



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 25, 2022

VIA ELECTRONIC MAIL

Laurence E. Gold
Trister, Ross, Schadler & Gold, PLLC
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RE: MURs 7631 & 7634
NY Fairness PAC

Dear Mr. Gold:

On August 7 and August 14, 2019, the Federal Election Commission (“Commission”) notified your client, NY Fairness PAC, of complaints alleging violations of the Federal Election Campaign Act of 1971. Copies of the complaints were forwarded to your client at those times.

Upon review of the allegations contained in the complaints and information supplied by you, the Commission on August 11, 2022, found reason to believe that NY Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive contributions to De Blasio 2020 and Bill de Blasio with respect to \$53,000 in expenditures for travel and consulting services. The Factual and Legal Analysis, which forms the basis of the Commission’s determination, is attached.

In order to expedite the resolution of these matters, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve these matters at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

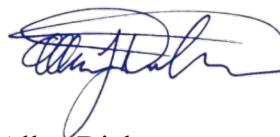
Please note that your client has a legal obligation to preserve all documents, records and materials relating to these matters until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in engaging in pre-probable cause conciliation, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or at arabinowitz@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in these matters or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures:
Factual and Legal Analysis

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

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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, the Commission finds reason to believe that NY
20 Fairness PAC made excessive in-kind contributions in violation of 52 U.S.C. § 30116(a).

21 **II. FACTUAL BACKGROUND**

22 **A. Establishment of NY Fairness PAC**

23 Bill de Blasio served as mayor of New York from January 1, 2014 to December 31,
24 2021.¹ According to available information, de Blasio decided to become a candidate for

¹ 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 President of the United States on May 15, 2019, and publicly announced his decision the
2 following day, on May 16, 2019. That same day, de Blasio filed his Statement of Candidacy and
3 designated De Blasio 2020 as his authorized committee.² De Blasio’s campaign ran until
4 September 20, 2019, when he announced its suspension.³

5 Before announcing his candidacy, de Blasio “and others” established NY Fairness PAC
6 in July 2018 as an unincorporated political organization under section 527 of the Internal
7 Revenue Code.⁴ On July 27, 2018, NY Fairness PAC, registered with the New York State Board
8 of Elections (“NYSBOE”) as a state political action committee.⁵ NY Fairness PAC states that its
9 purpose was “to support nonfederal Democratic Party candidates and progressive causes in New
10 York State and elsewhere, and it did so, including by making contributions and public
11 communications and by travel by Mayor de Blasio for activities, events and conferences . . . to
12 promote progressive positions on issues and to support who embraced those positions.”⁶

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

15 According to available information, de Blasio began to test the waters for a potential
16 2020 presidential run in early March 2019. De Blasio 2020’s July 2019 Quarterly Report, which
17 was the first report the Committee filed with the Commission after de Blasio announced his

² Bill de Blasio, Statement of Candidacy (May 16, 2019).

³ 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>.

⁴ Resp. at 1 (Oct. 15, 2019), MUR 7631.

⁵ *Id.*

⁶ Resp. at 2, MUR 7634 (Oct. 15, 2010).

1 candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7
2 through May 14, 2019.⁷ Despite this level of spending, that report does not indicate how any of
3 those expenses were funded because it discloses no contributions received during the testing-the-
4 waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the
5 Committee reported accepting its first contribution.⁸

6 Although NY Fairness PAC has not been disclosed as a contributor to de Blasio's
7 campaign, it admits to paying for at least some of de Blasio's exploratory activities. NY Fairness
8 PAC represents that it made the first payment for de Blasio's exploratory expenses by paying for
9 travel on March 13, 2019,⁹ and that NY Fairness PAC continued to pay for such expenses
10 "during the ensuing two months,"¹⁰ which is reflected in reports filed with the NYSBOE and the
11 Commission.¹¹ De Blasio 2020 has reported in its initial filing a \$52,851.89 debt owed to NY

⁷ De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

⁸ *Id.*

⁹ 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 (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 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.*

¹⁰ Resp. at 2, MUR 7631.

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

1 Fairness PAC,¹² which NY Fairness PAC states includes approximately \$8,600 for travel
2 expenses.¹³

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

10 The 78 exploratory expenditures further include a payment to Freedomland Media for
11 \$19,964 on May 12, 2019.¹⁷ This corresponds to a payment by NY Fairness PAC in the same
12 amount and on the same day to Freedomland Media for "Video Production Services."¹⁸ NY
13 Fairness PAC acknowledges that it thereby paid for a portion of the cost of what became de
14 Blasio's presidential campaign announcement video, which De Blasio 2020 released four days

¹² De Blasio 2020, Amended 2019 July Quarterly Report at 417.

¹³ Resp. at 3-4, MUR 7631.

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

¹⁵ 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.

¹⁶ See De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

¹⁷ *Id.* at 378.

¹⁸ NY Fairness PAC NYSBOE Disclosures.

1 later.¹⁹ De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this payment.
2 De Blasio 2020 later made additional payments to Freedomland Media in the amounts of
3 \$19,694 on June 13,²⁰ \$24,694 on July 9,²¹ and \$8,000 on August 7.²²

4 The Complaints also identify two groups of expenditures by NY Fairness PAC that De
5 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, on April
6 12, 2019, NY Fairness PAC made a disbursement of \$46,000 to “Trilogy Interactive” for a
7 “digital media buy.”²³ Within days of the April disbursements, de Blasio’s Facebook page began
8 running dozens of ads that criticized President Trump or promoted de Blasio’s policy agenda,
9 and asked recipients to share their names and email addresses.²⁴ The Complaints allege that
10 those payments to Trilogy Interactive were made for de Blasio’s exploratory activities because
11 after de Blasio announced his candidacy, the same Facebook page continued running ads “with
12 similar messages,” but now with disclaimers stating that the ads were paid for by De Blasio
13 2020.²⁵ NY Fairness PAC denies that those payments were related to de Blasio’s testing-the-

¹⁹ Resp. at 2, MUR 7631.

²⁰ De Blasio 2020, Amended 2019 July Quarterly Report at 379.

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

²² *Id.* at 273.

²³ 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. 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.

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

²⁵ Compl. ¶ 15, MUR 7634.

1 waters activities on the basis that the advertisements in question were issue-oriented and made no
2 reference to any election or potential candidacy.²⁶

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

8 De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first
9 report with the Commission in July, 2019, for the period May 16 through June 30, 2019.²⁹ De
10 Blasio 2020’s first report disclosed \$1,087,564.24 in contributions from individuals but no
11 contributions from NY Fairness PAC.³⁰ However, it listed a \$52,851.89 debt owed to NY
12 Fairness PAC for “Travel Expenses, Digital Advertising, [and] Rent,” which NY Fairness PAC
13 represents comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020,
14 \$4,200 in rent for office space that the campaign used, and other campaign-related travel costs.³¹

²⁶ Resp. at 3, MUR 7634.

²⁷ Compl. ¶ 15, MUR 7634.

²⁸ Resp. at 5, MUR 7634.

²⁹ De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

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

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

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

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

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

13 **Alleged Payments Made by NY Fairness PAC to Support de Blasio³⁴**

PAYOR	Amount	Recipient	Date of Payment	Date of Reporting by De Blasio 2020	Description	Date of Reimbursement
NY Fairness PAC	\$46,000	Trilogy Interactive	April 12, 2019	Not Disclosed	Digital Media Buy	None

³² De Blasio 2020, Amended October 2019 Quarterly Report.

³³ De Blasio 2020, Amended 2019 October Quarterly Report at 316.

³⁴ 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.

PAYOR	Amount	Recipient	Date of Payment	Date of Reporting by De Blasio 2020	Description	Date of Reimbursement
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 ³⁵	Not Disclosed	Digital Services	None
TOTAL	\$ 193,710					

³⁵ 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 An individual becomes a candidate under the Act if he or she receives contributions or
5 makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.³⁶
6 The Commission’s regulations create exemptions to the definitions of contribution and
7 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,
8 *i.e.*, to “test the waters.”³⁷ These exemptions exclude from the definitions of “contribution” and
9 “expenditure” those funds received and payments made solely to determine whether an
10 individual should become a candidate.³⁸ Testing-the-waters activities include, but are not limited
11 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act
12 may be used for such activities.³⁹ If the individual subsequently becomes a candidate, the funds
13 previously received for testing-the-waters activities are thereafter considered contributions
14 subject to the reporting requirements of the Act.⁴⁰ Commission regulations further require that
15 “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”⁴¹ The
16 Act prohibits any person from making contributions to any candidate and his authorized political
17 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800

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

³⁷ 11 C.F.R. §§ 100.72(a), 100.131(a).

³⁸ 11 C.F.R. §§ 100.72(a), 100.131(a).

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

⁴⁰ 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

⁴¹ 11 C.F.R. §§ 100.72(a), 100.131(a).

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

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

⁴² 52 U.S.C. § 30116(a)(1)(A).

⁴³ 11 C.F.R. § 100.72(a).

⁴⁴ 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.⁴⁵

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

3 NY Fairness PAC admits to paying for \$52,851.89 for consulting, rent, and travel
4 expenses in early-to-mid May that were for testing the waters or benefited de Blasio's
5 candidacy.⁵⁹ De Blasio 2020 disclosed these payments as a debt in its 2019 July Quarterly
6 Report.⁶⁰ NY Fairness PAC explains that the payments were specifically for: (1) a \$40,000 fee
7 paid by NY Fairness PAC to Clarify Agency for digital services that were ultimately performed
8 for the campaign; (2) a \$4,200 payment for "rent for office space that by then was used solely by
9 De Blasio 2020"; and (3) "travel that was previously arranged for that time irrespective of
10 whether or not the Mayor then would be a candidate."⁶¹ The campaign reimbursed NY Fairness
11 PAC for these expenses on September 11, 2019, long after the 60-day deadline to do so under
12 Commission regulations.⁶²

13 Based on the foregoing discussion, the available information indicates that NY Fairness
14 PAC exceeded its contribution limits to the campaign of \$2,800. NY Fairness PAC concedes

⁴⁵ 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)).

⁴⁶ *See* 52 U.S.C. § 30116(a)(1)(A).

⁵⁹ Resp. at 9, MUR 7634.

⁶⁰ De Blasio 2020, Amended 2019 July Quarterly Report at 417.

⁶¹ Resp. at 9, MUR 7634.

⁶² *See* 11 C.F.R. § 103.3(b)(3).

MURs 7631/7634 (NY Fairness PAC)

Factual and Legal Analysis

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- 1 that it made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent,
- 2 and consulting services. The Commission therefore finds reason to believe that NY Fairness
- 3 PAC made excessive contributions in violation of 52 U.S.C. § 30116(a).