



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 2023

VIA ELECTRONIC MAIL

Laurence E. Gold
Trister, Ross, Schadler & Gold, PLLC
1666 Connecticut Avenue, N.W., Fifth Floor
Washington, D.C. 20009
lgold@tristerross.com

RE: MURs 7631 & 7634
De Blasio 2020, *et al.*

Dear Mr. Gold:

On April 17, 2023, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, De Blasio 2020 and Herbert Block in his official capacity as treasurer, Fairness PAC and Herbert Block in his official capacity as treasurer, and NY Fairness PAC, in settlement of violations of 52 U.S.C. §§ 30104(a), (b), 30116(a), (f) and 11 C.F.R. §§ 100.72(a) and 100.131(a). Further, on April 17, 2023, the Commission voted to take no further action as to your client, Bill de Blasio. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or arabinowitz@fec.gov.

Mr. Gold
MURs 7631 & 7634
Page 2

Sincerely,

Peter G. Blumberg

Peter G. Blumberg
Special Counsel to The
Associate General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
)	
De Blasio 2020 and Herbert Block)	MURs 7631, 7634
in his official capacity as treasurer)	
Fairness PAC and Herbert Block)	
in his official capacity as treasurer)	
NY Fairness PAC)	
)	

CONCILIATION AGREEMENT

This consolidated matter was generated by complaints filed with the Federal Election Commission (the “Commission”). The Commission found reason to believe that De Blasio 2020 and Herbert Block in his official capacity as treasurer¹ (“De Blasio 2020”) violated 52 U.S.C. § 30116(f) by accepting excessive contributions from NY Fairness PAC and Fairness PAC and Herbert Block in his official capacity as treasurer (“Fairness PAC”); De Blasio 2020 violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a) by failing to report \$52,581.89 as in-kind contributions and expenditures, \$68,000 as in-kind contributions and \$55,000 as expenditures; Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive contributions to De Blasio 2020 and Bill de Blasio with respect to \$68,000 in polling expenses; and 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 \$52,581.89 in expenditures for travel, rent and consulting services. (De Blasio 2020, Fairness PAC, and NY Fairness PAC are hereinafter referred to as “Respondents”).

¹ Herbert Block became treasurer of Respondent Fairness PAC on January 23, 2022 and treasurer of Respondent De Blasio 2020 on April 15, 2022, after the 2019 events at issue in this matter. He is identified in this agreement only in his official, not his personal, capacity. See Federal Election Commission, “Statement of Policy Regarding Treasurers in Enforcement Proceedings,” 70 Fed. Reg. 3 (January 3, 2005).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation prior to a finding of probable cause to believe, agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. In July 2018, Bill de Blasio and others established Fairness PAC and NY Fairness PAC as unincorporated political organizations under section 527 of the Internal Revenue Code. On July 25, 2018, Fairness PAC filed its Statement of Organization with the Commission and in January 2019 became a multicandidate committee. On July 27, 2018, NY Fairness PAC registered with the New York State Board of Elections (“NYSBOE”) as a state political action committee.

2. Mr. de Blasio began to test the waters for a potential 2020 presidential run in early March 2019. Respondents represent that Mr. de Blasio decided to become a candidate for President of the United States on May 15, 2019, and publicly announced his decision the following day, May 16, 2019. That same day, Mr. de Blasio filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.

3. NY Fairness PAC made the following payments that supported Mr. de Blasio’s testing the waters or his eventual campaign: \$4,200 to the Yard for office space on

May 2, 2019; a \$40,000 payment to Clarify Agency for work done for De Blasio 2020 on May 15, 2019; and \$8,651.89 for various other campaign-related travel costs during mid-May 2019.

4. Fairness PAC made the following payments that supported Mr. de Blasio's testing the waters or his eventual campaign: \$68,000 to Brilliant Corners Research & Strategies for polling on March 27, 2019, and \$55,000 to Keating Research for polling on May 13, 2019.

5. De Blasio 2020's July 2019 Quarterly Report, which was the first report it filed with the Commission after Mr. de Blasio announced his candidacy, did not report any in-kind contributions from either Fairness PAC or NY Fairness PAC. De Blasio 2020 disclosed in its initial report a \$52,851.89 debt owed to NY Fairness PAC that corresponds to the payments described above, and the expenditure made by Fairness PAC to Brilliant Corners Research & Strategies, but not the expenditures made by Fairness PAC to Keating Research and by NY Fairness PAC to Clarify Agency and the Yard. Fairness PAC's July 2019 Mid-Year Report filed with the Commission disclosed the expenditures to both Brilliant Corners Research & Strategies and Keating Research as "exploratory activity."

6. De Blasio 2020 repaid \$123,000 to Fairness PAC on June 30, 2019, which it reported for the purpose of "polling." This repaid Fairness PAC for the polling expenses paid to Keating Research and Brilliant Corners Research & Strategies described above. On September 11, 2019, De Blasio 2020 repaid NY Fairness PAC the \$52,851.89 listed as a debt on De Blasio 2020's July 2019 Quarterly Report.

7. An individual becomes a candidate under the Act if he or she receives contributions or makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf. 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). The Commission's regulations

create exemptions to the definitions of contribution and expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy, *i.e.*, to “test the waters.” 11 C.F.R. §§ 100.72(a), 100.131(a). These exemptions exclude from the definitions of “contribution” and “expenditure” those funds received and payments made solely to determine whether an individual should become a candidate. 11 C.F.R. §§ 100.72(a), 100.131(a). If the individual subsequently becomes a candidate, the funds previously received for testing-the-waters activities are thereafter considered contributions subject to the reporting requirements of the Act. 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

8. With respect to the 2020 election cycle, the Act prohibited any person from making contributions to any candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceeded \$2,800, or \$5,000 in the case of a federal multicandidate committee. 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A). The Act also prohibits any candidate or political committee from knowingly accepting any excessive contribution. 52 U.S.C. § 30116(f). Where an in-kind contribution exceeds the applicable contribution limit, whether on its face or when aggregated with other contributions, the treasurer may request redesignation or reattribution or, if neither is requested, must refund the contribution within 60 days of receipt. 11 C.F.R. § 103.3(b)(3).

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

provision, was materially involved in the decision to provide them, or was involved in substantial discussions about their provision;” and (3) the goods or services involved are — among other categories — “[p]olling expenses for determining the favorability, name recognition, or relative support level of the candidate involved.” 11 C.F.R. § 110.2(l). However, “if the candidate, through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate, the payment shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an expenditure of the candidate.” 11 C.F.R. § 110.2(l)(2).

10. When an individual becomes a candidate under the Act, any funds received or payments made for testing-the-waters activities become contributions or expenditures subject to the reporting requirements of the Act and are to be reported as such on the first disclosure report filed by the candidate’s authorized committee. 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 100.72(a); 100.131(a).

11. De Blasio 2020 accepted \$52,851.89 from NY Fairness PAC for travel, office space, and digital services and \$123,000 from Fairness PAC for polling that was for testing-the-waters purposes or ultimately benefitted the campaign. De Blasio 2020 repaid Fairness PAC for \$55,000 of the polling expenses within 60 days of Fairness PAC’s disbursement. Otherwise, De Blasio 2020 did not reimburse NY Fairness PAC or Fairness PAC within 60 days of the date of their respective disbursements.

V. In their responses to the complaints, Respondents advised the Commission that the violations of the Act described in this agreement had occurred, and the Commission subsequently found reason to believe that they had occurred. Respondents contend that they did not intend to violate the Act, and that several violations arose from the abrupt transition to a presidential

candidacy from the testing-the-waters stage. Respondents disputed other allegations in the complaints that are not the subject of this Agreement.

VI. The Commission did not find reason to believe that any of the violations was knowing and willful.

VII. 1. De Blasio 2020 violated 52 U.S.C. § 30116(f) by accepting excessive in-kind contributions from Fairness PAC and NY Fairness PAC.

2. De Blasio 2020 violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a) by failing to report \$52,581.89 as in-kind contributions and expenditures, \$68,000 as in-kind contributions, and \$55,000 as expenditures.

3. Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions to De Blasio 2020.

4. NY Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions to De Blasio 2020.

VIII. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Commission in the amount of fifty-three thousand one hundred dollars (\$53,100), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from committing further violations of 52 U.S.C. §§ 30104(a), (b), 30116(a), (f) and 11 C.F.R. §§ 100.72(a) and 100.131(a).

3. De Blasio 2020 will amend its disclosure reports to correctly report all information concerning the contributions received from Fairness PAC and NY Fairness PAC and the testing-the-waters expenditures and disbursements described above.

IX. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

X. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

XI. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XII. This Conciliation Agreement constitutes the entire agreement between the Commission and Respondents and constitutes a final settlement as to Respondents and their officers, directors, and agents. No other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

MURs 7631, 7634 (De Blasio 2020, *et al.*)
Conciliation Agreement
Page 8 of 8

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: **Charles**
Kitcher

Digitally signed by
Charles Kitcher
Date: 2023.04.19
13:43:51 -04'00'

4/19/23

Charles Kitcher
Associate General Counsel
for Enforcement

Date

FOR THE RESPONDENTS:

Laurence E. Gold

March 7, 2023

Laurence E. Gold
Trister, Ross, Schadler & Gold, PLLC

Date