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October 15, 2019

***By email to CELA@fec.gov***

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 7631**  
**NY Fairness PAC**

Dear Mr. Jordan:

I am responding on behalf of respondent NY Fairness PAC to the complaint (“Complaint”) filed with the Commission by the Foundation for Accountability and Civic Trust (FACT). FACT alleges that NY Fairness PAC made unlawful contributions to De Blasio 2020. For the reasons stated below, the Commission should find no reason to believe that NY Fairness PAC violated the Federal Election Campaign Act (“the Act”) with respect to certain allegations, and with respect to matters as to which Respondent acknowledges noncompliance with the Act the Commission should refer them to pre-probable cause conciliation for a negotiated resolution.

**I. Background**

Bill de Blasio has been the Mayor of the City of New York since January 1, 2014. In July 2018 he and others established NY Fairness PAC, an unincorporated nonfederal political organization under Section 527 of the Internal Revenue Code (IRC), registered on July 27, 2018 as a political action committee with the New York State Board of Elections (NYSBOE). As such, NY Fairness PAC could contribute to New York nonfederal candidates, political party committees and political action committees, but it could not undertake independent expenditures, as defined by the New York Election Law, in the state’s nonfederal elections.<sup>1</sup> NY Fairness PAC could, however, spend in connection with nonfederal elections in other states subject only to those states’ laws and the obligation to disclose all such spending

<sup>1</sup> See N.Y. Election Law § 14-100(16).

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on its periodic reports to NYSBOE.<sup>2</sup> The purpose of NY Fairness PAC was to support nonfederal Democratic Party candidates and progressive causes in New York State and elsewhere, and it did so, including by making contributions and public communications, and by travel by Mayor de Blasio for activities, events and conferences in order to promote progressive positions on issues and to support candidates who embraced those positions, as reflected on its reports to NYSBOE.<sup>3</sup>

At some point during 2019 Mayor de Blasio began to consider becoming a candidate for the Democratic Party's nomination for President of the United States in 2020. Mayor de Blasio considered that travel he undertook in early March marked the first exploratory spending, by NY Fairness PAC. NY Fairness PAC undertook exploratory spending during the ensuing two months while maintaining other activities, as is reflected on its report to NYSBOE and the July Quarterly Report submitted by De Blasio 2020, which included memo entries to disclose exploratory activities.<sup>4</sup>

On May 16 Mayor de Blasio publicly announced his candidacy and De Blasio 2020 filed its Statement of Organization with the Commission, and Mayor de Blasio filed a Statement of Candidacy on May 20. The presidential campaign continued until September 20, when Mayor de Blasio announced that he would no longer be an active candidate. NY Fairness PAC continues to operate in accordance with its original purposes.

Other facts pertinent to the Complaint are set forth below as necessary in responding to the allegations.

## **II. The Commission Should Find No Reason to Believe That Respondents Violated the Act As Alleged in Part**

Solely in reliance upon on a newspaper article, FACT alleges that two payments by NY Fairness PAC were unlawful contributions to De Blasio 2020 because, FACT claims, they were “expenses of the presidential campaign.”<sup>5</sup> In fact, neither of these payments was an expense of the presidential campaign, for different reasons.

First, NY Fairness PAC paid Freedomland Media \$19,694 on May 12, during, albeit near the end of, the exploratory period, and it was so designated on De Blasio 2020's July Quarterly Report, at page 378. Freedomland Media was engaged shortly beforehand to produce a video that would be used in connection with either a presidential campaign launch or, if there was no campaign, then for other continuing political activity. At the time of the payment there was no final decision on candidacy. The final video did become a De Blasio 2020 video and accordingly, De Blasio 2020 paid Freedomland Media the balance due for this work, disbursing \$19,694 on June 13, as also reported also on page 378 of the July Quarterly Report, and \$24,694 on July 9. If an individual who is testing the waters subsequently becomes

<sup>2</sup> See NYSBOE, 1978 Formal Opinion No. 8 (1978); 1977 Formal Opinion No. 2 (April 14, 1977).

<sup>3</sup> See generally reports filed with NYSBOE by NY Fairness PAC, No. A22609, available via <https://www.elections.ny.gov/recipientstext.html>.

<sup>4</sup> See <https://docquery.fec.gov/pdf/448/201907199151533448/201907199151533448.pdf>; [https://cfapp.elections.ny.gov/ords/plsql\\_browser/getreports?filer\\_in=A22609&fyear\\_in=2019&rep\\_in=K](https://cfapp.elections.ny.gov/ords/plsql_browser/getreports?filer_in=A22609&fyear_in=2019&rep_in=K).

<sup>5</sup> Complaint at 2, 3, citing <https://nypost.com/2019/07/19/de-blasio-used-state-account-he-controls-as-campaign-slush-fund/>.

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a candidate, then an exploratory expense paid during the exploratory period must be reported as an “expenditure” by the candidate’s authorized committee, but that *expenditure* is not thereby also a *contribution to* that authorized committee.<sup>6</sup> FACT does not even acknowledge NY Fairness PAC’s exploratory role.

Second, NY Fairness PAC paid \$9,129.72 to Trilogy Interactive on July 1. This payment related back to and finished payment for previous work by Trilogy Interactive for NY Fairness PAC that occurred *prior* to Mayor de Blasio becoming a candidate. On April 12 NY Fairness PAC paid Trilogy Interactive \$46,000 for digital advertisements that addressed issues and made no reference whatsoever to any election or potential candidacy; and asked viewers to “sign on” in order to build the respective PACs’ lists of email contacts for future fundraising and other activities; viewers were asked to “sign on” if they agreed with particular issue positions (*e.g.*, “It’s time for paid family leave for ALL Americans. Sign on if you agree!”).

FACT does not provide any facts to support its bald statement that these payments were candidate expenses; nor does the newspaper article, which simply states that it “identified another \$27,609 in NY Fairness PAC expenditures made on or after Mayor de Blasio’s May 16 announcement – including \$9,130 for ‘digital services’ from Trilogy Interactive,” without explaining their connection to Mayor de Blasio’s actual candidacy.<sup>7</sup> As is well-established, “purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of [the Act] has occurred.”<sup>8</sup> That is the situation here.

### **III. Conduct That Did Not Comply With the Act Should Be Resolved Through Pre-Probable Cause Conciliation**

Respondents acknowledge that the following actions did not comply with the Act. None was intentional, and most have already been disclosed in reports to the Commission itself. Respondents respectfully request that the Office of General Counsel recommend that the Commission enter into pre-probable cause conciliation with respect to these matters.

NY Fairness PAC made payments for travel and digital services that, at the time the commitments were made, were believed to be exploratory expenses, but NY fairness PAC and its co-respondents came to realize in retrospect, and due to the Mayor’s new status as a candidate, that they should have been paid by De Blasio 2020. Most occurred on May 15, the day Mayor de Blasio became a candidate, and the ensuing two days. NY Fairness PAC paid for travel that was previously arranged for that time irrespective of whether or not the Mayor then would be a candidate; NY Fairness PAC had just engaged the digital services firm Clarify Agency with an initial \$40,000 fee, all of whose work would now be done for De Blasio 2020; the authorized committee was not yet established, let alone funded; and as a result in the hectic days of transition to candidacy these payments were erroneously paid by NY Fairness PAC. Another payment, \$4,200 on June 4 to the Yard, consisted of rent for office space that by then was used

<sup>6</sup> See 11 C.F.R. 11 C.F.R. §§ 100.72, 100.131(a).

<sup>7</sup> See <https://nypost.com/2019/07/19/de-blasio-used-state-account-he-controls-as-campaign-slush-fund/>.

<sup>8</sup> Statement of Reasons of Commissioners David Mason, Karl J. Sandstorm, Bradley A Smith and Scott E. Thomas at 3, MUR 4960 (December 21, 2000).

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solely by De Blasio 2020. NY Fairness PAC had previously leased this space and paid rent by ACH transfer. After De Blasio 2020 instead assumed this obligation, it provided its bank account information to The Yard. However, the Yard erred by not updating the account and, without the prior knowledge or approval of either NY Fairness PAC or De Blasio 2020, secured another ACH transfer for rent on June 4 from NY Fairness PAC's account. Upon discovery, The Yard was notified and it made the requested change.<sup>9</sup>

NY Fairness PAC and De Blasio 2020 recognized these errors and, accordingly, De Blasio listed the then-determined total of all of these payments – \$52,851.89<sup>10</sup> – on Schedule D-P, “Debts and Obligations,” of its first report to the Commission, with the memo entry “Travel Expenses, Digital Advertising, Rent.” De Blasio 2020 has since reimbursed NY Fairness PAC for the \$52,851.89 amount.

Contrary to FACT's unsupported allegation<sup>11</sup>, none of these NY Fairness PAC payments were made as a “loan” to De Blasio 2020; NY Fairness PAC was well aware that it could *not* lend to De Blasio 2020, let alone pay candidate expenses, and De Blasio 2020 properly disclosed this debt on Schedule D-P, “Debts and Obligations,” rather than on Schedule C-P, “Loans.”<sup>12</sup>

All of these matters are straightforward, no investigation is necessary to establish the facts admitted, and NY Fairness PAC concedes noncompliance with the Act. Under these circumstances pre-probable cause conciliation is appropriate.<sup>13</sup> NY Fairness PAC is willing to resolve them through that process and respectfully requests that the Office of General Counsel so recommend to the Commission.

### Conclusion

Accordingly, NY Fairness PAC respectfully requests that the Commission find no reason to believe that respondents violated the Act as set forth above, and that other matters be referred by the Commission to pre-probable cause conciliation.

Respectfully submitted,



Laurence E. Gold  
Counsel to NY Fairness PAC

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<sup>9</sup> Perhaps needless to say, we reject the “strapped for cash” characterization that FACT quotes from the newspaper article, see Complaint at 2, which in turn attributes that phrase to no source.

<sup>10</sup> Most of the travel costs entailed airline fares, and a more recent internal accounting shows that several of the charges initially paid were refunded, so the travel portion of this total is \$7,933.29, not \$8,651.89.

<sup>11</sup> See Complaint at 2-3.

<sup>12</sup> See generally Form 3P and its Instructions.

<sup>13</sup> See generally 11 C.F.R. § 111.18(d); FEC, *Guidebook for Complainants and Respondents on the FEC Enforcement Process* at 17 (May 2012).