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October 15, 2019

By email to CELA@fec.gov

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

Re: MUR 7634
NY Fairness PAC

Dear Mr. Jordan:

I am responding on behalf of respondent NY Fairness PAC to the complaint ("Complaint") filed with the Commission by the Campaign Legal Center (CLC). For the reasons stated below, the Commission should find no reason to believe that NY Fairness PAC violated the Federal Election Campaign Act ("the Act") with respect to certain allegations, and with respect to matters as to which NY Fairness PAC acknowledges noncompliance with the Act the Commission should refer them to pre-probable cause conciliation for a negotiated resolution.

I. Background

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

[1] See N.Y. Election Law § 14-100(16).

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

Co-respondent Fairness PAC, also an unincorporated nonfederal political organization under IRC § 527, registered on July 25, 2018 as a political committee with the Commission, and on January 31, 2019 it notified the Commission that it had become a multicandidate political committee. The purpose of Fairness PAC was to support federal Democratic Party candidates and progressive causes in New York State and elsewhere, and it did so in a manner similar to that of NY Fairness PAC, but on a federal level.[4] Fairness PAC and NY Fairness PAC entered into and operated under a written joint fundraising arrangement in accordance with the Commission's regulations, with Fairness PAC acting as the joint fundraising representative.[5]

At some point during 2019 Mayor de Blasio began to consider becoming a candidate for the Democratic Party's nomination for President of the United States in 2020. Mayor de Blasio considered that travel he undertook in early March marked the first exploratory spending, by NY Fairness PAC. NY Fairness PAC undertook exploratory spending during the ensuing two months while maintaining other activities, as is reflected on its reports to NYSBOE and the Commission and on the July Quarterly Report submitted by De Blasio 2020, which included memo entries to disclose exploratory activities.[6]

Mayor de Blasio decided to become a candidate on May 15. On May 16 he publicly announced his candidacy and co-respondent De Blasio 2020 filed its Statement of Organization with the Commission, and Mayor de Blasio filed a Statement of Candidacy on May 20. The presidential campaign continued until September 20, when Mayor de Blasio announced that he would no longer be an active candidate. NY Fairness PAC continues to operate in accordance with its original purposes.

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

II. The Commission Should Find No Reason to Believe That NY Fairness PAC Violated the Act As Alleged in Part

A. Exploratory Expenditures by NY Fairness PAC Did Not Become *Per Se* Contributions to De Blasio 2020

[2] *See* NYSBOE, 1978 Formal Opinion No. 8 (1978); 1977 Formal Opinion No. 2 (April 14, 1977).
[3] *See generally* reports filed with NYSBOE by NY Fairness PAC, No. A22609, available via https://www.elections.ny.gov/recipientstext.html.
[4] *See generally* reports filed with the Commission by Fairness PAC, FEC ID No. C00683664, available via https://www.fec.gov/data/committee/C00683664/.
[5] *See generally* 11 C.F.R. § 102.17.
[6] *See* https://docquery.fec.gov/pdf/448/201907199151533448/201907199151533448.pdf; https://cfapp.elections.ny.gov/ords/plsql_browser/getreports?filer_in=A22609&fyear_in=2019&rep_in=K.

CLC asserts that "[t]he Commission has not addressed whether a candidate may use a nonfederal committee as an exploratory committee" and that "even if this were permissible, the nonfederal committee's exploratory expenditures would constitute in-kind contributions, unless reimbursed by the candidate's authorized committee within 30 days of the end of the testing-the-water period. 11 C.F.R. § 110.2(l)."[7] Both of these propositions are plainly incorrect.

First, the Commission's testing-the-waters regulations speak only passively in terms of whether the "funds received"[8] and the "funds …used" for exploratory activities are "permissible under the Act"[9], and they do not address, let alone restrict, the particular organizational vehicle that receives and uses those funds for exploratory activity. All Commission guidance is to the same effect, explaining that an individual "may" but need not even use a distinct bank account for testing-the-waters activities, let alone register with the Commission a *federal* self-styled "exploratory" committee in order to undertake those activities,[10] so there is no relevant restriction on the nonfederal committee form itself.[11] Nor has the Commission ever required that a potential candidate use any particular account or vehicle *exclusively* for exploratory purposes.[12] CLC does not contend that NY Fairness PAC's sources of funds were impermissible sources under the Act, and in fact NY Fairness PAC's funds in 2019 derived almost exclusively from individual contributions that did not exceed $2,500.[13]

Second, and relatedly, CLC ignores the Commission's applicable regulations and guidance and instead relies solely upon 11 C.F.R. § 110.2(l). But that rule is inapplicable to nonfederal committees; rather, it provides that any of certain "payment[s] by a *multicandidate political committee*" are "deemed an in-kind contribution to and an expenditure by a Presidential candidate, even though made before the individual becomes a candidate," so long as the eventual candidate, "through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate…." (emphasis added). Of course, a multicandidate political committee is a particular kind of *federal* committee.[14] No

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[7] Complaint ¶ 35.
[8] *See* 11 C.F.R. § 100.72.
[9] *See* 11 C.F.R. § 100.131.
[10] *See*, *e.g.*, FEC, Campaign Guide, "Congressional Candidates and Committees" 1-3 (June 2014) ("Congressional Campaign Guide") ("An 'exploratory committee' or 'testing-the-waters committee' is not considered a political committee and does not have to register or file reports as long as its activities are limited to testing the waters and it does not engage in campaigning."); https://www.fec.gov/help-candidates-and-committees/registering-candidate/testing-the-waters-possible-candidacy/; https://www.youtube.com/watch?v=r-ag-W_-kTg ("It's a *good idea* to open a separate bank account for testing-the-waters efforts.") (emphasis added). *See also* Common Cause, "Testing the Waters or Diving Right In? How Candidates Bend and Break Campaign Finance Laws in Presidential Campaigns" 13 (January 2019) ("An individual who is testing the waters isn't required to use any specific organizational form to do so.").
[11] A separate regulation prohibits transfers from such a state candidate's state candidate committee to the same candidate's federal authorized committee. See 11 C.F.R. § 110.3(d); AO 1997-20, n. 4. Even if that rule precludes an individual from using his or her state account for federal testing-the-waters activities, NY Fairness PAC was not and is not Mayor de Blasio's "state campaign committee or account." Rather, Mayor de Blasio's state campaign committee is the distinct De Blasio 2017, NYSBOE No. C02795.
[12] And, in other contexts, the Commission has approved the *conversion* of a nonfederal committee in whole or in part to a federal committee subject to accounting and other protocols to ensure that the latter includes only funds that are permissible under the Act – the lone constraint imposed by the testing-the-waters regulations on the source of exploratory spending. *See, e.g.,* FEC Advisory Opinions (AOs) 2006-38, 2003-29, 2004-45. The Act and the Commission's regulations are silent as to whether or how a nonfederal committee that is used *in part* for exploratory purposes must or may be so converted, and it does not appear that the Commission has addressed this question elsewhere. A violation cannot be found absent an applicable restriction.
[13] See https://cfapp.elections.ny.gov/ords/plsql_browser/getreports?filer_in=A22609&fyear_in=2019&rep_in=K.
[14] *See* 11 C.F.R. § 100.5(e)(3).

authority supports the conversion of this restriction on federal multicandidate political committee involvement in exploratory activities into a never previously recognized *prohibition*, conditional or otherwise, of a *nonfederal* committee's involvement in such activities, including treatment of its spending as unlawful contributions to any subsequent authorized committee.[15]

While the Commission has no legal basis to treat all of NY Fairness PAC's exploratory spending as *per se* contributions to De Blasio 2020, it would be wholly inappropriate for the Commission to reach that legal conclusion for the first time in this (or any) enforcement proceeding. Where a matter before the Commission in an enforcement proceeding is of first impression and the respondent acted in accordance with a reasonable understanding of the applicable law, "due process would preclude the Commission from seeking to enact a new legal norm now, without prior notice, behind closed doors in a confidential enforcement action and apply it retroactively."[16] Indeed, Commissioners specifically rejected a proposed legal conclusion adverse to respondents in an enforcement matter because they "d[id] not agree that a provision in our regulations that the Commission has specifically worded to apply only to a federal committee (a 'political committee' in the term of art used in the Act) can be blithely applied to a non-federal committee"; absent "any [supporting] Commission precedent or other authority….due process at least would require us to do so by explicit regulation."[17] For the same reason, the Commission could only determine, if at all, that a nonfederal committee that uses permissible funds is nonetheless an unlawful vehicle in whole or in part for testing-the-waters activity through a formal rulemaking that provides notice to and elicits comments from the directly regulated community and the general public.

B. NY Fairness PAC's Payment to Freedomland Media Was Not an Unlawful Contribution to De Blasio 2020

CLC alleges that NY Fairness PAC's payment to Freedomland Media of $19,694 was an unlawful contribution to the subsequent De Blasio 2020.[18] This payment occurred on May 12 during, albeit near the end of, the exploratory period, and it was so designated on De Blasio 2020's July Quarterly Report, at page 378. Freedomland Media was engaged shortly beforehand to produce a video that would be used in connection with either a presidential campaign launch or, if there was no campaign, then for other continuing political activity. At the time of the payment there was no final decision on candidacy. The final video did become a De Blasio 2020 video and accordingly, De Blasio 2020 paid Freedomland Media the balance due for this work, disbursing $19,694 on June 13, as also reported also on page 378 of the July Quarterly Report, and $24,694 on July 9 as disclosed on De Blasio 2020's October Quarterly Report.

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[15] *Cf.* 11 C.F.R. § 102.5(b)(1) (an organization that does not qualify as a political committee may make a federal contribution if it can "demonstrate through a reasonable accounting method that it…has received sufficient funds subject to the limitations and prohibitions of the Act" to do so). *See* First General Counsel's Report at 13, Matters Under Review (MURs) 5672 and 5733; Certification, MURs 5672 and 5733 (Dec. 18, 2006).

[16] Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 23, MUR 6396 (January 8, 2014) (footnote omitted). *See also* Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12-14, MURs 6485 *et al*. (April 1, 2016); Statement of Reasons of Commissioner Karl J. Sandstrom at 2, MURs 4553 *et al*. (June 21, 2000).

[17] Statement of Reasons of Chairman Darryl R. Wold and Commissioners Lee Ann Elliott and David Mason at 5, MUR 4250 (February 11, 2000).

[18] Complaint ¶ 14.

C. Particular Spending by NY Fairness PAC Identified by CLC Was Not Exploratory

The Complaint makes speculative and factually incorrect allegations that certain payments by NY Fairness PAC were "exploratory." While the applicable standard is whether or not particular payments were made "solely" for testing-the-waters purposes,[19] these payments were simply not part of the testing-the-waters activities. We address each such payment in turn.

First, the $46,000 disbursement by NY Fairness PAC on April 12 to Trilogy Interactive for "digital media buy" purchased digital advertisements that addressed issues, made no reference whatsoever to any election or potential candidacy, and asked viewers to "sign on" in order to build the respective PACs' lists of email contacts for future fundraising and other activities; viewers were asked to "sign on" if they agreed with particular issue positions (*e.g.,* "It's time for paid family leave for ALL Americans. Sign on if you agree!"). NY Fairness PAC's payment of $9,129.72 to Trilogy Interactive on July 1 related back to this previous work.[20]

Second, payments by NY Fairness PAC to Blue State Digital for "Digital Services" and to Aisle 518 Strategies, LLC for "Digital Consulting Services" were not exploratory. Blue State Digital was the platform for sending all emails. NY Fairness PAC paid Blue State Digital a flat fee on a monthly basis, beginning on January 17, as it reported to NYSBOE. Aisle 518 Strategies, LLC drafted fundraising emails and emails concerning the 2018 elections during 2018 for NY Fairness PAC that did not refer to any potential candidacy of Mayor de Blasio. NY Fairness PAC paid the firm $7,500 during 2018, then $1,500 on January 4, 2019, and finally another $1,500 on February 22. CLC alleges no facts other than the payments themselves in alleging that these payments were exploratory.[21]

As is well-established, "purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of [the Act] has occurred."[22] That is the situation here.

D. Donations to NY Fairness PAC Were Not "Contributions" Within the Meaning of 11 C.F.R. § 100.72

[19] *See* 11 C.F.R. § 100.131(a); AO 1998-18 at 4 ("Since you have indicated that the sole purpose of conducting the poll was to test the waters for a potential federal candidate, the Commission concludes that the state Party's payment to the pollster must be made entirely from its Federal account.") (footnote omitted); AO 1985-40 at 11 (unnumbered) ("[T]his opinion concludes that [Senator Howard] Baker's private meetings with Republican Party leaders to seek their view on whether he should become a [presidential] candidate will be testing-the-waters activity. Thus, RMF expenditures to defray Mr. Baker's travel costs solely for such meetings will constitute in-kind gifts to his [testing-the-waters fund].").

[20] When De Blasio 2020 was created, it entered into a written, nonexclusive data licensing agreement to pay NY Fairness PAC $19,397.78 for a license to use the latter's email and social media contact lists through December 31, 2020. This fee was calculated by assessing the fair market value of the contact lists to be licensed. De Blasio 2020's payment of this sum appears on its October Quarterly Report. Also upon on its creation, De Blasio 2020 entered into a written agreement with Fairness PAC and NY Fairness PAC to purchase their jointly owned URL, www.billdeblasio.com, for $2,095, half of which De Blasio 2020 paid to each committee, as is disclosed on the October Quarterly Report. This fee similarly was calculated in order to reflect the fair market value of the URL.

[21] See Complaint ¶ 15(b).

[22] Statement of Reasons of Commissioners David Mason, Karl J. Sandstorm, Bradley A Smith and Scott E. Thomas at 3, MUR 4960 (December 21, 2000).

CLC alleges that De Blasio 2020 unlawfully failed to report donations to NY Fairness PAC during 2019 as exploratory contributions, although CLC does not explain whether or why its allegation applies to all such payments, an amount of them that matches what CLC alleges was the amount of exploratory spending, or some other portion of them.[23] CLC relatedly alleges that De Blasio 2020 accepted unlawful contributions from any individual who donated or contributed[24] more than $2,800 collectively to NY Fairness PAC, Fairness PAC and De Blasio 2020 during 2019, asserting that this conclusion must follow because both NY Fairness PAC and Fairness PAC undertook expenses that De Blasio 2020 identified as exploratory on its first report to the Commission.[25] These allegation are insufficient both legally and factually to warrant reason-to-believe findings.

Since its early days the Commission by regulation has recognized and regulated – at least with respect to individuals who *do* later become candidates[26] – a "testing-the-waters" phase prior to candidacy. Those regulations, 11 C.F.R. §§ 100.72, 100.131, and 101.3 (which incorporates the other two regulations), distinguish exploratory from candidacy activity and require that only funds "permissible under the Act" be used for the former. The regulations require that a potential candidate keep records of all "[f]unds received *solely* for purpose of determining whether [the] individual should become a candidate" (emphasis added) and all "[p]ayments made *solely* for" that same purpose (emphasis added); and, if the individual subsequently becomes a candidate, his or her authorized committee must report all such "funds received" and "payments made" on its first report to the Commission. As the Commission early stated, the "funds received" include only "funds obtained *expressly* for that purpose."[27] When the Commission amended these regulations in 1985 in order to elaborate further what conduct would indicate candidacy as distinct from exploratory activity, the Commission emphasized the "explicit[ ] limita[tion]" intended by the word "solely"[28], and this limitation has been routinely noted since then.[29] Accordingly, pursuant to the plain language of this regulation, a pre-candidacy payment would become a "contribution" to a subsequently created authorized committee of an actual "candidate" only where either (a) the payment was made to an entity whose sole and expressed purpose was testing the waters, which was not true of NY Fairness PAC; (b) the donor or contributor was expressly solicited for that exploratory purpose, or (c) the donor or contributor indicated that purpose in connection with his or her payment.

The Commission adopted its testing-the-waters rules in order to enable an individual to consider

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[23] See Complaint ¶¶ 33-34.
[24] Consistently with common Commission usage, we use the word "donation" and its other forms to describe funds provided to NY Fairness PAC, and the word "contribution" and its other forms to describe funds provided to Fairness PAC.
[25] See Complaint ¶¶ 33-35.
[26] The Act's text applies only to "candidates," as defined, see 52 U.S.C. § 30101(2), not to individuals who *consider* becoming candidates and either have not yet or never do satisfy either statutory prerequisite of "candidate" status, namely, receiving "contributions" or making "expenditures" that exceed $5,000. The Act does not refer to pre-candidacy, and neither its definitions of "contribution" and "expenditure" nor its exceptions to those terms allude to pre-candidacy. *See* 52 U.S.C. §§ 30101(8) and (9). However, the Commission classifies its testing-the-waters regulations as "exceptions" to those terms. *See* 11 C.F.R. Subparts C and E. Recently, the Commission was unable to agree whether the regulatory "funds permissible" requirement would apply to a Section 527 entity that is used for testing-the-waters activity for an individual who does *not* later become a candidate. *See* AO 2015-09 at 5.
[27] AO 1981-32 at 6 (unnumbered) (emphasis added).
[28] *See* FEC, Explanation and Justification, "Payments Received for Testing the Water Activities," 50 Fed. Reg. 9992, 9993 (March 13, 1985) ("1985 E & J").
[29] *See, e.g.*, First General Counsel's Report at 7 n.30, MUR 6999.

becoming a federal candidate without being "discouraged from pursuing a variety of activities to determine whether a candidacy for federal office would be feasible."[30] For that reason, it is of course necessary that testing-the-waters activities be clearly distinguished from "candidate" activities.[31] And, by the same token, it is necessary to identify and distinguish activities by a potential candidate that are *neither* solely exploratory nor candidate activities, because they are not subject to any regulation under the Act. The term "solely" in the regulations not only ensures that *candidate* activities *are* subject to the Act, which explicitly defines and regulates "candidates," but also relieves potential candidates who engage in *other* activities – *neither* "testing the waters" nor "candidate" activities – from having to comply with the fundraising, recordkeeping and reporting obligations that the Commission has no power to impose on those activities – namely, that the individual or his vehicle raise and spend only funds permissible under the Act, keep records in accordance with Commission requirements, and then, as a candidate through an authorized committee, publicly report associated receipts as "contributions" and associated payments as "expenditures" *for the candidacy*. In sum, the word "solely" distinguishes exploratory activities from both candidacy activities *and* any other activities by the potential candidate during the testing-the-waters period.

CLC's implicit theory of violation is not only unsupported by Commission precedent in the testing-the-waters context, it is also inconsistent with the fundamental principle under the Act that an individual's contribution to a political committee is *not* also counted as a contribution to the candidate committees to which that political committee contributes, even if a contributor contributed the maximum allowable contribution to each of them, unless the contributor *earmarks* his or her contribution to the political committee to be used as a subsequent contribution to a particular candidate.[32] Absent earmarking, it is irrelevant that some accounting analysis could associate the original contribution to the political committee with the otherwise fungible funds that comprised that later contribution. By the same token, absent evidence of a "solely" exploratory nature, it is irrelevant that by some accounting analysis particular donations to NY Fairness PAC could be associated with subsequent exploratory spending.

And, to our knowledge, the Commission has never stated that an authorized committee's inclusion on its first report of exploratory receipts and payments incurred by an entity other than an exploratory-*only* vehicle requires that *all* of its receipts be deemed to have been "solely" for exploratory purposes; that all testing-the-waters "payments made" be matched with an equal sum of testing-the-waters "funds received"; or that the ending cash balance equal the net of testing-the-waters receipts plus authorized committee contributions received minus testing-the-waters payments plus expenditures made. Rather, the appropriate way for an authorized committee to report prior testing-the-waters transactions is to list them as memo entries, as De Blasio 2020 did on its July Quarterly Report (and which CLC does not challenge).

Nor does CLC present pertinent factual allegations that meet its burden at the complaint stage. Save for citing an ambiguous reference in one media article[33], CLC alleges no facts that suggest, let alone

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[30] FEC, Federal Election Regulations, Communication from the Chairman, Federal Election Commission, at 40, House Document No. 95-1, 95th Cong., 1st Sess. (January 12, 1977); AO 1981-32 at 4 (unnumbered).
[31] 1985 E & J, *supra*.
[32] *See generally* 52 U.S.C. § 30116; 11 C.F.R. § 110.6; FEC, Final Rule, "Affiliated Committees, Transfers, Prohibited Contributions and Earmarked Contributions," 54 Fed. Reg. 34098, 34105-34108 (August 17, 1989).
[33] CLC asserts: "One donor who gave the maximum to de Blasio 2020 told *The City* that he gave $2,500 to NY Fairness PAC in order to support de Blasio's potential presidential run." Complaint ¶ 16 (footnote omitted). The referenced article did not quote

demonstrate, that any donor to NY Fairness PAC was ever asked to support a presidential exploratory effort or donated or contributed with that intention, express or otherwise. And, "a political committee or other organization may provide an individual…with a platform to speak about issues, support other candidates, and maintain a public profile without the payments for such activities necessarily being considered contributions to the future candidate's campaign."[34] "[M]ere speculation" otherwise does not suffice to warrant a reason-to-believe finding by the Commission.[35] To be sure, after Mayor de Blasio began to consider a potential presidential candidacy NY Fairness PAC spent in part to test the waters for such a candidacy, so not exclusively for either that or its original purposes. But this development did not *per se* convert either past donors or those who subsequently contributed through May 14 into contributors "solely for the purpose of determining whether [Mayor de Blasio] should become a candidate…."[36]

Accepting CLC's theory of violation also would be completely unfair by creating a trap for unwary donors and contributors to nonfederal and federal committees by ascribing unsolicited and unexpressed intentions for which there is no evidence, and compelling a subsequent and of course separate authorized committee to submit a sworn public report to the Commission that identifies them as its own contributors. Here, the Commission should not conclusively ascribe such an intention and find reason to believe that NY Fairness PAC and its co-respondents violated the Act, let alone, as alleged by CLC, by deliberately "concoct[ing] a shell game"[37] involving dozens if not more of their respective hundreds or thousands of donors and contributors.

Finally, as discussed earlier, even if the Commission were inclined to consider the merits of the theory advanced here by CLC, it would violate due process norms recognized by Commissioners over many years to do so for the first time in this enforcement proceeding.

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

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

Specifically, NY Fairness PAC made payments for travel and digital services that, at the time the

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this individual, reporting only that the individual "told THE CITY he believed he was supporting de Blasio's potential presidential run." See https://thecity.nyc/2019/07/bill-de-blasio-tapped-his-state-pac-for-presidential-hopes.html. Even assuming that this individual expressed such a "belie[f]" to the reporter, the article provided no information as to the cause of that belief and did not suggest that the individual had expressed it to NY Fairness PAC, Mayor de Blasio or anyone else. CLC also describes the Fairness PAC fundraising page, which explained its joint fundraising arrangement with NY Fairness PAC, see Complaint ¶ 9, and which has never referred to a potential presidential (or other) candidacy by Mayor de Blasio.

[34] Statement of Reasons of Chairman Matthew S. Peterson, and Commissioners Caroline C. Hunter and Lee E. Goodman at 4, MURs 6470, 6482, 6484 (March 30, 2016). *See also* Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter at 8, MUR 6928; First General Counsel's Report at 29, MUR 5260; First General Counsel's Report at 9, MUR 6907.

[35] *See generally* Statement of Reasons of Commissioners David Mason, Karl J. Sandstorm, Bradley A Smith and Scott E. Thomas at 2, MUR 4960 (December 21, 2000).

[36] 11 C.F.R. § 100.72(a).

[37] Complaint ¶ 2.

commitments were made, were believed to be exploratory expenses, but Respondents came to realize in retrospect, and due to the Mayor's new status as a candidate, that they should have been paid by De Blasio 2020. Most occurred on May 15, the day Mayor de Blasio became a candidate, and the ensuing two days. NY Fairness PAC paid for travel that was previously arranged for that time irrespective of whether or not the Mayor then would be a candidate; NY Fairness PAC had just engaged the digital services firm Clarify Agency with an initial $40,000 fee, all of whose work would now be done for De Blasio 2020; the authorized committee was not yet established, let alone funded; and as a result in the hectic days of transition to candidacy these payments were erroneously paid by NY Fairness PAC. Another payment, $4,200 on June 4 to the Yard, consisted of rent for office space that by then was used solely by De Blasio 2020. NY Fairness PAC had previously leased this space and paid rent by ACH transfer. After De Blasio 2020 instead assumed this obligation, it provided its bank account information to The Yard. However, the Yard erred by not updating the account and, without the prior knowledge or approval of either NY Fairness PAC or De Blasio 2020, secured another ACH transfer for rent on June 4 from NY Fairness PAC's account. Upon discovery, The Yard was notified and it made the requested change.

De Blasio 2020 recognized these errors and, accordingly, listed the then-determined total of all of these payments – $52,851.89[38] – on Schedule D-P, "Debts and Obligations," of its first report to the Commission, with the memo entry "Travel Expenses, Digital Advertising, Rent." As its October Quarterly report discloses, De Blasio 2020 has since reimbursed NY Fairness PAC for the $52,851.89 amount.

This matter is straightforward, no investigation is necessary to establish the facts admitted, and NY Fairness PAC concedes noncompliance with the Act. Under these circumstances pre-probable cause conciliation is appropriate.[39] NY Fairness PAC is willing to resolve it through that process and respectfully request that the Office of General Counsel so recommend to the Commission.

Conclusion

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

Respectfully submitted,

Laurence E. Gold

Laurence E. Gold
Counsel to NY Fairness PAC

[38] Most of the travel costs entailed airline fares, and a more recent internal accounting shows that several of the charges initially paid were refunded, so the travel portion of this total is $7,933.29, not $8,651.89.
[39] *See generally* 11 C.F.R. § 111.18(d); FEC, *Guidebook for Complainants and Respondents on the FEC Enforcement Process* at 17 (May 2012).