



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 25, 2022

VIA ELECTRONIC MAIL

Laurence E. Gold
Trister, Ross, Schadler & Gold, PLLC
1666 Connecticut Avenue, N.W., Fifth Floor
Washington, D.C. 20009
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RE: MURs 7631 & 7634
De Blasio 2020, *et al.*

Dear Mr. Gold:

On August 7 and August 14, 2019, the Federal Election Commission ("Commission") notified your clients, De Blasio 2020 and Herbert Block in his official capacity as treasurer and Bill de Blasio, of complaints alleging violations of the Federal Election Campaign Act of 1971. Copies of the complaints were forwarded to your clients 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 De Blasio 2020 and Herbert Block in his official capacity as treasurer and Bill de Blasio violated 52 U.S.C. § 30116(f) by accepting excessive contributions from NY Fairness PAC and Fairness PAC; and De Blasio 2020 and Herbert Block in his official capacity as treasurer 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 \$176,000 in in-kind contributions and expenditures. 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 clients 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 clients violated the law.

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

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: De Blasio 2020 and Herbert Block MURs 7631 and 7634
as Treasurer
Bill de Blasio

I. INTRODUCTION

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

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

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

Committees made \$121,000 in payments related to de Blasio's testing-the-waters and campaign activities. Further, De Blasio 2020 has not properly disclosed these contributions.

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

II. FACTUAL BACKGROUND

A. Establishment of Fairness PAC and NY Fairness PAC

Bill de Blasio served as mayor of New York from January 1, 2014 to December 31, 2021.¹ According to the Response submitted on his behalf in connection with these matters, 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, on May 16, 2019.² That same day, de Blasio filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.³ De Blasio's campaign ran until September 20, 2019, when he announced its suspension.⁴

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/>.

² Resp. at 2 (Oct. 15, 2019), MUR 7631.

³ Bill de Blasio, Statement of Candidacy (May 16, 2019).

⁴ 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>.

Before announcing his candidacy, de Blasio “and others” established two committees in July 2018: Fairness PAC and NY Fairness PAC, both organized as unincorporated political organizations under section 527 of the Internal Revenue Code.⁵ First, on July 25, 2018, Fairness PAC filed its Statement of Organization with the Commission⁶ and became a multicandidate committee in January 2019.⁷ The available information indicates that Fairness PAC’s purpose was to support federal Democratic candidates and progressive causes in New York State and elsewhere.⁸ Then, on July 27, 2018, NY Fairness PAC, registered with the New York State Board of Elections (“NYSBOE”) as a state political action committee.⁹ Available information indicates that NY Fairness PAC’s purpose was to support nonfederal Democratic Party candidates and progressive causes in New York State and elsewhere — and that it did so by making contributions and public communications and by travel by Mayor de Blasio for activities, events and conferences to promote progressive positions on issues and to support who embraced those positions.

The two political committees entered into and operated under a joint fundraising agreement pursuant to Commission regulations, with Fairness PAC as the joint fundraising

⁵ Resp. at 1 (Oct. 15, 2019), MUR 7634.

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

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

⁸ *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”).

⁹ Resp. at 1, MUR 7631.

1 representative. According to the Complaint in MUR 7634, the two committees conducted their
 2 joint fundraising through an ActBlue fundraising page that indicated that the Committees would
 3 accept contributions from individuals of up to \$5,000 total, or \$2,500 each¹⁰ and that
 4 contributions from individuals would be allocated 50% to Fairness PAC and 50% to NY Fairness
 5 PAC.¹¹

6 At the time it filed its initial statement of organization, Fairness PAC represented its
 7 website to be billdeblasio.com¹² — which, according to the Complaint in MUR 7634, previously
 8 had been associated with de Blasio’s mayoral campaign.¹³ However, Fairness PAC did not
 9 mention the website in an amended statement of organization it filed on July 25, 2019, or
 10 thereafter.¹⁴ Archived versions of the website show that as of July, 2018, billdeblasio.com
 11 provided information regarding Fairness PAC and stated that it was paid for by Fairness PAC,
 12 while as of May, 2019, billdeblasio.com solicited contributions for, and stated that it was paid for
 13 by, De Blasio 2020.¹⁵

¹⁰ 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).

¹¹ 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.

¹² Fairness PAC, Statement of Organization (July 25, 2018).

¹³ Compl. at 3, MUR 7634. According to the Complaint, after the formation of Fairness PAC, the disclaimer on 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.*

¹⁴ Fairness PAC, Amended Statement of Organization (July 25, 2019).

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

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

According to Respondents, de Blasio began to test the waters for a potential 2020 presidential run in early March 2019.¹⁶ De Blasio 2020's July 2019 Quarterly Report, which was the first report the Committee filed with the Commission after de Blasio announced his candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7 through May 14, 2019.¹⁷ Despite this level of spending, that report does not indicate how any of those expenses were funded because it discloses no contributions received during the testing-the-waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the Committee reported accepting its first contribution.¹⁸

Although neither Committee has been disclosed as a contributor to de Blasio's campaign, Respondents admit that the Committees paid for at least some of de Blasio's exploratory activities. The Responses represent that NY Fairness PAC paid for travel expenses that benefited the campaign,¹⁹ which is reflected in reports filed with the NYSBOE and the

¹⁶ See, e.g., Resp. at 2, MUR 7634.

¹⁷ De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

¹⁸ *Id.*

¹⁹ 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 (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.*

Commission.²⁰ De Blasio 2020 has reported in its initial filing a \$52,851.89 debt owed to NY Fairness PAC,²¹ which Respondents acknowledge includes travel expenses.²²

As alleged in the Complaint in MUR 7634, De Blasio 2020's Amended July 2019 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as "Exploratory" in memo entries.²³ A number of those expenditures are identical to expenditures that appear in Fairness PAC or NY Fairness PAC's reports, reflecting the same amounts and dates of disbursement.²⁴ These include: approximately \$13,000 in consulting services to various individuals and entities; an \$8,600 payment for rent to The Yard; a payment of \$1,769.22 to Cision, Inc., for a press list; and various payments for travel, food, and lodging.²⁵ The 78 expenditures listed in De Blasio 2020's initial report as "exploratory" also include a payment of \$68,000 to Brilliant Corners Research and Strategies for "polling."²⁶

The 78 exploratory expenditures further include a payment to Freedomland Media for \$19,964 on May 12, 2019.²⁷ This corresponds to a payment by NY Fairness PAC in the same

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

²¹ De Blasio 2020, Amended 2019 July Quarterly Report at 417.

²² Resp. at 9, MUR 7634.

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

²⁴ *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.

²⁵ *See* De Blasio 2020, Amended 2019 July Quarterly Report.

²⁶ De Blasio 2020, Amended 2019 July Quarterly Report at 362.

²⁷ *Id.* at 378.

amount and on the same day to Freedomland Media for “Video Production Services.”²⁸ Respondents acknowledge that NY Fairness PAC thereby paid for a portion of the cost of what became de Blasio’s presidential campaign announcement video, which De Blasio 2020 released four days later.²⁹ De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this payment. De Blasio 2020 later made additional payments to Freedomland Media in the amounts of \$19,694 on June 13,³⁰ \$24,694 on July 9,³¹ and \$8,000 on August 7.³²

The Complaints also identify three groups of expenditures by the Committees that De Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, De Blasio 2020 allegedly failed to disclose as an expenditure a \$55,000 payment by Fairness PAC to Keating Research on May 13, 2019 that is described as for “exploratory” purposes in Fairness PAC’s 2019 Mid-Year Report.³³

Second, on April 12, 2019, NY Fairness PAC and Fairness PAC each made disbursements of \$46,000 — \$92,000 in total — to “Trilogy Interactive” for a “digital media buy.”³⁴ Within days of the April disbursements, de Blasio’s Facebook page began running

²⁸ NY Fairness PAC NYSBOE Disclosures.

²⁹ Resp. at 2, MUR 7631.

³⁰ De Blasio 2020, Amended 2019 July Quarterly Report at 379.

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

³² *Id.* at 273.

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

³⁴ 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_freort_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.

dozens of ads (with disclaimers stating that they were paid for by Fairness PAC) that criticized President Trump or promoted de Blasio's policy agenda, and asked recipients to share their names and email addresses.³⁵ The Complaints allege that those payments to Trilogy Interactive were made for de Blasio's exploratory activities because after de Blasio announced his candidacy, the same Facebook page continued running ads "with similar messages," but now with disclaimers stating that the ads were paid for by De Blasio 2020.³⁶ Respondents deny that those payments were related to de Blasio's testing-the-waters activities on the basis that the advertisements in question were issue-oriented and made no reference to any election or potential candidacy.³⁷

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

De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first report with the Commission in July, 2019, for the period May 16 through June 30, 2019.⁴⁰ De

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

³⁶ Compl. ¶ 15, MUR 7634.

³⁷ Resp. at 5, MUR 7634.

³⁸ Compl. ¶ 15, MUR 7634.

³⁹ Resp. at 5, MUR 7634.

⁴⁰ De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

Blasio 2020's first report disclosed \$1,087,564.24 in contributions from individuals but no contributions from the Committees.⁴¹ However, it listed a \$52,851.89 debt owed to NY Fairness PAC for "Travel Expenses, Digital Advertising, [and] Rent," which Respondents represent comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020, \$4,200 in rent for office space that the campaign used, and other campaign-related travel costs.⁴²

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

Although Respondents dispute that many of the disbursements made by the Committees supported de Blasio's future or actual candidacy, the campaign committee has reimbursed the Committees for some of the payments in question. On September 11, 2019, De Blasio 2020 paid NY Fairness PAC the \$52,851.89 listed as a debt on the campaign's July report.⁴³ De Blasio 2020 reported two other disbursements to NY Fairness PAC on September 30, 2019: \$1,047.50 for a "website" and \$19,397.78 for "digital assets,"⁴⁴ and the campaign made a similar \$1,047.50 payment to Fairness PAC for a "website" the same day.⁴⁵ Further, De Blasio 2020 reported making a \$123,000 payment to Fairness PAC on June 30, 2019, for "polling."⁴⁶ Respondents admit that this corresponds to the disbursements by Fairness PAC of \$55,000 to Keating Research on May 13, 2019, and \$68,000 to Brilliant Corners Research & Strategies on March 27,

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

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

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

⁴⁴ De Blasio 2020, Amended 2019 October Quarterly Report at 316.

⁴⁵ *Id.* at 273.

⁴⁶ De Blasio 2020, Amended 2019 July Quarterly Report at 378.

1 2019.⁴⁷ In its initial FEC filing in July 2019, De Blasio 2020 reported the expenditure to
 2 Brilliant Corners⁴⁸ but not the expenditure to Keating Research, and the committee has not
 3 amended this report. The campaign has reported no other disbursements to either Committee.

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

8 **Alleged Payments Made by Fairness PAC and/or NY Fairness PAC to Support de Blasio**⁴⁹

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

⁴⁷ 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”).

⁴⁸ De Blasio 2020, Amended 2019 July Quarterly Report at 362.

⁴⁹ 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.

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

1 **III. LEGAL ANALYSIS**

2 **A. The Commission Finds 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.⁵¹

⁵⁰ 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.

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

1 The Commission’s regulations create exemptions to the definitions of contribution and
 2 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,
 3 *i.e.*, to “test the waters.”⁵² These exemptions exclude from the definitions of “contribution” and
 4 “expenditure” those funds received and payments made solely to determine whether an
 5 individual should become a candidate.⁵³ Testing-the-waters activities include, but are not limited
 6 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act
 7 may be used for such activities.⁵⁴ If the individual subsequently becomes a candidate, the funds
 8 previously received for testing-the-waters activities are thereafter considered contributions
 9 subject to the reporting requirements of the Act.⁵⁵ Commission regulations further require that
 10 “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”⁵⁶ The
 11 Act prohibits any person from making contributions to any candidate and his authorized political
 12 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800
 13 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.⁵⁷ The
 14 Act also prohibits any candidate or political committee from knowingly accepting any excessive
 15 contribution.⁵⁸ Consequently, in order to comply with these requirements, de Blasio was limited

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

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

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

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

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

⁵⁷ 52 U.S.C. § 30116(a)(1)(A).

⁵⁸ 52 U.S.C. § 30116(f).

1 to accepting contributions that complied with the Act’s source and amount restrictions while
2 testing the waters.

3 Respondents contend that the Commission has never restricted the type of organizational
4 vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides that funds
5 received for testing the waters become contributions once an individual becomes a candidate and
6 that those contributions “must be reported with the first report filed by the principal campaign
7 committee of the candidate, regardless of the date the funds were received.”⁵⁹ Therefore, in past
8 matters, the Commission has determined that a payment made by a multi-candidate committee
9 for an individual’s testing-the-waters activities constitutes an in-kind contribution and must be
10 reported as such by the candidate’s authorized committee after that individual becomes a
11 candidate.⁶⁰ Pursuant to the Act’s contribution limits, a multicandidate committee would be
12 limited to spending up to \$5,000 on the candidate’s exploratory efforts; if such committee were
13 to spend more, that committee would be making an excessive in-kind contribution to the
14 candidate’s authorized committee.⁶¹ With respect to non-federal organizations, the Commission
15 has similarly found that payments for testing-the-waters activities by such entities also constitute

⁵⁹ 11 C.F.R. § 100.72(a).

⁶⁰ 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).

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

1 in-kind contributions to a candidate.⁶² Non-federal organizations are limited to the individual
 2 \$2,800 contribution threshold.⁶³

3 Here, respondents admit that De Blasio 2020 accepted \$52,851.89 from NY Fairness
 4 PAC for travel and digital services that ultimately benefitted the campaign and \$123,000 from
 5 Fairness PAC for polling that was for testing-the-waters purposes.

6 2. Pre-Candidacy Expenditures Deemed as In-Kind Contributions under
 7 11 C.F.R. § 110.2(l)

8 Along with the exploratory expenditures reported on the campaign’s initial report, the
 9 campaign reported a reimbursement on June 30, 2019, to Fairness PAC for \$123,000 in polling
 10 expenses, which corresponds to a \$68,000 payment to Brilliant Corners Research and Strategies
 11 on March 27 and \$55,000 to Keating Research on May 13.⁶⁴

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

⁶² 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)).

⁶³ *See* 52 U.S.C. § 30116(a)(1)(A).

⁶⁴ De Blasio 2020, Amended 2019 July Quarterly Report at 378; Resp. at 10, MUR 7634.

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.”⁶⁵ 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.”⁶⁶ In addition, 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.⁶⁷

Respondents admit that Fairness PAC made payments for polling that qualify as pre-candidacy expenditures under 11 C.F.R. § 110.2(l): (1) \$68,000 to Brilliant Corners Research and Strategies on March 27, 2019; and (2) \$55,000 to Keating Research on May 13, 2020.⁶⁸ Further, because De Blasio 2020 did not reimburse Fairness PAC until June 30 for those expenditures, De Blasio 2020 failed to reimburse those expenses within 30 days after de Blasio announced his candidacy.⁶⁹ The campaign reimbursed Fairness PAC for the polling by Keating Research within 60 days of Fairness PAC’s disbursement, but it did not reimburse the

⁶⁵ 11 C.F.R. § 110.2(l).

⁶⁶ 11 C.F.R. § 110.2(l)(2); *accord* F&LA at 6, MUR 7191 (Rand Paul).

⁶⁷ 11 C.F.R. § 103.3(b)(3).

⁶⁸ *See* Resp. at 10, MUR 7634.

⁶⁹ Resp. at 10, MUR 7634.

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.⁷⁰ De Blasio 2020 disclosed these
9 payments as a debt in its 2019 July Quarterly Report.⁷¹ 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."⁷²
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.⁷³

16 4. Conclusion

17 Based on the foregoing discussion, the available information indicates that the
18 Committees exceeded their respective contribution limits to the campaign — \$2,800 as to NY

⁷⁰ *Id.* at 9.

⁷¹ De Blasio 2020, Amended 2019 July Quarterly Report at 417.

⁷² Resp. at 9, MUR 7634.

⁷³ *See* 11 C.F.R. § 103.3(b)(3).

1 Fairness PAC and \$5,000 as to Fairness PAC. Respondents concede that NY Fairness PAC
 2 made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent, and
 3 consulting services and that Fairness PAC paid for \$68,000 in polling expenses that benefited the
 4 campaign and that was not refunded within 60 days of the disbursement. The Commission
 5 therefore finds reason to believe that de Blasio and De Blasio 2020 accepted excessive
 6 contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 100.72(a).

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

9 When an individual becomes a candidate under the Act, any funds received or payments
 10 made for testing-the-waters activities become contributions or expenditures subject to the
 11 reporting requirements of the Act and are to be reported as such on the first disclosure report
 12 filed by the candidate's authorized committee.⁷⁴

13 Though the record indicates that Fairness PAC and NY Fairness PAC made
 14 disbursements for testing-the-waters activities by de Blasio and otherwise contributed to his
 15 campaign, De Blasio 2020 did not report any in-kind contributions from either Committee.
 16 Respondents also acknowledge that De Blasio 2020 failed to properly itemize polling
 17 expenditures paid for by Fairness PAC.⁷⁵

18 The Commission therefore finds reason to believe that De Blasio 2020 violated 52 U.S.C.
 19 § 30104(a), (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a) by failing to report in-kind

⁷⁴ 11 C.F.R. §§ 100.72(a); 100.131(a).

⁷⁵ 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.”).

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- 1 contributions from Fairness PAC and NY Fairness PAC and by failing to properly report
- 2 expenditures.