stating “I want you all to
9 know that it is imperative that you get out and caucus for Donald J. Trump and vote for Donald
10 J. Trump And it is up to all of us to help Donald J. Trump make America great again.”¹⁵

11 The Fundraiser raised approximately \$5.6 million.¹⁶ Of that amount, the Foundation
12 received \$2.8 million directly,¹⁷ donors gave approximately \$1.8 million payable directly to

¹² OAG Referral, Shiffman Aff. Ex. 1 ¶ 38.

¹³ Fundraiser Video at 0.04-0.05, *supra* n.6.

¹⁴ *Id.* at 17:41-25:16.

¹⁵ *Id.* at 50:50-51:30.

¹⁶ OAG Referral at 3, Ex. 14.

¹⁷ *Id.* The Foundation received four checks totaling \$1.2 million, and \$1.6 million in online donations in undisclosed amounts and sources. The four checks were in the following amounts: \$50,000 from JJ Cafaro,

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1 veterans' organizations, and Trump personally pledged to give \$1 million to veterans'
2 organizations.¹⁸ Most of the funds payable directly to veterans' organizations were from donors
3 who had received a Trump solicitation to the Foundation but expressed concern about giving to
4 the Foundation due to IRS restrictions on transfers from one private foundation to another.¹⁹ For
5 example, a representative of the Richard S. and Karen LeFrak Charitable Foundation informed
6 the Foundation via email that LeFrak "cannot donate from his foundation to a private
7 foundation."²⁰ Ivanka Trump informed the Foundation that Carl Icahn was in a similar
8 situation.²¹ Given these donors' understanding of a prohibition on donations between private
9 foundations, Ivanka Trump recommended that the Foundation ask donors to send the physical
10 checks to the Foundation, but make the checks payable to a veterans' organization selected from
11 a list provided by the Foundation, and the Foundation would bundle and send similar donations
12 "on behalf of [Donald Trump]."²² Thus, on February 16, 2016, the Foundation received a check
13 from the LeFrak family foundation made payable to Intrepid Fallen Heroes Fund for \$100,000.²³
14 Although it is unclear whether other donors similarly sent to the Foundation checks payable to
15 veterans' organizations, an email sent from Campbell Burr on behalf of the Committee to agents

\$50,000 from Steven Roth, \$1,000,000 from Phil Ruffin, and \$100,000 from Ivanka Trump. *Id.* At least 15,000 donors made up the online donations. *Id.*, Ex. 7, McConney Dep. Tr. 139:7-11.

¹⁸ OAG Referral at 3, Ex. 14. Trump's \$1 million did not flow through the Foundation. OAG Referral, Verified Petition ¶ 57, n.4.

¹⁹ OAG Referral, Ex. 27.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ OAG Referral, Exs. 19-20.

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- 1 of both the Committee and the Foundation provided the following accounting of funds solicited
2 and raised by the Fundraiser that were provided directly to the veterans' organizations:²⁴

Donor	Charity	Amount
Ben Lebow (Howard Lorber's partner)	Navy SEAL Foundation	\$50,000
Carl C. Icahn Foundation	Green Beret Foundation	\$250,000
Carl C. Icahn Foundation	Navy SEAL Foundation	\$250,000
Richard S. and Karen LeFrak Charitable Foundation, Inc.	Intrepid Fallen Heroes Fund	\$100,000
Stewart J. Rahr Foundation	Fisher House Foundation	\$100,000
Stewart J. Rahr Foundation	Folds of Honor Foundation	\$200,000
Stewart J. Rahr Foundation	Homes for Our Troops	\$50,000
Stewart J. Rahr Foundation	Hope for the Warriors	\$50,000
Stewart J. Rahr Foundation	K9s for Warriors	\$50,000
Stewart J. Rahr Foundation	Liberty House Inc.	\$100,000
Stewart J. Rahr Foundation	22Kill	\$200,000
Stewart J. Rahr Foundation	Navy SEAL Foundation	\$100,000
Stewart J. Rahr Foundation	Operation Homefront	\$50,000
Stewart J. Rahr Foundation	Task Force Dagger Foundation	\$50,000
Stewart J. Rahr Foundation	Warriors for Freedom Foundation	\$50,000
	Total	\$1,650,000 ²⁵

- 3 Documents provided by OAG demonstrate that, following the Fundraiser, the Committee
4 directed the Foundation how to disburse Fundraiser proceeds the Foundation had collected in its
5 bank account, including the timing, amounts, and recipients of the disbursements.²⁶ On multiple
6 occasions, the Committee timed disbursements from the Foundation with campaign events. For
7 example, on January 29, 2016, three days before the February 1, 2016, Iowa caucuses, Trump's

²⁴ OAG Referral, Ex. 20 (referring to the recipients as "Team").

²⁵ The OAG Referral attaches two charts that appear to have been created by the Committee or the Foundation with slightly different numbers. One chart calculated \$1,775,000 of donations payable to charitable organizations while the other chart shows \$1,650,000 of donations payable to charity. *Compare* OAGA Referral, Ex. 14, *with* Ex. 20. It is unclear what accounts for the discrepancy.

²⁶ OAG Referral at 4.

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1 campaign manager, Corey Lewandowski, emailed Allen Weisselberg, Trump Organization
2 Executive Vice President and CFO who also performed tasks for the Foundation, to ask: “Is
3 there any way we can make some disbursements [from the proceeds of the Fundraiser] this week
4 while in Iowa? Specifically on Saturday.”²⁷ Weisselberg replied to the email, asking
5 Lewandowski “to put together a list of the Iowa veteran organizations you have in mind along
6 with dollar amounts. Once received I will cut the check and give them to the boss.”²⁸
7 Lewandowski provided a list later that day that metadata indicates was compiled by the
8 Committee’s staff.²⁹

9 In the days leading up to the Iowa caucuses, Trump presented ceremonial, enlarged
10 \$100,000 checks in the Foundation’s name to veterans’ organizations at campaign rallies.³⁰ On
11 January 29, 2016, Trump presented Partners for Patriots with a ceremonial check for \$100,000.³¹
12 The OAG investigation revealed that the Foundation was unaware that Trump had presented this
13 ceremonial check to Partners for Patriots, and did not actually issue a negotiable check until
14 February 10, 2016, after the Committee requested that the Foundation issue the check.³² At a
15 campaign rally in Siouxland, Iowa on January 31, 2016, Trump presented Support Siouxland
16 Soldiers with a \$100,000 enlarged ceremonial check with the name and address of the

²⁷ OAG Referral, Ex. 15.

²⁸ *Id.* Weisselberg informed Lewandowski that the money would come from “Donald’s \$1,000,000” because the funds from the online donations would not be available for “7 days.” It is unknown which individual disbursements came from Trump’s personal \$1 million pledge as opposed to the funds raised online.

²⁹ OAG Referral, Ex. 16.

³⁰ OAG Referral at 4-5.

³¹ *Id.* at 4.

³² *Id.* at 4-5.

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1 Foundation at the top, and the name “TRUMP” in all capital letters and the Trump campaign’s
2 slogan “MAKE AMERICA GREAT AGAIN!” included across the bottom, as indicated in the
3 image OAG provided below:³³



4
5 In total, the OAG Referral identifies five campaign rallies between January 29 and February 1,
6 2016, in which Trump presented \$100,000 ceremonial checks drawn on Foundation funds to
7 different charitable organizations selected by the Committee.³⁴

8 Documents provided by OAG also indicate that, following the Iowa caucuses, the
9 Foundation continued to seek direction from the Committee for instructions on how to disburse
10 the funds.³⁵ On February 16, 2016, Jeff McConney sent an email on behalf of the Foundation to
11 Lewandowski, asking “Currently we have \$1,664,000 left in DJT’s foundation to distribute to the
12 Vets Do you have a list of which veterans charities you want these funds sent to and how
13 much for each charity?? . . . Lastly, how much longer do you want to keep the TrumpForVets

³³ OAG Referral at 4, Verified Petition ¶ 50.

³⁴ OAG Referral at 4-5.

³⁵ OAG Referral at 5, Ex. 19.

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1 website up and running?”³⁶ On March 22, 2016, Lewandowski asked Weisselberg, “Do we have
2 the ability to give a check to these guys [a veterans’ organization] from the Foundation?”³⁷
3 Weisselberg responded that he would overnight a check to Trump for his signature.³⁸
4 The Committee continued to promote its role in raising funds for charity through the
5 spring of 2016 while, at the same time, it directed the Foundation on how to disburse the funds.
6 On May 24, 2016, the Committee posted an updated press release to its website entitled
7 “Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups.”³⁹
8 Several days later, on May 30, 2016, the Committee posted a press release to its website
9 consisting of a chart identifying recipients of \$5.6 million in disbursements from the “Donald J.
10 Trump Veteran Fundraiser.”⁴⁰ After repeated press inquiries about the distribution of Fundraiser
11 proceeds, including Trump’s personal pledge of \$1 million, Trump held a press conference on
12 May 31, 2016, at a podium displaying his campaign’s “MAKE AMERICA GREAT AGAIN!”

³⁶ *Id.*

³⁷ OAG Referral, Ex. 21.

³⁸ *Id.*

³⁹ OAG Referral at 6-7; Donald J. Trump, *Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups*, available at <http://web.archive.org/web/20160730101140/http://www.donaldjtrump.com:80/media/lewandowski-trump-campaign-gave-between-5.5-6-million-to-veterans-groups> (snapshot from July 30, 2016, showing release dated May 24, 2016).

⁴⁰ OAG Referral at 6-7; Donald J. Trump, *Donald J. Trump Veteran Fundraiser*, available at <http://web.archive.org/web/20160601080540/https://www.donaldjtrump.com/press-releases/donald-j.-trump-veteran-fundraiser> (snapshot from June 1, 2016, showing release dated May 30, 2016).

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1 slogan, in which Trump compared his charitable giving to that of his opponent, Hillary Clinton,
2 and talked about his poll numbers.⁴¹

3 The OAG Referral identifies one other allegedly impermissible transaction, which it does
4 not allege to be related to the 2016 Fundraiser. On September 9, 2013, the Foundation donated
5 \$25,000 to And Justice for All, a Florida organization that supported the re-election of Pam
6 Bondi for Florida Attorney General.⁴²

7 In response to the principal allegations in the OAG Referral and Complaint relating to its
8 activities in 2016, the Committee contends that the Charitable Exclusion exempts all the funds
9 from the soft money restrictions of the Act.⁴³ The Committee asserts that its general solicitations
10 were permissible because there is no allegation that the veterans' organizations conducted federal
11 election activity. The Committee further contends that any funds deposited with the Foundation
12 were only deposited temporarily while "deserving charities could be identified."⁴⁴ The
13 Committee maintains that the funds were not raised for the Foundation and were required to be
14 transferred to veterans' organizations in accordance with donor intent, and thus should not be
15 treated any differently than if those funds were donated directly to those veterans' organizations.

⁴¹ OAG Referral at 6, n.30-31 (citing David Fahrenthold and Jose A. DelReal, *Trump Rails Against Scrutiny Over Delayed Donation to Veterans Groups*, WASH. POST, May 31, 2016, https://www.washingtonpost.com/news/post-politics/wp/2016/05/31/trump-rails-against-scrutiny-over-delayed-donations-to-veterans-groups/?utm_term=.fb95a8826013, and citing Fox 10 Phoenix, FULL PRESS CONFERENCE: Donald Trump Discusses Donations to Veterans, BLASTS Political Media (FNN), YOUTUBE (May 31, 2016), <https://www.youtube.com/watch?v=pgPhBlohFfY> ("May 31, 2016 Press Conference Video")). According to the article, Trump did not in fact give his pledged \$1 million until May 23, 2016, following repeated inquiries from the press.

⁴² OAG Referral at 7.

⁴³ Resp. at 3.

⁴⁴ *Id.* at 2.

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1 The Committee additionally contends that the receipts were not for the purpose of influencing a
2 federal election and, therefore, were not expenditures or contributions under the Act.⁴⁵

3 **III. LEGAL ANALYSIS**

4 5 **A. There is Reason to Believe that Trump, the Committee, and the Foundation** 6 **Violated the Soft Money Provisions of the Act**

7 Under the Act and Commission regulations, federal candidates and officeholders; agents
8 of federal candidates and officeholders; and entities directly or indirectly established, financed,
9 maintained, or controlled (“EFMC’d”) by, or acting on behalf of, federal candidates or
10 officeholders cannot solicit, receive, direct, transfer, or spend funds in connection with an
11 election for federal office, including funds for any federal election activity, unless the funds are
12 subject to the limitations, prohibitions, and reporting requirements of the Act.⁴⁶ Funds that are
13 subject to the Act’s amount limitations, source prohibitions, and reporting requirements, also
14 known as “federal” or “hard money,”⁴⁷ are treated differently under the Act than “nonfederal” or
15 “soft money” that is not subject to these same prohibitions and limitations. The legislative
16 history indicates that a “compelling purpose” of the Act’s regulation of solicitation of soft money
17 set forth in section 30125(e) was to “deter any possibility that solicitations of large sums from
18 corporations, unions, and wealthy private interests will corrupt or appear to corrupt our Federal
19 Government or undermine our political system with the taint of impropriety.”⁴⁸ The Act’s soft
20 money provisions, among others enacted as part of the Bipartisan Campaign Reform Act of

⁴⁵ *Id.* at 4.

⁴⁶ *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

⁴⁷ *McConnell v. FEC*, 540 U.S. 93, 122 (2003).

⁴⁸ 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Sen. McCain); *see also* Advisory Op. (“AO”) 2004-25 (Corzine).

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1 2002, were designed to “plug the soft-money loophole,”⁴⁹ which had “led to a meltdown of the
2 campaign finance system that had been intended to keep corporate, union and large individual
3 contributions from influencing the electoral process.”⁵⁰

4 As set forth below, the current record indicates that the Fundraiser was in connection
5 with the 2016 presidential election, that Trump EFMC’d the Trump Foundation, and that Trump,
6 the Committee, and the Foundation solicited, received, directed, transferred or spent soft money
7 in connection with the Fundraiser in contravention of section 30125(e).

8 1. The Fundraiser Was in Connection with an Election for Federal Office

9 A threshold issue in analyzing a potential section 30125(e) violation is whether the funds
10 solicited, received, directed, transferred or spent are “in connection with a federal or non-federal
11 election.”⁵¹ As the Commission has previously stated, if the funds are not “in connection with an
12 election, then the funds do not fall within the scope of Section [30125(e)].”⁵² Relevant factors
13 the Commission has considered in this analysis when funds are raised in connection with a
14 particular event or activity include the timing of the event or activity with respect to the next
15 election, whether the event or activity contains express advocacy or federal election activity,

⁴⁹ *McConnell*, 540 U.S. at 133.

⁵⁰ *Id.* at 129 (internal quotation marks omitted).

⁵¹ AO 2003-20 at 2 (Reyes) (citing AO 2003-12 (Flake)).

⁵² *Id.*; AO 2009-26 at 5 (State Representative Coulson).

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1 whether contributions are solicited to the candidate’s federal committee, and the extent to which
2 campaign materials are displayed.⁵³

3 Here, the circumstances indicate that the Fundraiser and the distribution of the donations
4 were in connection with the 2016 presidential election.⁵⁴ The timing of the Fundraiser was in
5 connection with the election because Trump declined to participate in a Republican primary
6 debate just days before the Iowa caucuses and instead held the Fundraiser as a competing event
7 that the Committee refers to in its Response as a “campaign event.”⁵⁵ The record indicates that
8 the Committee organized the Fundraiser, paid for the venue, and created the website that
9 solicited and accepted donations to the Foundation. Trump was introduced as the next President
10 of the United States and the podium at the Fundraiser had a pro-Trump placard with his
11 campaign slogan, “MAKE AMERICA GREAT AGAIN!”⁵⁶ Further, the televised portion of the
12 Fundraiser had the hallmarks of a campaign rally, including remarks by the candidate to an

⁵³ See, e.g., AO 2009-26 at 5 (State Representative Coulson) (concluding that a federal candidate may spend funds in her state committee’s account for costs associated with a charitable event because the event was not “in connection with an election”); AO 2004-14 (Davis) (concluding that communications to raise funds solely for charitable purposes, where the communication did not contain express advocacy, reference candidate status, or display “any signs, banners, or activities related to” the election were not in connection with an election) (superseded in part on other grounds); AO 2003-20 (Reyes) (determining that funds raised for charitable organization scholarship fund in candidate’s name were neither contributions nor in “connection with an election” so long as scholarship recipients do not engage in activity in connection with an election as part of or in exchange for scholarship); *cf.* AO 1999-34 (Bilirakis) (analyzing whether candidate’s co-hosting of fundraising event, and his committee’s payments for event costs, are for campaign or charitable purposes under “for the purpose of influencing a federal election” clause of the definition of “contribution”).

⁵⁴ *Cf.* AO 1999-34 (Bilirakis) at 5 (“The question of whether the [purported charitable] event or your participation in the event is also for the purpose of promoting your candidacy may be answered by considering the various features of the event and its promotion, and the role of the Committee.”); Factual & Legal Analysis (“F&LA”) at 13, MUR 6494 (Schmidt for Congress) (finding that a candidate’s acceptance of free legal services to defend litigation arising out of statements during the campaign was “in connection with a federal election”).

⁵⁵ Resp. at 1.

⁵⁶ Fundraiser Video at 0.04-0.05, *supra* n.6; see also 11 C.F.R. § 100.22(a) (including, campaign slogans in definition of express advocacy).

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1 audience, the location and timing in Iowa just days before voters would participate in the Iowa
2 caucuses, and the inclusion of statements from campaign surrogates Diamond & Silk expressly
3 advocating that participants in the Iowa caucuses vote for Trump.⁵⁷

4 The record also indicates that the Committee directed the Foundation’s disbursement of
5 funds from the Fundraiser, and made those disbursements to maximize the political benefit to
6 Trump, actions which indicate the event was in connection with an election.⁵⁸ The record
7 appears to reflect a pattern that the Committee, often by way of email from Trump’s then-
8 Campaign Manager Lewandowski, dictated the timing, value, and recipients of the
9 disbursements — not the Foundation. Trump presented five \$100,000 ceremonial checks
10 bearing Trump’s campaign slogan to veterans’ organizations at campaign rallies just days before
11 the Iowa caucuses. In presenting at least one of the ceremonial checks at a campaign rally on
12 February 1, 2016, the day of the Iowa caucus, the OAG Referral noted that Trump linked the
13 distribution of proceeds from the Fundraiser to his campaign’s polling, first stating that they had
14 “so many of these checks” to hand out and then stating “the poll numbers just came down from
15 New Hampshire, I went through the roof.”⁵⁹

⁵⁷ See generally Fundraiser Video, *supra* n.6; *cf.* AO 1999-34 (Bilirakis) at 5-6 (explaining facts relevant to determination that charitable fundraising event is not a campaign event, including: “persons invited to speak, or to make a presentation at, the event will not make reference to the campaign or Committee;” “neither you nor any agents of your Committee or campaign will use the event as an opportunity to discuss the campaign or to campaign for re-election”).

⁵⁸ *Cf.* AO 1999-34 (Bilirakis) at 5-6 (explaining facts relevant to determination that charitable fundraising event is not a campaign event, including: “no funds will be made payable to the campaign or accepted by the campaign and that the disbursements of the proceeds will be controlled by each benefiting” charitable organization; and “the Committee will not obtain any list of donors to the event and will not use such a list for campaign purposes”).

⁵⁹ OAG Referral, Verified Petition ¶ 54.

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1 Following the Iowa caucuses, the Foundation continued to seek instructions from the
2 Committee, and specifically Lewandowski, on how to disburse the funds. On May 30, 2016, the
3 Committee posted a chart on its website identifying recipients of disbursements from the
4 “Donald J. Trump Veteran Fundraiser,” and posted an update to its website explicitly taking
5 credit for the charitable giving resulting from the Fundraiser.⁶⁰ At a campaign press conference
6 on May 31, 2016, Trump noted that he raised \$6 million for veterans’ organizations through the
7 Fundraiser and contrasted that with another candidate’s actions, stating, “Find out how much
8 Hillary Clinton is giving to the veterans. Nothing.”⁶¹

9 Accordingly, the record indicates that the Fundraiser and disbursement of Fundraiser
10 proceeds were inextricably intertwined with the Committee and Trump’s campaign appearances,
11 and that the funds solicited, received, directed, transferred, or spent from the Fundraiser were in
12 connection with a federal election.

13 2. Trump Established, Financed, Maintained, or Controlled the Foundation

14 In addition to establishing that the Fundraiser was in connection with a federal election,
15 the current record also indicates that Trump EFMC’d the Trump Foundation. Whether Trump
16 EFMC’d the Foundation relates to the issue of liability under section 30125(e), particularly the
17 application of the Charitable Exclusion for solicitations discussed below.

⁶⁰ OAG Referral at 6-7 (citing Donald J. Trump, *Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups*, available at <http://web.archive.org/web/20160730101140/http://www.donaldjtrump.com:80/media/lewandowski-trump-campaign-gave-between-5.5-6-million-to-veterans-groups> (snapshot from July 30, 2016, showing release dated May 24, 2016); Donald J. Trump, *Donald J. Trump Veteran Fundraiser*, available at <http://web.archive.org/web/20160601080540/https://www.donaldjtrump.com/press-releases/donald-j.-trump-veteran-fundraiser> (snapshot from June 1, 2016, showing release dated May 30, 2016)).

⁶¹ May 31, 2016 Press Conference Video at 16:27-30, *supra* n.42.

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1 To determine whether a candidate or his or her agent “directly or indirectly” EFMC’d an
2 entity, the Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R.
3 § 300.2(c)(2), as well as any other relevant factors, in the context of the overall relationship
4 between the federal candidate or officeholder and the entity.⁶² Among those factors are whether
5 the candidate “provides goods in a significant amount or an ongoing basis to the entity,” “causes
6 or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity,”
7 “directly or through its agent, had an active or significant role in the formation of the entity,”
8 “has the authority or ability to direct or participate in the governance of the entity,” or whether
9 the entity “has common or overlapping officers or employees with the entity that indicates a
10 formal or ongoing relationship.”⁶³

11 The available record suggests that Trump EFMC’d the Foundation while he was a federal
12 candidate by maintaining, controlling, or financing the Foundation.⁶⁴ First, the record shows that
13 Trump “maintained” and “controlled” the Foundation while he was a candidate. The Foundation
14 is named after Trump, suggesting his control over the organization.⁶⁵ Trump participated in the
15 governance of the Foundation by serving as President of the Foundation from its inception
16 through all times relevant to these matters, and he was the only individual with authority to sign

⁶² See AO 2006-04 (Tancredo) at 3.

⁶³ 11 C.F.R. § 300.2(c)(2)(ii), (v), (vii), (viii), (ix).

⁶⁴ The record indicates that Trump established the Foundation in 1987, prior to the adoption of section 30125(e). Accordingly, his establishment of the organization falls within a safe harbor for actions or activities predating the adoption of section 30125(e) on November 6, 2002. See 11 C.F.R. § 300.2(c)(3); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002) (explaining non-retroactive nature of rule and clarifying that such entities’ actions after the effective date would be relevant to EFMC analysis).

⁶⁵ See F&LA at 7, MUR 6957 (Isadore Hall III) (“The name of Hall’s Ballot Measure Committee includes a representation that Hall controls it . . .”).

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1 the Foundation’s checks.⁶⁶ While the Foundation itself did not have any employees, employees
2 of the Trump Organization, Trump’s single-member LLC, an entity he also EFMC’d,⁶⁷
3 performed the day-to-day tasks on an ongoing basis to support the operations of the Foundation.
4 Furthermore, there are numerous common or overlapping officers between the Trump
5 Organization and the Foundation, including Trump, three of Trump’s children (who also served
6 as members of the board of directors of the Foundation and informal advisers to the Committee),
7 Weisselberg, and McConney. Taken together, these circumstances indicate that Trump
8 maintained and controlled the Foundation while he was a federal candidate.

9 Second, the record indicates that Trump also “financed” the Foundation while he was a
10 federal candidate. Trump provided funds, or arranged or caused for funds to be provided, to the
11 Foundation in a significant amount or on an ongoing basis.⁶⁸ The Commission has approached
12 the question of what constitutes a significant amount on a case-by-case basis in view of all the
13 relevant circumstances. It has stated that “amounts that are so large or . . . that comprise such a
14 substantial percentage of the organization’s receipts” would be considered “financing” a
15 committee under 11 CFR 300.2.⁶⁹ The Commission has concluded that a donation of 50 percent

⁶⁶ See OAG Referral, Verified Petition ¶¶ 25, 27 (describing Foundation board as “shell” and describing its operations as per Trump’s “whim”); Shiffman Aff. ¶¶ 13-16 (same, and providing additional detail as to Trump’s control of Foundation’s operations); *cf.* F&LA at 8, MUR 6280 (Berman) (finding no reason to believe a violation had occurred where candidate did not have formal executive position and did not have the ability to “hire, appoint, demote, or otherwise control the officers”).

⁶⁷ See Donald J. Trump, United States Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Record, OGE Form 278e (March 2014) (June 14, 2015) (“listing position held as Chairman and President/Member”).

⁶⁸ 11 C.F.R. § 300.2(c)(2)(vii)-(viii); *see also* F&LA at 4-6, MUR 5367 (Issa) (finding that a candidate EFMC’d an organization by directly donating, and soliciting from third parties more than 60% of its funding); AO 2004-29 (Akin) at 3 n.4; AO 2004-25 (Corzine) at 4.

⁶⁹ AO 2006-04 (Tancredo) at 3.

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1 of the total receipts of an organization constitutes “financing,” while donations of 25 percent, in
2 conjunction with other factors indicating a closeness of the entities such as the sharing of polling
3 and strategy, would also constitute “financing.”⁷⁰

4 In 2016, Trump indirectly financed the Foundation by soliciting \$2.8 million that was
5 directly deposited into the Foundation’s bank account in connection with the Fundraiser. This
6 amount accounted for more than 95% of the \$2.9 million in income the Foundation reported in
7 2016 and approximately 75% of the Foundation’s income from 2015 to 2016, and was more than
8 the Foundation had previously raised in every year except 2007.⁷¹ Moreover, the Trump
9 Organization provided administrative services to the Foundation on an ongoing basis, Trump is
10 the namesake of the Foundation, and was the public face of its fundraising campaign throughout
11 the Fundraiser and throughout the lifetime of the Foundation. All of these circumstances

⁷⁰ *Id.* at 4-5.

⁷¹ See F&LA at 7-8, MUR 5367 (Issa) (finding that third party solicitations to an organization EFMC’d by candidate, in part, created basis for finding reason to believe that soft money provisions were violated); David A. Fahrenthold, *How Donald Trump Retooled His Charity to Spend Other People’s Money*, WASH. POST, Sept. 10, 2016; see also OAG Referral, Exs. 3-4 (showing donor portions of Foundation tax returns from 1987 to 2016). Trump also directly and indirectly financed the Foundation prior to his federal candidacy. For example, news reports indicate that Trump personally solicited a total of \$150,000 in donations to the Foundation in 2009 and 2010 from the Charles Evans Foundation, and that since 2008 Trump directed over \$2.3 million in funds to the Foundation from individuals and companies that owed money to Trump or his businesses. See Shiffman Aff. ¶¶ 19, 62-63 (detailing Foundation’s raising of outside funds as part of self-dealing transaction); David A. Fahrenthold, *How Donald Trump Retooled his Charity to Spend other People’s Money*, WASH. POST, Sept. 10, 2016, https://www.washingtonpost.com/politics/how-donald-trump-retooled-his-charity-to-spend-other-peoples-money/2016/09/10/da8cce64-75df-11e6-8149-b8d05321db62_story.html?noredirect=on&utm_term=.dd3c3b26a9d8; David A. Fahrenthold, *Trump Directed \$2.3 Million Owed to Him to His Tax-Exempt Foundation Instead*, WASH. POST, Sept. 26, 2016, https://www.washingtonpost.com/politics/trump-directed-23-million-owed-to-him-to-his-charity-instead/2016/09/26/7a9e9fac-8352-11e6-ac72-a29979381495_story.html?utm_term=.b5c9ac6565ae. The \$2.3 million that news reports indicate Trump caused to be transferred to the Foundation, which accounted for half of the donations to the Foundations since 2008, included \$400,000 that Comedy Central owed to Trump from his participation in a 2011 “roast” and \$1.9 million between 2011 and 2014 from Richard Ebers, an individual who bought goods for services from Trump or his businesses. The Trump campaign acknowledged that Trump directed the \$400,000 from Comedy Central to the Foundation but did not confirm whether Trump personally directed the donations from Ebers. See David A. Fahrenthold, *Trump Directed \$2.3 Million Owed to Him to His Tax-Exempt Foundation Instead*, WASH. POST, Sept. 26, 2016.

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1 indicate that Trump, directly or indirectly, financed the Foundation while he was a federal
2 candidate by providing funds, or arranging or causing for funds to be provided, to the Foundation
3 in a significant amount or on an ongoing basis.

4 3. Trump, the Committee, and the Foundation Solicited, Received, Directed,
5 Transferred, or Spent Non-federal Funds

6 In light of the available information regarding the Fundraiser's connection with a federal
7 election and that the Foundation is an entity EFMC'd by Trump, the current record indicates that
8 Trump, the Committee, and his Foundation appear to have contravened the Act's soft money
9 provisions set forth in section 30125(e). Under the Act, corporations are prohibited from making
10 contributions to candidates and their authorized committees.⁷² The Act also prohibits any person
11 from making, and any candidate or committee from accepting or receiving, excessive or
12 prohibited contributions.⁷³ During the 2016 election cycle, the per-election limit for an
13 individual's contributions to a candidate or their authorized committee was \$2,700.⁷⁴ It is
14 unlawful for candidates and political committees to knowingly accept a prohibited or excessive
15 contribution.⁷⁵ Commission regulations define "to solicit" to mean "to ask, request, or

⁷² See 52 U.S.C. § 30118(a).

⁷³ 52 U.S.C. § 30116(a), (f).

⁷⁴ See 52 U.S.C. § 30116(a); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg 5750, 5752 (Feb. 3, 2015) (adjusting the contributions limits under 52 U.S.C. § 30116(a) for inflation up to \$2,700 per election for the 2016 cycle).

⁷⁵ See 52 U.S.C. §§ 30116(f), 30118(a).

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1 recommend, explicitly or implicitly, that another person make a contribution, donation, transfer
2 of funds, or otherwise provide anything of value.”⁷⁶

3 Respondents do not dispute that Trump solicited nonfederal funds in connection with the
4 Fundraiser through individual phone calls, statements made during the Fundraiser, and through
5 the Fundraiser’s website. The available information indicates that Trump solicited, and the
6 Foundation directly received, four checks totaling \$1.2 million in the following amounts, all in
7 excess of the Act’s amount limitation of \$2,700: \$1,000,000 from Phil Ruffin, \$100,000 from
8 Ivanka Trump, \$50,000 from JJ Cafaro, and \$50,000 from Steven Roth.⁷⁷ The record also
9 indicates that Trump solicited, and the Foundation directly received, \$1.6 million in online
10 donations from unknown sources and in unknown amounts.⁷⁸

11 The available record also indicates that Trump solicited nonfederal funds to the
12 Foundation that were either ultimately made payable and delivered directly to other charities or
13 were made payable to other charities but delivered to the Foundation. For example, Trump
14 stated at the Fundraiser that he asked his friend to “give him a million,” which Stewart J. Rahr
15 ultimately gave directly to several veterans’ organizations through his private foundation.⁷⁹
16 Trump similarly solicited donations of nonfederal funds to the Foundation from Icahn and
17 LeFrak, who ultimately gave \$500,000 and \$100,000, respectively, directly to veterans’

⁷⁶ 11 C.F.R. § 300.2(m).

⁷⁷ OAG Referral, Ex. 14; Fundraising Video at 10:10-11:50; *see*, F&LA at 7, MUR 6957 (Isadore Hall III) (finding reason to believe that respondents violated the act by “soliciting” and “receiving” nonfederal funds).

⁷⁸ OAG Referral, Ex. 14; *see also* Donald Trump for Vets, *I Want to Support Our Veterans*, available at <https://web.archive.org/web/20160217203848/https://www.donaldtrumpforvets.com/> (snapshot of donation page from Feb. 17, 2016).

⁷⁹ Fundraiser Video at 5:48-5:55, *supra* n.6.

1 organizations in Trump’s name through their private foundations.⁸⁰ The Committee took credit
2 for raising these funds through the Fundraiser.⁸¹

3 The Committee and Trump also “directed” the Foundation how to “spend” the \$2.8
4 million in funds that the Foundation had received by identifying the recipient charities.

5 Commission regulations define “to direct” as:

6 to guide, directly or indirectly, a person who has expressed an intent
7 to make a contribution, donation, transfer of funds, or otherwise
8 provide anything of value, by identifying a candidate, political
9 committee or organization, for the receipt of such funds, or things
10 of value. The contribution, donation, transfer, or thing of value may
11 be made or provided directly or through a conduit or intermediary.⁸²
12

13 Trump presented five \$100,000 ceremonial checks to veterans’ organizations at political
14 campaign rallies days before the Iowa caucuses. Following the Iowa caucuses, Lewandowski
15 continued to instruct Weisselberg and McConney how to spend the Foundation’s funds, and
16 Weisselberg and McConney looked to the Committee for direction. On February 16, 2016,
17 McConney emailed Lewandowski, asking “Currently we have \$1,664,000 left in DJTs
18 foundation to distribute to the Vets Do you have a list of which veterans charities you want
19 these funds sent to and how much for each charity??”⁸³ Trump signed each of the checks from
20 the Foundation because he had sole signing authority over the Foundation’s bank account.⁸⁴ The
21 Committee further “directed” the donations of Icahn and LeFrak by providing a list of veterans’

⁸⁰ OAG Referral, Exs. 20, 27.

⁸¹ OAG Referral at 6-7; Donald J. Trump, *Donald J. Trump Veteran Fundraiser*, available at <http://web.archive.org/web/20160601080540/https://www.donaldjtrump.com/press-releases/donald-j.-trump-veteran-fundraiser> (snapshot from June 1, 2016, showing release dated May 30, 2016).

⁸² 11 C.F.R. § 300.2(m).

⁸³ OAG Referral, Ex. 19.

⁸⁴ OAG Referral, Ex. 22.

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1 organizations, and asking them to make the donation in Trump’s name. These circumstances
2 indicate that Trump, the Committee, and the Foundation solicited, received, disbursed, directed
3 or transferred nonfederal funds in violation of section 30125(e).

4 While the Committee does not dispute that Trump and some agents solicited nonfederal
5 funds in connection with the Fundraiser, it contends that the solicitations were permissible
6 general solicitations under the Charitable Exclusion. The Committee further argues that the
7 Charitable Exclusion should apply despite the fact that the funds were “temporarily” deposited
8 with the Foundation. These arguments are unpersuasive.

9 The Act and Commission regulations allow a federal candidate, or agent acting on behalf
10 of the candidate, to make a “general solicitation” of nonfederal funds for a tax-exempt section
11 501(c) organization that either (i) does not engage in activities in connection with an election,
12 including certain federal election activity described at 11 C.F.R. § 300.65(c); or (ii) that conducts
13 activities in connection with an election but that does not have a principal purpose to conduct
14 certain federal election activity described at 11 C.F.R. § 300.65(c), so long as the solicitation is
15 not to obtain funds in connection with an election or such federal election activity.⁸⁵ When the
16 conditions for its exercise are met, this “general solicitation” provision operates “as a total
17 exclusion from the solicitation restrictions on Federal candidates and officeholders contained in
18 [52 U.S.C. § 30125(e)(1)].”⁸⁶ The Commission has explained that the Charitable Exclusion

⁸⁵ 52 U.S.C. § 30125(e)(4)(A) (describing general solicitations that do not “specify how the funds will or should be spent”); 11 C.F.R. § 300.65(a). The Act and Commission regulations have a similar exclusion for certain “specific solicitations” made only to individuals for a tax-exempt section 501(c) organization to obtain nonfederal funds to carry out federal election activity. *See* 52 U.S.C. § 30125(e)(4)(B); 11 C.F.R. § 300.65(b).

⁸⁶ AO 2003-12 (Flake) at 11 (referencing previous codification of 52 U.S.C. § 30125(e)(1)).

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1 “should not be misinterpreted to prohibit candidates, officeholders, or their agents from soliciting
2 funds for a 501(c) organization that engages in no election activity, such as the Red Cross.”⁸⁷

3 The Charitable Exclusion does not apply here, however, because Trump solicited funds
4 for an entity he EFMC’d, the Foundation, and as an entity EFMC’d by Trump, the Foundation is
5 independently restricted under the text of the Act’s soft money provisions in its solicitation,
6 receipt, direction, transfer, spending, or disbursing of funds in connection with a federal
7 election.⁸⁸ The Commission confronted a similar issue in Advisory Opinion 2003-12 (Flake), in
8 which then-Representative Jeff Flake and a non-profit he established, Stop Taxpayer Money for
9 Politicians Committee (“STMP”), requested an advisory opinion concerning the extent to which
10 Flake could fundraise for STMP. The Commission concluded that because Flake established
11 STMP, “he and STMP may only solicit up to \$5,000 per calendar year for STMP from any
12 permissible donor.”⁸⁹ The Commission’s analysis in Advisory Opinion 2003-12 (Flake) accords
13 with the circumstances here, particularly with respect to the funds collected by the Foundation.
14 Although funds that Trump solicited directly to veterans’ organizations and that were actually
15 given directly to veterans’ organizations could qualify for the Charitable Exclusion under other
16 circumstances, as discussed above, there is no information in the record that Trump solicited
17 funds directly to or for such organizations as provided under the Act.

⁸⁷ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. at 49,109.

⁸⁸ See 52 U.S.C. § 30125(e)(1)(A) (defining entities EFMC’d by candidates within scope of soft money rules); 11 C.F.R. § 300.60(d) (same); 11 C.F.R. § 300.61 (incorporating full scope of covered persons in soft money restriction); AO 2003-12 (Flake) at 11 n.14 (“The provisions of [52 U.S.C. § 30125(e)(4)] only apply to those 501(c) organizations that are not ‘established, financed, maintained or controlled’ by a covered individual.”).

⁸⁹ AO 2003-12 (Flake) at 12. STMP was a multicandidate committee organized as a section 527 organization, though Flake also asked whether any legal analysis would change if it became a section 501(c) organization. The Commission concluded that, because the entity was EFMC’d by the candidate, the limitations to only federal fund solicitations would not change.

1 Instead, the available record indicates that the Charitable Exclusion does not apply to the
2 Fundraiser for several reasons. First, similar to the circumstances in AO 2003-12, Trump
3 EFMC'd the Foundation, and both Trump and the Foundation were therefore required to raise
4 only federal funds, including funds raised for the Foundation itself, in connection with a federal
5 election.⁹⁰ Additionally, Trump did not make a general solicitation to a third party charitable
6 organization similar to, for example, Intrepid Fallen Heroes. The record instead supports the
7 conclusion that he solicited funds directly to the Foundation, into a bank account over which he
8 had sole signing authority, stating that the funds would later be disbursed to yet to be identified
9 veterans' organizations. Moreover, the Committee took credit for the donations, claiming in a
10 post to its website on May 25, 2016, that the "Trump Campaign Gave Between \$5.5 - \$6 Million
11 to Veterans Groups,"⁹¹ undermining its argument that these were general solicitations for
12 donations directly between third parties.

13 Second, the Charitable Exclusion does not apply because, under Commission regulations,
14 the solicitation must be for an organization that either does not engage in activities in connection
15 with an election, including federal election activity, or the solicitation is "not to obtain funds for
16 activities in connection with an election."⁹² As discussed above, the funds Trump solicited were
17 for activities in connection with an election. The Committee described the event as a "campaign

⁹⁰ *Id.*

⁹¹ OAG Referral at 6-7, n.33 (citing Donald J. Trump, *Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups*, available at <http://web.archive.org/web/20160730101140/http://www.donaldjtrump.com:80/media/lewandowski-trump-campaign-gave-between-5.5-6-million-to-veterans-groups> (snapshot from July 30, 2016, showing release dated May 24, 2016); *cf.* AO 1999-34 (Bilirakis) at 5-6 (concluding that solicitation, receipt, or acceptance of funds by campaign, or campaign's control of disbursements of fundraising proceeds, can indicate an event is for campaign purposes rather than charitable fundraising).

⁹² 11 C.F.R. § 300.65(a)(1), (a)(2)(ii).

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1 event,” and the proceeds of the Fundraiser were disbursed at the direction of the Committee to
2 Trump’s political benefit, including the presentation of five \$100,000 ceremonial checks
3 referencing Trump’s campaign slogan to veterans’ organizations at campaign rallies immediately
4 preceding the Iowa caucuses. In its Response, the Committee mistakenly focuses only on
5 whether the veterans’ organizations engaged in federal election activity, ignoring the Foundation
6 in its analysis. However, as outlined above, the funds were not solicited directly to the veterans’
7 organizations, but were instead solicited to, and in some instances received by, the Foundation.
8 The funds were obtained for, and spent to further, activities in connection with Trump’s election
9 and, therefore, the Charitable Exclusion does not apply.

10 Finally, the Charitable Exclusion applies only to “solicitations.” The Committee’s
11 arguments regarding the Charitable Exclusion do not apply to receiving, directing, transferring,
12 or spending the \$2.8 million that was deposited directly into the Foundation’s bank account or
13 the \$600,000 in donations from Icahn and LeFrak.⁹³ The Committee does not address these
14 additional actions in its Response, which in any event provide separate bases for liability under
15 section 30125(e).⁹⁴

16 In sum, based on the available information, Trump, the Committee, and the Foundation
17 — an entity Trump EFMC’d — solicited, received, directed, transferred, or spent funds outside
18 the source and amount limitations of the Act in connection with a federal election, *i.e.*, Trump’s

⁹³ The \$1 million donation from Rahr may also fall into this category; however, the record is less developed as to whether Trump only solicited this donation or also directed this donation to particular charities similar to the Icahn and LeFrak donations.

⁹⁴ See, *e.g.*, F&LA at 7, MUR 6957 (Isadore Hall III) (finding reason to believe that respondents violated the act by “receiving” nonfederal funds).

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1 candidacy for President of the United States. Accordingly, the Commission finds reason to
2 believe that Trump, the Committee, and the Foundation violated 52 U.S.C. § 30125(e).

3 **B. There Is No Reason to Believe that the Foundation’s \$25,000 Donation to**
4 **And Justice for All in September 2013 Violated the Act**

5
6 In addition to the funds solicited, received, directed, transferred, or spent in connection
7 with the Fundraiser, the OAG Referral also determined that in September 2013 the Foundation
8 made a \$25,000 payment to And Justice for All, “a Florida political organization that supported
9 the re-election of Pam Bondi to the position of Florida Attorney General.”⁹⁵ Because Trump was
10 not a federal candidate at the time that the Foundation made the state election donation, the
11 restrictions of section 30125(e)(1)(B), which applies to soft money in non-federal elections,
12 would not apply to the Foundation’s activity at that time. In addition, the activity is beyond the
13 applicable five year statute of limitations. Accordingly, the Commission finds no reason to
14 believe that Respondents violated the Act in connection with the 2013 donation.

⁹⁵ OAG Referral at 7.