

**FEDERAL ELECTION COMMISSION****FIRST GENERAL COUNSEL'S REPORT****MUR: 7631**

DATE COMPLAINT FILED: 08/05/2019

DATE OF NOTIFICATION: 08/07/2019

LAST RESPONSE RECEIVED: 10/15/2019

DATE ACTIVATED: 03/04/2020

ELECTION CYCLE: 2020

EXPIRATION OF SOL: 07/19/2024

**COMPLAINANT:**Foundation for Accountability and Civic Trust and  
Kendra Arnold**RESPONDENTS:**Bill de Blasio  
De Blasio 2020 and Herbert Block in his official  
capacity as treasurer  
NY Fairness PAC**MUR: 7634**

DATE COMPLAINT FILED: 08/07/2019

DATE OF NOTIFICATION: 08/14/2019

LAST RESPONSE RECEIVED: 10/15/2019

DATE ACTIVATED: 03/04/2020

ELECTION CYCLE: 2020

EXPIRATION OF SOL: 03/17/2024

**COMPLAINANT:**

Campaign Legal Center and Margaret Crist

**RESPONDENTS:**De Blasio 2020 and Herbert Block in his official  
capacity as treasurer  
Fairness PAC and Herbert Block in his official  
capacity as treasurer  
NY Fairness PAC**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(a)

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)

52 U.S.C. § 30116(f)

11 C.F.R. § 100.72(a)

11 C.F.R. § 100.131(a)

11 C.F.R. § 110.2(l)

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2 **INTERNAL REPORTS CHECKED:** Disclosure Reports  
3  
4 **FEDERAL AGENCIES CHECKED:** None

5 **I. INTRODUCTION**

6 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
7 established Fairness PAC, a federal multi-candidate committee, and NY Fairness PAC, a non-  
8 federal committee registered with the state of New York (collectively, the "Committees"). The  
9 Complaints allege that these Committees funded exploratory activity and made other  
10 contributions to de Blasio's campaign in excess of federal contribution limits as set forth in the  
11 Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.  
12 The Complaints further allege that 25 individuals made excessive contributions to de Blasio's  
13 campaign because their aggregate contributions to the Committees and De Blasio 2020 exceeded  
14 the \$2,800 limit on individual contributions to a campaign.

15 Respondents admit that NY Fairness PAC made approximately \$53,000 in expenditures  
16 for travel and consulting services that benefited the campaign after it was formed. Respondents  
17 also admit that Fairness PAC paid for \$123,000 in polling expenses that it contends were for  
18 testing-the-waters purposes and that the campaign reimbursed late. Respondents otherwise deny  
19 the allegations. Respondents request that the Commission enter into pre-probable cause  
20 conciliation with respect to the approximately \$176,000 in contributions from the Committees  
21 and otherwise dismiss the allegations.

22 Based on the available information, Fairness PAC and NY Fairness PAC appear to have  
23 made excessive in-kind contributions. Although the Committees admit to paying for some of  
24 de Blasio's expenses, their payments appear to exceed the \$176,000 identified by the  
25 Respondents. Instead, the information in the record, which includes identical expenditures

1 reported both by De Blasio 2020 and the Committees, indicates that the Committees made  
2 additional payments related to de Blasio's testing-the-waters and campaign activities totaling as  
3 much as approximately \$350,000 — most of which de Blasio and De Blasio 2020 never  
4 reimbursed — and thereby made excessive, in-kind contributions. Further, De Blasio 2020 has  
5 not properly disclosed many of the activities paid for by the Committees.

6 Accordingly, we recommend that the Commission find reason to believe that:

7 (1) Fairness PAC and Herbert Block in his official capacity as treasurer (“Fairness PAC”) and  
8 NY Fairness PAC made, and De Blasio 2020 and Herbert Block in his official capacity as  
9 treasurer (“De Blasio 2020”) and de Blasio accepted, excessive in-kind contributions in violation  
10 of 52 U.S.C. § 30116(a) and (f) and 11 C.F.R. § 100.72(a); and (2) De Blasio 2020 failed to  
11 properly report its testing-the-waters and campaign activities in violation of 52 U.S.C.  
12 § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a). Because the full scope of the  
13 violations is unclear, we propose to open an investigation to determine the totality of the  
14 contributions made by the Committees. We recommend that the Commission authorize the use  
15 of compulsory process in the event it is necessary to the investigation. With respect to the  
16 allegations that individuals made excessive contributions to the campaign, we recommend that  
17 the Commission take no action at this time.

## 18 **II. FACTUAL BACKGROUND**

### 19 **A. Establishment of Fairness PAC and NY Fairness PAC**

20 Bill de Blasio served as mayor of New York from January 1, 2014 to December 31,  
21 2021.<sup>1</sup> According to the Response submitted on his behalf in connection with these matters,

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio's NYC Mayoral Tenure, What's Next and What's Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

1 de Blasio decided to become a candidate for President of the United States on May 15, 2019, and  
2 publicly announced his decision the following day, on May 16, 2019.<sup>2</sup> That same day, de Blasio  
3 filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.<sup>3</sup>  
4 De Blasio's campaign ran until September 20, 2019, when he announced its suspension.<sup>4</sup>

5 Before announcing his candidacy, de Blasio "and others" established two committees in  
6 July 2018: Fairness PAC and NY Fairness PAC, both organized as unincorporated political  
7 organizations under section 527 of the Internal Revenue Code.<sup>5</sup> First, on July 25, 2018, Fairness  
8 PAC filed its Statement of Organization with the Commission<sup>6</sup> and became a multicandidate  
9 committee in January 2019.<sup>7</sup> Fairness PAC states that its purpose was "to support federal  
10 Democratic candidates and progressive causes in New York State and elsewhere."<sup>8</sup> Then, on  
11 July 27, 2018, NY Fairness PAC, registered with the New York State Board of Elections  
12 ("NYSBOE") as a state political action committee.<sup>9</sup> NY Fairness PAC states that its purpose  
13 was "to support nonfederal Democratic Party candidates and progressive causes in New York  
14 State and elsewhere, and it did so, including by making contributions and public communications

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<sup>2</sup> De Blasio 2020 and Bill de Blasio Resp. ("De Blasio Resp.") at 2 (Oct. 15, 2019), MUR 7631.

<sup>3</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>4</sup> De Blasio Resp. at 2, MUR 7631; Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

<sup>5</sup> De Blasio Resp. at 1 (Oct. 15, 2019), MUR 7634.

<sup>6</sup> Fairness PAC, Statement of Organization (July 25, 2018); *see also* Fairness PAC, Amended Statement of Organization (July 25, 2019) (same).

<sup>7</sup> The Committee informed the Commission that it had reached multicandidate status on January 31, 2019. Fairness PAC, Notification of Multicandidate Status (Jan. 31, 2019).

<sup>8</sup> Fairness PAC Resp. at 2 (Oct. 15, 2019), MUR 7634; *see also* Laura Nahmias and Gloria Pazmino, *De Blasio Launches Federal PAC and Considers Post-Mayoral Run*, POLITICO (July 26, 2018), <https://www.politico.com/states/new-york/albany/story/2018/07/25/de-blasio-launches-federal-pac-and-considers-post-mayoral-run-529622> (stating that de Blasio had stated he formed Fairness PAC in order "to support national Democratic candidates in their efforts to retake the House, Senate and New York state Senate").

<sup>9</sup> NY Fairness PAC Resp. at 1 (Oct. 15, 2019), MUR 7631; De Blasio Resp. at 1, MUR 7631.

1 and by travel by Mayor de Blasio for activities, events and conferences . . . to promote  
2 progressive positions on issues and to support who embraced those positions.”<sup>10</sup>

3 The two political committees entered into and operated under a joint fundraising  
4 agreement pursuant to Commission regulations, with Fairness PAC as the joint fundraising  
5 representative.<sup>11</sup> According to the Complaint in MUR 7634, the two committees conducted their  
6 joint fundraising through an ActBlue fundraising page that indicated that the Committees would  
7 accept contributions from individuals of up to \$5,000 total, or \$2,500 each<sup>12</sup> and that  
8 contributions from individuals would be allocated 50% to Fairness PAC and 50% to NY Fairness  
9 PAC.<sup>13</sup>

10 At the time it filed its initial statement of organization, Fairness PAC represented its  
11 website to be [billdeblasio.com](http://billdeblasio.com)<sup>14</sup> — which, according to the Complaint in MUR 7634, previously  
12 had been associated with de Blasio’s mayoral campaign.<sup>15</sup> However, Fairness PAC did not  
13 mention the website in an amended statement of organization it filed on July 25, 2019, or  
14 thereafter.<sup>16</sup> Archived versions of the website show that as of July, 2018, [billdeblasio.com](http://billdeblasio.com)  
15 provided information regarding Fairness PAC and stated that it was paid for by Fairness PAC,

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<sup>10</sup> NY Fairness PAC Resp. at 2 (Oct. 15, 2019), MUR 7634.

<sup>11</sup> Fairness PAC Resp. at 2, MUR 7634.

<sup>12</sup> *See* Compl. at 3-4 (Aug. 7, 2019), MUR 7634; De Blasio Resp. at 2, MUR 7634 (citing 11 C.F.R. § 102.17, which permits federal and non-federal committees to engage in joint fundraising so long as participants comply with the Act’s contribution prohibitions and limitations); NY Fairness PAC Resp. at 2, MUR 7634; Fairness PAC Resp. at 2 (Oct. 15, 2019), MUR 7634.

<sup>13</sup> Compl. ¶ 9, MUR 7634 (citing Donate to Fairness PAC, ActBlue, <https://secure.actblue.com/donate/fairnesspac>) (quotation marks omitted). The underlying ActBlue page is no longer available.

<sup>14</sup> Fairness PAC, Statement of Organization (July 25, 2018).

<sup>15</sup> Compl. at 3, MUR 7634. According to the Complaint, after the formation of Fairness PAC, the disclaimer on [billdeblasio.com](http://billdeblasio.com) was changed from “Paid for by de Blasio 2017,” the name of de Blasio’s mayoral committee, to “Paid for by Fairness PAC.” *Id.*

<sup>16</sup> Fairness PAC, Amended Statement of Organization (July 25, 2019).

1 while as of May, 2019, [billdeblasio.com](http://billdeblasio.com) solicited contributions for, and stated that it was paid for  
 2 by, De Blasio 2020.<sup>17</sup>

3 **B. Payments Made by the Committees Allegedly for Financing de Blasio's**  
 4 **Testing-the-Waters and Campaign Activities**

5 According to Respondents, de Blasio began to test the waters for a potential 2020  
 6 presidential run in early March 2019.<sup>18</sup> De Blasio 2020's July 2019 Quarterly Report, which  
 7 was the first report the Committee filed with the Commission after de Blasio announced his  
 8 candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7  
 9 through May 14, 2019.<sup>19</sup> Despite this level of spending, that report does not indicate how any of  
 10 those expenses were funded because it discloses no contributions received during the testing-the-  
 11 waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the  
 12 Committee reported accepting its first contribution.<sup>20</sup>

13 Although neither Committee has been disclosed as a contributor to de Blasio's campaign,  
 14 Fairness PAC and NY Fairness PAC admit to paying for at least some of de Blasio's exploratory  
 15 activities. In its Responses, NY Fairness PAC represents that it made the first payment for  
 16 de Blasio's exploratory expenses by paying for travel on March 13, 2019,<sup>21</sup> and that NY Fairness

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<sup>17</sup> Compare [deblasio.com](http://deblasio.com) [<https://web.archive.org/web/20180727015840/https://billdeblasio.com/>] (July 27, 2018, archived snapshot of website), with [deblasio.com](http://deblasio.com) [[https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de\\_blasio\\_donate\\_is/](https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de_blasio_donate_is/)] (May 17, 2019, archived snapshot of website).

<sup>18</sup> See, e.g., De Blasio Resp. at 2, MUR 7634.

<sup>19</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019). A list of the expenses that are described as exploratory in the campaign's July 2019 filing is included as Attachment 1.

<sup>20</sup> *Id.*

<sup>21</sup> NY Fairness PAC Resp. at 2, MUR 7631; see also De Blasio 2020, Amended July 2019 Quarterly Report at 364; New York State Board of Elections, Campaign Finance Disclosure, NY Fairness PAC, [https://cfapp.elections.ny.gov/ords/plsql\\_browser/EXPENSESA\\_county?ID\\_in=A22609&date\\_From=&date\\_to=&OFFICE\\_in=ALL&AMOUNT\\_From=&AMOUNT\\_to=&ZIP1=&ZIP2=&ORDERBY\\_IN=N](https://cfapp.elections.ny.gov/ords/plsql_browser/EXPENSESA_county?ID_in=A22609&date_From=&date_to=&OFFICE_in=ALL&AMOUNT_From=&AMOUNT_to=&ZIP1=&ZIP2=&ORDERBY_IN=N) (hereafter "NY Fairness PAC NYSBOE Disclosures"). Although not specifically admitted by the Respondents, the campaign disclosed expenditures related to a press list and consulting services that it described as "exploratory" on March 7

1 PAC continued to pay for such expenses “during the ensuing two months,”<sup>22</sup> which is reflected  
2 in reports filed with the NYSBOE and the Commission.<sup>23</sup> De Blasio 2020 has reported in its  
3 initial filing a \$52,851.89 debt owed to NY Fairness PAC,<sup>24</sup> which Respondents state includes  
4 approximately \$8,600 for travel expenses.<sup>25</sup>

5 As alleged in the Complaint in MUR 7634, De Blasio 2020's Amended July 2019  
6 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as  
7 “Exploratory” in memo entries.<sup>26</sup> A number of those expenditures are identical to expenditures  
8 that appear in Fairness PAC or NY Fairness PAC's reports, reflecting the same amounts and  
9 dates of disbursement.<sup>27</sup> These include: approximately \$13,000 in consulting services to various  
10 individuals and entities; an \$8,600 payment for rent to The Yard; a payment of \$1,769.22 to  
11 Cision, Inc., for a press list; and various payments for travel, food, and lodging.<sup>28</sup> The 78  
12 expenditures listed in De Blasio 2020's initial report as “exploratory” also include a payment of  
13 \$68,000 to Brilliant Corners Research and Strategies for “polling.”<sup>29</sup>

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and March 8, respectively. The campaign disclosed additional disbursements for travel and described as “exploratory” taking place in March, April, and May. De Blasio 2020, Amended July 2019 Quarterly Report. They included exploratory expenditures for travel, food, and lodging in Illinois, Massachusetts, Nevada, New Hampshire, South Carolina, and Virginia. *Id.*

<sup>22</sup> NY Fairness PAC Resp. at 2, MUR 7631.

<sup>23</sup> De Blasio 2020, Amended 2019 July Quarterly Report; NY Fairness PAC NYSBOE Disclosures.

<sup>24</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>25</sup> NY Fairness PAC Resp. at 3-4, MUR 7631.

<sup>26</sup> *See* Compl. ¶ 11, MUR 7634; De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>27</sup> *Compare* De Blasio 2020, Amended 2019 July Quarterly Report, *with* Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020); NY Fairness PAC NYSBOE Disclosures.

<sup>28</sup> *See* De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>29</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

1           The 78 exploratory expenditures further include a payment to Freedomland Media for  
2 \$19,964 on May 12, 2019.<sup>30</sup> This corresponds to a payment by NY Fairness PAC in the same  
3 amount and on the same day to Freedomland Media for “Video Production Services.”<sup>31</sup>  
4 Respondents acknowledge that NY Fairness PAC thereby paid for a portion of the cost of what  
5 became de Blasio’s presidential campaign announcement video, which De Blasio 2020 released  
6 four days later.<sup>32</sup> De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this  
7 payment. De Blasio 2020 later made additional payments to Freedomland Media in the amounts  
8 of \$19,694 on June 13,<sup>33</sup> \$24,694 on July 9,<sup>34</sup> and \$8,000 on August 7.<sup>35</sup>

9           The Complaints also identify three groups of expenditures by the Committees that De  
10 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, De Blasio  
11 2020 allegedly failed to disclose as an expenditure a \$55,000 payment by Fairness PAC to  
12 Keating Research on May 13, 2019 that is described as for “exploratory” purposes in Fairness  
13 PAC’s 2019 Mid-Year Report.<sup>36</sup>

14           *Second*, on April 12, 2019, NY Fairness PAC and Fairness PAC each made  
15 disbursements of \$46,000 — \$92,000 in total — to “Trilogy Interactive” for a “digital media  
16 buy.”<sup>37</sup> Within days of the April disbursements, de Blasio’s Facebook page began running

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<sup>30</sup> *Id.* at 378.

<sup>31</sup> NY Fairness PAC NYSBOE Disclosures.

<sup>32</sup> NY Fairness PAC Resp. at 2, MUR 7631.

<sup>33</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 379.

<sup>34</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 273 (June 22, 2020).

<sup>35</sup> *Id.* at 273.

<sup>36</sup> Compl. ¶ 13, MUR 7634; Fairness PAC, Amended July Mid-Year Report at 143, 151 (Jan, 31, 2020).

<sup>37</sup> Compl. ¶ 15, MUR 7634; Fairness PAC, Amended 2019 Mid-Year Report at 157; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9 (July 15, 2019), [https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs\\_sch\\_report+p\\_filer\\_id=A22609+p\\_e\\_year=2019+p\\_fir](https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs_sch_report+p_filer_id=A22609+p_e_year=2019+p_fir)



1 dozens of ads (with disclaimers stating that they were paid for by Fairness PAC) that criticized  
2 President Trump or promoted de Blasio's policy agenda, and asked recipients to share their  
3 names and email addresses.<sup>38</sup> The Complaints allege that those payments to Trilogy Interactive  
4 were made for de Blasio's exploratory activities because after de Blasio announced his  
5 candidacy, the same Facebook page continued running ads "with similar messages," but now  
6 with disclaimers stating that the ads were paid for by De Blasio 2020.<sup>39</sup> Respondents deny that  
7 those payments were related to de Blasio's testing-the-waters activities on the basis that the  
8 advertisements in question were issue-oriented and made no reference to any election or  
9 potential candidacy.<sup>40</sup>

10 *Third*, the Complaint in MUR 7634 alleges that \$5,069 in expenditures by NY Fairness  
11 PAC for "digital services" and "digital consulting" to various vendors that took place from  
12 January 4 to April 23, 2019, were in fact contributions to the campaign because NY Fairness  
13 PAC does not have an online presence or purchase ads.<sup>41</sup> Respondents contend that these  
14 payments were for "fundraising emails and emails concerning the 2018 elections."<sup>42</sup>

15 De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first  
16 report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>43</sup> De  
17 Blasio 2020's first report disclosed \$1,087,564.24 in contributions from individuals but no

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[port\\_id=K+p\\_transaction\\_code=F](#). NY Fairness PAC reported another payment to Trilogy Interactive of \$9,130 on July 1, 2019; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 15.

<sup>38</sup> Compl. ¶ 15, MUR 7634; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook, <https://www.facebook.com/ads/library/?id=1303967669741097>.

<sup>39</sup> Compl. ¶ 15, MUR 7634.

<sup>40</sup> Fairness PAC Resp. at 3, MUR 7634.

<sup>41</sup> Compl. ¶ 15, MUR 7634.

<sup>42</sup> De Blasio Resp. at 5, MUR 7634.

<sup>43</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

1 contributions from the Committees.<sup>44</sup> However, it listed a \$52,851.89 debt owed to NY Fairness  
2 PAC for “Travel Expenses, Digital Advertising, [and] Rent,” which Respondents represent  
3 comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020, \$4,200 in  
4 rent for office space that the campaign used, and other campaign-related travel costs.<sup>45</sup>

### 5 **C. Reimbursement of Testing-the-Waters and Campaign Expenses**

6 Although Respondents dispute that many of the disbursements made by the Committees  
7 supported de Blasio’s future or actual candidacy, the campaign committee has reimbursed the  
8 Committees for some of the payments in question. On September 11, 2019, De Blasio 2020 paid  
9 NY Fairness PAC the \$52,851.89 listed as a debt on the campaign’s July report.<sup>46</sup> De Blasio  
10 2020 reported two other disbursements to NY Fairness PAC on September 30, 2019: \$1,047.50  
11 for a “website” and \$19,397.78 for “digital assets,”<sup>47</sup> and the campaign made a similar \$1,047.50  
12 payment to Fairness PAC for a “website” the same day.<sup>48</sup> Further, De Blasio 2020 reported  
13 making a \$123,000 payment to Fairness PAC on July 30, 2019, for “polling.”<sup>49</sup> Respondents  
14 admit that this corresponds to the disbursements by Fairness PAC of \$55,000 to Keating  
15 Research on May 13, 2019, and \$68,000 to Brilliant Corners Research & Strategies on March 27,  
16 2019.<sup>50</sup> In its initial FEC filing in July 2019, De Blasio 2020 reported the expenditure to

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<sup>44</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

<sup>45</sup> *Id.* at 417; NY Fairness PAC Resp. at 3, MUR 7631; De Blasio 2020, Amended 2019 October Quarterly Report at 352 (Oct. 15, 2019).

<sup>46</sup> De Blasio Resp. at 4, MUR 7631; De Blasio 2020, Amended October 2019 Quarterly Report.

<sup>47</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 316.

<sup>48</sup> *Id.* at 273.

<sup>49</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378.

<sup>50</sup> Fairness PAC Resp. at 7, MUR 7634; De Blasio Resp. at 10, MUR 7634; *see also* Fairness PAC, Amended 2019 July Mid-Year Report at 143, 151 (Jan. 31, 2020) (disclosing both payments and describing them as “exploratory”).

1 Brilliant Corners<sup>51</sup> but not the expenditure to Keating Research, and the committee has not  
 2 amended this report. The campaign has reported no other disbursements to either Committee.

3 The following chart summarizes the payments by the Committees specifically identified  
 4 by the Complaints that were allegedly either testing-the-waters or campaign expenses, when if  
 5 ever De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed the  
 6 Committee:

7 **Alleged Payments Made by Fairness PAC and/or NY Fairness PAC to Support de Blasio**<sup>52</sup>

PAYOR	Amount	Recipient	Date of Payment	Date of Reporting by De Blasio 2020	Description	Date of Reimbursement
Fairness PAC	\$68,000	Brilliant Corners Research and Strategies	March 27, 2019	July 19, 2019	Polling	June 30, 2019
NY Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None
Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None
NY Fairness PAC	\$4,200	The Yard	May 2, 2019	July 19, 2019	Office Space	September 11, 2019
NY Fairness PAC	\$19,964	Freedomland Media	May 12, 2019	July 19, 2019	Campaign Announcement Video	None
Fairness PAC	\$55,000	Keating Research	May 13, 2019	Not Disclosed	Polling	June 30, 2019
NY Fairness PAC	\$40,000	Clarify Agency	May 15, 2019	July 19, 2019	Digital Services	September 11, 2019

<sup>51</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

<sup>52</sup> As stated above, De Blasio 2020 also made payments to NY Fairness PAC on September 30 of \$1,047.50 for a “website” and \$19,397.78 for “digital assets. It also paid Fairness PAC \$1,047.50 for a “website” on the same day. It is not clear whether De Blasio 2020 reimbursed the Committees for any of the expenditures listed.

PAYOR	Amount	Recipient	Date of Payment	Date of Reporting by De Blasio 2020	Description	Date of Reimbursement
NY Fairness PAC	\$9,130	Trilogy Interactive	July 1, 2019	Not Disclosed	Digital Media Buy	None
NY Fairness PAC	\$8,651.89	Various Recipients	Various	July 19, 2019	Travel	September 11, 2019
Both	\$60,695.16	Various Recipients	Various	July 19, 2019	Various travel and administrative expenses	None
NY Fairness PAC	\$5,069	Blue State Digital and Aisle 518 Strategies, LLC	Various <sup>53</sup>	Not Disclosed	Digital Services	None
<b>TOTAL</b>	<b>\$362,710</b>					

### 1 III. LEGAL ANALYSIS

#### 2 A. The Commission Should Find Reason to Believe that Fairness PAC and NY 3 Fairness PAC Made, and de Blasio and De Blasio 2020 Accepted, Excessive 4 In-Kind Contributions

##### 5 1. The Committees' Payment of de Blasio's Testing-the-Waters Activities

6 An individual becomes a candidate under the Act if he or she receives contributions or  
 7 makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>54</sup>  
 8 The Commission's regulations create exemptions to the definitions of contribution and  
 9 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,  
 10 *i.e.*, to "test the waters."<sup>55</sup> These exemptions exclude from the definitions of "contribution" and

<sup>53</sup> The Complaint in MUR 7634 appears to be referring to four payments to Blue State Digital and two payments to Aisle 518 Strategies, LLC taking place between January 4 and April 23, 2019. *See* NY Fairness PAC NYSBOE Disclosures.

<sup>54</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>55</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

1 “expenditure” those funds received and payments made solely to determine whether an  
2 individual should become a candidate.<sup>56</sup> Testing-the-waters activities include, but are not limited  
3 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act  
4 may be used for such activities.<sup>57</sup> If the individual subsequently becomes a candidate, the funds  
5 previously received for testing-the-waters activities are thereafter considered contributions  
6 subject to the reporting requirements of the Act.<sup>58</sup> Commission regulations further require that  
7 “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”<sup>59</sup> The  
8 Act prohibits any person from making contributions to any candidate and his authorized political  
9 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800  
10 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>60</sup> The  
11 Act also prohibits any candidate or political committee from knowingly accepting any excessive  
12 contribution.<sup>61</sup> Consequently, in order to comply with these requirements, de Blasio was limited  
13 to accepting contributions that complied with the Act’s source and amount restrictions while  
14 testing the waters.

15 Respondents contend that the Commission has never restricted the type of organizational  
16 vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides that funds  
17 received for testing the waters become contributions once an individual becomes a candidate and  
18 that those contributions “must be reported with the first report filed by the principal campaign

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<sup>56</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>57</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>58</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>59</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>60</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>61</sup> 52 U.S.C. § 30116(f).

1 committee of the candidate, regardless of the date the funds were received.”<sup>62</sup> Therefore, in past  
2 matters, the Commission has determined that a payment made by a multi-candidate committee  
3 for an individual’s testing-the-waters activities constitutes an in-kind contribution and must be  
4 reported as such by the candidate’s authorized committee after that individual becomes a  
5 candidate.<sup>63</sup> Pursuant to the Act’s contribution limits, a multicandidate committee would be  
6 limited to spending up to \$5,000 on the candidate’s exploratory efforts; if such committee were  
7 to spend more, that committee would be making an excessive in-kind contribution to the  
8 candidate’s authorized committee.<sup>64</sup> With respect to non-federal organizations, the Commission  
9 has similarly found that payments for testing-the-waters activities by such entities also constitute  
10 in-kind contributions to a candidate.<sup>65</sup> Non-federal organizations are limited to the individual  
11 \$2,800 contribution threshold.<sup>66</sup>

12 Here, there is already significant evidence that Fairness PAC and NY Fairness PAC  
13 funded activities that were for the purpose of testing the waters of a potential presidential  
14 candidacy by de Blasio. As explained above, De Blasio 2020 reported on its first FEC disclosure

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<sup>62</sup> 11 C.F.R. § 100.72(a).

<sup>63</sup> Factual & Legal Analysis (“F&LA”) at 5, MUR 5908 (Peace Through Strength PAC) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter’s leadership PAC paid for travel expenses properly attributable to Hunter’s presidential campaign); *see also* AO 1985-40 (Republican Majority Fund) (addressing specifically multicandidate committees); AO 1981-32 at 5 (explaining that “in kind gifts or loans of goods or services provided in connection with . . . testing the waters activities” are contributions under the Act).

<sup>64</sup> 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

<sup>65</sup> F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*) (finding reason to believe that non-federal entity made contributions to campaign by paying for candidate’s testing-the-waters expenses) F&LA at 11, MURs 6917, 6929 (Scott Walker, *et al.*) (same); *see also* F&LA at 15, MUR 4323 (Huckabee Election Committee) (concluding that a state committee “could not . . . use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential . . . federal campaign”); AO 2015-09 (Senate Majority PAC and House Majority PAC) at 5 (concluding that 527 organizations’ payments for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.13(a)).

<sup>66</sup> *See* 52 U.S.C. § 30116(a)(1)(A).

1 report 78 expenditures that it described as “exploratory.”<sup>67</sup> Many of these expenditures —  
2 largely for travel and consulting — correspond to identical expenditures made by Fairness PAC  
3 and NY Fairness PAC to the same recipients on the same days and in the same amounts. By way  
4 of example, both De Blasio 2020 and NY Fairness PAC reported the following disbursements:  
5 \$4,000 to Michael Casca on April 19, 2019;<sup>68</sup> \$5,077.98 to Expedia on April 4, 2019;<sup>69</sup>  
6 \$1,650.51 to United Airlines on April 23, 2019;<sup>70</sup> \$1,104.90 to Delta Airlines on April 4, 2019;<sup>71</sup>  
7 and \$1,065.20 to Delta Airlines on March 27, 2019.<sup>72</sup> Both De Blasio 2020 and Fairness PAC  
8 reported the following disbursements: \$1,769.22 to Cision US Inc. on March 7, 2019;<sup>73</sup> \$1,500  
9 to Kendal Corley on March 8, 2019;<sup>74</sup> \$530.64 to Claudia Cereceda on March 13, 2019;<sup>75</sup>  
10 \$414.51 to Jaclyn Rothenberg on March 20, 2019;<sup>76</sup> \$378.58 to Expedia on May 9, 2019, 2019.<sup>77</sup>  
11 The Campaign appears not to have reimbursed most if any of the 78 “exploratory” expenditures

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<sup>67</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>68</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 366; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9.

<sup>69</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 391; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 7-8.

<sup>70</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 375; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 10.

<sup>71</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 377; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 8.

<sup>72</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 365; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 6.

<sup>73</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 363; Fairness PAC, Amended 2019 Mid-Year Report at 146 (Jan 30, 2020).

<sup>74</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 376; Fairness PAC, Amended 2019 Mid-Year Report at 150.

<sup>75</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 368; Fairness PAC, Amended 2019 Mid-Year Report at 148.

<sup>76</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 401; Fairness PAC, Amended 2019 Mid-Year Report at 154.

<sup>77</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 393; Fairness PAC, Amended 2019 Mid-Year Report at 154.

1 other than Fairness PAC's \$68,000 payment to Brilliant Corners for polling, as discussed  
2 elsewhere.<sup>78</sup>

3 Moreover, De Blasio 2020's first reported contribution occurred on May 16, 2019, while  
4 its reported exploratory expenditures began in early March 2019 and continued throughout the  
5 next three months.<sup>79</sup> Respondents have not provided any other explanation for a possible source  
6 of the funds used to pay for these exploratory expenses.

7 Respondents admit that NY Fairness PAC made exploratory expenditures but argue that  
8 an exploratory expenditure paid for before an individual becomes a candidate "is not thereby also  
9 *a contribution*."<sup>80</sup> This argument is inconsistent with the plain text of Commission regulations,  
10 which provide that "[i]f the individual subsequently becomes a candidate, the [testing-the-  
11 waters] funds received . . . are contributions" and are thereafter retroactively subject to the  
12 contribution limits set forth in the Act.<sup>81</sup> Thus, "[i]f and when the individual becomes a  
13 candidate . . . the financing of all activity coming within the [testing-the-waters] exemption must  
14 be reported and otherwise treated as contributions and expenditures for purposes of the Act and  
15 regulations."<sup>82</sup>

16 The exploratory expenditures allegedly paid for by the Committees total hundreds of  
17 thousands of dollars and are well in excess of the applicable contribution limits — \$2,800 as to

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<sup>78</sup> See *supra* Section II.C; *infra* Section III.A.2.

<sup>79</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>80</sup> NY Fairness PAC Resp. at 2-4, MUR 7634 (emphasis in original).

<sup>81</sup> 11 C.F.R. § 100.72(a). As discussed above, the Commission has applied this principle to state and federal multicandidate committees in prior instances. See F&LA at 5 MUR 5908 (Peace Through Strength PAC); F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*); AO 1981-32 at 5; AO 1985-40 at 5.

<sup>82</sup> F&LA at 5 n.24, MURs 7689, 7794 (Amanda Adkins for Congress, *et al.*) (quoting AO 1981-32 at 3) (quotation marks omitted).



1 NY Fairness PAC and \$5,000 as to Fairness PAC.<sup>83</sup> Moreover the campaign appears not to have  
2 reimbursed either NY Fairness PAC or Fairness PAC for most of these disbursements.

3 2. Pre-Candidacy Expenditures Deemed as In-Kind Contributions under  
4 11 C.F.R. § 110.2(l)

5 Along with the exploratory expenditures reported on the campaign's initial report, the  
6 campaign reported a reimbursement on June 30, 2019, to Fairness PAC for \$123,000 in polling  
7 expenses, which corresponds to a \$68,000 payment to Brilliant Corners Research and Strategies  
8 on March 27 and \$55,000 to Keating Research on May 13.<sup>84</sup>

9 Commission regulations provide that a pre-candidacy payment by a multicandidate  
10 political committee of a presidential candidate's expenses will be deemed an in-kind contribution  
11 — regardless of whether the payment is made before the individual becomes a candidate — if  
12 the following conditions are met: (1) “[t]he expenditure is made on or after January 1 of the year  
13 immediately following the last Presidential election year;” (2) “the candidate accepted or  
14 received [the goods or services involved], requested or suggested their provision, was materially  
15 involved in the decision to provide them, or was involved in substantial discussions about their  
16 provision;” and (3) the goods or services involved are — among other categories — “[p]olling  
17 expenses for determining the favorability, name recognition, or relative support level of the  
18 candidate involved.”<sup>85</sup> However, “if the candidate, through an authorized committee, reimburses  
19 the multicandidate political committee within 30 days of becoming a candidate, the payment  
20 shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an

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<sup>83</sup> See table, *supra* at 11-12.

<sup>84</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378; De Blasio Resp. at 10, MUR 7634.

<sup>85</sup> 11 C.F.R. § 110.2(l).

1 expenditure of the candidate.”<sup>86</sup> In addition, where an in-kind contribution exceeds the  
2 applicable contribution limit, whether on its face or when aggregated with other contributions,  
3 the treasurer may request redesignation or reattribution or, if neither is requested, must refund the  
4 contribution within 60 days of receipt.<sup>87</sup>

5 Respondents admit that Fairness PAC made payments for polling that qualify as pre-  
6 candidacy expenditures under 11 C.F.R. § 110.2(l): (1) \$68,000 to Brilliant Corners Research  
7 and Strategies on March 27, 2019; and (2) \$55,000 to Keating Research on May 13, 2020.<sup>88</sup>  
8 Further, because De Blasio 2020 did not reimburse Fairness PAC until June 30 for those  
9 expenditures, De Blasio 2020 failed to reimburse those expenses within 30 days after de Blasio  
10 announced his candidacy.<sup>89</sup> The campaign reimbursed Fairness PAC for the polling by Keating  
11 Research within 60 days of Fairness PAC’s disbursement, but it did not reimburse the  
12 Committee for the payment to Brilliant Corners Research and Strategies until 95 days after that  
13 disbursement. Consequently, Fairness PAC made, and De Blasio 2020 and Bill de Blasio  
14 accepted, excessive in-kind contributions in the form of polling expenditures.

### 15 3. Committees’ Payment of de Blasio’s Campaign Activities

16 The Committees’ support of de Blasio was not limited to his testing-the-waters activities;  
17 they also purchased goods and services that they transferred to the campaign after it was formed.  
18 NY Fairness PAC admits to paying for \$52,851.89 for consulting, rent, and travel expenses in  
19 early-to-mid May that benefited de Blasio’s candidacy.<sup>90</sup> De Blasio 2020 disclosed these

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<sup>86</sup> 11 C.F.R. § 110.2(l)(2); *accord* F&LA at 6, MUR 7191 (Rand Paul).

<sup>87</sup> 11 C.F.R. § 103.3(b)(3).

<sup>88</sup> *See* De Blasio Resp. at 10, MUR 7634; Fairness PAC Resp. at 6-7, MUR 7634.

<sup>89</sup> De Blasio Resp. at 10, MUR 7634; Fairness PAC Resp. at 6-7, MUR 7634.

<sup>90</sup> NY Fairness PAC Resp. at 9, MUR 7634.

1 payments as a debt in its 2019 July Quarterly Report.<sup>91</sup> Respondents explain that the payments  
2 were specifically for: (1) a \$40,000 fee paid by NY Fairness PAC to Clarify Agency for digital  
3 services that were ultimately performed for the campaign; (2) a \$4,200 payment for “rent for  
4 office space that by then was used solely by De Blasio 2020”; and (3) “travel that was previously  
5 arranged for that time irrespective of whether or not the Mayor then would be a candidate.”<sup>92</sup>  
6 The campaign reimbursed NY Fairness PAC for these expenses on September 11, 2019, long  
7 after the 60-day deadline to do so under Commission regulations.<sup>93</sup>

8         Additionally, while Respondents admit that NY Fairness PAC paid Freedomland Media  
9 \$19,964 on May 12, 2019, towards the cost of De Blasio 2020's opening video, they deny that  
10 this constituted an in-kind contribution to de Blasio's campaign. They state that the media  
11 company was hired “to produce a video that would be used in connection with either a  
12 presidential campaign launch or, if there was no campaign, then for other continuing political  
13 activity.”<sup>94</sup> However, the payment of part of the cost of the announcement video falls under the  
14 broad definition of “anything of value” and qualifies as a contribution to the campaign because  
15 the Committee expended funds to purchase a good or service that it then provided to the  
16 campaign.<sup>95</sup> The Committee's payment for the video is also not for the purpose of testing the

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<sup>91</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>92</sup> De Blasio Resp. at 9, MUR 7634.

<sup>93</sup> *See* 11 C.F.R. § 103.3(b)(3).

<sup>94</sup> De Blasio Resp. at 2, MUR 7631.

<sup>95</sup> *See, e.g.*, First Gen. Counsel's Rpt. at 10, MUR 5409 (Norquist, *et al.*) (dispositive Commission opinion) (recommending finding reason to believe that a nonprofit corporation made prohibited in-kind contributions by providing a campaign with its private lists of conservative organizations and individuals, which the corporation “utilized its resources to obtain and compile”), and Certification, MUR 5409 (Oct. 19, 2004) (approving recommendation); AO 2007-22 (Hurysz) at 6 (“The provision of . . . materials without charge would relieve your campaign of the expense that it would otherwise incur to obtain such materials. Thus, the provision of such items without charge would constitute a contribution . . . .”); AO 1992-33 (DNC/RNC) at 3 (“As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services.”); *see also* F&LA at 8-9,

1 waters. Commission regulations specify that “funds received for activities indicating that an  
2 individual has decided to become a candidate for a particular office or for activities relevant to  
3 conducting a campaign” are not testing-the-waters expenditures and provide as a specific  
4 example “general public political advertising to publicize his or her intention to campaign for  
5 Federal office.”<sup>96</sup> Therefore the launch video appears to constitute an in kind contribution to De  
6 Blasio 2020 and Bill de Blasio.

#### 7 4. Conclusion

8 Based on the foregoing discussion, the available information indicates that the  
9 Committees exceeded their respective contribution limits to the campaign — \$2,800 as to NY  
10 Fairness PAC and \$5,000 as to Fairness PAC. Respondents concede that NY Fairness PAC  
11 made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent, and  
12 consulting services and that Fairness PAC paid for \$123,000 in polling expenses that benefited  
13 the campaign. There is also information that both Committees paid for other travel, consulting,  
14 and media expenses that either were used to test the waters of a presidential run by de Blasio or  
15 benefited the campaign once it was formed. We therefore recommend the Commission find

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MUR 7207 (Taub) (finding reason to believe that a foreign national made a contribution by providing “research reports” that were prepared by commercial vendors and were “commercial products of the sort routinely prepared by professional vendors on behalf of Congressional campaigns”). There is no indication that NY Fairness PAC separately used the video to its own benefit.

<sup>96</sup> 11 C.F.R. § 100.72(b)(1).

We also recommend investigation whether Fairness PAC and NY Fairness PAC’s payment of \$96,000 to Trilogy Interactive for a “digital media buy” qualified as a contribution. Respondents contend that the advertisements Trilogy was involved in creating related to “issues” rather than directly advocated for de Blasio as a candidate. De Blasio Resp., MUR 7634 at 5. However, the Complaints allege, and Respondents do not dispute, that within days of the campaign’s formation ads like those Trilogy Interactive created for the Committees continued to run through the same Facebook page but thereafter stated they were paid for by De Blasio 2020. *See* Ads from the Page of Bill de Blasio, Facebook, <https://www.facebook.com/ads/library/?id=1303967669741097>. Given the substantial and pervasive involvement by the Committees in exploratory and campaign activity, there is sufficient reason to investigate whether Trilogy Interactive was involved in the creation of the similar advertisements launched by the campaign soon after its formation.

1 reason to believe that de Blasio and De Blasio 2020 accepted excessive contributions in violation  
2 of 52 U.S.C. § 30116(f) and 11 C.F.R. § 100.72(a) and that Fairness PAC and NY Fairness PAC  
3 made excessive contributions in violation of 52 U.S.C. § 30116(a).

4 **B. The Commission Should Find Reason to Believe that De Blasio 2020 Failed to**  
5 **Report In-Kind Contributions**

6 When an individual becomes a candidate under the Act, any funds received or payments  
7 made for testing-the-waters activities become contributions or expenditures subject to the  
8 reporting requirements of the Act and are to be reported as such on the first disclosure report  
9 filed by the candidate's authorized committee.<sup>97</sup>

10 Though the record indicates that Fairness PAC and NY Fairness PAC made  
11 disbursements for testing-the-waters activities by de Blasio and otherwise contributed to his  
12 campaign, De Blasio 2020 did not report any in-kind contributions from either Committee.<sup>98</sup>  
13 Respondents also acknowledge that De Blasio 2020 failed to properly itemize polling  
14 expenditures paid for by Fairness PAC.<sup>99</sup>

15 We therefore recommend the Commission find reason to believe that De Blasio 2020  
16 violated 52 U.S.C. §§ 30104(a), (b) and 11 C.F.R §§ 100.72(a) and 100.131(a) by failing to  
17 report in-kind contributions from Fairness PAC and NY Fairness PAC and by failing to properly  
18 report expenditures.

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<sup>97</sup> 11 C.F.R. §§ 100.72(a); 100.131(a).

<sup>98</sup> Moreover, even if the Committees did not pay for the campaign's exploratory expenditures — which the Respondents do not dispute — the campaign still failed to make required disclosures because it did not disclose *any* contributions prior to May 16, 2019 despite reporting dozens of expenditures taking place before that date.

<sup>99</sup> De Blasio Resp. at 10, MUR 7634 (“Although De Blasio 2020’s original July Quarterly Report disclosed, on page 378, its reimbursement of Fairness PAC for \$123,000 for ‘polling,’ it did not itemize either of the two underlying exploratory expenditures. De Blasio 2020 amended its report on July 19 and disclosed the payment to Brilliant Corners Research and Strategies, but it again omitted the payment to Keating Research.”).

1           **C.       The Commission Should Take No Action at this Time as to the Allegations**  
2                   **That De Blasio 2020 Received Excessive Contributions from Donors to**  
3                   **Fairness PAC and NY Fairness PAC**  
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5           The Complaint in MUR 7634 alleges that De Blasio 2020 accepted and failed to report  
6 excessive contributions from 25 individuals.<sup>100</sup> According to the factual record, these 25  
7 individuals each contributed \$2,500 to Fairness PAC and an additional \$2,500 to NY Fairness  
8 PAC between January 1 and May 16, 2019, and — once de Blasio became a candidate in May,  
9 2020 — made an additional contribution of \$2,800 to De Blasio 2020. The Complaint in MUR  
10 7634 argues that because (1) each Committee had less than \$30,000 in cash-on-hand at the  
11 beginning of 2019; and (2) the Committees were able to raise and spend hundreds of thousands  
12 of dollars to support de Blasio's pre-candidacy efforts, it follows that these 25 individuals'  
13 contributions to the Committees should be aggregated with their contributions to De Blasio  
14 2020.<sup>101</sup> The Complaint contends that, as a result, these contributions resulted in excessive  
15 contributions to the campaign.<sup>102</sup>

16           There are insufficient facts to support a reason-to-believe finding based on the  
17 Complaint's allegations at this time. We are aware of no information indicating that the  
18 contributions from any of the 25 individual donors were earmarked or otherwise specifically  
19 directed towards testing-the-waters activities.<sup>103</sup> Further, a review of the reports shows that,  
20 even if Fairness PAC and NY Fairness PAC made the amount of exploratory expenditures  
21 alleged by the Complaints, both Committees reported spending significantly more on other

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<sup>100</sup> Compl. ¶ 16, MUR 7634.

<sup>101</sup> *Id.* ¶ 33–35.

<sup>102</sup> *Id.*

<sup>103</sup> *See* 11 C.F.R. § 110.6 (defining earmarked contributions).

1 disbursements that do not appear related de Blasio's exploratory efforts and that greatly  
2 exceeded the total amount received from the 25 donors identified by the Complaint.<sup>104</sup>

3           Given the apparent interconnectedness of the campaign and Committees outlined above,  
4 however, we recommend that the Commission take no action at this time regarding the  
5 allegations that the campaign violated 52 U.S.C. § 30116(f) by accepting unreported and  
6 excessive individual contributions and await the results of the below proposed investigation.

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<sup>104</sup> Fairness PAC reported \$580,443 in disbursements between January 1, 2019, and June 30, 2019. Fairness PAC, First Amended 2019 Mid-Year Report. On its report covering January 1, 2019, to July 11, 2019, NY Fairness PAC reported \$335,780 in total disbursements. NY Fairness PAC NYSBOE Disclosures. Given that the available information indicates that each entity spent less than \$200,000 on testing-the-waters and campaign-related expenses, *see supra* chart at pages 11-12, the \$62,500 given by these 25 individuals to each entity could have been used for activity unrelated to the allegations at issue in this matter.

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4 **V. RECOMMENDATIONS**

5 1. Find reason to believe that Fairness PAC and Herbert Block in his official  
6 capacity as treasurer and NY Fairness PAC violated 52 U.S.C. § 30116(a) by  
7 making excessive contributions to De Blasio 2020 and Bill de Blasio;

8 2. Find reason to believe that De Blasio 2020 and Herbert Block in his official  
9 capacity as treasurer and Bill de Blasio violated 52 U.S.C. § 30116(f) by  
10 accepting excessive contributions from NY Fairness PAC and Fairness PAC;

11 3. Find reason to believe that De Blasio 2020 and Herbert Block in his official  
12 capacity as treasurer violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R.  
13 § § 100.72(a) and 100.131(a) by failing to report in-kind contributions and  
14 expenditures;

15 4. Take no action at this time as to the allegation that De Blasio 2020 and Herbert  
16 Block in his official capacity as treasurer accepted excessive contributions in  
17 violation of 52 U.S.C. § 30116(f) by accepting contributions from 25 individuals  
18 who donated to De Blasio 2020, Fairness PAC, and NY Fairness PAC;

19 5. Approve the use of compulsory process;

20 6. Approve the attached Factual and Legal Analyses; and

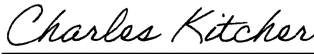



1                   7. Approve the appropriate letters.

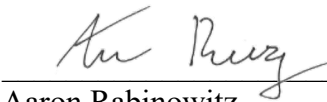
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Lisa J. Stevenson  
Acting General Counsel

Date: 04/20/22

  
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Charles Kitcher  
Associate General Counsel  
for Enforcement

  
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Jin Lee  
Deputy Associate General Counsel  
for Enforcement

  
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Aaron Rabinowitz  
Attorney

22 Attachments:

- 23 1. De Blasio 2020 Amended July 2019 Report Exploratory Expenditures
- 24 2. Factual and Legal Analysis – Bill De Blasio and De Blasio 2020 and Herbert Block in his
- 25 official capacity as treasurer
- 26 3. Factual and Legal Analysis – Fairness PAC and Herbert Block in his official capacity as
- 27 treasurer
- 28 4. Factual and Legal Analysis – NY Fairness PAC

## De Blasio 2020 Amended July 2019 Report Exploratory Expenditures

Name	Date	Amount	Purpose
American Airlines	3/20/2019	\$ 188.30	Travel
American Airlines	3/20/2019	\$ 188.35	Travel
American Airlines	4/2/2019	\$ 620.80	Travel
American Airlines	4/16/2019	\$ 776.80	Travel
Ames Boston Hotel	3/20/2019	\$ 131.50	Lodging
Ames Boston Hotel	3/20/2019	\$ 131.50	Lodging
Amtrak	3/20/2019	\$ 73.50	Travel
Amtrak	3/20/2019	\$ 73.50	Travel
Amtrak	5/3/2019	\$ 215.00	Travel
Amtrak	4/12/2019	\$ 331.00	Travel
Bedford Grove LLC	3/27/2019	\$ 2,000.00	Fundraising Consulting Services
Bedford Grove LLC	4/26/2019	\$ 2,000.00	Fundraising Consulting Services
Brilliant Corners Research & Strategies	3/27/2019	\$ 68,000.00	Polling
Casca, Mike	4/19/2019	\$ 4,000.00	Strategic Consulting Services
Casca, Mike	5/6/2019	\$ 4,000.00	Strategic Consulting Services
Cision, Inc.	3/7/2019	\$ 1,769.22	Press List
Columbia Marriott	4/4/2019	\$ 114.55	Lodging
Columbia Marriott	3/13/2019	\$ 172.35	Lodging
Columbia Marriott	3/13/2019	\$ 172.35	Lodging
Common Man Restaurant	3/27/2019	\$ 520.60	Food/Beverage
Corley, Kendall	3/8/2019	\$ 1,500.00	Strategic Consulting Services
Courtyard Marriott Boston	3/13/2019	\$ 112.15	Lodging
Courtyard Marriott Boston	3/13/2019	\$ 112.15	Lodging
Courtyard Marriott Boston	5/3/2019	\$ 228.86	Lodging
Courtyard Marriott Boston	4/23/2019	\$ 525.28	Lodging
Courtyard Marriott Boston	4/8/2019	\$ 545.91	Lodging
Delta Airlines	3/13/2019	\$ 230.30	Travel
Delta Airlines	3/13/2019	\$ 230.30	Travel
Delta Airlines	3/13/2019	\$ 235.80	Travel
Delta Airlines	3/13/2019	\$ 235.80	Travel
Delta Airlines	3/20/2019	\$ 246.30	Travel
Delta Airlines	3/20/2019	\$ 246.30	Travel
Delta Airlines	5/3/2019	\$ 426.50	Travel
Delta Airlines	4/3/2019	\$ 442.20	Travel
Delta Airlines	4/12/2019	\$ 450.10	Travel
Delta Airlines	3/27/2019	\$ 1,065.20	Travel
Delta Airlines	4/4/2019	\$ 1,104.90	Travel
Delta Airlines	5/9/2019	\$ 1,208.20	Travel

Expedia	4/16/2019	\$ 161.28	Travel
Expedia	4/12/2019	\$ 320.04	Travel
Expedia	5/9/2019	\$ 378.56	Travel
Expedia	4/3/2019	\$ 492.06	Travel
Expedia	5/9/2019	\$ 3,330.00	Travel
Expedia	4/4/2019	\$ 5,077.98	Travel
Freedomland Media	5/14/2019	\$ 19,694.00	Media Production Services
Frontier Airlines	5/2/2019	\$ 498.59	Travel
Hilton Garden Inn	3/20/2019	\$ 149.50	Lodging
Hilton Garden Inn	3/20/2019	\$ 149.50	Lodging
Hilton Garden Inn	3/20/2019	\$ 162.41	Lodging
Hilton Garden Inn	3/20/2019	\$ 162.41	Lodging
Hilton Garden Inn	3/20/2019	\$ 226.96	Lodging
Hilton Garden Inn	3/20/2019	\$ 226.97	Lodging
Hilton Garden Inn	3/27/2019	\$ 847.59	Lodging
Hyatt Place	4/2/2019	\$ 211.68	Lodging
La Cabana Mexican Restaurant	5/9/2019	\$ 641.35	Food/Beverage
Lyft	5/9/2019	\$ 52.55	Travel
Lyft	5/9/2019	\$ 53.45	Travel
Lyft	5/2/2019	\$ 88.38	Travel
Lyft	4/4/2019	\$ 146.57	Travel
Lyft	5/9/2019	\$ 261.74	Travel
MGM Grand Hotel	5/2/2019	\$ 691.62	Lodging
Omni Parker House	5/3/2019	\$ 210.00	Lodging
Seamless	5/9/2019	\$ 244.50	Food/Beverage
Seamless	5/9/2019	\$ 249.49	Food/Beverage
Super 8 by Wyndham	4/4/2019	\$ 258.72	Lodging
The Yard	5/2/2019	\$ 8,600.00	Rent
Trister, Ross, Schadler & Gold, PLLC	4/18/2019	\$ 3,471.55	Legal Services
Tuscan Kitchen	3/27/2019	\$ 259.09	Food/Beverage
Uber	3/20/2019	\$ 9.86	Travel
Uber	3/20/2019	\$ 9.86	Travel
Uber	5/2/2019	\$ 43.75	Travel
Uber	4/22/2019	\$ 44.23	Travel
United Airlines	4/8/2019	\$ 239.30	Travel
United Airlines	5/9/2019	\$ 277.30	Travel
United Airlines	4/2/2019	\$ 492.00	Travel
United Airlines	4/23/2019	\$ 1,650.51	Travel
Wolfson, Roger	4/29/2019	\$ 3,000.00	Strategic Consulting Services
Wynn Hotel	4/23/2019	\$ 678.24	Lodging

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

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2  
3  
4  
5  
6 RESPONDENT: De Blasio 2020 and Herbert Block MURs 7631 and 7634  
7 as Treasurer  
8 Bill de Blasio  
9

**I. INTRODUCTION**

10  
11 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
12 established Fairness PAC, a federal multi-candidate committee, and NY Fairness PAC, a non-  
13 federal committee registered with the state of New York (collectively, the “Committees”). The  
14 Complaints allege that these Committees funded exploratory activity and made other  
15 contributions to de Blasio’s campaign in excess of federal contribution limits as set forth in the  
16 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.  
17 The Complaints further allege that 25 individuals made excessive contributions to de Blasio’s  
18 campaign because their aggregate contributions to the Committees and De Blasio 2020 exceeded  
19 the \$2,800 limit on individual contributions to a campaign.

20 Respondents admit that NY Fairness PAC made approximately \$53,000 in expenditures  
21 for travel and consulting services that benefited the campaign after it was formed. Respondents  
22 also admit that Fairness PAC paid for \$123,000 in polling expenses that it contends were for  
23 testing-the-waters purposes and that the campaign reimbursed late. Respondents otherwise deny  
24 the allegations. Respondents request that the Commission enter into pre-probable cause  
25 conciliation with respect to the approximately \$176,000 in contributions from the Committees  
26 and otherwise dismiss the allegations.

27 Based on the available information, De Blasio 2020 and de Blasio appear to have  
28 accepted excessive in-kind contributions from Fairness PAC and NY Fairness PAC. Although

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1 Respondents admit that the Committees paid for some of de Blasio’s expenses, the payments  
2 appear to exceed the \$176,000 identified by the Respondents. Instead, the information in the  
3 record, which includes identical expenditures reported both by De Blasio 2020 and the  
4 Committees, indicates that the Committees made additional payments related to de Blasio’s  
5 testing-the-waters and campaign activities totaling as much as approximately \$350,000 — most  
6 of which de Blasio and De Blasio 2020 never reimbursed — and thereby made excessive, in-kind  
7 contributions. Further, De Blasio 2020 has not properly disclosed many of the activities paid for  
8 by the Committees.

9 Accordingly, the Commission finds reason to believe that: (1) De Blasio 2020 and  
10 Herbert Block in his official capacity as treasurer (“De Blasio 2020”) and de Blasio accepted  
11 excessive in-kind contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 100.72(a);  
12 and (2) De Blasio 2020 failed to properly report its testing-the-waters and campaign activities in  
13 violation of 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a).

## 14 **II. FACTUAL BACKGROUND**

### 15 **A. Establishment of Fairness PAC and NY Fairness PAC**

16 Bill de Blasio served as mayor of New York from January 1, 2014 to December 31,  
17 2021.<sup>1</sup> According to the Response submitted on his behalf in connection with these matters,  
18 de Blasio decided to become a candidate for President of the United States on May 15, 2019, and  
19 publicly announced his decision the following day, on May 16, 2019.<sup>2</sup> That same day, de Blasio

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio’s NYC Mayoral Tenure, What’s Next and What’s Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

<sup>2</sup> Resp. at 2 (Oct. 15, 2019), MUR 7631.

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1 filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.<sup>3</sup>

2 De Blasio’s campaign ran until September 20, 2019, when he announced its suspension.<sup>4</sup>

3 Before announcing his candidacy, de Blasio “and others” established two committees in  
4 July 2018: Fairness PAC and NY Fairness PAC, both organized as unincorporated political  
5 organizations under section 527 of the Internal Revenue Code.<sup>5</sup> First, on July 25, 2018, Fairness  
6 PAC filed its Statement of Organization with the Commission<sup>6</sup> and became a multicandidate  
7 committee in January 2019.<sup>7</sup> The available information indicates that Fairness PAC’s purpose  
8 was to support federal Democratic candidates and progressive causes in New York State and  
9 elsewhere.<sup>8</sup> Then, on July 27, 2018, NY Fairness PAC, registered with the New York State  
10 Board of Elections (“NYSBOE”) as a state political action committee.<sup>9</sup> Available information  
11 indicates that NY Fairness PAC’s purpose was to support nonfederal Democratic Party  
12 candidates and progressive causes in New York State and elsewhere — and that it did so by

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<sup>3</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>4</sup> Resp. at 2, MUR 7631; Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

<sup>5</sup> Resp. at 1 (Oct. 15, 2019), MUR 7634.

<sup>6</sup> Fairness PAC, Statement of Organization (July 25, 2018); *see also* Fairness PAC, Amended Statement of Organization (July 25, 2019) (same).

<sup>7</sup> The Committee informed the Commission that it had reached multicandidate status on January 31, 2019. Fairness PAC, Notification of Multicandidate Status (Jan. 31, 2019).

<sup>8</sup> See Laura Nahmias and Gloria Pazmino, *De Blasio Launches Federal PAC and Considers Post-Mayoral Run*, POLITICO (July 26, 2018), <https://www.politico.com/states/new-york/albany/story/2018/07/25/de-blasio-launches-federal-pac-and-considers-post-mayoral-run-529622> (stating that de Blasio had stated he formed Fairness PAC in order “to support national Democratic candidates in their efforts to retake the House, Senate and New York state Senate”).

<sup>9</sup> Resp. at 1, MUR 7631.

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1 making contributions and public communications and by travel by Mayor de Blasio for activities,  
2 events and conferences to promote progressive positions on issues and to support who embraced  
3 those positions.

4 The two political committees entered into and operated under a joint fundraising  
5 agreement pursuant to Commission regulations, with Fairness PAC as the joint fundraising  
6 representative. According to the Complaint in MUR 7634, the two committees conducted their  
7 joint fundraising through an ActBlue fundraising page that indicated that the Committees would  
8 accept contributions from individuals of up to \$5,000 total, or \$2,500 each<sup>10</sup> and that  
9 contributions from individuals would be allocated 50% to Fairness PAC and 50% to NY Fairness  
10 PAC.<sup>11</sup>

11 At the time it filed its initial statement of organization, Fairness PAC represented its  
12 website to be [billdeblasio.com](http://billdeblasio.com)<sup>12</sup> — which, according to the Complaint in MUR 7634, previously  
13 had been associated with de Blasio’s mayoral campaign.<sup>13</sup> However, Fairness PAC did not  
14 mention the website in an amended statement of organization it filed on July 25, 2019, or

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<sup>10</sup> See Compl. at 3-4 (Aug. 7, 2019), MUR 7634; Resp. at 2, MUR 7634 (citing 11 C.F.R. § 102.17, which permits federal and non-federal committees to engage in joint fundraising so long as participants comply with the Act’s contribution prohibitions and limitations).

<sup>11</sup> Compl. ¶ 9, MUR 7634 (citing Donate to Fairness PAC, ActBlue, <https://secure.actblue.com/donate/fairnesspac>) (quotation marks omitted). The underlying ActBlue page is no longer available.

<sup>12</sup> Fairness PAC, Statement of Organization (July 25, 2018).

<sup>13</sup> Compl. at 3, MUR 7634. According to the Complaint, after the formation of Fairness PAC, the disclaimer on [billdeblasio.com](http://billdeblasio.com) was changed from “Paid for by de Blasio 2017,” the name of de Blasio’s mayoral committee, to “Paid for by Fairness PAC.” *Id.*

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1 thereafter.<sup>14</sup> Archived versions of the website show that as of July, 2018, [billdeblasio.com](http://billdeblasio.com)  
2 provided information regarding Fairness PAC and stated that it was paid for by Fairness PAC,  
3 while as of May, 2019, [billdeblasio.com](http://billdeblasio.com) solicited contributions for, and stated that it was paid for  
4 by, De Blasio 2020.<sup>15</sup>

5 **B. Payments Made by the Committees Allegedly for Financing de Blasio's**  
6 **Testing-the-Waters and Campaign Activities**

7 According to Respondents, de Blasio began to test the waters for a potential 2020  
8 presidential run in early March 2019.<sup>16</sup> De Blasio 2020's July 2019 Quarterly Report, which  
9 was the first report the Committee filed with the Commission after de Blasio announced his  
10 candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7  
11 through May 14, 2019.<sup>17</sup> Despite this level of spending, that report does not indicate how any of  
12 those expenses were funded because it discloses no contributions received during the testing-the-  
13 waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the  
14 Committee reported accepting its first contribution.<sup>18</sup>

15 Although neither Committee has been disclosed as a contributor to de Blasio's campaign,  
16 Respondents admit that the Committees paid for at least some of de Blasio's exploratory

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<sup>14</sup> Fairness PAC, Amended Statement of Organization (July 25, 2019).

<sup>15</sup> Compare [deblasio.com](http://deblasio.com) [<https://web.archive.org/web/20180727015840/https://billdeblasio.com/>] (July 27, 2018, archived snapshot of website), with [deblasio.com](http://deblasio.com) [[https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de\\_blasio\\_donate\\_is/](https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de_blasio_donate_is/)] (May 17, 2019, archived snapshot of website).

<sup>16</sup> See, e.g., Resp. at 2, MUR 7634.

<sup>17</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>18</sup> *Id.*



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1 activities. The Responses represent that NY Fairness PAC paid for travel expenses that  
2 benefited the campaign,<sup>19</sup> which is reflected in reports filed with the NYSBOE and the  
3 Commission.<sup>20</sup> De Blasio 2020 has reported in its initial filing a \$52,851.89 debt owed to NY  
4 Fairness PAC,<sup>21</sup> which Respondents acknowledge includes travel expenses.<sup>22</sup>

5 As alleged in the Complaint in MUR 7634, De Blasio 2020's Amended July 2019  
6 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as  
7 "Exploratory" in memo entries.<sup>23</sup> A number of those expenditures are identical to expenditures  
8 that appear in Fairness PAC or NY Fairness PAC's reports, reflecting the same amounts and  
9 dates of disbursement.<sup>24</sup> These include: approximately \$13,000 in consulting services to various  
10 individuals and entities; an \$8,600 payment for rent to The Yard; a payment of \$1,769.22 to  
11 Cision, Inc., for a press list; and various payments for travel, food, and lodging.<sup>25</sup> The 78

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<sup>19</sup> Resp. at 9, MUR 7634; *see also* De Blasio 2020, Amended July 2019 Quarterly Report at 364; New York State Board of Elections, Campaign Finance Disclosure, NY Fairness PAC, [https://cfapp.elections.ny.gov/ords/plsql\\_browser/EXPENSESA\\_county?ID\\_in=A22609&date\\_From=&date\\_to=&OFFICE\\_in=ALL&AMOUNT\\_From=&AMOUNT\\_to=&ZIP1=&ZIP2=&ORDERBY\\_IN=N](https://cfapp.elections.ny.gov/ords/plsql_browser/EXPENSESA_county?ID_in=A22609&date_From=&date_to=&OFFICE_in=ALL&AMOUNT_From=&AMOUNT_to=&ZIP1=&ZIP2=&ORDERBY_IN=N) (hereafter "NY Fairness PAC NYSBOE Disclosures"). Although not specifically admitted by the Respondents, the campaign disclosed expenditures related to a press list and consulting services that it described as "exploratory" on March 7 and March 8, respectively. The campaign disclosed additional disbursements for travel and described as "exploratory" taking place in March, April, and May. De Blasio 2020, Amended July 2019 Quarterly Report. They included exploratory expenditures for travel, food, and lodging in Illinois, Massachusetts, Nevada, New Hampshire, South Carolina, and Virginia. *Id.*

<sup>20</sup> De Blasio 2020, Amended 2019 July Quarterly Report; NY Fairness PAC NYSBOE Disclosures.

<sup>21</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>22</sup> Resp. at 9, MUR 7634.

<sup>23</sup> *See* Compl. ¶ 11, MUR 7634; De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>24</sup> *Compare* De Blasio 2020, Amended 2019 July Quarterly Report, *with* Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020); NY Fairness PAC NYSBOE Disclosures.

<sup>25</sup> *See* De Blasio 2020, Amended 2019 July Quarterly Report.

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1 expenditures listed in De Blasio 2020’s initial report as “exploratory” also include a payment of  
2 \$68,000 to Brilliant Corners Research and Strategies for “polling.”<sup>26</sup>

3         The 78 exploratory expenditures further include a payment to Freedomland Media for  
4 \$19,964 on May 12, 2019.<sup>27</sup> This corresponds to a payment by NY Fairness PAC in the same  
5 amount and on the same day to Freedomland Media for “Video Production Services.”<sup>28</sup>  
6 Respondents acknowledge that NY Fairness PAC thereby paid for a portion of the cost of what  
7 became de Blasio’s presidential campaign announcement video, which De Blasio 2020 released  
8 four days later.<sup>29</sup> De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this  
9 payment. De Blasio 2020 later made additional payments to Freedomland Media in the amounts  
10 of \$19,694 on June 13,<sup>30</sup> \$24,694 on July 9,<sup>31</sup> and \$8,000 on August 7.<sup>32</sup>

11         The Complaints also identify three groups of expenditures by the Committees that De  
12 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, De Blasio  
13 2020 allegedly failed to disclose as an expenditure a \$55,000 payment by Fairness PAC to

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<sup>26</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

<sup>27</sup> *Id.* at 378.

<sup>28</sup> NY Fairness PAC NYSBOE Disclosures.

<sup>29</sup> Resp. at 2, MUR 7631.

<sup>30</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 379.

<sup>31</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 273 (June 22, 2020).

<sup>32</sup> *Id.* at 273.

1 Keating Research on May 13, 2019 that is described as for “exploratory” purposes in Fairness  
2 PAC’s 2019 Mid-Year Report.<sup>33</sup>

3         *Second*, on April 12, 2019, NY Fairness PAC and Fairness PAC each made  
4 disbursements of \$46,000 — \$92,000 in total — to “Trilogy Interactive” for a “digital media  
5 buy.”<sup>34</sup> Within days of the April disbursements, de Blasio’s Facebook page began running  
6 dozens of ads (with disclaimers stating that they were paid for by Fairness PAC) that criticized  
7 President Trump or promoted de Blasio’s policy agenda, and asked recipients to share their  
8 names and email addresses.<sup>35</sup> The Complaints allege that those payments to Trilogy Interactive  
9 were made for de Blasio’s exploratory activities because after de Blasio announced his  
10 candidacy, the same Facebook page continued running ads “with similar messages,” but now  
11 with disclaimers stating that the ads were paid for by De Blasio 2020.<sup>36</sup> Respondents deny that  
12 those payments were related to de Blasio’s testing-the-waters activities on the basis that the  
13 advertisements in question were issue-oriented and made no reference to any election or  
14 potential candidacy.<sup>37</sup>

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<sup>33</sup> Compl. ¶ 13, MUR 7634; Fairness PAC, Amended July Mid-Year Report at 143, 151 (Jan, 31, 2020).

<sup>34</sup> Compl. ¶ 15, MUR 7634; Fairness PAC, Amended 2019 Mid-Year Report at 157; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9 (July 15, 2019), [https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs\\_sch\\_report+p\\_filer\\_id=A22609+p\\_e\\_year=2019+p\\_report\\_id=K+p\\_transaction\\_code=F](https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs_sch_report+p_filer_id=A22609+p_e_year=2019+p_report_id=K+p_transaction_code=F). NY Fairness PAC reported another payment to Trilogy Interactive of \$9,130 on July 1, 2019; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 15.

<sup>35</sup> Compl. ¶ 15, MUR 7634; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook, <https://www.facebook.com/ads/library/?id=1303967669741097>.

<sup>36</sup> Compl. ¶ 15, MUR 7634.

<sup>37</sup> Resp. at 5, MUR 7634.

1           *Third*, the Complaint in MUR 7634 alleges that \$5,069 in expenditures by NY Fairness  
2 PAC for “digital services” and “digital consulting” to various vendors that took place from  
3 January 4 to April 23, 2019, were in fact contributions to the campaign because NY Fairness  
4 PAC does not have an online presence or purchase ads.<sup>38</sup> Respondents contend that these  
5 payments were for “fundraising emails and emails concerning the 2018 elections.”<sup>39</sup>

6           De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first  
7 report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>40</sup> De  
8 Blasio 2020’s first report disclosed \$1,087,564.24 in contributions from individuals but no  
9 contributions from the Committees.<sup>41</sup> However, it listed a \$52,851.89 debt owed to NY Fairness  
10 PAC for “Travel Expenses, Digital Advertising, [and] Rent,” which Respondents represent  
11 comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020, \$4,200 in  
12 rent for office space that the campaign used, and other campaign-related travel costs.<sup>42</sup>

### 13           **C.       Reimbursement of Testing-the-Waters and Campaign Expenses**

14           Although Respondents dispute that many of the disbursements made by the Committees  
15 supported de Blasio’s future or actual candidacy, the campaign committee has reimbursed the  
16 Committees for some of the payments in question. On September 11, 2019, De Blasio 2020 paid

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<sup>38</sup> Compl. ¶ 15, MUR 7634.

<sup>39</sup> Resp. at 5, MUR 7634.

<sup>40</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>41</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

<sup>42</sup> *Id.* at 417; De Blasio 2020, Amended 2019 October Quarterly Report at 352 (Oct. 15, 2019).

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1 NY Fairness PAC the \$52,851.89 listed as a debt on the campaign’s July report.<sup>43</sup> De Blasio  
2 2020 reported two other disbursements to NY Fairness PAC on September 30, 2019: \$1,047.50  
3 for a “website” and \$19,397.78 for “digital assets,”<sup>44</sup> and the campaign made a similar \$1,047.50  
4 payment to Fairness PAC for a “website” the same day.<sup>45</sup> Further, De Blasio 2020 reported  
5 making a \$123,000 payment to Fairness PAC on July 30, 2019, for “polling.”<sup>46</sup> Respondents  
6 admit that this corresponds to the disbursements by Fairness PAC of \$55,000 to Keating  
7 Research on May 13, 2019, and \$68,000 to Brilliant Corners Research & Strategies on March 27,  
8 2019.<sup>47</sup> In its initial FEC filing in July 2019, De Blasio 2020 reported the expenditure to  
9 Brilliant Corners<sup>48</sup> but not the expenditure to Keating Research, and the committee has not  
10 amended this report. The campaign has reported no other disbursements to either Committee.

11 The following chart summarizes the payments by the Committees specifically identified  
12 by the Complaints that were allegedly either testing-the-waters or campaign expenses, when if  
13 ever De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed the  
14 Committee:

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<sup>43</sup> Resp. at 4, MUR 7631; De Blasio 2020, Amended October 2019 Quarterly Report.

<sup>44</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 316.

<sup>45</sup> *Id.* at 273.

<sup>46</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378.

<sup>47</sup> Resp. at 10, MUR 7634; *see also* Fairness PAC, Amended 2019 July Mid-Year Report at 143, 151 (Jan. 31, 2020) (disclosing both payments and describing them as “exploratory”).

<sup>48</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

**1 Alleged Payments Made by Fairness PAC and/or NY Fairness PAC to Support de Blasio<sup>49</sup>**

<b>PAYOR</b>	<b>Amount</b>	<b>Recipient</b>	<b>Date of Payment</b>	<b>Date of Reporting by De Blasio 2020</b>	<b>Description</b>	<b>Date of Reimbursement</b>
Fairness PAC	\$68,000	Brilliant Corners Research and Strategies	March 27, 2019	July 19, 2019	Polling	June 30, 2019
NY Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None
Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None
NY Fairness PAC	\$4,200	The Yard	May 2, 2019	July 19, 2019	Office Space	September 11, 2019
NY Fairness PAC	\$19,964	Freedomland Media	May 12, 2019	July 19, 2019	Campaign Announcement Video	None
Fairness PAC	\$55,000	Keating Research	May 13, 2019	Not Disclosed	Polling	June 30, 2019
NY Fairness PAC	\$40,000	Clarify Agency	May 15, 2019	July 19, 2019	Digital Services	September 11, 2019
NY Fairness PAC	\$9,130	Trilogy Interactive	July 1, 2019	Not Disclosed	Digital Media Buy	None
NY Fairness PAC	\$8,651.89	Various Recipients	Various	July 19, 2019	Travel	September 11, 2019
Both	\$60,695.16	Various Recipients	Various	July 19, 2019	Various travel and administrative expenses	None

<sup>49</sup> As stated above, De Blasio 2020 also made payments to NY Fairness PAC on September 30 of \$1,047.50 for a “website” and \$19,397.78 for “digital assets. It also paid Fairness PAC \$1,047.50 for a “website” on the same day. It is not clear whether De Blasio 2020 reimbursed the Committees for any of the expenditures listed.

PAYOR	Amount	Recipient	Date of Payment	Date of Reporting by De Blasio 2020	Description	Date of Reimbursement
NY Fairness PAC	\$5,069	Blue State Digital and Aisle 518 Strategies, LLC	Various <sup>50</sup>	Not Disclosed	Digital Services	None
<b>TOTAL</b>	<b>\$362,710</b>					

### 1 III. LEGAL ANALYSIS

#### 2 A. The Commission Should Find Reason to Believe that Fairness PAC and NY 3 Fairness PAC Made, and de Blasio and De Blasio 2020 Accepted, Excessive 4 In-Kind Contributions

##### 5 1. The Committees' Payment of de Blasio's Testing-the-Waters Activities

6 An individual becomes a candidate under the Act if he or she receives contributions or  
7 makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>51</sup>  
8 The Commission's regulations create exemptions to the definitions of contribution and  
9 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,  
10 *i.e.*, to "test the waters."<sup>52</sup> These exemptions exclude from the definitions of "contribution" and  
11 "expenditure" those funds received and payments made solely to determine whether an  
12 individual should become a candidate.<sup>53</sup> Testing-the-waters activities include, but are not limited  
13 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act

<sup>50</sup> The Complaint in MUR 7634 appears to be referring to four payments to Blue State Digital and two payments to Aisle 518 Strategies, LLC taking place between January 4 and April 23, 2019. *See* NY Fairness PAC NYSBOE Disclosures.

<sup>51</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>52</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>53</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

1 may be used for such activities.<sup>54</sup> If the individual subsequently becomes a candidate, the funds  
2 previously received for testing-the-waters activities are thereafter considered contributions  
3 subject to the reporting requirements of the Act.<sup>55</sup> Commission regulations further require that  
4 “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”<sup>56</sup> The  
5 Act prohibits any person from making contributions to any candidate and his authorized political  
6 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800  
7 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>57</sup> The  
8 Act also prohibits any candidate or political committee from knowingly accepting any excessive  
9 contribution.<sup>58</sup> Consequently, in order to comply with these requirements, de Blasio was limited  
10 to accepting contributions that complied with the Act’s source and amount restrictions while  
11 testing the waters.

12 Respondents contend that the Commission has never restricted the type of organizational  
13 vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides that funds  
14 received for testing the waters become contributions once an individual becomes a candidate and  
15 that those contributions “must be reported with the first report filed by the principal campaign  
16 committee of the candidate, regardless of the date the funds were received.”<sup>59</sup> Therefore, in past

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<sup>54</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>55</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>56</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>57</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>58</sup> 52 U.S.C. § 30116(f).

<sup>59</sup> 11 C.F.R. § 100.72(a).



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1 matters, the Commission has determined that a payment made by a multi-candidate committee  
2 for an individual’s testing-the-waters activities constitutes an in-kind contribution and must be  
3 reported as such by the candidate’s authorized committee after that individual becomes a  
4 candidate.<sup>60</sup> Pursuant to the Act’s contribution limits, a multicandidate committee would be  
5 limited to spending up to \$5,000 on the candidate’s exploratory efforts; if such committee were  
6 to spend more, that committee would be making an excessive in-kind contribution to the  
7 candidate’s authorized committee.<sup>61</sup> With respect to non-federal organizations, the Commission  
8 has similarly found that payments for testing-the-waters activities by such entities also constitute  
9 in-kind contributions to a candidate.<sup>62</sup> Non-federal organizations are limited to the individual  
10 \$2,800 contribution threshold.<sup>63</sup>

11 Here, there is already significant evidence that Fairness PAC and NY Fairness PAC  
12 funded activities that were for the purpose of testing the waters of a potential presidential  
13 candidacy by de Blasio. As explained above, De Blasio 2020 reported on its first FEC disclosure

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<sup>60</sup> Factual & Legal Analysis (“F&LA”) at 5, MUR 5908 (Peace Through Strength PAC) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter’s leadership PAC paid for travel expenses properly attributable to Hunter’s presidential campaign); *see also* AO 1985-40 (Republican Majority Fund) (addressing specifically multicandidate committees); AO 1981-32 at 5 (explaining that “in kind gifts or loans of goods or services provided in connection with . . . testing the waters activities” are contributions under the Act).

<sup>61</sup> 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

<sup>62</sup> F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*) (finding reason to believe that non-federal entity made contributions to campaign by paying for candidate’s testing-the-waters expenses) F&LA at 11, MURs 6917, 6929 (Scott Walker, *et al.*) (same); *see also* F&LA at 15, MUR 4323 (Huckabee Election Committee) (concluding that a state committee “could not . . . use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential . . . federal campaign”); AO 2015-09 (Senate Majority PAC and House Majority PAC) at 5 (concluding that 527 organizations’ payments for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.13(a)).

<sup>63</sup> *See* 52 U.S.C. § 30116(a)(1)(A).

1 report 78 expenditures that it described as “exploratory.”<sup>64</sup> Many of these expenditures —  
2 largely for travel and consulting — correspond to identical expenditures made by Fairness PAC  
3 and NY Fairness PAC to the same recipients on the same days and in the same amounts. By way  
4 of example, both De Blasio 2020 and NY Fairness PAC reported the following disbursements:  
5 \$4,000 to Michael Casca on April 19, 2019;<sup>65</sup> \$5,077.98 to Expedia on April 4, 2019;<sup>66</sup>  
6 \$1,650.51 to United Airlines on April 23, 2019;<sup>67</sup> \$1,104.90 to Delta Airlines on April 4, 2019;<sup>68</sup>  
7 and \$1,065.20 to Delta Airlines on March 27, 2019.<sup>69</sup> Both De Blasio 2020 and Fairness PAC  
8 reported the following disbursements: \$1,769.22 to Cision US Inc. on March 7, 2019;<sup>70</sup> \$1,500  
9 to Kendal Corley on March 8, 2019;<sup>71</sup> \$530.64 to Claudia Cereceda on March 13, 2019;<sup>72</sup>

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<sup>64</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>65</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 366; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9.

<sup>66</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 391; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 7-8.

<sup>67</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 375; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 10.

<sup>68</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 377; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 8.

<sup>69</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 365; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 6.

<sup>70</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 363; Fairness PAC, Amended 2019 Mid-Year Report at 146 (Jan 30, 2020).

<sup>71</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 376; Fairness PAC, Amended 2019 Mid-Year Report at 150.

<sup>72</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 368; Fairness PAC, Amended 2019 Mid-Year Report at 148.

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1 \$414.51 to Jaclyn Rothenberg on March 20, 2019;<sup>73</sup> \$378.58 to Expedia on May 9, 2019, 2019.<sup>74</sup>  
2 The Campaign appears not to have reimbursed most if any of the 78 “exploratory” expenditures  
3 other than Fairness PAC’s \$68,000 payment to Brilliant Corners for polling, as discussed  
4 elsewhere.<sup>75</sup>

5 Moreover, De Blasio 2020’s first reported contribution occurred on May 16, 2019, while  
6 its reported exploratory expenditures began in early March 2019 and continued throughout the  
7 next three months.<sup>76</sup> Respondents have not provided any other explanation for a possible source  
8 of the funds used to pay for these exploratory expenses.

9 Respondents admit that NY Fairness PAC made exploratory expenditures but argue that  
10 an exploratory expenditure paid for before an individual becomes a candidate is not thereby also  
11 a contribution.<sup>77</sup> This argument is inconsistent with the plain text of Commission regulations,  
12 which provide that “[i]f the individual subsequently becomes a candidate, the [testing-the-  
13 waters] funds received . . . are contributions” and are thereafter retroactively subject to the  
14 contribution limits set forth in the Act.<sup>78</sup> Thus, “[i]f and when the individual becomes a

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<sup>73</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 401; Fairness PAC, Amended 2019 Mid-Year Report at 154.

<sup>74</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 393; Fairness PAC, Amended 2019 Mid-Year Report at 154.

<sup>75</sup> *See supra* Section II.C; *infra* Section III.A.2.

<sup>76</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>77</sup> Resp. at 3-4, MUR 7634.

<sup>78</sup> 11 C.F.R. § 100.72(a). As discussed above, the Commission has applied this principle to state and federal multicandidate committees in prior instances. *See* F&LA at 5 MUR 5908 (Peace Through Strength PAC); F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*); AO 1981-32 at 5; AO 1985-40 at 5.

1 candidate . . . the financing of all activity coming within the [testing-the-waters] exemption must  
2 be reported and otherwise treated as contributions and expenditures for purposes of the Act and  
3 regulations.”<sup>79</sup>

4 The exploratory expenditures allegedly paid for by the Committees total hundreds of  
5 thousands of dollars and are well in excess of the applicable contribution limits — \$2,800 as to  
6 NY Fairness PAC and \$5,000 as to Fairness PAC.<sup>80</sup> Moreover the campaign appears not to have  
7 reimbursed either NY Fairness PAC or Fairness PAC for most of these disbursements.

8 2. Pre-Candidacy Expenditures Deemed as In-Kind Contributions under  
9 11 C.F.R. § 110.2(l)

10 Along with the exploratory expenditures reported on the campaign’s initial report, the  
11 campaign reported a reimbursement on June 30, 2019, to Fairness PAC for \$123,000 in polling  
12 expenses, which corresponds to a \$68,000 payment to Brilliant Corners Research and Strategies  
13 on March 27 and \$55,000 to Keating Research on May 13.<sup>81</sup>

14 Commission regulations provide that a pre-candidacy payment by a multicandidate  
15 political committee of a presidential candidate’s expenses will be deemed an in-kind contribution  
16 — regardless of whether the payment is made before the individual becomes a candidate — if  
17 the following conditions are met: (1) “[t]he expenditure is made on or after January 1 of the year  
18 immediately following the last Presidential election year;” (2) “the candidate accepted or  
19 received [the goods or services involved], requested or suggested their provision, was materially

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<sup>79</sup> F&LA at 5 n.24, MURs 7689, 7794 (Amanda Adkins for Congress, *et al.*) (quoting AO 1981-32 at 3) (quotation marks omitted).

<sup>80</sup> *See table, supra* at 11-12.

<sup>81</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378; Resp. at 10, MUR 7634.

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1 involved in the decision to provide them, or was involved in substantial discussions about their  
2 provision;” and (3) the goods or services involved are — among other categories — “[p]olling  
3 expenses for determining the favorability, name recognition, or relative support level of the  
4 candidate involved.”<sup>82</sup> However, “if the candidate, through an authorized committee, reimburses  
5 the multicandidate political committee within 30 days of becoming a candidate, the payment  
6 shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an  
7 expenditure of the candidate.”<sup>83</sup> In addition, where an in-kind contribution exceeds the  
8 applicable contribution limit, whether on its face or when aggregated with other contributions,  
9 the treasurer may request redesignation or reattribution or, if neither is requested, must refund the  
10 contribution within 60 days of receipt.<sup>84</sup>

11 Respondents admit that Fairness PAC made payments for polling that qualify as pre-  
12 candidacy expenditures under 11 C.F.R. § 110.2(1): (1) \$68,000 to Brilliant Corners Research  
13 and Strategies on March 27, 2019; and (2) \$55,000 to Keating Research on May 13, 2020.<sup>85</sup>  
14 Further, because De Blasio 2020 did not reimburse Fairness PAC until June 30 for those  
15 expenditures, De Blasio 2020 failed to reimburse those expenses within 30 days after de Blasio  
16 announced his candidacy.<sup>86</sup> The campaign reimbursed Fairness PAC for the polling by Keating  
17 Research within 60 days of Fairness PAC’s disbursement, but it did not reimburse the

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<sup>82</sup> 11 C.F.R. § 110.2(1).

<sup>83</sup> 11 C.F.R. § 110.2(1)(2); *accord* F&LA at 6, MUR 7191 (Rand Paul).

<sup>84</sup> 11 C.F.R. § 103.3(b)(3).

<sup>85</sup> *See Resp.* at 10, MUR 7634.

<sup>86</sup> *Resp.* at 10, MUR 7634.

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1 Committee for the payment to Brilliant Corners Research and Strategies until 95 days after that  
2 disbursement. Consequently, Fairness PAC made, and De Blasio 2020 and Bill de Blasio  
3 accepted, excessive in-kind contributions in the form of polling expenditures.

4 3. Committees' Payment of de Blasio's Campaign Activities

5 The Committees' support of de Blasio was not limited to his testing-the-waters activities;  
6 they also purchased goods and services that they transferred to the campaign after it was formed.  
7 NY Fairness PAC admits to paying for \$52,851.89 for consulting, rent, and travel expenses in  
8 early-to-mid May that benefited de Blasio's candidacy.<sup>87</sup> De Blasio 2020 disclosed these  
9 payments as a debt in its 2019 July Quarterly Report.<sup>88</sup> Respondents explain that the payments  
10 were specifically for: (1) a \$40,000 fee paid by NY Fairness PAC to Clarify Agency for digital  
11 services that were ultimately performed for the campaign; (2) a \$4,200 payment for "rent for  
12 office space that by then was used solely by De Blasio 2020"; and (3) "travel that was previously  
13 arranged for that time irrespective of whether or not the Mayor then would be a candidate."<sup>89</sup>  
14 The campaign reimbursed NY Fairness PAC for these expenses on September 11, 2019, long  
15 after the 60-day deadline to do so under Commission regulations.<sup>90</sup>

16 Additionally, while Respondents admit that NY Fairness PAC paid Freedomland Media  
17 \$19,964 on May 12, 2019, towards the cost of De Blasio 2020's opening video, they deny that  
18 this constituted an in-kind contribution to de Blasio's campaign. They state that the media

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<sup>87</sup> *Id.* at 9.

<sup>88</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>89</sup> Resp. at 9, MUR 7634.

<sup>90</sup> *See* 11 C.F.R. § 103.3(b)(3).

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1 company was hired “to produce a video that would be used in connection with either a  
2 presidential campaign launch or, if there was no campaign, then for other continuing political  
3 activity.”<sup>91</sup> However, the payment of part of the cost of the announcement video falls under the  
4 broad definition of “anything of value” and qualifies as a contribution to the campaign because  
5 the Committee expended funds to purchase a good or service that it then provided to the  
6 campaign.<sup>92</sup> The Committee’s payment for the video is also not for the purpose of testing the  
7 waters. Commission regulations specify that “funds received for activities indicating that an  
8 individual has decided to become a candidate for a particular office or for activities relevant to  
9 conducting a campaign” are not testing-the-waters expenditures and provide as a specific  
10 example “general public political advertising to publicize his or her intention to campaign for  
11 Federal office.”<sup>93</sup> Therefore, the launch video appears to constitute an in kind contribution to De  
12 Blasio 2020 and Bill de Blasio.

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<sup>91</sup> Resp. at 2, MUR 7631.

<sup>92</sup> *See, e.g.*, First Gen. Counsel’s Rpt. at 10, MUR 5409 (Norquist, *et al.*) (dispositive Commission opinion) (recommending finding reason to believe that a nonprofit corporation made prohibited in-kind contributions by providing a campaign with its private lists of conservative organizations and individuals, which the corporation “utilized its resources to obtain and compile”), and Certification, MUR 5409 (Oct. 19, 2004) (approving recommendation); AO 2007-22 (Hurysz) at 6 (“The provision of . . . materials without charge would relieve your campaign of the expense that it would otherwise incur to obtain such materials. Thus, the provision of such items without charge would constitute a contribution . . . .”); AO 1992-33 (DNC/RNC) at 3 (“As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services.”); *see also* F&LA at 8-9, MUR 7207 (Taub) (finding reason to believe that a foreign national made a contribution by providing “research reports” that were prepared by commercial vendors and were “commercial products of the sort routinely prepared by professional vendors on behalf of Congressional campaigns”). There is no indication that NY Fairness PAC separately used the video to its own benefit.

<sup>93</sup> 11 C.F.R. § 100.72(b)(1).

1                   4.     Conclusion

2                   Based on the foregoing discussion, the available information indicates that the  
3     Committees exceeded their respective contribution limits to the campaign — \$2,800 as to NY  
4     Fairness PAC and \$5,000 as to Fairness PAC. Respondents concede that NY Fairness PAC  
5     made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent, and  
6     consulting services and that Fairness PAC paid for \$123,000 in polling expenses that benefited  
7     the campaign. There is also information that both Committees paid for other travel, consulting,  
8     and media expenses that either were used to test the waters of a presidential run by de Blasio or  
9     benefited the campaign once it was formed. The Commission therefore finds reason to believe  
10    that de Blasio and De Blasio 2020 accepted excessive contributions in violation of 52 U.S.C.  
11    § 30116(f) and 11 C.F.R. § 100.72(a).

12                **B.     The Commission Finds Reason to Believe that De Blasio 2020 Failed to**  
13                **Report In-Kind Contributions**

14                When an individual becomes a candidate under the Act, any funds received or payments  
15    made for testing-the-waters activities become contributions or expenditures subject to the  
16    reporting requirements of the Act and are to be reported as such on the first disclosure report  
17    filed by the candidate's authorized committee.<sup>94</sup>

18                Though the record indicates that Fairness PAC and NY Fairness PAC made  
19    disbursements for testing-the-waters activities by de Blasio and otherwise contributed to his

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<sup>94</sup> 11 C.F.R. §§ 100.72(a); 100.131(a).



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1 campaign, De Blasio 2020 did not report any in-kind contributions from either Committee.<sup>95</sup>  
2 Respondents also acknowledge that De Blasio 2020 failed to properly itemize polling  
3 expenditures paid for by Fairness PAC.<sup>96</sup>

4 The Commission therefore finds reason to believe that De Blasio 2020 violated 52 U.S.C.  
5 § 30104(a), (b) and 11 C.F.R §§ 100.72(a) and 100.131(a) by failing to report in-kind  
6 contributions from Fairness PAC and NY Fairness PAC and by failing to properly report  
7 expenditures.

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<sup>95</sup> Moreover, even if the Committees did not pay for the campaign’s exploratory expenditures — which the Respondents do not dispute — the campaign still failed to make required disclosures because it did not disclose *any* contributions prior to May 16, 2019 despite reporting dozens of expenditures taking place before that date.

<sup>96</sup> Resp. at 10, MUR 7634 (“Although De Blasio 2020’s original July Quarterly Report disclosed, on page 378, its reimbursement of Fairness PAC for \$123,000 for ‘polling,’ it did not itemize either of the two underlying exploratory expenditures. De Blasio 2020 amended its report on July 19 and disclosed the payment to Brilliant Corners Research and Strategies, but it again omitted the payment to Keating Research.”).

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5  
6 RESPONDENT: Fairness PAC and Herbert Block MUR 7634  
7 in his official capacity as treasurer  
8

9 **I. INTRODUCTION**

10 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
11 established Fairness PAC, a federal multi-candidate committee. The Complaint alleges that  
12 Fairness PAC, along with NY Fairness PAC, a non-federal committee registered with the state of  
13 New York, funded exploratory activity and made other contributions to de Blasio's campaign in  
14 excess of federal contribution limits as set forth in the Federal Election Campaign Act of 1971,  
15 as amended (the "Act"), and Commission regulations.

16 Fairness PAC admits that it paid for \$123,000 in polling expenses that it contends were  
17 for testing-the-waters purposes and that the campaign reimbursed late. It otherwise denies the  
18 allegations and requests that the Commission enter into pre-probable cause conciliation with  
19 respect to the \$123,000 in contributions and otherwise dismiss the allegations.

20 Based on the available information, Fairness PAC appears to have made excessive in-  
21 kind contributions. Although it admits to paying for some of de Blasio's expenses, the payments  
22 appear to exceed the \$123,000 it identifies. Instead, the information in the record, which  
23 includes identical expenditures reported both by De Blasio 2020 and Fairness PAC, indicates that  
24 it made additional payments related to de Blasio's testing-the-waters and campaign activities  
25 totaling as much as approximately \$350,000 — most of which de Blasio and De Blasio 2020  
26 never reimbursed — and thereby made excessive, in-kind contributions.

1           Accordingly, the Commission finds reason to believe that Fairness PAC and Herbert  
2 Block in his official capacity as treasurer made excessive in-kind contributions in violation of  
3 52 U.S.C. § 30116(a) and 11 C.F.R. § 100.72(a).

## 4   **II.   FACTUAL BACKGROUND**

### 5       **A.   Establishment of Fairness PAC**

6           Bill de Blasio served as mayor of New York from January 1, 2014 to December 31,  
7 2021.<sup>1</sup> According to the available information, de Blasio decided to become a candidate for  
8 President of the United States on May 15, 2019, and publicly announced his decision the  
9 following day, on May 16, 2019. That same day, de Blasio filed his Statement of Candidacy and  
10 designated De Blasio 2020 as his authorized committee.<sup>2</sup> De Blasio’s campaign ran until  
11 September 20, 2019, when he announced its suspension.<sup>3</sup>

12           Before announcing his candidacy, de Blasio “and others” established Fairness PAC in  
13 July 2018 as an unincorporated political organization under section 527 of the Internal Revenue  
14 Code.<sup>4</sup> On July 25, 2018, Fairness PAC filed its Statement of Organization with the

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio’s NYC Mayoral Tenure, What’s Next and What’s Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

<sup>2</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>3</sup> Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

<sup>4</sup> Resp. at 1 (Oct. 15, 2019).

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1 Commission<sup>5</sup> and became a multicandidate committee in January 2019.<sup>6</sup> Fairness PAC states  
2 that its purpose was “to support federal Democratic candidates and progressive causes in New  
3 York State and elsewhere.”<sup>7</sup>

4 At the time it filed its initial statement of organization, Fairness PAC represented its  
5 website to be [billdeblasio.com](http://billdeblasio.com)<sup>8</sup> — which, according to the Complaint in MUR 7634, previously  
6 had been associated with de Blasio’s mayoral campaign.<sup>9</sup> However, Fairness PAC did not  
7 mention the website in an amended statement of organization it filed on July 25, 2019, or  
8 thereafter.<sup>10</sup> Archived versions of the website show that as of July, 2018, [billdeblasio.com](http://billdeblasio.com)  
9 provided information regarding Fairness PAC and stated that it was paid for by Fairness PAC,  
10 while as of May, 2019, [billdeblasio.com](http://billdeblasio.com) solicited contributions for, and stated that it was paid for  
11 by, De Blasio 2020.<sup>11</sup>

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<sup>5</sup> Fairness PAC, Statement of Organization (July 25, 2018); *see also* Fairness PAC, Amended Statement of Organization (July 25, 2019) (same).

<sup>6</sup> The Committee informed the Commission that it had reached multicandidate status on January 31, 2019. Fairness PAC, Notification of Multicandidate Status (Jan. 31, 2019).

<sup>7</sup> Resp. at 2; *see also* Laura Nahmias and Gloria Pazmino, *De Blasio Launches Federal PAC and Considers Post-Mayoral Run*, POLITICO (July 26, 2018), <https://www.politico.com/states/new-york/albany/story/2018/07/25/de-blasio-launches-federal-pac-and-considers-post-mayoral-run-529622> (stating that de Blasio had stated he formed Fairness PAC in order “to support national Democratic candidates in their efforts to retake the House, Senate and New York state Senate”).

<sup>8</sup> Fairness PAC, Statement of Organization (July 25, 2018).

<sup>9</sup> Compl. at 3, MUR 7634. According to the Complaint, after the formation of Fairness PAC, the disclaimer on [billdeblasio.com](http://billdeblasio.com) was changed from “Paid for by de Blasio 2017,” the name of de Blasio’s mayoral committee, to “Paid for by Fairness PAC.” *Id.*

<sup>10</sup> Fairness PAC, Amended Statement of Organization (July 25, 2019).

<sup>11</sup> Compare [billdeblasio.com](http://billdeblasio.com) [<https://web.archive.org/web/20180727015840/https://billdeblasio.com/>] (July 27, 2018, archived snapshot of website), with [billdeblasio.com](http://billdeblasio.com) [[https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de\\_blasio\\_donate\\_is/](https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de_blasio_donate_is/)] (May 17, 2019, archived snapshot of website).

1           **B.       Payments Made by Fairness PAC Allegedly for Financing de Blasio’s**  
2           **Testing-the-Waters and Campaign Activities**

3           Available information indicates that de Blasio began to test the waters for a potential  
4           2020 presidential run in early March 2019. De Blasio 2020’s July 2019 Quarterly Report, which  
5           was the first report the Committee filed with the Commission after de Blasio announced his  
6           candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7  
7           through May 14, 2019.<sup>12</sup> Despite this level of spending, that report does not indicate how any of  
8           those expenses were funded because it discloses no contributions received during the testing-the-  
9           waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the  
10          Committee reported accepting its first contribution.<sup>13</sup>

11          Although Fairness PAC has not been disclosed as a contributor to de Blasio’s campaign,  
12          it admits to paying for at least some of de Blasio’s exploratory activities. As alleged in the  
13          Complaint in MUR 7634, De Blasio 2020’s Amended July 2019 Quarterly Report disclosed 78  
14          discrete expenditures that totaled \$148,389 by denoting them as “Exploratory” in memo  
15          entries.<sup>14</sup> A number of those expenditures are identical to expenditures that appear in Fairness  
16          PAC’s reports, reflecting the same amounts and dates of disbursement.<sup>15</sup> The 78 expenditures

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<sup>12</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

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

<sup>14</sup> *See* Compl. ¶ 11; De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>15</sup> *Compare* De Blasio 2020, Amended 2019 July Quarterly Report, *with* Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020).

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1 listed in De Blasio 2020’s initial report as “exploratory” also include a payment of \$68,000 to  
2 Brilliant Corners Research and Strategies for “polling.”<sup>16</sup>

3 The Complaint also identifies two groups of expenditures by Fairness PAC that De  
4 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, De Blasio  
5 2020 allegedly failed to disclose as an expenditure a \$55,000 payment by Fairness PAC to  
6 Keating Research on May 13, 2019 that is described as for “exploratory” purposes in Fairness  
7 PAC’s 2019 Mid-Year Report.<sup>17</sup>

8 *Second*, on April 12, 2019, Fairness PAC made a disbursement of \$46,000 to “Trilogy  
9 Interactive” for a “digital media buy.”<sup>18</sup> Within days of the April disbursement, de Blasio’s  
10 Facebook page began running dozens of ads (with disclaimers stating that they were paid for by  
11 Fairness PAC) that criticized President Trump or promoted de Blasio’s policy agenda, and asked  
12 recipients to share their names and email addresses.<sup>19</sup> The Complaint alleges that those  
13 payments to Trilogy Interactive were made for de Blasio’s exploratory activities because after  
14 de Blasio announced his candidacy, the same Facebook page continued running ads “with similar  
15 messages,” but now with disclaimers stating that the ads were paid for by De Blasio 2020.<sup>20</sup>  
16 Fairness PAC denies that those payments were related to de Blasio’s testing-the-waters activities

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<sup>16</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

<sup>17</sup> Compl. ¶ 13; Fairness PAC, Amended July Mid-Year Report at 143, 151 (Jan, 31, 2020).

<sup>18</sup> Compl. ¶ 15; Fairness PAC, Amended 2019 Mid-Year Report at 157.

<sup>19</sup> Compl. ¶ 15; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook,  
<https://www.facebook.com/ads/library/?id=1303967669741097>.

<sup>20</sup> Compl. ¶ 15.

1 on the basis that the advertisements in question were issue-oriented and made no reference to any  
2 election or potential candidacy.<sup>21</sup>

3 De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first  
4 report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>22</sup> De  
5 Blasio 2020's first report disclosed \$1,087,564.24 in contributions from individuals but no  
6 contributions from Fairness PAC.<sup>23</sup>

### 7 **C. Reimbursement of Testing-the-Waters and Campaign Expenses**

8 Although Fairness PAC disputes that many of the disbursements supported de Blasio's  
9 future or actual candidacy, the campaign committee has reimbursed Fairness PAC for some of  
10 the payments in question. De Blasio 2020 reported making a \$123,000 payment to Fairness PAC  
11 on July 30, 2019, for "polling."<sup>24</sup> Fairness PAC admits that this corresponds to the  
12 disbursements of \$55,000 to Keating Research on May 13, 2019, and \$68,000 to Brilliant  
13 Corners Research & Strategies on March 27, 2019.<sup>25</sup> In its initial FEC filing in July 2019, De  
14 Blasio 2020 reported the expenditure to Brilliant Corners<sup>26</sup> but not the expenditure to Keating  
15 Research, and the committee has not amended this report. The campaign has reported no other  
16 disbursements to either Committee.

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<sup>21</sup> Resp. at 3.

<sup>22</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>23</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

<sup>24</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378.

<sup>25</sup> Resp. at 7; *see also* Fairness PAC, Amended 2019 July Mid-Year Report at 143, 151 (Jan, 31, 2020) (disclosing both payments and describing them as "exploratory").

<sup>26</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

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- 1 The following chart summarizes the payments by Fairness PAC specifically identified by  
2 the Complaint that were allegedly either testing-the-waters or campaign expenses, when if ever  
3 De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed the  
4 Committee:  
5 **Alleged Payments Made by Fairness PAC and/or NY Fairness PAC to Support de Blasio**<sup>27</sup>

<b>PAYOR</b>	<b>Amount</b>	<b>Recipient</b>	<b>Date of Payment</b>	<b>Date of Reporting by De Blasio 2020</b>	<b>Description</b>	<b>Date of Reimbursement</b>
Fairness PAC	\$68,000	Brilliant Corners Research and Strategies	March 27, 2019	July 19, 2019	Polling	June 30, 2019
Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None
Fairness PAC	\$55,000	Keating Research	May 13, 2019	Not Disclosed	Polling	June 30, 2019
Fairness PAC and NY Fairness PAC	\$60,695.16	Various Recipients	Various	July 19, 2019	Various travel and administrative expenses	None
<b>TOTAL</b>	<b>\$229,695</b>					

<sup>27</sup> As stated above, De Blasio paid Fairness PAC \$1,047.50 for a “website” on the same day. It is not clear whether De Blasio 2020 reimbursed Fairness PAC for any of the expenditures listed.



1 **III. LEGAL ANALYSIS**2 **A. The Commission Finds Reason to Believe that Fairness PAC Made Excessive**  
3 **In-Kind Contributions**4 1. Fairness PAC's Payment of de Blasio's Testing-the-Waters Activities

5 An individual becomes a candidate under the Act if he or she receives contributions or  
6 makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>28</sup>  
7 The Commission's regulations create exemptions to the definitions of contribution and  
8 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,  
9 *i.e.*, to "test the waters."<sup>29</sup> These exemptions exclude from the definitions of "contribution" and  
10 "expenditure" those funds received and payments made solely to determine whether an  
11 individual should become a candidate.<sup>30</sup> Testing-the-waters activities include, but are not limited  
12 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act  
13 may be used for such activities.<sup>31</sup> If the individual subsequently becomes a candidate, the funds  
14 previously received for testing-the-waters activities are thereafter considered contributions  
15 subject to the reporting requirements of the Act.<sup>32</sup> Commission regulations further require that  
16 "[o]nly funds permissible under the Act may be used for [testing-the-waters] activities."<sup>33</sup> The  
17 Act prohibits any person from making contributions to any candidate and his authorized political

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<sup>28</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>29</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>30</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>31</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>32</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>33</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

1 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800  
2 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>34</sup>  
3 Consequently, in order to comply with these requirements, de Blasio was limited to accepting  
4 contributions that complied with the Act's source and amount restrictions while testing the  
5 waters.

6 Fairness PAC contends that the Commission has never restricted the type of  
7 organizational vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides  
8 that funds received for testing the waters become contributions once an individual becomes a  
9 candidate and that those contributions "must be reported with the first report filed by the  
10 principal campaign committee of the candidate, regardless of the date the funds were received."<sup>35</sup>  
11 Therefore, in past matters, the Commission has determined that a payment made by a multi-  
12 candidate committee for an individual's testing-the-waters activities constitutes an in-kind  
13 contribution and must be reported as such by the candidate's authorized committee after that  
14 individual becomes a candidate.<sup>36</sup> Pursuant to the Act's contribution limits, a multicandidate  
15 committee would be limited to spending up to \$5,000 on the candidate's exploratory efforts; if

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<sup>34</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>35</sup> 11 C.F.R. § 100.72(a).

<sup>36</sup> Factual & Legal Analysis ("F&LA") at 5, MUR 5908 (Peace Through Strength PAC) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter's leadership PAC paid for travel expenses properly attributable to Hunter's presidential campaign); *see also* AO 1985-40 (Republican Majority Fund) (addressing specifically multicandidate committees); AO 1981-32 at 5 (explaining that "in kind gifts or loans of goods or services provided in connection with . . . testing the waters activities" are contributions under the Act).

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1 such committee were to spend more, that committee would be making an excessive in-kind  
2 contribution to the candidate’s authorized committee.<sup>37</sup>

3 Here, there is already significant evidence that Fairness PAC funded activities that were  
4 for the purpose of testing the waters of a potential presidential candidacy by de Blasio. As  
5 explained above, De Blasio 2020 reported on its first FEC disclosure report 78 expenditures that  
6 it described as “exploratory.”<sup>38</sup> Many of these expenditures — largely for travel and consulting  
7 — correspond to identical expenditures made by Fairness PAC to the same recipients on the  
8 same days and in the same amounts. By way of example, both De Blasio 2020 and Fairness  
9 PAC reported the following disbursements: \$1,769.22 to Cision US Inc. on March 7, 2019;<sup>39</sup>  
10 \$1,500 to Kendal Corley on March 8, 2019;<sup>40</sup> \$530.64 to Claudia Cereceda on March 13, 2019;<sup>41</sup>  
11 \$414.51 to Jaclyn Rothenberg on March 20, 2019;<sup>42</sup> \$378.58 to Expedia on May 9, 2019, 2019.<sup>43</sup>  
12 The Campaign appears not to have reimbursed most if any of the 78 “exploratory” expenditures

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<sup>37</sup> 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

<sup>38</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>39</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 363; Fairness PAC, Amended 2019 Mid-Year Report at 146 (Jan 30, 2020).

<sup>40</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 376; Fairness PAC, Amended 2019 Mid-Year Report at 150.

<sup>41</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 368; Fairness PAC, Amended 2019 Mid-Year Report at 148.

<sup>42</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 401; Fairness PAC, Amended 2019 Mid-Year Report at 154.

<sup>43</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 393; Fairness PAC, Amended 2019 Mid-Year Report at 154.

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1 other than Fairness PAC's \$68,000 payment to Brilliant Corners for polling, as discussed  
2 elsewhere.<sup>44</sup>

3 Moreover, De Blasio 2020's first reported contribution occurred on May 16, 2019, while  
4 its reported exploratory expenditures began in early March 2019 and continued throughout the  
5 next three months.<sup>45</sup> Fairness PAC has not provided any other explanation for a possible source  
6 of the funds used to pay for these exploratory expenses.

7 Fairness PAC admits argues that an exploratory expenditure paid for before an individual  
8 becomes a candidate is not thereby also a contribution.<sup>46</sup> This argument is inconsistent with the  
9 plain text of Commission regulations, which provide that "[i]f the individual subsequently  
10 becomes a candidate, the [testing-the-waters] funds received . . . are contributions" and are  
11 thereafter retroactively subject to the contribution limits set forth in the Act.<sup>47</sup> Thus, "[i]f and  
12 when the individual becomes a candidate . . . the financing of all activity coming within the  
13 [testing-the-waters] exemption must be reported and otherwise treated as contributions and  
14 expenditures for purposes of the Act and regulations."<sup>48</sup>

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<sup>44</sup> See *supra* Section II.C; *infra* Section III.A.2.

<sup>45</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>46</sup> Resp. at 4-5.

<sup>47</sup> 11 C.F.R. § 100.72(a). As discussed above, the Commission has applied this principle to state and federal multicandidate committees in prior instances. See F&LA at 5 MUR 5908 (Peace Through Strength PAC); F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*); AO 1981-32 at 5; AO 1985-40 at 5.

<sup>48</sup> F&LA at 5 n.24, MURs 7689, 7794 (Amanda Adkins for Congress, *et al.*) (quoting AO 1981-32 at 3) (quotation marks omitted).

1           The exploratory expenditures allegedly paid for by Fairness PAC total over a hundred  
2 thousand of dollars and are well in excess of the applicable contribution limits of \$5,000.<sup>49</sup>  
3 Moreover the campaign appears not to have reimbursed Fairness PAC for most of these  
4 disbursements.

5           2.       Pre-Candidacy Expenditures Deemed as In-Kind Contributions under  
6                    11 C.F.R. § 110.2(l)

7           Along with the exploratory expenditures reported on the campaign’s initial report, the  
8 campaign reported a reimbursement on June 30, 2019, to Fairness PAC for \$123,000 in polling  
9 expenses, which corresponds to a \$68,000 payment to Brilliant Corners Research and Strategies  
10 on March 27 and \$55,000 to Keating Research on May 13.<sup>50</sup>

11           Commission regulations provide that a pre-candidacy payment by a multicandidate  
12 political committee of a presidential candidate’s expenses will be deemed an in-kind contribution  
13 — regardless of whether the payment is made before the individual becomes a candidate — if  
14 the following conditions are met: (1) “[t]he expenditure is made on or after January 1 of the year  
15 immediately following the last Presidential election year;” (2) “the candidate accepted or  
16 received [the goods or services involved], requested or suggested their provision, was materially  
17 involved in the decision to provide them, or was involved in substantial discussions about their  
18 provision;” and (3) the goods or services involved are — among other categories — “[p]olling  
19 expenses for determining the favorability, name recognition, or relative support level of the

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<sup>49</sup>       *See table, supra at 7.*

<sup>50</sup>       De Blasio 2020, Amended 2019 July Quarterly Report at 378.

1 candidate involved.”<sup>51</sup> However, “if the candidate, through an authorized committee, reimburses  
2 the multicandidate political committee within 30 days of becoming a candidate, the payment  
3 shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an  
4 expenditure of the candidate.”<sup>52</sup> In addition, where an in-kind contribution exceeds the  
5 applicable contribution limit, whether on its face or when aggregated with other contributions,  
6 the treasurer may request redesignation or reattribution or, if neither is requested, must refund the  
7 contribution within 60 days of receipt.<sup>53</sup>

8 Fairness PAC admits that it made payments for polling that qualify as pre-candidacy  
9 expenditures under 11 C.F.R. § 110.2(1): (1) \$68,000 to Brilliant Corners Research and  
10 Strategies on March 27, 2019; and (2) \$55,000 to Keating Research on May 13, 2020.<sup>54</sup> Further,  
11 because De Blasio 2020 did not reimburse Fairness PAC until June 30 for those expenditures, De  
12 Blasio 2020 failed to reimburse those expenses within 30 days after de Blasio announced his  
13 candidacy.<sup>55</sup> The campaign reimbursed Fairness PAC for the polling by Keating Research  
14 within 60 days of Fairness PAC’s disbursement, but it did not reimburse the Committee for the  
15 payment to Brilliant Corners Research and Strategies until 95 days after that disbursement.  
16 Consequently, Fairness PAC made, and De Blasio 2020 and Bill de Blasio accepted, excessive  
17 in-kind contributions in the form of polling expenditures.

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<sup>51</sup> 11 C.F.R. § 110.2(1).

<sup>52</sup> 11 C.F.R. § 110.2(1)(2); *accord* F&LA at 6, MUR 7191 (Rand Paul).

<sup>53</sup> 11 C.F.R. § 103.3(b)(3).

<sup>54</sup> Resp. at 6-7.

<sup>55</sup> *Id.*

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1                   4.     Conclusion

2                   Based on the foregoing discussion, the available information indicates that Fairness PAC  
3 exceeded its contribution limits to the campaign of \$5,000. Fairness PAC concedes that it paid  
4 for \$123,000 in polling expenses that benefited the campaign. There is also information that it  
5 paid for other travel, consulting, and media expenses that either were used to test the waters of a  
6 presidential run by de Blasio or benefited the campaign once it was formed. The Commission  
7 therefore finds reason to believe that Fairness PAC made excessive contributions in violation of  
8 52 U.S.C. § 30116(a).

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5  
6 RESPONDENT: NY Fairness PAC MURs 7631 and 7634  
7

8 **I. INTRODUCTION**

9 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
10 established and NY Fairness PAC, a non-federal committee registered with the state of New  
11 York. The Complaints allege that NY Fairness PAC, along with Fairness PAC, a federal multi-  
12 candidate committee, funded exploratory activity and made other contributions to de Blasio's  
13 campaign in excess of federal contribution limits as set forth in the Federal Election Campaign  
14 Act of 1971, as amended (the "Act"), and Commission regulations.

15 NY Fairness PAC admits that it made approximately \$53,000 in expenditures for travel  
16 and consulting services that benefited the campaign after it was formed. It otherwise denies the  
17 allegations and requests that the Commission enter into pre-probable cause conciliation with  
18 respect to the approximately \$53,000 in contributions and otherwise dismiss the allegations.

19 Based on the available information, NY Fairness PAC appears to have made excessive  
20 in-kind contributions. Although it admits to paying for some of de Blasio's expenses, the  
21 payments appear to exceed the \$53,000 identified by NY Fairness PAC. Instead, the information  
22 in the record, which includes identical expenditures reported both by De Blasio 2020 and NY  
23 Fairness PAC, indicates that it made additional payments related to de Blasio's testing-the-  
24 waters and campaign activities totaling as much as approximately \$350,000 — most of which de  
25 Blasio and De Blasio 2020 never reimbursed — and thereby made excessive, in-kind  
26 contributions.



1           Accordingly, the Commission finds reason to believe that NY Fairness PAC made  
2 excessive in-kind contributions in violation of 52 U.S.C. § 30116(a) and 11 C.F.R. § 100.72(a).

## 3   **II.   FACTUAL BACKGROUND**

### 4   **A.   Establishment of NY Fairness PAC**

5           Bill de Blasio served as mayor of New York from January 1, 2014 to December 31,  
6 2021.<sup>1</sup> According to available information, de Blasio decided to become a candidate for  
7 President of the United States on May 15, 2019, and publicly announced his decision the  
8 following day, on May 16, 2019. That same day, de Blasio filed his Statement of Candidacy and  
9 designated De Blasio 2020 as his authorized committee.<sup>2</sup> De Blasio’s campaign ran until  
10 September 20, 2019, when he announced its suspension.<sup>3</sup>

11           Before announcing his candidacy, de Blasio “and others” established NY Fairness PAC  
12 in July 2018 as an unincorporated political organization under section 527 of the Internal  
13 Revenue Code.<sup>4</sup> On July 27, 2018, NY Fairness PAC, registered with the New York State Board  
14 of Elections (“NYSBOE”) as a state political action committee.<sup>5</sup> NY Fairness PAC states that its  
15 purpose was “to support nonfederal Democratic Party candidates and progressive causes in New  
16 York State and elsewhere, and it did so, including by making contributions and public

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio’s NYC Mayoral Tenure, What’s Next and What’s Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

<sup>2</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>3</sup> Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

<sup>4</sup> Resp. at 1 (Oct. 15, 2019), MUR 7631.

<sup>5</sup> *Id.*

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1 communications and by travel by Mayor de Blasio for activities, events and conferences . . . to  
2 promote progressive positions on issues and to support who embraced those positions.”<sup>6</sup>

3 **B. Payments Made by NY Fairness PAC Allegedly for Financing de Blasio’s**  
4 **Testing-the-Waters and Campaign Activities**

5 According to available information, de Blasio began to test the waters for a potential  
6 2020 presidential run in early March 2019. De Blasio 2020’s July 2019 Quarterly Report, which  
7 was the first report the Committee filed with the Commission after de Blasio announced his  
8 candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7  
9 through May 14, 2019.<sup>7</sup> Despite this level of spending, that report does not indicate how any of  
10 those expenses were funded because it discloses no contributions received during the testing-the-  
11 waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the  
12 Committee reported accepting its first contribution.<sup>8</sup>

13 Although NY Fairness PAC has not been disclosed as a contributor to de Blasio’s  
14 campaign, it admits to paying for at least some of de Blasio’s exploratory activities. NY Fairness  
15 PAC represents that it made the first payment for de Blasio’s exploratory expenses by paying for  
16 travel on March 13, 2019,<sup>9</sup> and that NY Fairness PAC continued to pay for such expenses

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<sup>6</sup> Resp. at 2, MUR 7634 (Oct. 15, 2010).

<sup>7</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> Resp. at 2, MUR 7631; *see also* De Blasio 2020, Amended July 2019 Quarterly Report at 364; New York State Board of Elections, Campaign Finance Disclosure, NY Fairness PAC, [https://cfapp.elections.ny.gov/ords/plsql\\_browser/EXPENSESA\\_county?ID\\_in=A22609&date\\_From=&date\\_to=&OFFICE\\_in=ALL&AMOUNT\\_From=&AMOUNT\\_to=&ZIP1=&ZIP2=&ORDERBY\\_IN=N](https://cfapp.elections.ny.gov/ords/plsql_browser/EXPENSESA_county?ID_in=A22609&date_From=&date_to=&OFFICE_in=ALL&AMOUNT_From=&AMOUNT_to=&ZIP1=&ZIP2=&ORDERBY_IN=N) (hereafter “NY Fairness PAC NYSBOE Disclosures”). The campaign disclosed expenditures related to a press list and consulting services that it described as “exploratory” on March 7 and March 8, respectively. The campaign disclosed additional disbursements for travel and described as “exploratory” taking place in March, April, and May. De

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1 “during the ensuing two months,”<sup>10</sup> which is reflected in reports filed with the NYSBOE and the  
2 Commission.<sup>11</sup> De Blasio 2020 has reported in its initial filing a \$52,851.89 debt owed to NY  
3 Fairness PAC,<sup>12</sup> which NY Fairness PAC states includes approximately \$8,600 for travel  
4 expenses.<sup>13</sup>

5 As alleged in the Complaint in MUR 7634, De Blasio 2020’s Amended July 2019  
6 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as  
7 “Exploratory” in memo entries.<sup>14</sup> A number of those expenditures are identical to expenditures  
8 that appear in NY Fairness PAC’s reports, reflecting the same amounts and dates of  
9 disbursement.<sup>15</sup> These include: approximately \$13,000 in consulting services to various  
10 individuals and entities; an \$8,600 payment for rent to The Yard; a payment of \$1,769.22 to  
11 Cision, Inc., for a press list; and various payments for travel, food, and lodging.<sup>16</sup>

12 The 78 exploratory expenditures further include a payment to Freedomland Media for  
13 \$19,964 on May 12, 2019.<sup>17</sup> This corresponds to a payment by NY Fairness PAC in the same

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Blasio 2020, Amended July 2019 Quarterly Report. They included exploratory expenditures for travel, food, and lodging in Illinois, Massachusetts, Nevada, New Hampshire, South Carolina, and Virginia. *Id.*

<sup>10</sup> Resp. at 2, MUR 7631.

<sup>11</sup> De Blasio 2020, Amended 2019 July Quarterly Report; NY Fairness PAC NYSBOE Disclosures.

<sup>12</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>13</sup> Resp. at 3-4, MUR 7631.

<sup>14</sup> *See* Compl. ¶ 11, MUR 7634; De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>15</sup> *Compare* De Blasio 2020, Amended 2019 July Quarterly Report, *with* Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020); NY Fairness PAC NYSBOE Disclosures.

<sup>16</sup> *See* De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>17</sup> *Id.* at 378.

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1 amount and on the same day to Freedomland Media for “Video Production Services.”<sup>18</sup> NY  
2 Fairness PAC acknowledges that it thereby paid for a portion of the cost of what became de  
3 Blasio’s presidential campaign announcement video, which De Blasio 2020 released four days  
4 later.<sup>19</sup> De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this payment.  
5 De Blasio 2020 later made additional payments to Freedomland Media in the amounts of  
6 \$19,694 on June 13,<sup>20</sup> \$24,694 on July 9,<sup>21</sup> and \$8,000 on August 7.<sup>22</sup>

7         The Complaints also identify two groups of expenditures by NY Fairness PAC that De  
8 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, on April  
9 12, 2019, NY Fairness PAC made a disbursement of \$46,000 to “Trilogy Interactive” for a  
10 “digital media buy.”<sup>23</sup> Within days of the April disbursements, de Blasio’s Facebook page began  
11 running dozens of ads that criticized President Trump or promoted de Blasio’s policy agenda,  
12 and asked recipients to share their names and email addresses.<sup>24</sup> The Complaints allege that  
13 those payments to Trilogy Interactive were made for de Blasio’s exploratory activities because

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<sup>18</sup> NY Fairness PAC NYSBOE Disclosures.

<sup>19</sup> Resp. at 2, MUR 7631.

<sup>20</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 379.

<sup>21</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 273 (June 22, 2020).

<sup>22</sup> *Id.* at 273.

<sup>23</sup> Compl. ¶ 15, MUR 7634; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9 (July 15, 2019), [https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs\\_sch\\_report+p\\_filer\\_id=A22609+p\\_e\\_year=2019+p\\_report\\_id=K+p\\_transaction\\_code=F](https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs_sch_report+p_filer_id=A22609+p_e_year=2019+p_report_id=K+p_transaction_code=F). NY Fairness PAC reported another payment to Trilogy Interactive of \$9,130 on July 1, 2019; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 15.

<sup>24</sup> Compl. ¶ 15, MUR 7634; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook, <https://www.facebook.com/ads/library/?id=1303967669741097>.

1 after de Blasio announced his candidacy, the same Facebook page continued running ads “with  
2 similar messages,” but now with disclaimers stating that the ads were paid for by De Blasio  
3 2020.<sup>25</sup> NY Fairness PAC denies that those payments were related to de Blasio’s testing-the-  
4 waters activities on the basis that the advertisements in question were issue-oriented and made no  
5 reference to any election or potential candidacy.<sup>26</sup>

6 *Second*, the Complaint in MUR 7634 alleges that \$5,069 in expenditures by NY Fairness  
7 PAC for “digital services” and “digital consulting” to various vendors that took place from  
8 January 4 to April 23, 2019, were in fact contributions to the campaign because NY Fairness  
9 PAC does not have an online presence or purchase ads.<sup>27</sup> NY Fairness PAC contends that these  
10 payments were for “fundraising emails and emails concerning the 2018 elections.”<sup>28</sup>

11 De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first  
12 report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>29</sup> De  
13 Blasio 2020’s first report disclosed \$1,087,564.24 in contributions from individuals but no  
14 contributions from NY Fairness PAC.<sup>30</sup> However, it listed a \$52,851.89 debt owed to NY  
15 Fairness PAC for “Travel Expenses, Digital Advertising, [and] Rent,” which NY Fairness PAC

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<sup>25</sup> Compl. ¶ 15, MUR 7634.

<sup>26</sup> Resp. at 3, MUR 7634.

<sup>27</sup> Compl. ¶ 15, MUR 7634.

<sup>28</sup> Resp. at 5, MUR 7634.

<sup>29</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>30</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

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1 represents comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020,  
2 \$4,200 in rent for office space that the campaign used, and other campaign-related travel costs.<sup>31</sup>

3 **C. Reimbursement of Testing-the-Waters and Campaign Expenses**

4 Although NY Fairness PAC disputes that many of the disbursements supported de  
5 Blasio’s future or actual candidacy, the campaign committee has reimbursed NY Fairness PAC  
6 for some of the payments in question. On September 11, 2019, De Blasio 2020 paid NY  
7 Fairness PAC the \$52,851.89 listed as a debt on the campaign’s July report.<sup>32</sup> De Blasio 2020  
8 reported two other disbursements to NY Fairness PAC on September 30, 2019: \$1,047.50 for a  
9 “website” and \$19,397.78 for “digital assets.”<sup>33</sup> The campaign has reported no other  
10 disbursements to either Committee.

11 The following chart summarizes the payments by NY Fairness PAC specifically  
12 identified by the Complaints that were allegedly either testing-the-waters or campaign expenses,  
13 when if ever De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed  
14 NY Fairness PAC:

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<sup>31</sup> *Id.* at 417; Resp. at 3, MUR 7631; De Blasio 2020, Amended 2019 October Quarterly Report at 352 (Oct. 15, 2019).

<sup>32</sup> De Blasio 2020, Amended October 2019 Quarterly Report.

<sup>33</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 316.

1 **Alleged Payments Made by NY Fairness PAC to Support de Blasio**<sup>34</sup>

<b>PAYOR</b>	<b>Amount</b>	<b>Recipient</b>	<b>Date of Payment</b>	<b>Date of Reporting by De Blasio 2020</b>	<b>Description</b>	<b>Date of Reimbursement</b>
NY Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None
NY Fairness PAC	\$4,200	The Yard	May 2, 2019	July 19, 2019	Office Space	September 11, 2019
NY Fairness PAC	\$19,964	Freedomland Media	May 12, 2019	July 19, 2019	Campaign Announcement Video	None
NY Fairness PAC	\$40,000	Clarify Agency	May 15, 2019	July 19, 2019	Digital Services	September 11, 2019
NY Fairness PAC	\$9,130	Trilogy Interactive	July 1, 2019	Not Disclosed	Digital Media Buy	None
NY Fairness PAC	\$8,651.89	Various Recipients	Various	July 19, 2019	Travel	September 11, 2019
NY Fairness PAC and Fairness PAC	\$60,695.16	Various Recipients	Various	July 19, 2019	Various travel and administrative expenses	None
NY Fairness PAC	\$5,069	Blue State Digital and Aisle 518 Strategies, LLC	Various <sup>35</sup>	Not Disclosed	Digital Services	None
<b>TOTAL</b>	<b>\$ 193,710</b>					

<sup>34</sup> As stated above, De Blasio 2020 also made payments to NY Fairness PAC on September 30 of \$1,047.50 for a “website” and \$19,397.78 for “digital assets. It is not clear whether De Blasio 2020 reimbursed NY Fairness PAC for any of the expenditures listed.

<sup>35</sup> The Complaint in MUR 7634 appears to be referring to four payments to Blue State Digital and two payments to Aisle 518 Strategies, LLC taking place between January 4 and April 23, 2019. See NY Fairness PAC NYSBOE Disclosures.

1 **III. LEGAL ANALYSIS**2 **A. The Commission Finds Reason to Believe that NY Fairness PAC Made**  
3 **Excessive In-Kind Contributions**4 1. NY Fairness PAC's Payment of de Blasio's Testing-the-Waters Activities

5 An individual becomes a candidate under the Act if he or she receives contributions or  
6 makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>36</sup>  
7 The Commission's regulations create exemptions to the definitions of contribution and  
8 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,  
9 *i.e.*, to "test the waters."<sup>37</sup> These exemptions exclude from the definitions of "contribution" and  
10 "expenditure" those funds received and payments made solely to determine whether an  
11 individual should become a candidate.<sup>38</sup> Testing-the-waters activities include, but are not limited  
12 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act  
13 may be used for such activities.<sup>39</sup> If the individual subsequently becomes a candidate, the funds  
14 previously received for testing-the-waters activities are thereafter considered contributions  
15 subject to the reporting requirements of the Act.<sup>40</sup> Commission regulations further require that  
16 "[o]nly funds permissible under the Act may be used for [testing-the-waters] activities."<sup>41</sup> The  
17 Act prohibits any person from making contributions to any candidate and his authorized political

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<sup>36</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>37</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>38</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>39</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>40</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>41</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).



1 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800  
2 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>42</sup>  
3 Consequently, in order to comply with these requirements, de Blasio was limited to accepting  
4 contributions that complied with the Act’s source and amount restrictions while testing the  
5 waters.

6 NY Fairness PAC contend that the Commission has never restricted the type of  
7 organizational vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides  
8 that funds received for testing the waters become contributions once an individual becomes a  
9 candidate and that those contributions “must be reported with the first report filed by the  
10 principal campaign committee of the candidate, regardless of the date the funds were received.”<sup>43</sup>  
11 Therefore, in past matters, the Commission has determined that a payment made by a multi-  
12 candidate committee for an individual’s testing-the-waters activities constitutes an in-kind  
13 contribution and must be reported as such by the candidate’s authorized committee after that  
14 individual becomes a candidate.<sup>44</sup> The Commission has found that payments for testing-the-

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<sup>42</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>43</sup> 11 C.F.R. § 100.72(a).

<sup>44</sup> Factual & Legal Analysis (“F&LA”) at 5, MUR 5908 (Peace Through Strength PAC) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter’s leadership PAC paid for travel expenses properly attributable to Hunter’s presidential campaign); *see also* AO 1985-40 (Republican Majority Fund) (addressing specifically multicandidate committees); AO 1981-32 at 5 (explaining that “in kind gifts or loans of goods or services provided in connection with . . . testing the waters activities” are contributions under the Act).

1 waters activities by non-federal organizations constitute in-kind contributions to a candidate.<sup>45</sup>

2 Non-federal organizations are limited to the individual \$2,800 contribution threshold.<sup>46</sup>

3 Here, there is already significant evidence that NY Fairness PAC funded activities that  
4 were for the purpose of testing the waters of a potential presidential candidacy by de Blasio. As  
5 explained above, De Blasio 2020 reported on its first FEC disclosure report 78 expenditures that  
6 it described as “exploratory.”<sup>47</sup> Many of these expenditures — largely for travel and consulting  
7 — correspond to identical expenditures made by NY Fairness PAC to the same recipients on the  
8 same days and in the same amounts. By way of example, both De Blasio 2020 and NY Fairness  
9 PAC reported the following disbursements: \$4,000 to Michael Casca on April 19, 2019;<sup>48</sup>  
10 \$5,077.98 to Expedia on April 4, 2019;<sup>49</sup> \$1,650.51 to United Airlines on April 23, 2019;<sup>50</sup>  
11 \$1,104.90 to Delta Airlines on April 4, 2019;<sup>51</sup> and \$1,065.20 to Delta Airlines on March 27,

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<sup>45</sup> F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*) (finding reason to believe that non-federal entity made contributions to campaign by paying for candidate’s testing-the-waters expenses) F&LA at 11, MURs 6917, 6929 (Scott Walker, *et al.*) (same); *see also* F&LA at 15, MUR 4323 (Huckabee Election Committee) (concluding that a state committee “could not . . . use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential . . . federal campaign”); AO 2015-09 (Senate Majority PAC and House Majority PAC) at 5 (concluding that 527 organizations’ payments for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.13(a)).

<sup>46</sup> *See* 52 U.S.C. § 30116(a)(1)(A).

<sup>47</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>48</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 366; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9.

<sup>49</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 391; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 7-8.

<sup>50</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 375; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 10.

<sup>51</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 377; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 8.

1 2019.<sup>52</sup> The Campaign appears not to have reimbursed most if any of the 78 “exploratory”  
2 expenditures.<sup>53</sup>

3 Moreover, De Blasio 2020’s first reported contribution occurred on May 16, 2019, while  
4 its reported exploratory expenditures began in early March 2019 and continued throughout the  
5 next three months.<sup>54</sup> NY Fairness PAC has not provided any other explanation for a possible  
6 source of the funds used to pay for these exploratory expenses.

7 NY Fairness PAC admits that it made exploratory expenditures but argues that an  
8 exploratory expenditure paid for before an individual becomes a candidate “is not thereby also a  
9 *contribution*.”<sup>55</sup> This argument is inconsistent with the plain text of Commission regulations,  
10 which provide that “[i]f the individual subsequently becomes a candidate, the [testing-the-  
11 waters] funds received . . . are contributions” and are thereafter retroactively subject to the  
12 contribution limits set forth in the Act.<sup>56</sup> Thus, “[i]f and when the individual becomes a  
13 candidate . . . the financing of all activity coming within the [testing-the-waters] exemption must

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<sup>52</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 365; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 6.

<sup>53</sup> See *supra* Section II.C; *infra* Section III.A.2.

<sup>54</sup> De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>55</sup> Resp. at 2-4, MUR 7634 (emphasis in original).

<sup>56</sup> 11 C.F.R. § 100.72(a). As discussed above, the Commission has applied this principle to state and federal multicandidate committees in prior instances. See F&LA at 5 MUR 5908 (Peace Through Strength PAC); F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*); AO 1981-32 at 5; AO 1985-40 at 5.

1 be reported and otherwise treated as contributions and expenditures for purposes of the Act and  
2 regulations.”<sup>57</sup>

3 The exploratory expenditures allegedly paid for by NY Fairness PAC total over one  
4 hundred thousand dollars and are well in excess of the applicable contribution limits of \$2,800.<sup>58</sup>  
5 Moreover the campaign appears not to have reimbursed NY Fairness PAC for most of these  
6 payments.

7 3. NY Fairness PAC’s Payment of de Blasio’s Campaign Activities

8 NY Fairness PAC’s support of de Blasio was not limited to his testing-the-waters  
9 activities; it also purchased goods and services that it transferred to the campaign after the  
10 campaign was formed. NY Fairness PAC admits to paying for \$52,851.89 for consulting, rent,  
11 and travel expenses in early-to-mid May that benefited de Blasio’s candidacy.<sup>59</sup> De Blasio 2020  
12 disclosed these payments as a debt in its 2019 July Quarterly Report.<sup>60</sup> NY Fairness PAC  
13 explains that the payments were specifically for: (1) a \$40,000 fee paid by NY Fairness PAC to  
14 Clarify Agency for digital services that were ultimately performed for the campaign; (2) a \$4,200  
15 payment for “rent for office space that by then was used solely by De Blasio 2020”; and (3)  
16 “travel that was previously arranged for that time irrespective of whether or not the Mayor then

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<sup>57</sup> F&LA at 5 n.24, MURs 7689, 7794 (Amanda Adkins for Congress, *et al.*) (quoting AO 1981-32 at 3) (quotation marks omitted).

<sup>58</sup> *See table, supra* at 11-12.

<sup>59</sup> Resp. at 9, MUR 7634.

<sup>60</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

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1 would be a candidate.”<sup>61</sup> The campaign reimbursed NY Fairness PAC for these expenses on  
2 September 11, 2019, long after the 60-day deadline to do so under Commission regulations.<sup>62</sup>

3         Additionally, while NY Fairness PAC admits that it paid Freedomland Media \$19,964 on  
4 May 12, 2019, towards the cost of De Blasio 2020’s opening video, it denies that this constituted  
5 an in-kind contribution to de Blasio’s campaign. It states that the media company was hired “to  
6 produce a video that would be used in connection with either a presidential campaign launch or,  
7 if there was no campaign, then for other continuing political activity.”<sup>63</sup> However, the payment  
8 of part of the cost of the announcement video falls under the broad definition of “anything of  
9 value” and qualifies as a contribution to the campaign because NY Fairness PAC expended funds  
10 to purchase a good or service that it then provided to the campaign.<sup>64</sup> The NY Fairness PAC’s  
11 payment for the video is also not for the purpose of testing the waters. Commission regulations  
12 specify that “funds received for activities indicating that an individual has decided to become a  
13 candidate for a particular office or for activities relevant to conducting a campaign” are not

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<sup>61</sup> Resp. at 9, MUR 7634.

<sup>62</sup> See 11 C.F.R. § 103.3(b)(3).

<sup>63</sup> Resp. at 4, MUR 7634.

<sup>64</sup> See, e.g., First Gen. Counsel’s Rpt. at 10, MUR 5409 (Norquist, et al.) (dispositive Commission opinion) (recommending finding reason to believe that a nonprofit corporation made prohibited in-kind contributions by providing a campaign with its private lists of conservative organizations and individuals, which the corporation “utilized its resources to obtain and compile”), and Certification, MUR 5409 (Oct. 19, 2004) (approving recommendation); AO 2007-22 (Hurysz) at 6 (“The provision of . . . materials without charge would relieve your campaign of the expense that it would otherwise incur to obtain such materials. Thus, the provision of such items without charge would constitute a contribution . . . .”); AO 1992-33 (DNC/RNC) at 3 (“As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services.”); see also F&LA at 8-9, MUR 7207 (Taub) (finding reason to believe that a foreign national made a contribution by providing “research reports” that were prepared by commercial vendors and were “commercial products of the sort routinely prepared by professional vendors on behalf of Congressional campaigns”). There is no indication that NY Fairness PAC separately used the video to its own benefit.

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1 testing-the-waters expenditures and provide as a specific example “general public political  
2 advertising to publicize his or her intention to campaign for Federal office.”<sup>65</sup> Therefore the  
3 launch video appears to constitute an in kind contribution to De Blasio 2020 and Bill de Blasio.

4 4. Conclusion

5 Based on the foregoing discussion, the available information indicates that NY Fairness  
6 PAC exceeded its contribution limits to the campaign of \$2,800. NY Fairness PAC concedes  
7 that it made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent,  
8 and consulting services. There is also information that it paid for other travel, consulting, and  
9 media expenses that either were used to test the waters of a presidential run by de Blasio or  
10 benefited the campaign once it was formed. The Commission therefore finds reason to believe  
11 that NY Fairness PAC made excessive contributions in violation of 52 U.S.C. § 30116(a).

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<sup>65</sup> 11 C.F.R. § 100.72(b)(1).