

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 **MUR 7880**

6 DATE COMPLAINT FILED: 2/19/2021
7 DATE OF NOTIFICATIONS: 2/25/2021
8 LAST RESPONSE RECEIVED: 2/26/2021
9 DATE ACTIVATED: 8/24/2021

10
11 ELECTION CYCLE: 2022
12 EXPIRATION OF SOL: 1/22/2026

13
14 **COMPLAINANT:** Dr. Joseph A. Resnick

15
16 **RESPONDENTS:** Mike Gaul f/k/a Patriot Party and Michael Joseph
17 Gaul in his official capacity as treasurer
18 Michael Joseph Gaul
19

20 **RELEVANT STATUTES**
21 **AND REGULATIONS:**

22 52 U.S.C. § 30103
23 52 U.S.C. § 30124(b)
24 11 C.F.R. § 102.2
25 11 C.F.R. § 110.16(b)

26 **INTERNAL REPORTS CHECKED:** Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:** None

29 **I. INTRODUCTION**

30 The Complaint, filed by the self-described owner of the name “Patriot Party,” alleges that
31 Michael Joseph Gaul violated the Federal Election Campaign Act of 1971, as amended (the
32 “Act”), by registering Mike Gaul f/k/a Patriot Party and Michael Joseph Gaul in his official
33 capacity as treasurer (the “Gaul Committee”) as a political committee under the name “Patriot
34 Party” without the Complainant’s knowledge or permission.¹ The Complaint further alleges that
35 the Gaul Committee falsely listed itself on its Statement of Organization as a joint fundraising

¹ Compl. at 1-3 (Feb. 19, 2021); Mike Gaul, Statement of Organization at 2 (Jan. 22, 2021),
<https://docquery.fec.gov/pdf/293/202101229405270293/202101229405270293.pdf>.

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1 representative of Make America Great Again PAC f/k/a Donald J. Trump for President, Inc. (the
2 “Trump Committee”) without the Trump Committee’s knowledge or permission.² After the
3 Trump Committee filed a Miscellaneous Report with the Commission disavowing any
4 association with the Gaul Committee, Gaul amended the Gaul Committee’s name to “Mike
5 Gaul,” removed the joint fundraising representative designation of the Trump Committee, and
6 identified the Gaul Committee as a state committee of the Republican Party.³ In the Response,
7 Gaul states that the name “Patriot Party” is no longer active.⁴ He further asserts that he had no
8 way of knowing that the Complainant had already registered the name “Patriot Party” given the
9 timing of the parties’ respective filings.⁵

10 As explained below, it appears that the Gaul Committee and Gaul in his personal capacity
11 filed an inaccurate Statement of Organization that incorrectly identified the Gaul Committee as a
12 joint fundraising representative of the Trump Committee and, four days later, amended its
13 Statement of Organization to incorrectly identify itself as a state party committee. However, in
14 light of the short time period involved and other circumstances such as the lack of fundraising or
15 other committee activity, we recommend that the Commission exercise its prosecutorial
16 discretion and dismiss the allegation that the Gaul Committee and Gaul in his personal capacity
17 violated 52 U.S.C. § 30103(b) by filing a false Statement of Organization and send a caution

² Compl. at 1-2; Mike Gaul, Statement of Organization at 2 (Jan. 22, 2021), <https://docquery.fec.gov/pdf/293/202101229405270293/202101229405270293.pdf>.

³ Resp. at 1 (Feb. 26, 2021); Mike Gaul, Amended Statement of Organization at 2 (Jan. 26, 2021, 15:16 EST), <https://docquery.fec.gov/pdf/866/202101269413402866/202101269413402866.pdf>; Compl. at 1-2, Attach. 3 (citing Make America Great Again PAC, Form 99 at 1 (Jan. 25, 2021, 13:49 EST), <https://docquery.fec.gov/pdf/667/202101259413340667/202101259413340667.pdf>).

⁴ Resp. at 1.

⁵ *Id.*

1 letter.⁶ We further recommend that the Commission find no reason to believe that the Gaul
2 Committee and Gaul in his personal capacity violated 52 U.S.C. § 30124(b) given that Trump
3 does not appear to have been a federal candidate at the time when the Gaul Committee registered
4 with the Commission and there is no available information indicating that Respondents solicited
5 contributions.

6 **II. FACTUAL BACKGROUND**

7 On January 22, 2021, Michael Gaul registered the Gaul Committee with the Commission
8 using the name “Patriot Party,” listed himself as treasurer, and identified the Gaul Committee as
9 a joint fundraising representative of the Trump Committee.⁷ Donald J. Trump was no longer a
10 candidate for federal office when the Gaul Committee registered with the Commission.

11 The Complaint alleges that Gaul used the name “Patriot Party” without Complainant’s
12 knowledge or permission and listed itself as a joint fundraising representative of the Trump
13 Committee without its knowledge or permission.⁸ The Complaint does not allege that the Patriot
14 Party solicited contributions. The Complaint includes a copy of an Internal Revenue Service
15 (“IRS”) notification dated two days prior to the Gaul Committee’s registration; the IRS
16 notification provides the newly-registered Employer Identification Number (“EIN”) for “Patriot
17 Party.”⁹ The Complainant also provides a copy of what appears to be his application to the U.S.
18 Copyright Office to copyright the name “Patriot Party” to “establish a new political

⁶ *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁷ Mike Gaul, Statement of Organization at 2 (Jan. 22, 2021),
<https://docquery.fec.gov/pdf/293/202101229405270293/202101229405270293.pdf>.

⁸ Compl. at 1-2.

⁹ *Id.* at 1, Attach. 1.

1 party/political action committee in the USA.”¹⁰ The copyright application is signed and dated
2 December 12, 2020.¹¹

3 On January 25, 2021, the Trump Committee filed a Miscellaneous Report with the
4 Commission disavowing the activities of the Gaul Committee, referring to it as the Patriot
5 Party.¹² In the filing, the Trump Committee states that it has “no knowledge of [the Gaul
6 Committee’s] activities whatsoever,” and asserts that it “has not entered into any joint
7 fundraising agreement to fundraise through [the Gaul Committee],” and “has no affiliation with
8 [the Gaul Committee].”¹³ The Trump Committee further states that the Gaul Committee’s
9 activities are not authorized by Trump or the Trump Committee.¹⁴ On the following day, the
10 Gaul Committee amended its Statement of Organization to change its name to “Mike Gaul” and
11 removed the joint fundraising representative connection to the Trump Committee, but changed
12 its type of committee to a state committee of the Republican Party.¹⁵

13 According to the Complaint, the Complainant emailed Gaul on January 27, 2021,
14 advising him that through Gaul’s personal website, Complainant became aware of Gaul’s use of
15 the name “Patriot Party” in filings with the Commission.¹⁶ In the email, the Complainant asserts
16 that he copyrighted the name “Patriot Party,” which he says Gaul was using without permission,

¹⁰ Compl. at 1, Attach. 4. The Complaint attaches a copy of the copyright application but does not submit any notification of a determination from the U.S. Copyright Office. *Id.* The copyright application, which includes the EIN, is dated prior to the IRS letter notifying Complainant of the issuance of an EIN.

¹¹ *Id.*

¹² *Id.* at 1-2, Attach. 3; Make America Great Again PAC, Form 99 at 1 (Jan. 25, 2021, 13:49 EST).

¹³ Compl. at 1-2, Attach. 3; Make America Great Again PAC, Form 99 at 1 (Jan. 25, 2021, 13:49 EST).

¹⁴ Compl. at 1-2, Attach. 3; Make America Great Again PAC, Form 99 at 1 (Jan. 25, 2021, 13:49 EST).

¹⁵ Resp. at 1; Mike Gaul, Amended Statement of Organization at 2 (Jan. 26, 2021, 15:16 EST).

¹⁶ Compl. at 2-3 (depicting email).

1 and requests that Gaul cease and desist using the name.¹⁷ The Complainant's email apparently
2 informed Gaul that the Trump Committee filed a disavowal notice with the Commission.¹⁸
3 RAD issued an RFAI to the Gaul Committee on February 1, 2021, in connection with the
4 Amended Statement of Organization, stating that before the Gaul Committee "us[es] the
5 contribution limits and/or statutes available for state parties," it must petition the Commission
6 through an advisory opinion request to determine if it satisfies the criteria for state party
7 committee status.¹⁹ On August 16, 2021, RAD issued the Committee a non-filer notice for
8 failure to file its 2021 Mid-Year Report.²⁰ To date, Gaul has not submitted responses to the
9 letters or taken the required steps to petition the Commission for state party status, nor has the
10 Gaul Committee filed any disclosure reports.²¹

¹⁷ *Id.*

¹⁸ *Id.* The Complainant's January 27 email to Gaul also cites to news articles reporting that Trump disavowed affiliation with the Patriot Party. *Id.* at 3 (citing, for example, Mark Niquette, *Trump Campaign Disavows Notice Linking Him to the Patriot Party*, BLOOMBERG (Jan. 25, 2021), <https://www.bloomberg.com/news/articles/2021-01-25/trump-campaign-disavows-notice-linking-him-to-the-patriot-party>; Jack Brewster, *Trump Campaign Distances Itself From Rogue "Patriot Party,"* FORBES (Jan. 25, 2021), <https://www.forbes.com/sites/jackbrewster/2021/01/25/trump-campaign-distances-itself-from-rogue-patriot-party>).

¹⁹ Mike Gaul, RFAI at 1 (Feb. 1, 2021), <https://docquery.fec.gov/pdf/065/202102010300103065/202102010300103065.pdf>.

²⁰ Letter from Deborah Chacona, Assistant Staff Director, RAD, to Mike Joseph Gaul, Treasurer, Mike Gaul, (Aug. 16, 2021) ("Non-Filer Notice"), <https://docquery.fec.gov/pdf/198/202108160300124198/202108160300124198.pdf>.

²¹ The term "state committee" means an organization that "by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 52 U.S.C. § 30101(15). The Commission's regulations include an additional factor that the organization must be "part of the official party structure" either "by virtue of the bylaws of a political party or the operation of State law." 11 C.F.R. § 100.14(a). The organization obtains the Commission's determination by submitting an advisory opinion request. *See, e.g.*, Advisory Opinion 2002-10 at 1-3 (Green Party of Michigan). In making its determination, the Commission also considers whether the national party of which the state party organization is a part is a "political party." Advisory Opinion 2016-14 at 2 (Libertarian Party of Alabama, *et al.*) (citing Advisory Opinion 2015-01 (Green-Rainbow Party) and Advisory Opinion 2012-39 (Green Party of Virginia). RAD informed the Gaul Committee that it had not taken the required steps to obtain a determination that it is a state committee of a political party. Mike Gaul, RFAI at 1 (Feb. 1, 2021) (citing Advisory Opinion 2002-10).

1 In the Response, Gaul states that the EIN obtained by the Complainant does not give the
 2 Complainant intellectual property rights to the name "Patriot Party."²² Gaul further states that
 3 the "Patriot Party" name "is no longer used, due to inadequate fundraiser knowledge" and
 4 asserts that the Complainant is aware of that.²³ Gaul states that he filed amendments with the
 5 Commission and did not know that the Complainant "had established" the Patriot Party because
 6 he registered the Gaul Committee four days after the Complainant "filed."²⁴ Gaul states that he
 7 does not "own any websites, media outlets or merchandising associated with Patriot Party," and
 8 that the "Patriot Party DJT Fundra[is]er C00767095 is no longer active."²⁵ The Response does
 9 not address whether Gaul or the Gaul Committee violated the Act or Commission regulations.

10 III. LEGAL ANALYSIS

11 A. The Gaul Committee's Liability

12 1. The Commission Should Exercise Its Prosecutorial Discretion to Dismiss 13 the Allegation that the Gaul Committee Filed an Inaccurate Statement of 14 Organization

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 16
 17 Political committees must register with the Commission and file a statement of
 18 organization no later than ten days after becoming a political committee within the meaning of
 19 52 U.S.C § 30101(4).²⁶ The statement of organization must include, *inter alia*, the name,
 20 address, relationship, and type of any connected organization or affiliated committee.²⁷ Any

²² Resp. at 1. The Response was submitted by Gaul and does not state whether it is filed on behalf of both the Gaul Committee and Gaul in his personal capacity.

²³ *Id.*

²⁴ *Id.* The four-day filing timeline Gaul refers to in this context is unclear.

²⁵ *Id.*; Mike Gaul, Statement of Organization at 2 (Jan. 22, 2021); Mike Gaul, Amended Statement of Organization at 2 (Jan. 26, 2021, 15:16 EST).

²⁶ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(d).

²⁷ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2(a)(1).

1 change of information previously submitted on a statement of organization must be reported to
2 the Commission by filing an amended FEC Form 1 no later than ten days after the date of the
3 change.²⁸

4 The available information indicates that the Gaul Committee filed an inaccurate
5 Statement of Organization on January 22, 2021, by inaccurately stating that it was a joint
6 fundraising representative of the Trump Committee. Four days later, the Gaul Committee filed
7 an Amended Statement of Organization, changing its name from “Patriot Party” to “Mike Gaul”
8 and changing its political committee type from joint fundraising representative to that of state
9 committee of the Republican Party, although it has not petitioned the Commission, in the form of
10 an advisory opinion request, to seek such status.²⁹ For this reason, the Amended Statement of
11 Organization was also inaccurate at the time it was filed and continues to be inaccurate.

12 Although the available information indicates that the Gaul Committee filed an inaccurate
13 Statement of Organization multiple times,³⁰ the Response states that the Gaul Committee is
14 inactive and there is no information indicating that the Gaul Committee has received
15 contributions or made disbursements. Accordingly, we recommend that the Commission avoid
16 expending further resources on this matter and instead exercise its prosecutorial discretion to
17 dismiss the allegation that the Gaul Committee violated 52 U.S.C. § 30103(b) by filing an
18 inaccurate Statement of Organization and issue a caution letter reminding the Gaul Committee

²⁸ 52 U.S.C. § 30103(c); 11 C.F.R. § 102.2(a)(2).

²⁹ *See supra* note 21.

³⁰ The Gaul Committee did not remove the joint fundraising representative connection to the Trump Committee when it first amended its Statement of Organization to change its name to “Mike Gaul” and change its type of committee to a state committee of the Republican Party. Mike Gaul, Amended Statement of Organization at 2 (Jan. 26, 2021, 15:00 EST). The Gaul Committee corrected this apparent error by filing a second Amended Statement of Organization sixteen minutes later. *See supra* note 15.

1 that a political committee may only be designated as a state party committee of a political party
 2 after petitioning for and obtaining state party status from the Commission.³¹

3 2. The Commission Should Find No Reason to Believe the Gaul Committee
 4 Violated the Fraudulent Misrepresentation Provision of the Act
 5

6 The Act provides that no person shall fraudulently misrepresent themselves as speaking,
 7 writing, or otherwise acting for, or on behalf of, any candidate or agent thereof for the purpose of
 8 soliciting contributions or donations.³² Further, the Act provides that no person shall willfully
 9 and knowingly participate in or conspire to participate in any plan or scheme to engage in such
 10 behavior.³³ Although the Act requires that the violator have the intent to deceive, it does not
 11 require proof of the common law fraud elements of justifiable reliance and damages.³⁴ Even
 12 absent an express misrepresentation, a representation is fraudulent “if it was reasonably
 13 calculated to deceive persons of ordinary prudence and comprehension.”³⁵

14 Here, it does not appear that by filing an inaccurate Statement of Organization the Gaul
 15 Committee violated the fraudulent misrepresentation provision of the Act. By filing the original

³¹ The caution letter would also instruct the Gaul Committee to further amend its Statement of Organization if it does not seek or receive authorization to be identified as a state committee of the Republican Party. We do not recommend that the Commission report the matter to the appropriate legal authorities pursuant to 52 U.S.C. § 30107(a)(9) for filing a false statement with the Commission pursuant to 18 U.S.C. § 1001(a)(2), (3). Although Gaul may have known his Statements of Organization were inaccurate, and Gaul has not yet corrected the inaccurate amended Statement of Organization, the circumstances of this matter indicate that these filings arose from misperception and efforts to claim intellectual property. *See infra* note 45.

³² 52 U.S.C. § 30124(b)(1); 11 C.F.R. § 110.16(b)(1).

³³ 52 U.S.C. § 30124(b)(2); 11 C.F.R. § 110.16(b)(2).

³⁴ *See FEC v. Novacek*, 739 F. Supp. 2d 957, 961(N.D. Tex. 2010) (finding that defendants knowingly and willfully violated 2 U.S.C. § 441h(b) (now 52 U.S.C. § 30124(b)); Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002) (“Explanation and Justification”) (citing *Neder v. United States*, 527 U.S. 1, 24-25 (1999) distinguishing fraud in federal campaign finance abuses from common law tort action on the basis of Congress intending to penalize schemes as well as actions taken to defraud and the damaging effect of misrepresentation); Factual & Legal Analysis at 4, MUR 5472 (Jody Novacek).

³⁵ *Novacek*, 739 F. Supp. 2d at 961.

1 Statement of Organization, the Gaul Committee misrepresented itself as a joint fundraising
2 representative of the Trump Committee, and thus appears to have misrepresented itself as a
3 person speaking, writing, otherwise acting for or on behalf of the Trump Committee, when in
4 fact, it had no connection with that political committee. However, the relevant part of the
5 provision only applies to fraudulently misrepresenting “any candidate or political party.”³⁶
6 When the Statement of Organization was filed on January 22, 2021, Trump did not appear to
7 have been a federal candidate for president. Moreover, the available information does not
8 support the allegation that the Gaul Committee made the misrepresentation for the purpose of
9 soliciting contributions or to deceive persons of ordinary prudence and comprehension. The
10 Complaint does not allege, and there is no other information to suggest, that the Respondents
11 solicited contributions during the four-day period before the Gaul Committee amended its
12 Statement of Organization. Accordingly, we recommend that the Commission find no reason to
13 believe that the Gaul Committee violated 52 U.S.C. § 30124(b).³⁷

14 **B. The Treasurer’s Liability**

15 The Act requires every political committee to have a treasurer.³⁸ The treasurer is
16 required to file periodic reports with the Commission disclosing the committee’s receipts and
17 disbursements.³⁹ The treasurer, and any other person required to file any report or statement
18 under the Act, is “personally responsible . . . for the accuracy of any information or statement

³⁶ 52 U.S.C. § 30124(b)(1).

³⁷ There is no indication that the Gaul Committee solicited contributions using the name “Patriot Party” before amending its Statement of Organization. Given that the Complaint focused on the false reporting and fraudulent misrepresentation allegations, and that it is unclear whether the joint fundraising procedures would apply given the apparent lack of a joint fundraising agreement, we do not make any recommendation as to whether the Gaul Committee violated the joint fundraising procedures at 11 C.F.R. § 102.17(c).

³⁸ 52 U.S.C. § 30102.

³⁹ 52 U.S.C. § 30104(a)(1), (b).

1 contained in it.”⁴⁰ According to Commission policy, a treasurer may be named as a respondent
2 in his or her personal capacity when it appears that, while serving as a treasurer, he or she may
3 have violated obligations imposed by the Act or Commission regulations personally as a
4 treasurer and where, for example, the violations were knowing and willful or “the treasurer
5 recklessly failed to fulfill the duties imposed by law.”⁴¹

6 Here, Gaul was notified in his personal capacity not only because of the fraudulent
7 misrepresentation allegation but also because it appeared that, based on the Complaint, he
8 recklessly failed to fulfill his duties as treasurer imposed by law. However, in the Response,
9 Gaul cites “inade[qu]ate fundraiser knowledge,” indicates that he amended the Gaul
10 Committee’s Statement of Organization, and states that “Patriot Party DJT Fundra[is]er
11 C00767095 is no longer active.”⁴² Gaul amended the Statement of Organization one day after
12 the Trump Committee filed its Miscellaneous Report disavowing any connection to the Gaul
13 Committee. Given the above facts, it is not clear that Gaul intended to file a false statement, or
14 that Gaul’s actions were knowing and willful or an intentional abuse of the Commission’s filing
15 requirements. Gaul’s actions in immediately amending the Statement of Organization and

⁴⁰ 11 C.F.R. § 104.14(d).

⁴¹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-6 (Jan. 3, 2005); *see, e.g.*, MUR 5971 (Mary Jennifer Adams); MUR 5610 (Earl Allen Haywood); MUR 5721 (Lockheed Martin Employees’ PAC);

⁴² Resp. at 1.

1 changing the type of committee designation are consistent with the other circumstances
2 indicating his lack of sophistication and understanding about how to complete the Statement of
3 Organization.⁴⁴ It may be the case that Gaul did not realize that he was filing an inaccurate
4 statement if he was unaware what it meant to check the joint fundraising representative box and
5 state that the Gaul Committee was a joint fundraising representative of the Trump Committee.
6 Therefore, we recommend that the Commission dismiss, as a matter of prosecutorial discretion,
7 the allegation that Gaul in his personal capacity violated 52 U.S.C. § 30103(b) by filing an
8 inaccurate Statement of Organization and issue a caution letter. We further recommend that the
9 Commission find no reason to believe that Gaul in his personal capacity violated 52 U.S.C.
10 § 30124(b).⁴⁵

11 **IV. RECOMMENDATIONS**

- 12 1. Dismiss, as a matter of prosecutorial discretion, the allegation that Mike Gaul
13 (f/k/a Patriot Party) and Michael Joseph Gaul in his official capacity as treasurer
14 violated 52 U.S.C. § 30103(b) by filing an inaccurate Statement of Organization
15 and issue a caution letter;
16
- 17 2. Dismiss, as a matter of prosecutorial discretion, the allegation that Michael Joseph
18 Gaul in his personal capacity violated 52 U.S.C. § 30103(b) by filing an
19 inaccurate Statement of Organization and issue a caution letter;
20
- 21 3. Find no reason to believe that Mike Gaul (f/k/a Patriot Party) and Michael Joseph
22 Gaul in his official capacity as treasurer violated 52 U.S.C. § 30124(b);
23
- 24 4. Find no reason to believe that Michael Joseph Gaul in his personal capacity
25 violated 52 U.S.C. § 30124(b);
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⁴⁴ See MUR 6561 (Friends of Liberty for Jessica) (EPS dismissal) (dismissing, in part, allegations that candidate and committee failed to accurately report on the statement of candidacy and statement of organization the correct congressional office sought, designating the committee as both a principal campaign committee and an authorized committee, among other things, due to confusion during transitions of treasurers, and issuing a reminder letter).

⁴⁵ The Complaint also alleges that Gaul infringed on his exclusive intellectual property right to use the name "Patriot Party." Compl. at 1. Since this allegation is outside the Commission's jurisdiction, we make no recommendation as to it.

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- 1 5. Approve the attached Factual and Legal Analysis;
- 2
- 3 6. Approve the appropriate letters; and
- 4
- 5 7. Close the file.

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Lisa J. Stevenson
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