

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

4
5 **MUR 7931**

6 DATES RECEIVED: Oct. 12, 2021; June 9, 2022;
7 June 15, 2022; Feb. 14, 2023

8 DATES OF NOTIFICATION: Oct. 18, 2021;
9 June 15, 2022;
10 June 22, 2022
11 Mar. 13, 2023

12 DATE OF LAST RESPONSE: July 29, 2022

13 DATE ACTIVATED: Dec. 19, 2022

14
15 EXPIRATION OF SOL: Nov. 4, 2025-Apr. 24,
16 2028

17 ELECTION CYCLE: 2024

18
19 **COMPLAINANT:**

Committee to Defeat the President

20
21 **RESPONDENTS:**

22 Joseph R. Biden, Jr.
23 Biden for President and Keana Spencer in her
24 official capacity as treasurer
25 Biden Victory Fund and Monica Guardiola in her
26 official capacity as treasurer

27 **MUR 8059**

28 DATE RECEIVED: Aug. 30, 2022

29 DATE OF NOTIFICATION: Aug. 31, 2022

30 DATE OF LAST RESPONSE: Oct. 21, 2022

31 DATE ACTIVATED: Dec. 19, 2022

32
33 EXPIRATION OF SOL: Nov. 4, 2025-Apr. 24,
34 2028

35 ELECTION CYCLE: 2024

36
37 **COMPLAINANT:**

Caitlin Sutherland
Americans for Public Trust

38
39
40 **RESPONDENTS:**

41 Joseph R. Biden, Jr.
42 Biden for President and Keana Spencer in her
43 official capacity as treasurer

44 **RELEVANT STATUTES**
45 **AND REGULATIONS:**

46 52 U.S.C. § 30102(e)(1)

52 U.S.C. § 30103(c)

1 52 U.S.C. § 30104(b)(5)(A), (b)(8)

2

3 11 C.F.R. § 101.1(a)

4 11 C.F.R. § 102.2(a)(2)

5 11 C.F.R. § 104.3(b)(4)(i)

6 11 C.F.R. § 104.11(b)

7

8 **INTERNAL REPORTS CHECKED:** Disclosure Reports

9

10 **FEDERAL AGENCIES CHECKED:** None

11 **I. INTRODUCTION**

12 These matters arise from Complaints alleging that Joseph R. Biden, Jr., became a
 13 candidate for President in the 2024 election cycle prior to his April 2023 formal announcement
 14 and failed to file a Statement of Candidacy with the Commission within 15 days of becoming a
 15 candidate in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

16 The Complaint in MUR 7931 alleges that Biden surpassed the \$5,000 threshold for
 17 candidacy via contributions received by his authorized committee, Biden for President and
 18 Keana Spencer in her official capacity as treasurer (the “Biden Committee”), and Biden Victory
 19 Fund and Monica Guardiola in her official capacity as treasurer (the “Victory Fund”), a joint
 20 fundraising committee in which the Biden Committee is a participant, as well as via
 21 disbursements made by the Biden Committee and the Victory Fund. The MUR 7931 Complaint
 22 further alleges that both the Biden Committee and the Victory Fund have failed to make
 23 necessary amendments to their Statements of Organization to reflect Biden’s 2024 candidacy. In
 24 addition, the Complainant in MUR 7931 has filed three supplements to its Complaint
 25 documenting statements made by Biden and individuals associated with him and his
 26 administration in support of the MUR 7931 Complaint’s claim that Biden decided to run for
 27 reelection long before his formal declaration of candidacy. The Complaint in MUR 8059
 28 similarly alleges that Biden failed to timely file a Statement of Candidacy despite consistent

1 statements indicating that he had determined to run for reelection and that Biden crossed the
2 \$5,000 statutory threshold because the Biden Committee had spent, at the time of that
3 Complaint, more than \$5 million including for text messaging, email, and database services.

4 Respondents deny the allegations, asserting that, at the time the Responses were
5 submitted, Biden had not yet conclusively determined to run for reelection in 2024, nor had he or
6 his affiliated committees raised or spent \$5,000 or more in connection with the 2024 presidential
7 election. Regarding contributions, Respondents state that all contributions received by the Biden
8 Committee after the 2020 election were solicited and made prior to the election and that all funds
9 raised by the Victory Fund for the Biden Committee were contributions solicited and made prior
10 to Election Day. They state that other funds raised by the Victory Fund after Election Day 2020
11 were not allocated or transferred to the Biden Committee. Regarding disbursements,
12 Respondents state that all expenditures made by the Biden Committee after November 3, 2020,
13 were associated with winding-down activities or maintenance of records or property, obligations
14 incurred during the 2020 election cycle, and expenses incurred in connection with fundraising for
15 the Democratic National Committee (the "DNC") in the 2022 election cycle, and that the Biden
16 Committee has made no disbursements to influence the 2024 presidential election. Respondents
17 state that expenditures made by the Victory Fund were to pay for services received prior to
18 Election Day and for services to maintain the Victory Fund while it winds down its operations.

19 After the filing of the Responses, on April 25, 2023, Biden filed a Statement of
20 Candidacy with the Commission indicating that he is running for reelection in 2024 and naming
21 both the Biden Committee and the Victory Fund as authorized committees.

22 As discussed below, the available information indicates that although Biden appears to
23 have made statements indicating that he had decided to become a candidate as early as March

1 2021, neither Biden nor the Biden Committee appears to have accepted any contributions for the
2 2024 election cycle, and it is unclear as to whether they made expenditures in excess of \$5,000 to
3 satisfy the statutory threshold for becoming a candidate. At the same time, the available
4 information indicates that the Biden Committee did not accurately disclose all of its spending
5 given that its disbursements to one vendor, Upland Software Inc., may have been for purposes
6 different from or beyond those stated in the Biden Committee's Responses and its disclosure
7 reports. Accordingly, we recommend the Commission: (1) take no action at this time with
8 respect to the allegation that Biden violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1 by
9 failing to timely file a Statement of Candidacy and designate an authorized committee within 15
10 days of becoming a candidate; and (2) find reason to believe the Biden Committee violated 52
11 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to properly disclose the
12 purpose of its disbursements to Upland Software. We intend to conduct an investigation to
13 resolve the reporting allegation and therefore recommend that the Commission approve
14 compulsory process so that the Office of General Counsel may complete the factual record.

15 Additionally, because the available information indicates that the Victory Fund incurred a
16 debt of \$100,000 in August 2020 that was not disclosed until it received and paid the associated
17 invoice in 2021, we recommend that the Commission find reason to believe the Victory Fund
18 violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.11(b) by failing to report a debt of greater
19 than \$500 at the time it was incurred. We further recommend the Commission authorize pre-
20 probable cause conciliation with the Victory Fund to resolve its debt reporting violation.

21 Finally, because neither the Biden Committee nor the Victory Fund had any obligation to
22 amend their Statements of Organization to reflect the election cycle relevant to Biden's
23 candidacy, we recommend the Commission find no reason to believe that either entity violated

1 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to amend their Statements of
2 Organization.

3 II. FACTUAL BACKGROUND

4 A. Statements Made by Biden and His Surrogates Regarding a 2024 5 Presidential Candidacy

6 Joseph R. Biden, Jr., was elected the 46th President of the United States on November 3,
7 2020.¹ He filed a Statement of Candidacy for the 2024 election on April 25, 2023.²

8 Beginning in early 2021, Biden and his surrogates made a number of public statements
9 about whether Biden had made a decision to run for President in 2024, as referenced in the
10 Complaints. As early as March 25, 2021, when asked whether he had “decided whether [he was]
11 going to run for reelection in 2024,” Biden responded that “the answer is ‘yes.’ My plan is to
12 run for reelection. That’s my expectation.”³ Later that year, in November 2021, then-Press
13 Secretary Jen Psaki was asked about “reports that President Biden was telling allies that he is
14 going to run for reelection in 2024” and whether she could confirm whether he is “going to run
15 in 2024,” to which Psaki responded that “[h]e is, that’s his intention.”⁴ Two months later, on
16 January 19, 2022, when asked whether Vice President Kamala Harris would be his Vice

¹ FEC, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 5 (Oct. 2022), <https://www.fec.gov/resources/cms-content/documents/federal-elections2020.pdf>; *Joe Biden: The President*, WHITE HOUSE, <https://www.whitehouse.gov/administration/president-biden/> (last visited May 2, 2023).

² Joseph R. Biden, Jr., Amended Statement of Candidacy (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf>.

³ WHITE HOUSE, REMARKS BY PRESIDENT BIDEN IN PRESS CONFERENCE (Mar. 25, 2021) [hereinafter March 25, 2021 Biden Remarks], <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/25/remarks-by-president-biden-in-press-conference/>.

⁴ Steven Nelson, *Psaki Says Biden Still Intends to Run in 2024 Despite Poor Polls, Old Age*, N.Y. POST (Nov. 22, 2021, 7:11 PM), <https://nypost.com/2021/11/22/psaki-says-biden-still-intends-to-run-in-2024-despite-poor-polls-old-age/> (quoting WHITE HOUSE, PRESS GAGGLE BY PRESS SECRETARY KEN PSAKI EN ROUTE FORT BRAGG, NC (Nov. 22, 2021, 5:00 PM) [hereinafter Nov. 22, 2021 White House Press Gaggle], <https://www.whitehouse.gov/briefing-room/press-briefings/2021/11/22/press-gaggle-by-press-secretary-jen-psaki-en-route-fort-bragg-nc/>) (quoted in Compl. ¶ 11 (Aug. 30, 2022), MUR 8059 [hereinafter MUR 8059 Compl.]).

1 President on the 2024 ticket and whether he thought she was doing a good job on voting rights
2 policies, Biden responded “[y]es and yes,” indicating that he had determined to run in 2024 and
3 again would select Harris as his running mate.⁵

4 Subsequent press reports have reiterated that Biden had made up his mind regarding the
5 2024 election: *Intelligencer* reported on May 24, 2022, that “in [Biden’s] mind there’s no
6 question he’s running. . . . ‘Yes!’ he told an interviewer . . . , sighing a little performatively at
7 having to keep repeating it.”⁶ The article went on to state that:

8 Every one of the would-be candidates has consistently maintained
9 that their own presidential prospects are moot because Biden is
10 running with their full support. As far as Biden’s camp is
11 concerned, there isn’t any ambiguity about 2024 at all. He has said
12 in private that he sees himself as the only thing standing between
13 the country [the reelection of Donald Trump] and has instructed his
14 aides to redouble their planning for a rematch. “People ask me
15 with some regularity, ‘When is Biden going to come out and say
16 what he’s going to do?’” an exasperated longtime Biden adviser
17 told me recently. “And I say, ‘Well, he has!’”⁷

18 Biden was also later reported as being relieved that Senator Bernard Sanders would not challenge
19 him in 2024, and the same press article states that aides argue that Biden is not just intending to
20 run but also “laying the groundwork by building resources at the [DNC], restocking his operation

⁵ Claire Rafford, *Biden Commits to Harris as His Running Mate for 2024*, POLITICO (Jan. 19, 2022, 6:09 PM), <https://www.politico.com/news/2022/01/19/biden-commits-to-harris-as-his-running-mate-2024-527418> (quoting WHITE HOUSE, REMARKS BY PRESIDENT BIDEN IN PRESS CONFERENCE (Jan. 19, 2022, 4:02 PM) [hereinafter Jan. 19, 2022 Biden Remarks], <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/19/remarks-by-president-biden-in-press-conference-6/>) (quoted in MUR 8059 Compl. ¶ 15).

⁶ Gabriel Debenedetti, *There Has to Be a Backup Plan. There’s a Backup Plan, Right?*, INTELLIGENCER (May 24, 2022), <https://nymag.com/intelligencer/2022/05/biden-2024-democrats-search-for-alternative.html> (quoted in First Supp. Compl. at 1-2 (June 9, 2022), MUR 7931 [hereinafter MUR 7931 First Supp. Compl.]).

⁷ *Id.*

1 in battleground states[,] and looking to use his influence to shape the nomination process in his
2 favor.”⁸

3 In addition to press accounts, individuals associated with Biden's campaign and the
4 White House have repeatedly stated that he will run for reelection. On June 13, 2022, Press
5 Secretary Karine Jean-Pierre stated at a Press Briefing, “Yes, he's running for reelection. I'm —
6 I can't say more than that.”⁹ The same day, Jean-Pierre tweeted, “To be clear, as the President
7 has said repeatedly, he plans to run in 2024.”¹⁰ Four days later, *The Washington Post* reported
8 that a dozen unnamed “Democrats close to the White House” had stated that, “[i]n public and
9 private, Biden himself has emphasized that he is running, effectively shutting down any
10 discussion of the topic between the president and his close advisers.”¹¹

11 Twice in late June 2022, Vice President Kamala Harris confirmed her understanding of
12 Biden's intention to run, stating first that “Joe Biden is running for reelection and I will be his
13 ticket-mate. Full stop.”¹² Two days later, she said that “[t]he president intends to run and if he

⁸ Taegan Goddard, *Biden Irked by Democrats Who Don't Think He's Running*, TAEGAN GODDARD'S POL. WIRE (June 27, 2022, 7:30 PM), <https://politicalwire.com/2022/06/27/biden-irked-by-democrats-who-dont-think-hes-running/> (quoted in Third Supp. Compl. at 2, MUR 7931 (Mar. 8, 2023) [hereinafter MUR 7931 Third Supp. Compl.]).

⁹ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE, JUNE 13, 2022 (June 13, 2022, 3:42 PM) [hereinafter June 13, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/06/13/press-briefing-by-press-secretary-karine-jean-pierre/> (quoted in MUR 8059 Compl. ¶ 13).

¹⁰ Karine Jean-Pierre (@PressSec), TWITTER (June 13, 2022, 6:36 PM), <https://twitter.com/presssec/status/1536477522988343296> (cited in Second Supp. Compl. at 1 (June 22, 2022), MUR 7931 [hereinafter MUR 7931 Second Supp. Compl.]).

¹¹ Tyler Pager & Michael Scherer, *Biden Sends Every Signal He Is Running Again*, WASH. POST (June 17, 2022, 3:00 PM), <https://www.washingtonpost.com/politics/2022/06/17/biden-signals-run-for-reelection/> (quoted in MUR 8059 Compl. ¶ 17).

¹² Dana Bash (@DanaBashCNN), TWITTER (June 27, 2022, 8:07 PM), <https://twitter.com/DanaBashCNN/status/1541574009418039299> (including video of Bash's interview of Harris on CNN that evening) (quoted in MUR 8059 Compl. ¶ 16, MUR 7931 Third Supp. Compl. at 1).

1 does, I will be his ticket mate. We will run together.”¹³ Regarding this remark, *The Los Angeles*
2 *Times* reported that an unnamed “prominent Democrat who is close to the White House” said
3 that Harris made the clarifying statement to “avoid using ‘trigger words’ that would set off
4 requirements for Biden to establish a formal campaign with the Federal Election Commission
5 and begin fundraising.”¹⁴

6 In July 2022, *CNN* reported that Biden had “insisted privately to donors and others [that
7 he is] their strongest candidate to beat Donald Trump — or another GOP candidate — in
8 2024.”¹⁵ It further reported that four unidentified aides stated that there are “muted worries . . .
9 going around the West Wing . . . that someone may yet emerge ahead of the President’s planned
10 spring 2023 formal reelection campaign launch. Biden advisers expect to stick to that no matter
11 what happens, including if Trump decides to jump in early.”¹⁶ Later in July 2022, Press
12 Secretary Jean-Pierre stated, “I’m going to be very clear; I’m going to say this once — and the
13 President has been very clear about this: He intends to run in 2024. And he is going to — until
14 then, he is going to do the business of the American people as he has been doing for the past 18
15 months.”¹⁷ The next day, she twice reiterated during a press briefing that “[t]he President

¹³ Erin B. Logan & Noah Bierman, *Vice President Harris Says Biden Intends to Seek Reelection, But Her Words Stir New Uncertainty*, L.A. TIMES (June 29, 2022, 4:38 PM), <https://www.latimes.com/politics/story/2022-06-29/vice-president-harris-creates-new-doubt-about-bidens-plans-for-reelection> (quoted in MUR 8059 Compl. ¶ 28).

¹⁴ *Id.*

¹⁵ Edward-Isaac Dove, *As Worries About Biden in 2024 Grow, Other Democrats Aren’t Stepping Forward to Challenge Him*, CNN (July 11, 2022, 8:26 AM), <https://www.cnn.com/2022/07/11/politics/biden-democratic-primary-challenge-2024/index.html> (quoted in MUR 8059 Compl. ¶¶ 18, 20).

¹⁶ *Id.*

¹⁷ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE (July 28, 2022, 4:11 PM) [hereinafter July 28, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/07/28/press-briefing-by-press-secretary-karine-jean-pierre-5/> (quoted in MUR 8059 Compl. ¶ 13, which misstates that Jean-Pierre tweeted this statement; she instead stated these words at a Press Briefing).

1 intends to run in 2024,”¹⁸ and on August 1, 2022, she stated twice more that the President
 2 “intends to run,” noting that he had “said that multiple times.”¹⁹ She was reported as stating so
 3 again on *This Week with George Stephanopoulos* on August 14, 2022.²⁰

4 In August 2022, Secretary of Transportation Pete Buttigieg stated while appearing on
 5 *CNBC* that he was “looking forward to supporting the president’s reelection. That is as much as
 6 I can say about these things while I’m here on an official capacity.”²¹ Less than a week later,
 7 *Bloomberg* reported that former White House aide Cedric Richmond had said that “[i]t is clear-
 8 cut that [Biden is] our best candidate. . . . If he says he’s planning on running, he’s running,”²²
 9 and that longtime aide Anita Dunn stated, “The president has said he’s planning on running
 10 again. People should take him at his word.”²³ *Bloomberg* further reported that unidentified aides
 11 were “worried that [Biden] publicly declaring [his 2024 candidacy] before the [2022] midterms
 12 [w]ould trigger legal restrictions on fundraising.”²⁴ In September 2022, Richmond told a

¹⁸ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE, JULY 29, 2022 (July 29, 2022, 1:55 PM) [hereinafter July 29, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/07/29/press-briefing-by-press-secretary-karine-jean-pierre-july-29-2022/> (quoted in MUR 7931 Third Supp. Compl. at 2; the Third Supplemental Complaint cites a press article for one of Jean-Pierre’s statements, but both appear in the White House Press Briefing from July 29, 2022).

¹⁹ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE AND NATIONAL SECURITY COUNCIL COORDINATOR FOR STRATEGIC COMMUNICATIONS JOHN KIRBY (Aug. 1, 2022, 1:54 PM) [hereinafter Aug. 1, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/08/01/press-briefing-by-press-secretary-karine-jean-pierre-and-national-security-council-coordinator-for-strategic-communications-john-kirby-2/> (quoted in MUR 7931 Third. Supp. Compl. at 2; the Third Supplemental Complaint cites a press article for one of Jean-Pierre’s statements, but both appear in the White House Press Briefing from August 1, 2022).

²⁰ S.E. Cupp, Opinion, *Biden Should Speak Fully on His Plans to Run in 2024 or Not*, NEWS-HERALD (Aug. 21, 2022, 7:56 AM), <https://www.news-herald.com/2022/08/21/biden-should-speak-fully-on-his-plans-to-run-in-2024-or-not-s-e-cupp/>.

²¹ *Squawk Box* (CNBC television broadcast Aug. 4, 2022), https://archive.org/details/CNBC_20220804_100000_Squawk_Box/start/6600/end/6660 (quoted in MUR 8059 Compl. ¶ 14).

²² Justin Sink & Josh Wingrove, *Biden Plots a 2024 President Run — and a Trump Rematch*, BLOOMBERG (Aug. 11, 2022), <https://www.bloomberg.com/news/articles/2022-08-11/biden-primed-2024-run-eager-to-stop-trump-again-despite-doubts> (quoted in MUR 8059 Compl. ¶ 19; MUR 7931 Third. Supp. Compl. at 3).

²³ *Id.*

²⁴ *Id.*

1 member of the press that Biden is “running and we’re building an infrastructure for him to run
2 and win. Right now, it’s all an early investment in 2024 while we’re helping 2022.”²⁵ In late
3 September 2022, Jean-Pierre again stated that Biden “intends to run. I don’t have any more
4 announcements on that.”²⁶

5 Though Biden claimed as late as February 2023 that he was “just not ready to make” the
6 decision of whether to run for reelection in 2024,²⁷ having stated the prior September that he
7 would “make a judgment on what to do . . . after [the 2022] election cycle here going into
8 [2023],”²⁸ he also made clear that it was his “intention to run again” and that part of his concern
9 about formally deciding to run was that, from the moment he did so, “a whole series of
10 regulations kick[ed] in and [he has] to be — [he] treat[s] [him]self as a candidate from that
11 moment on.”²⁹ In October 2022, *NBC* reported that Reverend Al Sharpton had told his staff at
12 the National Action Network that Biden had told him, “I’m going to do it again. I’m going,”

²⁵ Alex Gangitano, *Cedric Richmond on Biden 2024: “He’s Running,”* ABC27 (Sept. 17, 2022, 8:22 AM), <https://www.abc27.com/hill-politics/cedric-richmond-on-biden-2024-hes-running/> (quoted in MUR 7931 Third Supp. Compl. at 3).

²⁶ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE, SEPTEMBER 26, 2022 (Sept. 26, 2022, 1:27 PM) [hereinafter Sept. 26, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/09/26/press-briefing-by-press-secretary-karine-jean-pierre-september-26-2022/> (quoted in MUR 7931 Third Supp. Compl. at 3).

²⁷ Noticias Telemundo, *Entrevista Completa con Joe Biden | Noticias Telemundo* at 0:01, YOUTUBE (Feb. 9, 2023), <https://www.youtube.com/watch?v=JnzCFhVVb1c>.

²⁸ Scott Pelley, *President Joe Biden: The 2022 60 Minutes Interview* (Sept. 18, 2022), <https://www.cbsnews.com/news/president-joe-biden-60-minutes-interview-transcript-2022-09-18/> (noting that if he were to announce his candidacy, “all of a sudden, a whole range of things come into play that I have — requirements I have to change and move and do” and confirming, when asked, that he was referring to “election laws”) (quoted in Biden & Biden Committee Joint Resp. at 1-2 n.3 (Oct. 24, 2022), MUR 8059 [hereinafter MUR 8059 Biden Resp.]).

²⁹ MSNBC, *President Biden Vows to Protect Women’s Right to Choose if GOP Takes Control of Congress* at 4:53, YOUTUBE (Oct. 21, 2022), <https://www.youtube.com/watch?v=wdfulgUp6so> (“The reason I’m not making a judgment about formally running or not running, once I make that judgment, a whole series of regulations kick in and I have to be — I treat myself as a candidate from that moment on. I have not made that formal decision, but it’s my intention — my intention to run again. And we have time to make that decision.”).

1 concerning running for reelection.³⁰ Further, in November 2022, when asked what he would say
2 to the “[t]wo thirds of Americans in exit polls [who] say that they don’t think [Biden] should run
3 for reelection,” Biden responded, “Watch me.”³¹ And in December 2022, *The New York Times*
4 reported that Biden joined a toast at a state dinner with French President Emmanuel Macron to
5 his 2024 campaign following an exchange in which Biden’s wife, Dr. Jill Biden, reportedly
6 stated that she was “absolutely” ready for another campaign.³²

7 Subsequent to the filing of the Complaints and the Responses in these matters, on April
8 25, 2023, Biden announced that he was running for reelection in 2024,³³ and filed a Statement of
9 Candidacy with the Commission in which he designated the Biden Committee as his principal
10 campaign committee and listed the Victory Fund as another authorized committee.³⁴

³⁰ Jonathan Allen, *Biden Tells Al Sharpton He Will Run for President Again in 2024*, NBC NEWS (Oct. 3, 2022, 7:29 PM), <https://www.nbcnews.com/politics/white-house/biden-tells-al-sharpton-will-run-president-2024-rcna50556> (quoted in MUR 7931 Third Supp. Compl. at 3).

³¹ WHITE HOUSE, REMARKS BY PRESIDENT BIDEN IN PRESS CONFERENCE (Nov. 9, 2022) [hereinafter Nov. 9, 2022 Biden Remarks], <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/11/09/remarks-by-president-biden-in-press-conference-8/>.

³² Katie Rogers & Annie Karni, *Bidens Toasted a 2024 Campaign with Macron at the State Dinner*, N.Y. TIMES (Dec. 6, 2022), <https://www.nytimes.com/2022/12/06/us/politics/biden-running-president-2024.html> (cited in MUR 7931 Third Supp. Compl. at 3).

³³ Joe Biden (@JoeBiden), TWITTER (Apr. 25, 2023, 6:00 AM), <https://twitter.com/JoeBiden/status/1650801827728986112> (“Every generation has a moment where they have had to stand up for democracy. To stand up for their fundamental freedoms. I believe this is ours. That’s why I’m running for reelection as President of the United States. Join us. Let’s finish the job. <http://JoeBiden.com>[.]”).

³⁴ Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf>.

1 **B. The Committees**

2 1. The Biden Committee

3 The Biden Committee is Biden's principal campaign committee.³⁵ Between November 4,
 4 2020, and March 31, 2023, the Biden Committee reported \$134,048,699.80 in total receipts.³⁶
 5 Of this amount, the Biden Committee reported receiving \$103,362,129.86 in contributions
 6 during the 2020 Post-General reporting period;³⁷ \$151.80 in contributions received during the
 7 2020 Year-End reporting period;³⁸ and \$280 in the 2021 April Quarterly reporting period.³⁹ The
 8 Biden Committee contends that all of the reported post-2020 election contributions were

³⁵ Biden for President, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/354/202304259581294354/202304259581294354.pdf>.

³⁶ See Biden for President, 2020 30-Day Post-General Report (Dec. 3, 2020) [hereinafter Biden Committee, 2020 Post-General Report], <https://docquery.fec.gov/cgi-bin/forms/C00703975/1481223/> (reporting \$112,374,093.52 in receipts); Biden for President, Amended 2020 Year-End Report (June 24, 2021) [hereinafter Biden Committee, 2020 Year-End Report], <https://docquery.fec.gov/cgi-bin/forms/C00703975/1521558/> (reporting \$9,566,512.81 in receipts); Biden for President, 2021 April Quarterly Report (Apr. 15, 2021) [hereinafter Biden Committee, 2021 April Quarterly Report], <https://docquery.fec.gov/cgi-bin/forms/C00703975/1512502/> (reporting \$8,306,247.28 in receipts); Biden for President, 2021 July Quarterly Report (July 15, 2021) [hereinafter Biden Committee, 2021 July Quarterly Report], <https://docquery.fec.gov/pdf/289/202107159451654289/202107159451654289.pdf> (reporting \$2,158,612.93 in receipts); Biden for President, 2021 October Quarterly Report (Oct. 15, 2021) [hereinafter Biden Committee, 2021 October Quarterly Report], <https://docquery.fec.gov/pdf/966/202110159467807966/202110159467807966.pdf> (reporting \$793,042.37 in receipts); Biden for President, 2021 Year-End Report (Jan. 31, 2022) [hereinafter Biden Committee, 2021 Year-End Report], <https://docquery.fec.gov/pdf/602/202201319485852602/202201319485852602.pdf> (reporting \$533,586.29 in receipts); Biden for President, 2022 April Quarterly Report (Apr. 15, 2022) [hereinafter Biden Committee, 2022 April Quarterly Report], <https://docquery.fec.gov/pdf/058/202204159496652058/202204159496652058.pdf> (reporting \$35,698.04 in receipts); Biden for President, 2022 July Quarterly Report (July 15, 2022) [hereinafter Biden Committee, 2022 July Quarterly Report], <https://docquery.fec.gov/pdf/588/202207159521296588/202207159521296588.pdf> (reporting \$23,720.19 in receipts); Biden for President, 2022 October Quarterly Report (Oct. 15, 2022) [hereinafter Biden Committee, 2022 October Quarterly Report], <https://docquery.fec.gov/pdf/100/202210159532617100/202210159532617100.pdf> (reporting \$252,559.14 in receipts); Biden for President, 2022 Year-End Report (Jan. 31, 2023) [hereinafter Biden Committee, 2022 Year-End Report], <https://docquery.fec.gov/pdf/514/202301319577873514/202301319577873514.pdf> (reporting \$4,266.93 in receipts); Biden for President, 2023 April Quarterly Report (Apr. 15, 2023) [hereinafter Biden Committee, 2023 April Quarterly Report], <https://docquery.fec.gov/pdf/917/202304159581014917/202304159581014917.pdf> (reporting \$360.30 in receipts).

³⁷ Biden Committee, 2020 Post-General Report. Of this amount, \$68,465,679.20 was itemized, while \$34,833,704.04 was unitemized. *Id.*

³⁸ Biden Committee, 2020 Year-End Report. Of this amount, \$117.80 was itemized, and \$34 was unitemized. *Id.*

³⁹ Biden Committee, 2021 April Quarterly Report. Of this amount, all \$280 was unitemized. *Id.*

1 solicited and made prior to Election Day.⁴⁰ The Biden Committee reported no additional
 2 contributions after the 2021 April Quarterly Report.⁴¹ The remaining receipts included
 3 \$8,066,596.36 reported as offsets to operating expenditures⁴² and \$36,003,662.60 in transfers
 4 from other authorized committees, of which \$20,221,129.23 came from the Victory Fund,
 5 discussed below.⁴³

6 From November 4, 2020, through March 31, 2023, the Biden Committee also reported
 7 making expenditures totaling \$294,730,269.94, all designated as for the 2020 election.⁴⁴ This
 8 includes disbursements of, in the aggregate, \$478,158.91 to NGP Van Inc. for “database
 9 subscription” and “processing fees,” \$5,083,361.49 to Upland Software Inc. for “software,” and
 10 \$2,019,395.00 to Action Squared Inc. for “text message/email outreach” and “text message

⁴⁰ Biden & Biden Committee Joint Resp. at 2 (Dec. 19, 2021), MUR 7931 [hereinafter MUR 7931 Biden Resp.]; MUR 7931 Biden Resp., Attach. ¶¶ 3-5 (Decl. of Taryn Vogel) [hereinafter MUR 7931 Vogel Decl.].

⁴¹ See Biden Committee, 2021 July Quarterly Report; Biden Committee, 2021 October Quarterly Report; Biden Committee, 2021 Year-End Report; Biden Committee, 2022 April Quarterly Report; Biden Committee, 2022 July Quarterly Report; Biden Committee, 2022 October Quarterly Report; Biden Committee, 2022 Year-End Report; Biden Committee, 2023 April Quarterly Report.

⁴² *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?cycle=2022&data_type=processed&committee_id=C00703975&min_date=11%2F04%2F2020&line_number=F3P-20A (last visited May 2, 2023) (showing all offsets to operating expenditures reported by the Biden Committee between November 4, 2020, and March 31, 2023). Offsets to operating expenditures are defined on the Commission’s website as “[r]eturns by vendors of deposits, reimbursements for expenses shared by committees, vendor refunds and rebates These receipts are not considered contributions.” *Offsets to Operating Expenditures*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/filing-reports/offsets-operating-expenditures/> (last visited May 2, 2023).

⁴³ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?cycle=2022&data_type=processed&committee_id=C00703975&min_date=11%2F04%2F2020&line_number=F3P-18 (last visited May 2, 2023) (showing all transfers from author authorized committees reported by the Biden Committee between November 4, 2020, and March 31, 2023).

⁴⁴ This figure excludes contribution refunds. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00703975&min_date=11%2F04%2F2020&max_date=03%2F31%2F2023 [hereinafter Biden Committee Disbursements] (last visited May 2, 2023) (showing all reported disbursements made by the Biden Committee after the November 3, 2020 general election); see Compl. ¶ 36 (Oct. 12, 2021), MUR 7931 [hereinafter MUR 7931 Compl.]; MUR 8059 Compl. ¶ 10.

1 outreach.”⁴⁵ The individual disbursements summarized above are listed in the Appendix to this
 2 Report, span the time period from November 4, 2020, through March 23, 2023, and total
 3 \$7,580,915.41.⁴⁶

4 The Biden Committee did not disclose any debt, nor indicate its engagement in debt
 5 fundraising, in any of its reports following the 2020 general election.⁴⁷

6 2. The Victory Fund

7 The Victory Fund is a joint fundraising representative for the Biden Committee, the
 8 DNC, and multiple state parties' federal committees.⁴⁸ Since the 2020 general election, the
 9 Victory Fund has reported receiving \$73,740,037.29 in total receipts, of which \$73,172,580.88
 10 was reported as contributions.⁴⁹ It states that all contributions received for the Biden Committee

⁴⁵ Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10. The Complaints do not identify Action Squared Inc. as the vendor to which these disbursements were made, but Action Squared Inc. is the only vendor to have received disbursements for the above-quoted enumerated purposes from the Biden Committee. Other reported expenditures not discussed in the Complaints include \$19,084.80 across three payments to different vendors for “Media Production”; \$39,247.90 across nine payments for “music licenses” and “photo/music licenses”; and another \$217,435.54 across numerous payments to multiple vendors for “software” beyond those to Upland Software discussed above. Biden Committee Disbursements.

⁴⁶ *See* App'x.

⁴⁷ MUR 7931 Compl. ¶ 35; *see* Biden Committee, 2020 Post-General Report; Biden Committee, 2020 Year-End Report; Biden Committee, 2021 April Quarterly Report; Biden Committee, 2021 July Quarterly Report; Biden Committee, 2021 October Quarterly Report; Biden Committee, 2021 Year-End Report; Biden Committee, 2022 April Quarterly Report; Biden Committee, 2022 July Quarterly Report; Biden Committee, 2022 October Quarterly Report; Biden Committee, 2022 Year-End Report; Biden Committee, 2023 April Quarterly Report.

⁴⁸ Biden Victory Fund, Amended Statement of Organization (July 1, 2022), <https://docquery.fec.gov/pdf/159/202207019517783159/202207019517783159.pdf>.

⁴⁹ Biden Victory Fund, Amended 2020 Post-General Report (May 11, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00744946/1515838/> (reporting receipts of \$72,900,339.38, of which \$72,567,523.96 was contributions); Biden Victory Fund, 2020 Year-End Report (Jan. 31, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00744946/1497210/> (reporting receipts of \$393,379.35 of which \$390,682.58 was contributions); Biden Victory Fund, Amended 2021 April Quarterly Report at 3 (July 15, 2021), <https://docquery.fec.gov/pdf/853/202107159451575853/202107159451575853.pdf> (reporting \$329,187.84 in receipts of which \$177,032.27 was contributions); Biden Victory Fund, 2021 July Quarterly Report at 3 (July 15, 2021), <https://docquery.fec.gov/pdf/154/202107159451638154/202107159451638154.pdf> (reporting receipts of \$34,865.35 of which \$34,611.00 was contributions); Biden Victory Fund, 2021 October Quarterly Report at 3 (Oct. 15, 2021), <https://docquery.fec.gov/pdf/609/202110159467790609/202110159467790609.pdf> (reporting \$2,709.07 in receipts of which all was contributions); Biden Victory Fund, 2021 Year-End Report at 3 (Jan. 31, 2022), <https://docquery.fec.gov/pdf/728/202201319485153728/2022>

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1 were made to it on or before Election Day, and that no contributions received after Election Day
 2 have been transferred to the Biden Committee.⁵⁰ It has also reported spending \$78,027,083.84,⁵¹
 3 including \$100,000 to Vox Media LLC on March 1, 2021, for “online fundraising.”⁵² In
 4 addition, the Victory Fund transferred \$20,221,129.23 to the Biden Committee as shown below:

[01319485153728.pdf](https://docquery.fec.gov/pdf/01319485153728.pdf) (reporting receipts of \$29,548.70 of which \$22.00 was contributions); Biden Victory Fund, 2022 April Quarterly Report at 3 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/973/202204159496307973/202204159496307973.pdf> (reporting no receipts); Biden Victory Fund, 2022 July Quarterly Report at 3 (July 15, 2022), <https://docquery.fec.gov/pdf/761/202207159521232761/202207159521232761.pdf> (reporting \$7.60 in receipts of which non was contributions); Biden Victory Fund, 2022 October Quarterly Report at 3 (Oct. 15, 2022), <https://docquery.fec.gov/pdf/658/202210159532615658/202210159532615658.pdf> (reporting no receipts); Biden Victory Fund, 2022 Post-General Report at 3 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/784/202212089557166784/202212089557166784.pdf> (reporting no receipts); Biden Victory Fund, 2022 Year-End Report at 3 (Jan. 31, 2023), <https://docquery.fec.gov/pdf/383/202301319576509383/202301319576509383.pdf> (reporting no receipts); Biden Victory Fund, 2023 April Quarterly Report at 3 (Apr. 15, 2023), [https://docquery.fec.gov/pdf/679/202304159581013679.pdf](https://docquery.fec.gov/pdf/679/202304159581013679/202304159581013679.pdf) (reporting receipts of \$50,000.00 of which none was contributions); *see* MUR 7931 Compl. ¶¶ 25-28, 32.

⁵⁰ Biden Victory Fund Resp. at 2 (Dec. 19, 2021), MUR 7931 [hereinafter Victory Fund Resp.]. The Victory Fund notes that, after the 2020 election, it “also invited individuals to contribute via its online merchandise store for a period of time with the portion of the funds allocated to [the Biden Committee] designated for [the Biden Committee’s] recount account. None of these funds were transferred to [the Biden Committee]. Only five donors made contributions with any portion of funds allocated to [the Biden Committee’s] recount account, and the [Biden Committee] portion of those individuals’ contributions was refunded by [the Victory Fund] and never transferred to [the Biden Committee].” *Id.* Joseph Smolkis, the treasurer for the Victory Fund at the time of its Response, also attests that the Victory Fund “still has contributions made on or before Election Day that are allocated for, but not yet transferred to” the Biden Committee because it is necessary for the Victory Fund to “ensure that it has received and paid all invoices related to its 2020 fundraising and subsequent winddown before it can make final transfers to its participating committees.” Victory Fund Resp., Attach. ¶ 10 (Decl. of Joseph Smolkis) [hereinafter Smolkis Decl.].

⁵¹ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00744946&min_date=11%2F04%2F2020 (last visited May 2, 2023) (showing all disbursements by Biden Victory fund from November 4, 2020, through March 31, 2023).

⁵² Biden Victory Fund, Amended 2021 April Quarterly Report, Sched. B at 84 (July 15, 2021), <https://docquery.fec.gov/pdf/853/202107159451575853/202107159451575853.pdf>; *see* MUR 7931 Compl. ¶ 34.

| Date | Amount | Description | Election Designation |
|-------------------|------------------------|----------------------------|------------------------------------|
| November 17, 2020 | \$6,000,000.00 | Transfer Out Affiliated | 2020 General ⁵³ |
| November 24, 2020 | \$6,000,000.00 | Transfer Out Affiliated | <i>not indicated</i> ⁵⁴ |
| November 24, 2020 | \$554,438.30 | Salary & Overhead Expenses | <i>not indicated</i> ⁵⁵ |
| December 15, 2020 | \$1,500,000.00 | Transfer Out Affiliated | <i>not indicated</i> ⁵⁶ |
| January 5, 2021 | \$6,150,000.00 | Transfer Out Affiliated | 2020 General ⁵⁷ |
| March 5, 2021 | \$11,690.93 | Salary & Overhead Expenses | <i>not indicated</i> ⁵⁸ |
| June 30, 2021 | \$5,000.00 | Transfer Out Affiliated | 2020 General ⁵⁹ |
| Total: | \$20,221,129.23 | | |

1 In its 2020 Year-End Report, the Victory Fund disclosed debts of \$3,090.00 to Mal Warwick &
 2 Associates, Inc. for “Direct Mail,” but provided no indication that it had engaged in debt-
 3 settlement fundraising.⁶⁰

4 C. The Complaints and Responses

5 The Complaints allege that Biden became a candidate for President in the 2024 election
 6 cycle by both making a private determination to run and by raising and spending greater than
 7 \$5,000 in support of his candidacy via the Biden Committee and the Victory Fund⁶¹ beginning
 8 shortly after his election in November 2020, and that he accordingly failed to timely file a

⁵³ Biden Victory Fund, 2020 30-Day Post-General Report, Sched. B at 76,741 (Dec. 3, 2020), <https://docquery.fec.gov/pdf/791/202012039342488791/202012039342488791.pdf>.

⁵⁴ Biden Victory Fund, 2020 Year-End Report, Sched. B at 1179 (Jan. 31, 2021), <https://docquery.fec.gov/pdf/779/202101319424071779/202101319424071779.pdf>.

⁵⁵ *Id.* at 1139.

⁵⁶ *Id.* at 1199.

⁵⁷ Biden Victory Fund, Amended 2021 April Quarterly Report, Sched. B at 101 (July 15, 2021), <https://docquery.fec.gov/pdf/853/202107159451575853/202107159451575853.pdf>.

⁵⁸ *Id.* at 90.

⁵⁹ Biden Victory Fund, 2021 July Quarterly Report, Sched. B at 32 (July 15, 2021), <https://docquery.fec.gov/pdf/154/202107159451638154/202107159451638154.pdf>.

⁶⁰ Biden Victory Fund, 2020 Year-End Report, Sched. D at 1347 (Jan. 31, 2021), <https://docquery.fec.gov/pdf/779/202101319424071779/202101319424071779.pdf>; see MUR 7931 Compl. ¶¶ 29-30.

⁶¹ The MUR 7931 Complaint alleges that both the Biden Committee's and the Victory Fund's fundraising and spending has caused Biden to cross the \$5,000 statutory threshold for candidacy. See MUR 7931 Compl. ¶¶ 36, 49. The MUR 8059 Complaint makes the allegation solely as to the Biden Committee. See MUR 8059 Compl. ¶ 22.

1 Statement of Candidacy and designate a principal campaign committee.⁶² The MUR 7931
2 Complaint questions how certain ongoing expenditures made through 2021 can be designated for
3 the 2020 election cycle and alleges that the Biden Committee either incorrectly reported the
4 election cycle for its expenditures or failed to report any debts or outstanding liabilities from the
5 2020 general election.⁶³ Finally, the MUR 7931 Complaint alleges that the Biden Committee
6 and the Victory Fund have failed to amend their Statements of Organization to reflect Biden's
7 2024 candidacy.⁶⁴

8 The Responses and three attached sworn declarations deny that Biden had, at the time of
9 their submission, become a candidate for the 2024 election cycle, stating that Biden had neither
10 made a decision to run nor raised or spent \$5,000 or more in support of any 2024 campaign.⁶⁵
11 Regarding first whether Biden had determined to run, Biden and the Biden Committee state that
12 Biden had "a general intent to run for re-election, [but] he has not decided for certain that he will
13 do so,"⁶⁶ and that he "has repeatedly stated that he will make a final decision as to whether to run
14 for reelection after the [2022] mid-term elections."⁶⁷

15 Regarding whether Biden or entities he has authorized to fundraise on his behalf have
16 *raised* greater than the \$5,000 threshold for candidacy under the Act, Biden and the Biden
17 Committee aver that the Biden Committee ceased soliciting contributions on Election Day 2020,
18 and that all contributions received thereafter were "solicited and made on or before Election Day

⁶² MUR 7931 Compl. ¶¶ 39-44; MUR 7931 First Supp. Compl. at 1-2; MUR 7931 Second Supp. Compl. at 1; MUR 8059 Compl. ¶¶ 22-31.

⁶³ MUR 7931 Compl. ¶¶ 37-38.

⁶⁴ *Id.* ¶¶ 39-51, 66-82.

⁶⁵ MUR 7931 Biden Resp. at 3-7; Biden & Biden Committee Supp. Joint Resp. at 1-3 (July 29, 2022), MUR 7931 [hereinafter MUR 7931 Biden Supp. Resp.]; MUR 8059 Biden Resp. at 1-3; Victory Fund Resp. at 2-5.

⁶⁶ MUR 7931 Biden Supp. Resp. at 2.

⁶⁷ MUR 8059 Biden Resp. at 1 n.3.

1 or else refunded.”⁶⁸ They further state, as does the Victory Fund, that “all funds [the Victory
2 Fund] transferred to [the Biden Committee] were comprised solely of contributions made to [the
3 Victory Fund] on or before Election Day.”⁶⁹ With respect to funds received by the Victory Fund
4 after Election Day as a result of pre-Election Day solicitations, the Victory Fund states that
5 “none of the contributions made after Election Day were allocated or transferred to” the Biden
6 Committee,⁷⁰ and the Biden Committee notes that funds raised after Election Day by the Victory
7 Fund were “allocated to the accounts of other [joint fundraising] participants or refunded.”⁷¹
8 Respondents attest that, as of the dates of the declarations and prior to Biden’s formal
9 announcement, the Victory Fund “has not received consent from President Biden or [the Biden
10 Campaign] to solicit or accept contributions on behalf of either for the 2024 election cycle.”⁷²

11 Regarding whether Biden or his committees have *spent* \$5,000 or more in support of his
12 2024 candidacy, both the Biden Committee and the Victory Fund deny that they had spent any
13 funds to “influence the 2024 presidential election” at the time of the Responses.⁷³ With respect
14 to the \$478,158.91 that the Biden Committee disbursed to NGP Van Inc. for a “database

⁶⁸ MUR 7931 Biden Resp. at 2; *id.*, Attach. ¶¶ 3-5 (Decl. of Taryn Vogel) [hereinafter MUR 7931 Vogel Decl.]. Vogel is the founder of BlueBird Consulting LLC, which provides compliance consulting services for the Biden Committee. MUR 7931 Vogel Decl. ¶ 1.

⁶⁹ MUR 7931 Biden Resp. at 2; *see also* Biden Victory Fund Resp. at 2 (“The only funds [the Victory Fund] has transferred to [the Biden campaign] were for the 2020 primary or general election and were made from funds contributed to [the Victory Fund] on or before Election Day.”); MUR 7931 Vogel Decl. ¶ 5; Smolkis Decl. ¶ 7.

⁷⁰ Victory Fund Resp. at 2; Smolkis Decl. ¶¶ 7-8.

⁷¹ MUR 7931 Biden Resp. at 3; MUR 7931 Vogel Decl. ¶ 5.

⁷² Smolkis Decl. ¶ 11; *see* MUR 7931 Biden Resp. at 5 (“[The Victory Fund] is not authorized to, and has not, raised or spent any funds for President Biden in the 2024 presidential election.”); MUR 7931 Vogel Decl. ¶ 9 (“[The Biden Committee] has not given consent to [the Victory Fund] to accept contributions or make expenditures on behalf of President Biden for the 2024 election cycle.”).

⁷³ MUR 7931 Biden Resp. at 2; *see* MUR 7931 Biden Supp. Resp. at 3 (“In short, [the Biden Committee] has not made any expenditures for the purpose of influencing the 2024 presidential election.”); Victory Fund Resp. at 2 (“[The Victory Fund] has not made any expenditures that advocate for President Biden’s re-election in 2024 or that are otherwise in connection with that election.”).

1 subscription,” the Biden Committee states, relying upon a sworn declaration from its campaign
2 consultant, that these payments were for an “accounting and compliance database subscription
3 necessary to maintain records to comply with the Act” and “necessary for operations during the
4 wind down and the Commission’s reporting requirements, and costs necessary to protect [the
5 Biden Committee’s] intellectual property.”⁷⁴ Concerning the \$5,083,361.49 disbursed to Upland
6 Software Inc. for “software,” the Biden Committee states that the payments were “related to [the
7 Biden Committee’s] ownership of a[n] SMS short code.”⁷⁵ With respect to the \$2,019,395 the
8 Biden Committee has disbursed to Action Squared Inc. for “text message/email outreach” and
9 “text message outreach,”⁷⁶ the Biden Committee states that these payments:

10 relate to ongoing communications by the President to his
11 supporters who have opted-in to receive messages, encouraging
12 them to make contributions to the [DNC] . . . in 2021 and 2022. . . .
13 The messages make no reference to the 2024 election or the
14 potential of President Biden running for re-election.⁷⁷

⁷⁴ MUR 7931 Biden Resp. at 5. Vogel states that the Biden Committee “made disbursements to NGP VAN Inc. . . . to maintain and use an accounting and compliance database [that it uses] for filing reports with the Commission, maintaining [the Biden Committee’s] accounts, and other accounting and compliance needs.” *Id.* ¶ 7; *see also* MUR 8059 Biden Resp., Attach. ¶ 4 (Decl. of Taryn Vogel) [hereinafter MUR 8059 Vogel Decl.].

⁷⁵ MUR 7931 Biden Resp. at 2, 5; MUR 7931 Vogel Decl. ¶ 8 (“[The Biden Committee] made disbursements to Upland Software Inc. . . . to maintain ownership of [its] SMS short code phone number, used for communications with [the Biden Committee].”). An SMS short code is an abbreviated phone number of generally five or six digits that can send and receive text messages at high volume without being flagged as spam by mobile carriers because they are pre-approved and not subject to the same filtering mechanisms applied to standard 10-digit telephone numbers. *See Short Code*, TWILIO, <https://www.twilio.com/docs/glossary/what-is-a-short-code> (last visited May 2, 2023).

⁷⁶ Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10. Other reported expenditures not discussed in the Complaints include \$19,084.80 across three payments to different vendors for “Media Production”; \$39,247.90 across nine payments for “music licenses” and “photo/music licenses”; and another \$217,435.54 across numerous payments to multiple vendors for “software” beyond those to Upland Software discussed above. Biden Committee Disbursements.

⁷⁷ MUR 8059 Biden Resp. at 2; *see* MUR 8059 Vogel Decl. ¶ 5.

1 With respect to the \$100,000 disbursed by the Victory Fund to Vox Media LLC for online
2 fundraising, Respondents state that this “expenditure was for an advertisement purchased in
3 August 2020 but for which [the Victory Fund] received an invoice in 2021.”⁷⁸

4 The Respondents further deny that the Biden Committee and the Victory Fund have
5 failed to amend their Statements of Organization with the Commission. The Biden campaign
6 states that this is “because [a Statement of Organization] does not require the campaign
7 committee to identify the election for which the candidate seeks office, and because President
8 Biden has taken no action that has made him a candidate for president in 2024” even if it did so
9 require.⁷⁹ The Victory Fund states that this is because:

10 There is nothing in the Act or Commission regulations requiring a
11 joint fundraising committee to indicate on its Statement of
12 Organization that it is raising funds in connection with any
13 particular election or to indicate on its Statement of Organization
14 which office in which election year its participating candidate
15 committees are seeking. There is simply no place to put this
16 information on the Commission’s current version of [the Statement
17 of Organization] form.⁸⁰

18 The Victory Fund goes on to assert that it was “not even required to disclose on its Statement of
19 Organization that President Biden was running in the 2020 election last year, much less amend
20 this information.”⁸¹

⁷⁸ MUR 7931 Biden Resp. at 3; Victory Fund Resp. at 5 (“The online fundraising ads [the Victory Fund] ran through Vox Media, LLC were run in August 2020, but [the Victory Fund] received its invoice for this purchase in 2021. As such, the payment was made and reported in 2021.”); *see* Smolkis Decl. ¶ 6 (“[The Victory Fund] made a disbursement of \$100,000 to Vox Media, LLC on March 1, 2021 for online fundraising costs related to advertising run in August 2020. [The Victory Fund] received an invoice for these costs in 2021.”).

⁷⁹ MUR 7931 Biden Resp. at 7.

⁸⁰ Victory Fund Resp. at 2-3.

⁸¹ *Id.* at 3.

1 **III. LEGAL ANALYSIS**

2 **A. The Commission Should Take No Action At This Time With Respect to the**
3 **Allegation That Biden Failed to Timely File a Statement of Candidacy**

4 As discussed below, the available information strongly supports the Complaints'
5 allegations that Biden made a private decision to run for reelection prior to the time of his formal
6 announcement in April 2023. At the same time, the available information is unclear about
7 whether Respondents engaged in any spending in furtherance of that potential candidacy, with
8 the approximately \$5 million disbursed to Upland Software appearing to be the most likely
9 spending that potentially may have been for that purpose. Finally, the available information
10 supports Respondents' claim that they did not receive contributions for Biden's reelection, at
11 least until the April 2023 formal announcement.

12 1. The Available Information Indicates that Biden Decided to Run for
13 Reelection in 2024 as Early as March 2021

14 Under the Act and Commission regulations, an individual becomes a candidate when the
15 person (1) decides to run for office⁸² and (2) receives contributions or makes expenditures
16 exceeding \$5,000, either directly or through an entity the candidate has consented to receive
17 contributions or make expenditures on their behalf.⁸³

18 Commission regulations set forth a non-exhaustive set of “[e]xamples of activities that
19 indicate that an individual has decided to become a candidate.”⁸⁴ Such indicia include: (1) using

⁸² 11 C.F.R. §§ 100.72(b), 100.131(b). Though the Act defines candidacy in terms of crossing the \$5,000 threshold discussed below in note 83 and the accompanying text, by definition, a contribution or expenditure must be “for the purpose of influencing any election for Federal office.” See 52 U.S.C. § 30101(8)(A) (defining contribution); 11 C.F.R. § 100.52(a) (same); 52 U.S.C. § 30101(9)(A) (defining expenditure); 11 C.F.R. § 100.111(a) (same). Until an individual has decided to run for federal office, the money they raise and spend for themselves cannot be “for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A), (9); 11 C.F.R. §§ 100.52(a), 100.111(a). Accordingly, an individual must have made this determination in order to cross the contribution or expenditure threshold at 52 U.S.C. § 30101(2).

⁸³ 52 U.S.C. § 30101(2).

⁸⁴ 11 C.F.R. §§ 100.72(b), 100.131(b).

1 “general public political advertising to publicize his or her intention to campaign for federal
2 office”;⁸⁵ (2) raising “funds in excess of what could reasonably be expected to be used for
3 exploratory activities or undertak[ing] activity designed to amass campaign funds that would be
4 spent after he or she becomes a candidate”;⁸⁶ (3) making or authorizing “written or oral
5 statements that refer to the individual as a candidate for a particular office”;⁸⁷ (4) conducting
6 “activities in close proximity to the election or over a protracted period of time”;⁸⁸ and (5) taking
7 “action to qualify for the ballot under state law.”⁸⁹

8 In previous matters, the Commission has found reason to believe that an individual had
9 become a candidate and failed to timely file a Statement of Candidacy when public statements
10 and other indicia showed that the respondent had determined to run for office. In MUR 6449
11 (Jon Bruning, *et al.*), the Commission found that an individual who had publicly said “I want to
12 run. I’m ready to run” and made a solicitation to “help [him] defeat” his primary opponent had
13 made the decision to campaign for office and become a candidate under the Act.⁹⁰ In MUR 6735
14 (Joseph A. Sestak, *et al.*), the Commission found that an individual who had solicited funds via
15 emails asking for support in his attempt to “seek the U.S. Senate” and to “help [him] serve you,
16 again” indicated that he had determined to run and was not testing the waters for a potential
17 campaign.⁹¹ And in MUR 5908 (Duncan Hunter, *et al.*), the Commission found that an

⁸⁵ *Id.* §§ 100.72(b)(1), 100.131(b)(1).

⁸⁶ *Id.* §§ 100.72(b)(2), 100.131(b)(2).

⁸⁷ *Id.* §§ 100.72(b)(3), 100.131(b)(3).

⁸⁸ *Id.* §§ 100.72(b)(4), 100.131(b)(4).

⁸⁹ *Id.* §§ 100.72(b)(5), 100.131(b)(5).

⁹⁰ Factual & Legal Analysis (“F&LA”) at 7-9, MUR 6449 (Jon Bruning, *et al.*).

⁹¹ F&LA at 7-8, MUR 6735 (Joseph A. Sestak, *et al.*).

1 individual who stated, *inter alia*, “while I’ve announced that I am preparing to run for president,
2 I have not made a formal announcement of my candidacy” had, in fact, become a candidate.⁹²

3 Further, in Advisory Opinion 2015-09, the Commission advised that an individual
4 becomes a candidate when the individual passes the \$5,000 threshold and “when he or she makes
5 a private determination that he or she will run for federal office.”⁹³ When determining whether
6 an individual “has made a decision to run for federal office, [the Commission] assesses an
7 individual’s objectively deliberate actions to discern whether and when an individual decided to
8 become a candidate.”⁹⁴ The Commission has also advised that “[a] non-conditional statement by
9 an individual (directly or indirectly) that he or she ‘will’ announce his or her candidacy on a
10 given date unambiguously indicates that the individual has decided to become a candidate.”⁹⁵

11 Here, Biden’s activities indicate that he had decided to run for reelection in 2024 as early
12 as March 25, 2021. As set forth in the Commission’s non-exhaustive list of activities that
13 indicate when an individual has decided to become a candidate, one such indication is that the
14 individual has made or authorized statements that refer to the individual as a candidate for a
15 particular office.⁹⁶ Biden and his surrogates’ public statements have consistently indicated that
16 he had decided to run for reelection in 2024 well prior to his April 2023 formal announcement
17 regarding his candidacy. Below is a chart detailing some of his statements since March 2021,
18 discussed in Part II.A, above:

⁹² F&LA at 4-5, MUR 5908 (Duncan Hunter).

⁹³ Advisory Opinion 2015-09 at 5 (Senate Majority PAC & House Majority PAC) (“AO 2015-09”).

⁹⁴ F&LA at 17, MURs 6955, 6983 (John R. Kasich, *et al.*); *see* AO 2015-09 at 5 (noting that an individual becomes a candidate when she exceeds the \$5,000 threshold and “makes a private determination that . . . she will run for federal office”).

⁹⁵ AO 2015-09 at 6.

⁹⁶ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).

MURs 7931, 8059 (Biden for President, *et al.*)

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| Date | Speaker | Statement |
|---------------------|--------------------------------------|---|
| Mar. 25, 2021 | Joseph Biden | <i>Regarding whether he had decided to run in 2024, “[T]he answer is ‘yes.’ My plan is to run for reelection. That’s my expectation.”</i> ⁹⁷ |
| Nov. 22, 2021 | Jen Psaki (then-Press Secretary) | <i>Regarding whether Biden is going to run in 2024, “He is, that’s his intention.”</i> ⁹⁸ |
| Nov. 2021 (approx.) | Joseph Biden | <i>Regarding whether he would run for reelection in 2024, “Yes!”</i> ⁹⁹ |
| Jan. 19, 2022 | Joseph Biden | <i>Regarding whether Vice President Kamala Harris would be his Vice President on the 2024 ticket and whether he thought she was doing a good job on voting rights policies, “Yes and yes.”</i> ¹⁰⁰ |
| May 2022, (approx.) | unnamed Biden adviser | <i>After reporting that “Biden’s camp” believes that Biden is running in 2024: “People ask me with some regularity, ‘When is Biden going to come out and say what he’s going to do?’ And I say, ‘Well, he has!’”</i> ¹⁰¹ |
| June 13, 2022 | Karine Jean-Pierre (Press Secretary) | <p>“Yes, he’s running for reelection. I’m — I can’t say more than that.”¹⁰²</p> <p>To be clear, as the President has said repeatedly, he plans to run in 2024.”¹⁰³</p> |
| June 2022 (approx.) | unnamed Democrats | <i>Reportedly stating that, “[i]n public and private, Biden himself has emphasized that he is running, effectively shutting down any discussion of the topic between the president and his close advisers.”</i> ¹⁰⁴ |
| | unidentified aides | <i>Reportedly stating that Biden “isn’t just intending to run, he’s also laying the groundwork by building resources at the [DNC], restocking his operation in battleground states and looking to use his influence to shape the nomination process in his favor.”</i> ¹⁰⁵ |
| June 27, 2022 | Kamala Harris (Vice President) | “Joe Biden is running for reelection and I will be his ticket-mate. Full stop.” ¹⁰⁶ |
| June 29, 2022 | Kamala Harris | “The president intends to run and if he does, I will be his ticket mate. We will run together.” ¹⁰⁷ |

⁹⁷ March 25, 2021 Biden Remarks.

⁹⁸ Nov. 22, 2021 White House Press Gaggle.

⁹⁹ Debenedetti, *supra* note 6.

¹⁰⁰ Jan. 19, 2022 Biden Remarks.

¹⁰¹ Debenedetti, *supra* note 6.

¹⁰² June 13, 2022 White House Press Briefing.

¹⁰³ Jean-Pierre, *supra* note 10.

¹⁰⁴ Pager & Scherer, *supra* note 11.

¹⁰⁵ Goddard, *supra* note 8.

¹⁰⁶ Bash, *supra* note 12.

¹⁰⁷ Logan & Bierman, *supra* note 13.

MURs 7931, 8059 (Biden for President, *et al.*)

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| Date | Speaker | Statement |
|---------------------------------|---|---|
| July 2022 (<i>approx.</i>) | Joseph Biden | <i>Reportedly stating to donors and others that he is</i> “their strongest candidate to beat Donald Trump — or another GOP candidate — in 2024.” ¹⁰⁸ |
| | <i>four unidentified aides</i> | <i>Reporting that there are</i> “muted worries . . . going around the West Wing . . . that someone may yet emerge ahead of the President’s planned spring 2023 formal reelection campaign launch. Biden advisers expect to stick to that no matter what happens, including if Trump decides to jump in early.” ¹⁰⁹ |
| July 28, 2022 | Karine Jean-Pierre | “I’m going to be very clear; I’m going to say this once — and the President has been very clear about this: He intends to run in 2024. And he is going to — until then, he is going to do the business of the American people as he has been doing for the past 18 months.” ¹¹⁰ |
| July 29, 2022 | Karine Jean-Pierre | <i>Stating twice</i> , “The President intends to run in 2024.” ¹¹¹ |
| August 1, 2022 | Karine Jean-Pierre | <i>Stating twice that Biden</i> “intends to run” and that he has “said that multiple times.” ¹¹² |
| Aug. 4, 2022 | Pete Buttigieg (Secretary of Transportation) | “I’m looking forward to supporting the president’s reelection. That is as much as I can say about these things while I’m here on an official capacity.” ¹¹³ |
| Aug. 14, 2022 | Karine Jean-Pierre | “He intends to run. He intends to run.” ¹¹⁴ |
| Aug. 2022 (<i>approx.</i>) | Cedric Richmond (former aide) | “It is clear-cut that [Biden’s] our best candidate. . . . If he says he’s planning on running, he’s running.” ¹¹⁵ |
| | <i>unidentified aides</i> | <i>Reportedly expressing concern that Biden</i> “publicly declaring [his 2024 candidacy] before the [2022] midterms [w]ould trigger legal restrictions on fundraising.” ¹¹⁶ |
| | Anita Dunn (longtime aide) | “The president has said he’s planning on running again. People should take him at his word.” ¹¹⁷ |
| Sept. 2, 2022 | Joseph Biden | <i>Reportedly</i> , “I’m going to do it again. I’m going.” ¹¹⁸ |

¹⁰⁸ Dovere, *supra* note 15.

¹⁰⁹ *Id.*

¹¹⁰ July 28, 2022 White House Press Briefing.

¹¹¹ July 29, 2022 White House Press Briefing.

¹¹² Aug. 1, 2022 White House Press Briefing.

¹¹³ *Squawk Box*, *supra* note 21.

¹¹⁴ Cupp, *supra* note 20.

¹¹⁵ Sink & Wingrove, *supra* note 22.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Allen, *supra* note 30.

MURs 7931, 8059 (Biden for President, *et al.*)

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| Date | Speaker | Statement |
|----------------------|-----------------------------|--|
| Sept. 18, 2022 | Joseph Biden | “Look, if I were to say to you, I'm running again, all of a sudden, a whole range of things come into play that I have — requirements I have to change and move and do . . . [i]n terms of election laws. And it's much too early to make that kind of decision. I'm a great respecter of fate. And so, what I'm doing is I'm doing my job. I'm gonna do that job. And within the timeframe that makes sense after this next election cycle here, going into next year, make a judgment on what to do.” ¹¹⁹ |
| Sept. 26, 2022 | Karine Jean-Pierre | “So, as you know, I'm — I'm very limited on how I can discuss any kind of elections. I will reiterate what we have said many times from here, what the President has said many times, even recently — as recently as the <i>60 Minutes</i> interview — is that he intends to run. I don't have any more announcements on that.” ¹²⁰ |
| Sept. 2022 (approx.) | Cedric Richmond | “He's running and we're building an infrastructure for him to run and win. Right now, it's all an early investment in 2024 while we're helping 2022.” ¹²¹ |
| Oct. 21, 2022 | Joseph Biden | “The reason I'm not making a judgment about formally running or not running, once I make that judgment, a whole series of regulations kick in and I have to be — I treat myself as a candidate from that moment on. I have not made that formal decision, but it's my intention — my intention to run again. And we have time to make that decision.” ¹²² |
| Nov. 9, 2022 | Joseph Biden | <i>When asked what he would say to the Americans who do not think he should run for reelection, “Watch me.”</i> ¹²³ |
| Dec. 1, 2022 | Dr. Jill Biden (First Lady) | <i>When asked if she was ready for another campaign, responding, “Absolutely.”</i> ¹²⁴ |
| | Joseph Biden | <i>Reportedly joined in a toast with French President Emmanuel Macron made to his 2024 campaign.</i> ¹²⁵ |
| Feb. 9, 2023 | Joseph Biden | <i>When asked what is keeping him from making the decision regarding whether to run in 2024, “I'm just not ready to make it.”</i> ¹²⁶ |

1 Though the Responses state that Biden had not, at the time of their submission, “decided
2 for certain” to run for reelection in 2024,¹²⁷ Biden’s and his surrogates’ public statements as

¹¹⁹ Pelley, *supra* note 28.

¹²⁰ Sept. 26, 2022 White House Press Briefing.

¹²¹ Gangitano, *supra* note 25.

¹²² MSNBC, *supra* note 29.

¹²³ Nov. 9, 2022 Biden Remarks.

¹²⁴ Rogers & Karni, *supra* note 32.

¹²⁵ *Id.*

¹²⁶ Noticias Telemundo, *supra* note 27.

¹²⁷ MUR 7931 Biden Supp. Resp. at 2.

1 early as March 2021 indicate that he intended to do so. In MUR 5908, the Commission found
2 that a statement that the individual had “announced that I am preparing to run for president, [but]
3 I have not made a formal announcement of my candidacy” was sufficient basis on which to
4 determine the individual had decided to run for office and become a candidate;¹²⁸ accordingly,
5 Biden’s statements that he intended to run for reelection likewise present a sufficient basis for
6 the Commission to conclude that Biden had decided to become a candidate. In addition to the
7 statements already discussed, press reports relying on unnamed sources close to the White House
8 indicate that Biden planned a “spring 2023 formal reelection campaign launch,”¹²⁹ precisely in
9 line with the timing of Biden’s actual formal announcement on April 25, 2023.¹³⁰

10 Respondents principally appear to contend that the numerous statements do not indicate
11 that Biden has made a private determination to run. However, while Biden’s statements that he
12 “intends” to run may be arguably less direct than a statement indicating he “will” run, Biden said
13 that he had made a decision and that he “*plan[s]* to run for reelection,”¹³¹ with both the Press
14 Secretary stating, “Yes, he’s running for reelection. I’m — I can’t say more than that,”¹³² and
15 Vice President Harris stating, “Joe Biden is running for reelection and I will be his ticket-mate.
16 Full stop.”¹³³ Though Biden and his surrogates subsequently stated that he had not made a
17 formal decision regarding his 2024 candidacy, the Commission has previously advised that,
18 where an individual makes a statement evincing that they have decided to become a candidate,

¹²⁸ F&LA at 4-5, MUR 5908 (Duncan Hunter).

¹²⁹ *Dovere*, *supra* note 15.

¹³⁰ Joe Biden (@JoeBiden), TWITTER (Apr. 25, 2023, 6:00 AM), <https://twitter.com/JoeBiden/status/1650801827728986112>.

¹³¹ March 25, 2021 Biden Remarks (emphasis added).

¹³² June 13, 2022 White House Press Briefing.

¹³³ *Bash*, *supra* note 12.

1 “the statement may trigger candidacy regardless of subsequent retraction attempts.”¹³⁴ Further,
2 in MURs 6955, 6983 (John R. Kasich, *et al.*), the Commission found that a “‘non-conditional
3 statement’ by an individual . . . that he or she ‘*will* announce his or her candidacy on a given date
4 unambiguously indicates that the individual has decided to become a candidate.’”¹³⁵

5 Additionally, Biden’s reference to a decision to run implicating a “whole series of
6 regulations,”¹³⁶ including “election laws,”¹³⁷ appears to confirm his decision to run. If he were
7 not going to run, his decision would not cause a change from the *status quo* with respect to his
8 campaign finance obligations, whereas deciding to run (and crossing the statutory monetary
9 thresholds, discussed *infra*) would immediately implicate the Act’s Statement of Candidacy and
10 committee designation requirements.¹³⁸

11 The Responses do not dispute the accuracy of any of the statements attributed to Biden or
12 his surrogates in the Complaints, and instead assert that one of the Complaints “focuses on
13 anonymously sourced news stories, musings by political insiders, and half-quotes from White
14 House staff”¹³⁹ and that the statements do not have “any bearing on the question at issue”
15 regarding whether Biden has raised or spent \$5,000 or more for the 2024 presidential election.¹⁴⁰
16 Here, as in the matters discussed above in which the Commission evaluated candidate statements

¹³⁴ AO 2015-09 at 6 (citing F&LA at 4-8, MUR 5363 (Sharpton) (finding that once individual’s actions trigger candidate status, “equivocal statements of intent . . . do not eradicate the [Act’s candidate] registration and reporting requirements”)).

¹³⁵ F&LA at 17-18, MURs 6955, 6983 (John R. Kasich, *et al.*) (quoting AO 2015-09 at 6 (emphasis in original) (internal quotation marks omitted)).

¹³⁶ MSNBC, *supra* note 29.

¹³⁷ Pelley, *supra* note 28.

¹³⁸ See 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

¹³⁹ MUR 8059 Joint Resp. at 2 n.4.

¹⁴⁰ MUR 7931 Joint Supp. Resp. at 2.

1 using objective criteria, Biden's and his surrogate's public statements have made clear that he
2 determined to run for reelection in 2024 as early as March 25, 2021. These statements alone
3 would be sufficient to indicate that Biden has "made a decision to become a candidate."¹⁴¹

4 Further, one of the factors the Commission has identified as indicia that a candidate has
5 determined to run for office is whether the individual is "conducting activities in close proximity
6 to the election or over a protracted period of time."¹⁴² As discussed above, at the time of this
7 Report, Biden had made public statements indicating that he had determined to run for president
8 over a period spanning approximately two years. Though the Commission has not elaborated on
9 what constitutes a "protracted period of time," and noted in the testing-the-waters context that
10 "the length of time that an individual spends deliberating whether to become a candidate is one
11 factor and does not, in and of itself, determine whether the individual has become a
12 candidate,"¹⁴³ two years, or half a presidential term, appears to fall within the scope of a
13 "protracted period of time."¹⁴⁴

¹⁴¹ F&LA at 17, MURs 6955, 6983 (John R. Kasich, *et al.*).

¹⁴² 11 C.F.R. §§ 100.72(b), 100.131(b). The regulation also notes that raising "funds in excess of what could reasonably be expected to be used for exploratory activities" and undertaking "activities designed to amass campaign funds" are also indicia of candidacy. *Id.* §§ 100.72(b)(2), 100.131(b)(2). However, this factor is not required to establish candidacy: An individual may cross the statutory threshold by raising *or* spending greater than \$5,000. 52 U.S.C. § 30101(2).

¹⁴³ AO 2015-09 at 6.

¹⁴⁴ *Cf.* F&LA at 2, 12, MUR 6776 (Niger Innis, *et al.*) (dismissing where candidate had tested the waters for a period of approximately six months); F&LA at 8-9, MURs 7689, 7794 (Amanda Adkins for Congress, *et al.*) (same). The Commission has previously advised that, if an individual engaged in testing-the-waters activities for "several months" in one year, and his activities extended into the next year, the duration of those activities "would be very significant in determining the applicability of the [testing-the-waters] exemptions" in the latter year. *See* Advisory Opinion 1981-32 at 5 (Reubin Askew) ("AO 1981-32"). This would appear to indicate that the Commission would consider periods of time greater than a year are generally a "protracted period of time" as contemplated by 11 C.F.R. §§ 100.72(b)(4), 100.131(b)(4).

1 2. It Is Unclear Whether Biden Has Surpassed the Threshold for Candidacy
2 by Making More Than \$5,000 in Expenditures

3 As discussed above, once an individual decides to run for office, the individual becomes
4 a candidate under the Act when: (a) such individual receives contributions or makes
5 expenditures in excess of \$5,000; or (b) such individual gives their consent to another person to
6 receive contributions or make expenditures on behalf of such individual and if such person has
7 received such contributions or has made such expenditures in excess of \$5,000.¹⁴⁵ Once the
8 \$5,000 threshold has been met, the candidate has 15 days to designate a principal campaign
9 committee by filing a Statement of Candidacy with the Commission.¹⁴⁶ The principal campaign
10 committee must file a Statement of Organization within ten days of its designation,¹⁴⁷ and it must
11 file disclosure reports with the Commission.¹⁴⁸

12 The Commission has established “testing-the-waters” regulations excepting from the
13 definitions of “contribution” and “expenditure” funds received and payments made solely to
14 determine whether an individual should become a candidate, thereby permitting an individual to
15 test the feasibility of a campaign for federal office without becoming a candidate under the
16 Act.¹⁴⁹ These testing-the-waters regulations seek to draw a distinction between activities
17 directed to evaluating the feasibility of one’s candidacy and conduct signifying that a decision to
18 become a candidate has been made.¹⁵⁰ The testing-the-waters exceptions are not available to an

¹⁴⁵ 52 U.S.C. § 30101(2); *see also* AO 2015-09 at 5 (reiterating the “consent” standard).

¹⁴⁶ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

¹⁴⁷ *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

¹⁴⁸ 52 U.S.C. § 30104(a), (b); *see, e.g.*, F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 2, MUR 5363 (Alfred C. Sharpton).

¹⁴⁹ *See* 11 C.F.R. §§ 100.72, 100.131; F&LA at 8, MUR 6776 (Niger Innis, *et al.*); F&LA at 7, MUR 6775 (Hillary Clinton, *et al.*); F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*).

¹⁵⁰ *See* AO 1981-32.

1 individual who has decided to become a candidate, even if the individual has made only “a
2 private determination that he or she will run for federal office.”¹⁵¹

3 The Commission’s regulations further provide that funds in a campaign account may be
4 used for the “ordinary and necessary expenses incurred in connection with the recipient’s duties
5 as a holder of Federal office,” such as “[t]he costs of winding down the office of a former
6 Federal officeholder for a period of [six] months after he or she leaves office.”¹⁵² The
7 Commission has advised that winding-down costs include “the ‘necessary administrative costs’
8 of terminating a campaign or congressional office, such as office space rental, staff salaries and
9 office supplies.”¹⁵³ Although Commission regulations contemplate a time limit of six months for
10 when a campaign for a former officeholder may use funds to pay for winding down costs,¹⁵⁴ the
11 Commission has explained that this provision is a safe harbor that “does not preclude a former
12 officeholder who can demonstrate that he or she has incurred ordinary and necessary winding
13 down expenses more than six months after leaving office from using campaign funds to pay
14 those expenses.”¹⁵⁵

15 As discussed above, Biden appears to have made a decision to run for reelection in 2024
16 as early as March 2021, but he does not become a candidate under the Act unless he, or another

¹⁵¹ See AO 2015-09 at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (noting exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”).

¹⁵² 11 C.F.R. § 113.2(a)(2), (e).

¹⁵³ Advisory Opinion 2013-05 at 3 (Elton Gallegly); *see* Advisory Opinion 1993-06 at 1, 5-6 (Citizens for Congressman Panetta) (advising that committee could use campaign funds for expenses such as “telephone and clerical costs of winding down previous campaign activity” up to six months after officeholder resigned); F&LA at 8, MUR 7310 (Lanakila Strategies LLC, *et al.*).

¹⁵⁴ 11 C.F.R. § 113.2(a)(2).

¹⁵⁵ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862 at 7873 (Feb. 9, 1995).

1 person to whom he has given consent to do so, raises or spends in excess of \$5,000 in support of
2 a 2024 candidacy.¹⁵⁶

3 Here, the available information is murky about whether Biden passed the \$5,000
4 threshold triggering status as a candidate via funds spent by the Biden Committee in support of
5 his 2024 candidacy prior to his formal campaign announcement. Though the Biden Committee
6 attests that Biden had not at the time of its Responses authorized the Biden Committee to solicit
7 or spend funds on his behalf with respect to the 2024 election cycle,¹⁵⁷ because Biden designated
8 the Biden Committee as his principal campaign committee, Biden has given consent to the Biden
9 Committee to “receive contributions or make expenditures”¹⁵⁸ on his behalf; it is and has been
10 his authorized campaign committee through which he received contributions and made
11 expenditures during the 2020 election cycle, and which he has maintained as his authorized
12 campaign committee for 2024.¹⁵⁹

13 As discussed in Part II.B, above, the Biden Committee disbursed nearly \$295 million
14 between November 4, 2020, and March 31, 2023.¹⁶⁰ Given the numerous statements made by
15 Biden and his surrogates indicating that Biden had decided to run as a presidential candidate in
16 2024 or intended to do so, the Complaints question the substantial spending by the Biden
17 Committee and whether it has made more than \$5,000 in expenditures to support his 2024
18 candidacy, especially as more than two years have passed since the 2020 general election.

¹⁵⁶ 52 U.S.C. § 30101(2).

¹⁵⁷ See MUR 7931 Vogel Decl. ¶ 2 (“President Biden has not authorized [the Biden Committee] to solicit or receive contributions or to make expenditures for the 2024 presidential election.”).

¹⁵⁸ 52 U.S.C. § 30101(2).

¹⁵⁹ Biden for President, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/354/202304259581294354/202304259581294354.pdf>; Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf>.

¹⁶⁰ *Supra* note 44 and accompanying text.

1 Both the Biden Committee and the Victory Fund deny that they have spent any funds to
2 “influence the 2024 presidential election.”¹⁶¹ First, with respect to the Biden Committee’s
3 \$478,158.91 in disbursements to NGP Van Inc. for “database subscription,” the Biden
4 Committee avers that these disbursements were for “a compliance and accounting database
5 necessary for operations during the wind down and the Commission’s reporting
6 requirements.”¹⁶² These expenditures appear to be consistent with those of at least one prior
7 successful presidential candidate with respect to the same recipient: After his reelection in 2012,
8 former President Barack Obama’s campaign committee reported total disbursements of
9 \$315,784.60 to NGP Van Inc. for “technology consulting” and “telemarketing.”¹⁶³ Though
10 “telemarketing” does not align with the “database subscription” reported by the Biden
11 Committee, “technology consulting” may refer to services akin to those the Biden Committee
12 describes in its disclosure reports and Responses. Accordingly, Respondents have credibly
13 rebutted the Complaints’ allegations that these expenditures were associated with Biden’s 2024
14 candidacy.

15 The disbursements to Upland Software Inc. for “software” are more difficult to evaluate.
16 With respect to these disbursements, the Biden Committee states in a sworn declaration that
17 these disbursements were to “maintain ownership of [the Biden Committee’s] SMS short code

¹⁶¹ MUR 7931 Biden Resp. at 2; *see* MUR 7931 Biden Supp. Resp. at 3 (“In short, [the Biden Committee] has not made any expenditures for the purpose of influencing the 2024 presidential election.”); Victory Fund Resp. at 2 (“[The Victory Fund] has not made any expenditures that advocate for President Biden’s re-election in 2024 or that are otherwise in connection with that election.”).

¹⁶² MUR 7931 Biden Resp. at 5; *see* MUR 7931 Vogel Decl. ¶ 7.

¹⁶³ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00431445&recipient_name=NGP+Van&min_date=11%2F07%2F2012&max_date=12%2F31%2F2014 (last visited May 2, 2023) (showing all disbursements by Obama for America to NGP Van between November 7, 2012, and December 31, 2014).

1 phone number, used for communications with [the Biden Committee],”¹⁶⁴ and which the Biden
2 Committee describes as its “intellectual property.”¹⁶⁵ Comparisons to prior presidential
3 campaign committee are unhelpful, as prior committees do not appear to have identified
4 expenditures for similar purposes, likely because of the relative newness of the technology
5 involved: For example, a search across all disbursements by the authorized committees of
6 former presidential candidates Obama, Clinton, Romney, and McCain for disbursements with
7 purposes containing any of “short code,” “SMS,” “text number,” “phone number” or “text id”
8 revealed no results.¹⁶⁶

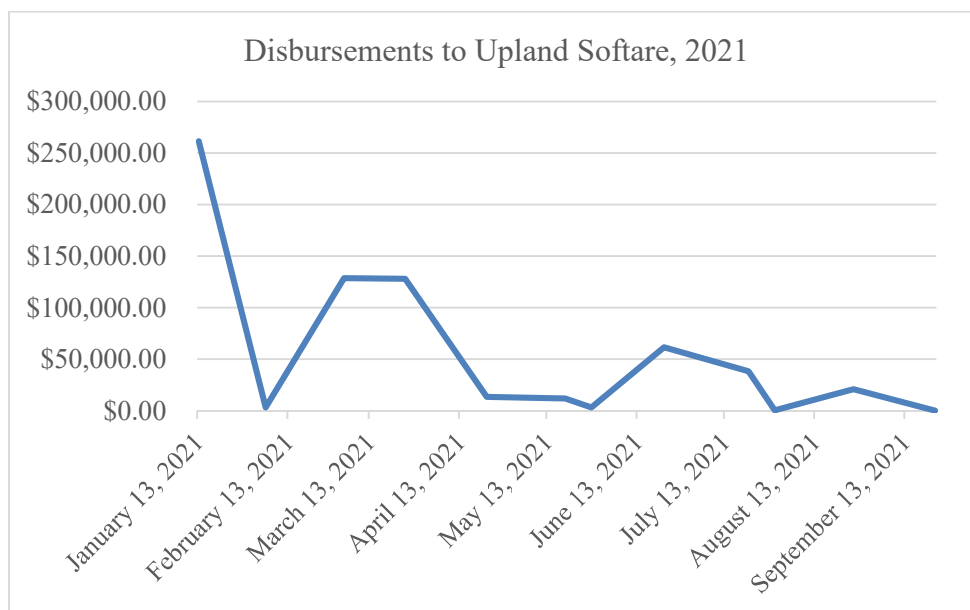
9 As shown in the Appendix to this Report and the figure below, the amount and timing of
10 the Biden Committee’s disbursements to Upland Software Inc. varied widely over the period
11 between January 13, 2021, the first disbursement following the immediate aftermath of the 2020
12 election, and September 23, 2021, the date of the Biden Committee’s last reported disbursement
13 to this vendor, with disbursements ranging from \$2.34 to \$261,449, including multiple
14 disbursements occurring on the same day for different amounts, and each disbursement reported

¹⁶⁴ MUR 7931 Vogel Decl. ¶ 8; *see* MUR 7931 Biden Resp. at 2. While the Vogel declaration refers specifically to disbursements to Upland Software Inc. “in June 2021,” this is likely because the MUR 7931 Complaint specifically identifies “multiple disbursements to Upland Software Inc. on June 22, 2021 totaling \$61,692.52” when questioning whether such disbursements “should be designated for the 2020 General Election.” MUR 7931 Compl. ¶ 37.

¹⁶⁵ MUR 7931 Biden Resp. at 5.

¹⁶⁶ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00431171&committee_id=C00431445&committee_id=C00453928&committee_id=C00575795&committee_id=C00580100&disbursement_description=sms&disbursement_description=short+code&disbursement_description=text+number&disbursement_description=phone+number&disbursement_description=text+id (last visited May 2, 2023) (showing all disbursements by Obama for America, Hillary for America, Make America Great Again PAC f/k/a Donald J. Trump for President, Inc., Romney for President, Inc., and McCain-Palin 2008 Inc. with purposes containing any of “short code,” “sms,” “text number,” “phone number,” or “text id”). Trump’s authorized committee reported 34 disbursements aggregating \$69.52 million during the 2020 election cycle for, *inter alia*, “SMS advertising,” “digital SMS/online advertising,” and “online & SMS advertising,” none of which appear to be for maintenance or ownership of an SMS short code. *Id.*

1 as for “software.”¹⁶⁷ Though the amounts disbursed decreased over time, as one might expect
 2 with a campaign winding down its operations, the data reflects various jumps in spending
 3 throughout 2021:



4
 5 On its face, this information could be viewed as being in some tension with the Biden
 6 Committee's sworn statement that the disbursements to this vendor were made in order to
 7 maintain ownership of an SMS short code, which one might expect to have been implemented
 8 through regular, or more routine, payments, akin to a subscription service provided at a set rate,
 9 rather than charges varying by amount and time and appearing to be triggered by external events.
 10 An online review of short code vendors indicates that the subscription model, using regular

¹⁶⁷ See App'x. It is further unclear whether “software” is an adequate reported purpose for disbursements that the Responses indicate were for maintaining a telephone number. See 52 U.S.C. § 30104(b)(6); 11 C.F.R. § 104.3(b)(4)(i)(A); see also *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited May 2, 2023) (“As a general rule, consider whether a person who is not associated with the committee could easily discern why the disbursement was made by reading the name of the recipient and the purpose.”).

1 identical payments, is both used in this context and at much lower costs.¹⁶⁸ At the same time and
2 given the context of a sophisticated presidential campaign, the declaration's statement may
3 accurately describe a different or more complex maintenance arrangement that happens to be
4 subject to external events, like energy costs required to maintain a home between set temperature
5 ranges (that will be subject to weather conditions) or the costs to maintain a maximum target
6 hold time for customer service calls (that is subject to demand). Further, while Biden is not a
7 former officeholder as contemplated in the regulations concerning winding-down activities, and
8 the six-month time period for the winding-down safe harbor is as such not directly applicable to
9 the circumstances presented here, the Responses do not clearly articulate why the Biden
10 Committee would need to maintain an SMS short code over a period of more than ten months
11 following Election Day 2020. It is possible that, consistent with the Complaints' allegations, the
12 Biden Committee was maintaining the SMS short code as campaign infrastructure in the event
13 that Biden would run for reelection in 2024, thus making the expenditures fairly linked to the
14 2024 presidential election. But it is also possible that maintenance of the SMS short code, which
15 the declaration asserts was "used for communications with [the Biden Committee],"¹⁶⁹ was
16 necessary as a communications tool to further appropriate wind-down activities.¹⁷⁰ Though not

¹⁶⁸ See, e.g., *How Much Does a Short Code Cost?*, TWILIO, <https://support.twilio.com/hc/en-us/articles/226460288-How-much-does-a-Short-Code-cost-> (last visited May 2, 2023) (reporting one-time fees of combined \$1,500 plus quarterly charges of between \$1,500 and \$4,500 for lease of an SMS short code); *Short Codes*, BANDWIDTH, <https://www.bandwidth.com/messaging/short-codes/> (last visited May 2, 2023) (reporting monthly charges of between \$500 and \$1,000 for lease of an SMS short code); *How Much is a Dedicated Short Code?*, TATANGO, <https://www.tatango.com/resources/qa-videos/qa-how-much-is-a-dedicated-short-code/> (last visited May 2, 2023) (same).

¹⁶⁹ MUR 7931 Vogel Decl. ¶ 8.

¹⁷⁰ This Office is unaware of matters in which the Commission has addressed whether an authorized committee of an incumbent officeholder is required to terminate between election cycles. We do not make any recommendations on this issue in this Report.

1 directly supported by the declaration, the Biden Committee also asserts that the expenditures
2 were “to maintain records or property related to the 2020 election.”¹⁷¹

3 Given the more than \$5 million amount involved and the factual questions regarding the
4 disbursements to Upland Software Inc., the Complaints’ allegation that these disbursements were
5 for the purpose of advancing Biden’s 2024 reelection campaign is plausible. This is primarily
6 because of the irregular nature of the payments and the fact that they appeared to be triggered by
7 external events, suggestive of some type of engagement. Presuming that Biden’s first public
8 statement on March 25, 2021, confirming that he intended to run, discussed in Parts II.A and
9 III.A, *supra*, marks the date on which he made that determination, if the disbursements discussed
10 above were for purpose of advancing his 2024 candidacy, Biden may have passed the \$5,000
11 threshold via the Biden Committee’s \$128,021.73 disbursement to Upland Software Inc. that
12 same day.¹⁷² At the same time, however, Respondents attest that these costs were for
13 maintaining ownership of the Biden Committee’s SMS short code and that this code was used
14 for communications with the committee; they have further indicated that this information was
15 related to maintaining records or property.¹⁷³ These explanations are also plausible, particularly
16 given that the payments to Upland Software Inc. ceased after September 2021. On balance,
17 while the available information indicates that the disbursements the Biden Committee made to

¹⁷¹ MUR 7931 Biden Committee Resp. at 2.

¹⁷² *See* App’x.

¹⁷³ Though the Biden Committee provided a sworn statement from the founder of its campaign and political compliance consultant attesting to the purposes of the expenditures made to Upland Software Inc. and Action Squared Inc., we note that the Biden Committee provided no documents regarding the services provided to it by these entities such as contracts, invoices, or example texts sent on behalf of the Biden Committee. As noted above, the Commission has established a “testing-the-waters” exception to the definition of “contribution” and “expenditure” such that testing-the-waters expenses do not trigger the \$5,000 threshold for candidacy, but the exception is not available to an individual who, like Biden, has decided to become a candidate. *See* AO 2015-09 at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9993 (noting exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”).

1 Upland Software Inc. do not appear to be solely for the purposes enumerated by the Biden
2 Committee, as discussed below,¹⁷⁴ we recommend that the Commission take no action at this
3 time as to the timing of his candidacy in light of our recommendation to investigate the potential
4 purpose reporting violation, which may shed light on the Complaints' late-candidacy allegations.

5 In addition, with respect to the Biden Committee's \$2.02 million in disbursements to
6 Action Squared Inc. for "text message/email outreach" and "text message outreach,"¹⁷⁵ the Biden
7 Committee states that the disbursements were for "ongoing communications by the President to
8 his supporters who have opted-in to receive messages, encouraging them to make contributions
9 to the [DNC] . . . in 2021 and 2022."¹⁷⁶ However, on its disclosure reports, the Biden Committee
10 reported each disbursement to Action Squared Inc. as being for the 2020 general election,¹⁷⁷ a
11 statement facially at odds with the purpose stated in the Biden Committee's Response.¹⁷⁸
12 Comparison to similarly situated authorized committees is similarly unclear: Following the 2012

¹⁷⁴ *Infra* Part III.B.

¹⁷⁵ Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10. Other reported expenditures not discussed in the Complaints include \$19,084.80 across three payments to different vendors for "media production"; \$39,247.90 across nine payments for "music licenses" and "photo/music licenses"; and another \$217,435.54 across numerous payments to multiple vendors for "software" beyond those to Upland Software discussed above. Biden Committee Disbursements.

¹⁷⁶ MUR 8059 Biden Resp. at 2; *see* MUR 8059 Vogel Decl. ¶ 5.

¹⁷⁷ *See, e.g.*, Biden Committee, 2022 Year-End Report, Sched. B-P at 35 (reporting \$5,767.36 disbursement to Action Squared Inc. for "text message outreach" labeled "Disbursement for: 2020 General"); Biden Committee, 2022 April Quarterly Report, Sched. B-P at 57 (reporting two disbursements to Action Squared Inc. for "text message/email outreach" for \$44,905.36 and \$25,582.00, both labeled with "Disbursement for: 2020 General"); Biden Committee, 2021 October Quarterly Report, Sched. B-P at 18 (reporting a \$150,000 disbursement to Action Squared Inc. for "text message/email outreach" labeled "Disbursement for: 2020 General").

¹⁷⁸ If, as the MUR Biden Response states and the timing of the expenditures appears to indicate, the disbursements were in support of election activity related to the 2022 election cycle, the Biden Committee appears to have failed in its duty to ensure that its disclosure reports are generally accurate and correct by reporting these disbursements as in connection to the 2020 general election. *See* 11 C.F.R. § 104.14(d) ("Each treasurer of a political committee . . . shall be personally responsible for the timely and complete filing of [any disclosure report] . . . and for the accuracy of any information or statement contained in it."). However, given that there is no statutory or regulatory requirement for committees to designate the election cycle for their disbursements, we make no recommendation as to the potential reporting violation.

1 election, for instance, Obama for America disbursed a total of \$210,313.30 for “text
 2 messages.”¹⁷⁹ And while, following the 2016 election, Trump’s authorized committee disbursed
 3 a total of \$15.86 million for, *inter alia*, “online advertising,” “email marketing,” and “digital
 4 consulting/online advertising,”¹⁸⁰ Trump had already declared his reelection candidacy on
 5 January 20, 2017,¹⁸¹ making this comparison less helpful. Notwithstanding the discrepancy
 6 between which election these expenditures were associated with — 2020, as stated in the reports,
 7 versus 2021 and 2022, as stated in the Responses — in neither event do they appear to be
 8 associated with Biden’s 2024 candidacy.¹⁸²

9 3. The Available Information Does Not Indicate That Biden Became a
 10 Candidate by Accepting More than \$5,000 in Contributions

11 Regarding Biden and the Biden Committee’s receipts, since November 4, 2020, the
 12 Biden Committee has reported receiving \$134,048,699.80,¹⁸³ including \$20,221,129.23 received
 13 from the Victory Fund.¹⁸⁴ Of the \$134 million in total receipts, the Biden Committee reported

¹⁷⁹ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00431445&min_date=11%2F07%2F2012&max_date=12%2F31%2F2014&disbursement_description=text (last visited May 2, 2023) (showing all disbursements by Obama for America between November 7, 2012, and December 31, 2014, for purposes including the words “text,” “sms,” “outreach,” “email,” “e-mail,” “online,” and “internet”; there were no results for any word other than “text”).

¹⁸⁰ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00580100&min_date=11%2F09%2F2016&max_date=12%2F31%2F2018&disbursement_description=outreach&disbursement_description=text&disbursement_description=sms&disbursement_description=email&disbursement_description=e-mail&disbursement_description=online&disbursement_description=internet (last visited May 2, 2023) (showing all disbursements by Make America Great Again PAC f/k/a Donald J. Trump for President, Inc. between November 9, 2016, and December 31, 2018, for purposes including the words “text,” “sms,” “outreach,” “email,” “e-mail,” “online,” and “internet”).

¹⁸¹ Donald J. Trump, Amended Statement of Candidacy at 1 (Jan. 20, 2017), <https://docquery.fec.gov/pdf/569/201701209041436569/201701209041436569.pdf> (submitting a Miscellaneous Text submission reading, “While this does not constitute a formal announcement of my candidacy for the 2020 election, because I have reached the legal threshold for filing FEC Form 2, please accept this letter as my Form 2 for the 2020 election in order to ensure compliance with the Federal Election Campaign Act”).

¹⁸² *See infra* Part III.B.

¹⁸³ *See supra* note 36 and accompany text.

¹⁸⁴ *Supra* note 37 and accompanying text.

1 receiving \$103,362,129.86 in contributions during the 2020 Post-General reporting period,¹⁸⁵
2 with only \$482 in additional contributions disclosed on subsequent Reports.¹⁸⁶ Since the 2020
3 general election, the Victory Fund has reported receiving \$2,414,952.90 in contributions.¹⁸⁷
4 Although the Complaints raise questions as to the amount of contributions accepted by the Biden
5 Committee and the Victory Fund after the 2020 general election, the Respondents credibly rebut
6 the allegations that those post-election contributions were attributable to a 2024 Biden
7 candidacy.

8 The Biden Committee does not appear to have solicited or accepted contributions for
9 Biden's reelection campaign prior to Biden's formal campaign announcement. First, the Biden
10 Committee states in its MUR 7931 Response that it neither solicited nor accepted contributions
11 made after Election Day 2020, and that it had not at the time of the Response accepted any
12 contributions for the 2024 election cycle; the sworn statement attached to the MUR 7931
13 Response supports this statement.¹⁸⁸ This Office is aware of no information that contradicts
14 these assertions.

15 4. The Victory Fund Does Not Appear to Have Accepted Contributions or
16 Made Expenditures in Support of Biden's 2024 Candidacy

17 The Victory Fund also does not appear to have solicited or accepted contributions for
18 Biden's reelection campaign prior to Biden's formal campaign announcement. As noted above,
19 the Biden Committee avers that the Victory Fund "is not authorized to, and has not," raised any

¹⁸⁵ Biden Committee, 2020 Post-General Report.

¹⁸⁶ Biden Committee, 2020 Year-End Report; Biden Committee, 2021 April Quarterly Report.

¹⁸⁷ *Supra* note 49 and accompanying text.

¹⁸⁸ MUR 7931 Biden Resp. at 2; MUR 7931 Vogel Decl. ¶¶ 3, 4 ("To the best of my knowledge, [the Biden Committee] has not solicited any funds, including through mail, online, or any other source since then. . . . [The Biden Committee] did not accept any contributions made after Election Day 2020. . . . [The Biden Committee] has not accepted any contributions for the 2024 election cycle.").

1 funds for Biden in the 2024 presidential election, to which the Victory Fund also attests.¹⁸⁹
2 Further, the Victory Fund has provided a sworn statement attesting that it did not transfer any
3 contributions to the Biden Committee that were made after Election Day 2020.¹⁹⁰ This Office is
4 aware of no information that contradicts these assertions.

5 Additionally, as noted by Respondents, the size of the post-election receipts reported by
6 the Victory Fund's joint fundraising operation is consistent with, and in fact smaller than, those
7 in prior successful presidential campaigns.¹⁹¹ Between the 2016 general election and the end of
8 the 2018 election cycle, former President Donald J. Trump's joint fundraising committee, Trump
9 Victory, reported nearly \$31.26 million in individual contributions,¹⁹² though, as noted above,
10 Trump had declared his candidacy for 2020 on the first day of his term in office. In the prior
11 election cycle, between the 2012 general election and the end of the 2014 election cycle, former
12 President Barack Obama's joint fundraising committee, Obama Victory Fund 2012, reported

¹⁸⁹ MUR 7931 Biden Resp. at 5; *see* MUR 7931 Vogel Decl. ¶ 9 (“[The Biden Committee] has not given consent to [the Victory Fund] to accept contributions or make expenditures on behalf of President Biden for the 2024 election cycle.”); Smolkis Decl. ¶ 11.

¹⁹⁰ Victory Fund Resp. at 2; Smolkis Decl. ¶¶ 7-10. While the Victory Fund acknowledges that it received contributions after the 2020 general Election Day, it notes that those contributions resulted from pre-Election Day solicitations, and none of those contributions were transferred to the Biden Committee, and that it has transferred or will transfer all such post-election contributions to the other joint fundraising participants per its allocation formula. Victory Fund Resp. at 4.

¹⁹¹ *See* MUR 7931 Biden Resp. at 5 & n.27. According to the Reports Analysis Division (“RAD”), it is not unusual for joint fundraising committees to report large post-election transfers, and RAD commonly sees this activity. While all of the transfers took place after the election, none of the itemized contributions disclosed on the report are reported as having been received after the general election, and the Biden Committee appears to have followed the correct reporting format for these transfers. For the unitemized component of the joint fundraising transfers, there is no information on the face of the report that the underlying transferred contributions were received after the election.

¹⁹² *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00618389&min_date=11%2F09%2F2016&max_date=12%2F31%2F2018 (last visited May 2, 2023) (showing all individual contributions reported by Trump Victory between November 9, 2016, and December 31, 2018).

1 \$2,890,741.23 in individual contributions.¹⁹³ Both figures exceed the \$2,414,952.90 in
2 contributions reported by the Victory Fund.

3 Transfers from the Victory Fund to the Biden Committee are, however, larger than those
4 reported by prior campaigns. Between the 2016 general election and the end of the 2018 election
5 cycle, Trump Victory transferred \$6,804,830.24 to Trump's authorized campaign committee.¹⁹⁴
6 In the prior election cycle, between the 2012 general election and the end of the 2014 election
7 cycle, Obama Victory Fund 2012 transferred \$9,024,726.22 to Obama for America.¹⁹⁵ These
8 sums are significantly lower than the \$20,221,129.23 the Biden Committee has received from the
9 Victory Fund.¹⁹⁶ Nonetheless, the disparity in the value of transfers from joint fundraising
10 committees to the candidate's authorized committee is not, itself, evidence that the Victory Fund
11 is receiving or transferring to the Biden Committee contributions other than those made for and
12 prior to the 2020 general election. Accordingly, Biden and those authorized to fundraise on his
13 behalf do not appear at this time to have raised \$5,000 or more in support of his 2024 candidacy
14 for reelection prior to his formal campaign announcement.

15 The Biden Victory Fund, as a joint fundraising enterprise partially benefitting the Biden
16 Committee, was authorized to accept contributions and make expenditures for Biden during the

¹⁹³ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00494740&min_date=11%2F07%2F2012&max_date=12%2F31%2F2014 (last visited May 2, 2023) (showing all individual contributions reported by Obama Victory Fund 2012 between November 7, 2012, and December 31, 2014).

¹⁹⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00618389&recipient_name=C00580100&min_date=11%2F09%2F2016&max_date=12%2F31%2F2018 (last visited May 2, 2023) (showing all transfers from Trump Victory to Donald J. Trump for President between November 9, 2016, and December 31, 2018).

¹⁹⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00494740&recipient_name=C00431445&min_date=11%2F07%2F2012&max_date=12%2F31%2F2014 (last visited May 2, 2023) (showing all transfers from Obama Victory Fund 2012 to Obama for America between November 7, 2012, and December 31, 2014).

¹⁹⁶ *Supra* notes 53-59 and accompanying text.

1 2020 election cycle,¹⁹⁷ but does not appear to have been so authorized in the period between
 2 Election Day 2020 and Biden's formal campaign announcement on April 25, 2023.
 3 Accordingly, the contributions it received and expenditures it made after Election Day 2020 and
 4 before Biden's campaign announcement do not appear to satisfy the statutory threshold for
 5 triggering Biden's candidacy.

6 * * *

7 In sum, there is insufficient information to determine whether Biden violated 52 U.S.C.
 8 § 30102(e)(1) and 11 C.F.R. § 101.1(a) by failing to file a Statement of Candidacy with the
 9 Commission and designating an authorized committee within 15 days of becoming a candidate.
 10 However, we recommend that the Commission take no action at this time as to this allegation
 11 rather than dismiss in light of our recommendation that the Commission find reason to believe
 12 that the Biden Committee violated the reporting provision of the Act and authorize compulsory
 13 process, as set forth below in Part III.B, *infra*. Should we discover any relevant information
 14 regarding Biden's pre-candidacy activities, we will make the appropriate recommendation.¹⁹⁸

¹⁹⁷ See *supra* note 72 and accompanying text.

¹⁹⁸ Another matter involving allegations regarding, in relevant part, a late-filed Statement of Candidacy is currently pending before the Commission. See First Gen. Counsel's Rpt. ("FGCR"), MURs 7968, 7969 (Donald J. Trump, *et al.*) That matter, in which this Office recommends that the Commission find reason to believe as to the late candidacy allegation as to Trump, is distinguishable from the present matter in two primary ways: First, Trump had, at the time of the FGCR in that matter, raised over \$100 million via two affiliated political committees. *Id.* at 31-36 Here, the available information indicates that Biden has not raised funds for his 2024 campaign (prior to his formal announcement). *Supra* Part III.A.3. Second, the FGCR in MURs 7968, 7969 addresses committee spending on Facebook advertising asking whether viewers would vote for Trump at third time, as well as sponsoring numerous Trump rallies over a protracted period of time. FGCR, MURs 7968, 7969 at 40 (discussing advertisement); *id.* at 43-44 (discussing advertisements and rallies). Here, the Biden Committee's disbursements to Upland Software Inc. raise questions about a possible connection to 2024, *supra* Part III.A.2, but unlike in the Trump matter are addressed in a sworn statement attesting to a plausible non-2024 basis and are much less compelling on their face than the aforementioned Trump expenditures — *i.e.*, ambiguous "software" spending on the one hand versus sponsoring ads asking "Would you vote for Trump a third time?" on the other. FGCR, MURs 7968, 7969 at 14 (image). In both cases, as discussed in both this Report and the FGCR in MURs 7968, 7969, the statements by Biden and Trump are more than sufficient to indicate that their respective decisions to run in 2024 were made well before their formal announcements.

1 **B. The Commission Should Find Reason to Believe That the Biden Committee**
2 **Failed to Accurately Report the Purpose of the Disbursements Made to**
3 **Upland Software**

4 The Act and Commission regulations require political committees to report the name and
5 address of each person to whom they make expenditures or other disbursements aggregating
6 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
7 date, amount, and purpose of such payments.¹⁹⁹ Commission regulations define “purpose” as a
8 “brief statement or description of why the disbursement was made.”²⁰⁰ “The ‘purpose of
9 disbursement’ entry, when considered along with the identity of the disbursement recipient, must
10 be sufficiently specific to make the purpose of the disbursement clear.”²⁰¹ The Commission has
11 determined that the description of the purpose should be sufficient to allow “a person not
12 associated with the committee [to] easily discern why the disbursement was made when reading
13 the name of the recipient and the purpose.”²⁰² Examples of sufficient statements of purpose
14 include, but are not limited to, dinner expenses, media, salary, polling, travel, party fees, phone
15 banks, travel expenses, travel expense reimbursement, and catering costs.²⁰³ The Commission’s
16 website also states that “software” can be an adequate statement of the purpose of a
17 disbursement.²⁰⁴

¹⁹⁹ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (regarding political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (regarding authorized committees); *id.* § 104.9(a), (b) (regarding all political committees).

²⁰⁰ 11 C.F.R. § 104.3(b)(3)(i)(A).

²⁰¹ Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887, 887 (Jan. 9, 2007) [hereinafter Purpose Statement of Policy] (citing 11 C.F.R. § 104.3(b)(3)(i)(B), (4)(i)(A)).

²⁰² *Id.* at 888.

²⁰³ 11 C.F.R. § 104.3(b)(3)(i)(B).

²⁰⁴ *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited May 2, 2023).

1 As discussed above, the Biden Committee asserts that its disbursements to Upland
2 Software Inc. reported as for “software” were to “maintain ownership of [the Biden
3 Committee’s] SMS short code phone number, used for communications with [the Biden
4 Committee].”²⁰⁵ Even if each of the disbursements were for the purpose of maintaining an SMS
5 short code and communicating with the committee, the reported purpose of “software” does not
6 “make the purpose of the disbursement clear” even when read in connection with the recipient of
7 the disbursement.²⁰⁶ Though “software” can be an adequate description of a disbursement’s
8 purpose, it does not appear to be so in the context here.²⁰⁷ In addition, and as discussed above,
9 the \$5,083,361.49 disbursed to Upland Software is far larger than apparent general costs for
10 maintaining a SMS short code, and the wide variation in the amounts disbursed between
11 November 5, 2020, and September 23, 2021, the date of the Biden Committee’s last reported
12 disbursement to this vendor, are indicative that these expenditures were inadequately described
13 as “software.”²⁰⁸

14 Accordingly, we recommend the Commission find reason to believe the Biden
15 Committee violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to
16 properly disclose the purpose of its disbursements to Upland Software Inc.

²⁰⁵ MUR 7931 Vogel Decl. ¶ 8; *see* MUR 7931 Biden Resp. at 2.

²⁰⁶ Purpose Statement of Policy at 887 (citing 11 C.F.R. § 104.3(b)(3)(i)(B), (4)(i)(A)).

²⁰⁷ *See* F&LA at 8-9, MURs 7291, 7449 (Hillary for America) (determining, with respect to disbursements used for opposition research, that “[a] person reading the Committee’s disclosure reports could not have discerned that the Committee was disbursing funds for anything other than legal services by reading the name of the recipient (*i.e.*, Perkins Coie) together with the reported purpose (*i.e.*, legal services or legal or compliance consulting”).

²⁰⁸ *See supra* notes 166-168 and accompanying text.

1 **C. The Commission Should Find No Reason to Believe That the Biden**
2 **Committee and the Victory Fund Failed to Amend Their Statements of**
3 **Organization**

4 The Act requires all political committees to file a Statement of Organization with the
5 Commission no later than 10 days after they are designated or established.²⁰⁹ The Statement of
6 Organization must include the name, address, and type of committee; the name, address,
7 relationship, and type of any connected organization or committee; the name and address of the
8 committee's custodian of books and accounts and the committee's treasurer; a listing of all
9 depositories used by the committee; and, if an authorized committee, the name, address, office
10 sought, and party affiliation of the authorizing candidate.²¹⁰ Changes or corrections to the
11 information contained in a Statement of Organization must be reported no later than 10 days
12 after the date of the change.²¹¹

13 With respect to the allegation in the MUR 7931 Complaint that the Biden Committee and
14 the Victory Fund have failed to amend their Statements of Organization to reflect Biden's 2024
15 candidacy,²¹² the facts as presented in the MUR 7931 Complaint and supported by the available
16 information do not indicate any violation of the Act in this regard. As Respondents note, neither
17 the Act nor Commission regulations require committees to designate the election cycle in which
18 an affiliated or authorizing candidate is running, instead requiring only the "name, address, office

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

²¹⁰ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2.

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

²¹² MUR 7931 Compl. ¶¶ 39-51, 66-82.

1 sought, and party affiliation” of that individual.²¹³ Indeed, the form on which Statements of
2 Organization are submitted has no line on which this information could be provided.²¹⁴

3 Accordingly, the Commission should find no reason to believe that the Biden Committee
4 and the Victory Fund violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to
5 amend their Statements of Organization reflecting Biden’s 2024 candidacy.

6 **D. The Commission Should Find Reason to Believe That the Victory Fund**
7 **Failed to Report a Debt**

8 The Act requires political committees to file reports accurately disclosing their receipts,
9 disbursements, and debts.²¹⁵ In addition, political committees must accurately itemize
10 contributions and disbursements for each election cycle and must also indicate the amount and
11 nature of outstanding debts and obligations until those debts are extinguished.²¹⁶ Under
12 Commission regulations, a debt or obligation of \$500 or less must be reported as of the time that
13 payment is made or within sixty days of the date on which the political committee incurs the
14 debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that
15 covers the date on which the debt was incurred.²¹⁷ If the exact amount of a debt or obligation is
16 not known, the report shall state that the amount reported is an estimate.²¹⁸ Once the exact
17 amount is determined, a political committee must either: (1) amend the report(s) containing the

²¹³ 52 U.S.C. § 30103(b)(5); *see* 11 C.F.R. § 102.2(a)(v).

²¹⁴ *See, e.g.*, Biden for President, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/354/202304259581294354/202304259581294354.pdf>; Biden Victory Fund, Amended Statement of Organization (July 1, 2022), <https://docquery.fec.gov/pdf/159/202207019517783159/202207019517783159.pdf>.

²¹⁵ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

²¹⁶ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

²¹⁷ 11 C.F.R. § 104.11(b).

²¹⁸ *Id.*

1 estimate; or (2) indicate the correct amount on the report for the reporting period in which such
2 amount is determined.²¹⁹

3 The MUR 7931 Complaint questions whether the Victory Fund's \$100,000 disbursement
4 to Vox Media LLC on March 1, 2021, for "online fundraising" relates to the 2020 presidential
5 election, noting that such disbursements are normally made to maintain the committee's
6 infrastructure and operations for ongoing and future campaign activity.²²⁰ The Victory Fund
7 states that this disbursement relates to "online fundraising ads [the Victory Fund] ran through
8 Vox Media, LLC . . . in August 2020."²²¹ It goes on to state that its received the invoice for this
9 expense in 2021, and "[a]s such, the payment was made and reported in 2021."²²²

10 Based on the Victory Fund's representations that the March 2021 payment to Vox
11 Media LLC was for services rendered in August 2020, the Victory Fund appears to have incurred
12 a debt or obligation to the vendor of greater than \$500 that was outstanding for over sixty days.
13 Thus, as required by Commission regulations, the Victory Fund should have reported its
14 \$100,000 debt to Vox Media LLC in its 2020 October Quarterly Report, and continuously
15 thereafter until paid, but it failed to do so.²²³ Accordingly, we recommend that the Commission
16 find reason to believe that the Victory Fund failed to report a debt in violation of 52 U.S.C. §
17 30104(b)(8) and 11 C.F.R. § 104.11(b).

²¹⁹ *Id.*

²²⁰ MUR 7931 Compl. ¶ 34.

²²¹ Victory Fund Resp. at 5; Smolkis Decl. ¶ 6.

²²² Victory Fund Resp. at 5.

²²³ *See* 11 C.F.R. § 104.11(a), (b).

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V. INVESTIGATION

Simultaneous with the conciliation with the Victory Fund, we plan to seek information to investigate the Biden Committee's disbursements to Upland Software Inc. since the 2020 election to determine the purpose for which those disbursements were made. We will request documents and information regarding the Biden Committee's contracts and service agreements with Upland Software Inc. as well as the services it provided in the period following the 2020 general election. We also request that the Commission authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

1 **V. RECOMMENDATIONS**

- 2 1. Take no action at this time as to the allegation that Joseph R. Biden, Jr., violated
3 52 U.S.C. § 30102(e)(1) and 11 C.F.R § 101.1 by failing to timely file a
4 Statement of Candidacy and designate an authorized committee within 15 days of
5 becoming a candidate;
- 6 2. Find reason to believe that Biden for President and Keana Spencer in her official
7 capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R.
8 § 104.3(b)(4)(i) by failing to properly disclose the purpose of its disbursements to
9 Upland Software;
- 10 3. Find no reason to believe that Biden for President and Keana Spencer in her
11 official capacity as treasurer and Biden Victory Fund and Monica Guardiola in
12 her official capacity as treasurer violated 52 U.S.C. § 30103(c) and 11 C.F.R.
13 § 102.2(a)(2) by failing to amend their Statements of Organization;
- 14 4. Find reason to believe that Biden Victory Fund and Monica Guardiola in her
15 official capacity as treasurer violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R.
16 § 104.11(b) by failing to report a debt of greater than \$500 at the time it was
17 incurred;
- 18 5. Approve the attached Factual and Legal Analyses;
- 19 6. Authorize pre-probable cause conciliation with Biden Victory Fund and Monica
20 Guardiola in her official capacity as treasurer;
- 21 7. Approve the attached proposed conciliation agreement;
- 22 8. Authorize the use of compulsory process; and

1 9. Send the appropriate letters.

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May 3, 2023

Date

Lisa J. Stevenson

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher

Charles Kitcher
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Jin Lee by *HLL*

Jin Lee
Deputy Associate General Counsel
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Justine A. di Giovanni

Justine A. di Giovanni
Attorney

Dominique Dillenseger

Dominique Dillenseger
Attorney

Appendix

Table of Select Disbursements by the Biden Committee Following the 2020 Election²²⁵

| Date | Amount | Recipient | Description |
|-------------------|----------------|----------------------|-----------------------------|
| November 5, 2020 | \$11,897.63 | NGP VAN Inc. | Database subscription |
| November 5, 2020 | \$23,055.00 | NGP VAN Inc. | Database subscription |
| November 10, 2020 | \$1,176.17 | Upland Software Inc. | Software |
| November 16, 2020 | \$138,604.11 | Upland Software Inc. | Software |
| November 17, 2020 | \$19,716.00 | NGP VAN Inc. | Database subscription |
| November 17, 2020 | \$23,717.50 | NGP VAN Inc. | Database subscription |
| November 18, 2020 | \$3,932,643.40 | Upland Software Inc. | Software |
| November 20, 2020 | \$3,203.25 | Action Squared Inc. | Text Message/Email Outreach |
| December 2, 2020 | \$2,898.84 | NGP VAN Inc. | Processing Fees |
| December 7, 2020 | \$2,724.43 | NGP VAN Inc. | Database subscription |
| December 10, 2020 | \$35,086.00 | NGP VAN Inc. | Database subscription |
| December 17, 2020 | \$336,046.40 | Upland Software Inc. | Software |
| December 24, 2020 | \$21,597.50 | NGP VAN Inc. | Database subscription |
| December 24, 2020 | \$33,450.00 | NGP VAN Inc. | Database subscription |
| December 31, 2020 | \$3,180.00 | Upland Software Inc. | Software |
| January 13, 2021 | \$261,449.00 | Upland Software Inc. | Software |
| January 28, 2021 | \$4,282.69 | NGP VAN Inc. | Database subscription |
| January 28, 2021 | \$7,715.48 | NGP VAN Inc. | Database subscription |
| February 4, 2021 | \$30,952.00 | NGP VAN Inc. | Database subscription |
| February 5, 2021 | \$10,600.00 | NGP VAN Inc. | Database subscription |
| February 5, 2021 | \$3,180.00 | Upland Software Inc. | Software |
| February 25, 2021 | \$3,686.42 | NGP VAN Inc. | Database subscription |
| February 25, 2021 | \$21,226.50 | NGP VAN Inc. | Database subscription |
| March 4, 2021 | \$21,226.50 | NGP VAN Inc. | Database subscription |
| March 4, 2021 | \$128,503.00 | Upland Software Inc. | Software |
| March 25, 2021 | \$128,021.73 | Upland Software Inc. | Software |
| April 22, 2021 | \$13,595.60 | Upland Software Inc. | Software |
| April 29, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| April 29, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| April 29, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| May 19, 2021 | \$678.90 | Upland Software Inc. | Software |
| May 19, 2021 | \$11,315.22 | Upland Software Inc. | Software |
| May 28, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| May 28, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| May 28, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |

²²⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00703975&recipient_name=action+squared&recipient_name=ngp+van&recipient_name=upland&min_date=11%2F04%2F2020&max_date=03%2F31%2F2023 (last visited May 2, 2023) (showing all disbursements by Biden for President to Action Squared Inc., NGP Van Inc., and Upland Software Inc. between November 4, 2020, and March 31, 2023).

MURs 7931, 8059 (Biden for President, *et al.*)

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| Date | Amount | Recipient | Description |
|--------------------|---------------|----------------------|-----------------------------|
| May 28, 2021 | \$180.00 | Upland Software Inc. | Software |
| May 28, 2021 | \$3,000.00 | Upland Software Inc. | Software |
| June 22, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| June 22, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| June 22, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| June 22, 2021 | \$756.88 | Upland Software Inc. | Software |
| June 22, 2021 | \$2,735.13 | Upland Software Inc. | Software |
| June 22, 2021 | \$12,614.97 | Upland Software Inc. | Software |
| June 22, 2021 | \$45,585.54 | Upland Software Inc. | Software |
| July 6, 2021 | \$150,000.00 | Action Squared Inc. | Text message/email outreach |
| July 21, 2021 | \$708.97 | Upland Software Inc. | Software |
| July 21, 2021 | \$1,465.25 | Upland Software Inc. | Software |
| July 21, 2021 | \$11,815.80 | Upland Software Inc. | Software |
| July 21, 2021 | \$24,420.90 | Upland Software Inc. | Software |
| July 30, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| July 30, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| July 30, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| July 30, 2021 | \$30.00 | Upland Software Inc. | Software |
| July 30, 2021 | \$500.00 | Upland Software Inc. | Software |
| August 12, 2021 | \$208.67 | NGP VAN Inc. | Database subscription |
| August 12, 2021 | \$3,477.75 | NGP VAN Inc. | Database subscription |
| August 26, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| August 26, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| August 26, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| August 26, 2021 | \$1,181.78 | Upland Software Inc. | Software |
| August 26, 2021 | \$19,696.29 | Upland Software Inc. | Software |
| August 26, 2021 | \$938.90 | Action Squared Inc. | Text message/email outreach |
| August 26, 2021 | \$5,819.51 | Action Squared Inc. | Text message/email outreach |
| August 26, 2021 | \$9,828.77 | Action Squared Inc. | Text message/email outreach |
| September 23, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| September 23, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| September 23, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| September 23, 2021 | \$2.34 | Upland Software Inc. | Software |
| September 23, 2021 | \$13.31 | Upland Software Inc. | Software |
| September 23, 2021 | \$39.04 | Upland Software Inc. | Software |
| September 23, 2021 | \$221.76 | Upland Software Inc. | Software |
| September 23, 2021 | \$3,238.87 | Action Squared Inc. | Text message/email outreach |
| September 23, 2021 | \$10,847.23 | Action Squared Inc. | Text message/email outreach |
| September 23, 2021 | \$43,133.99 | Action Squared Inc. | Text message/email outreach |
| October 28, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| October 28, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| October 28, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |

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| Date | Amount | Recipient | Description |
|-------------------|---------------|---------------------|-----------------------------|
| October 28, 2021 | \$3,826.31 | Action Squared Inc. | Text message/email outreach |
| October 28, 2021 | \$17,922.05 | Action Squared Inc. | Text message/email outreach |
| October 28, 2021 | \$45,849.84 | Action Squared Inc. | Text message/email outreach |
| November 30, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| November 30, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| November 30, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| December 23, 2021 | \$600.00 | NGP VAN Inc. | Database subscription |
| December 23, 2021 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| December 23, 2021 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| December 23, 2021 | \$3,341.72 | Action Squared Inc. | Text message/email outreach |
| December 23, 2021 | \$7,572.17 | Action Squared Inc. | Text message/email outreach |
| December 23, 2021 | \$24,885.72 | Action Squared Inc. | Text message/email outreach |
| December 23, 2021 | \$33,021.08 | Action Squared Inc. | Text message/email outreach |
| December 23, 2021 | \$55,695.36 | Action Squared Inc. | Text message/email outreach |
| December 23, 2021 | \$93,181.83 | Action Squared Inc. | Text message/email outreach |
| January 27, 2022 | \$9,055.65 | Action Squared Inc. | Text message/email outreach |
| January 27, 2022 | \$33,138.73 | Action Squared Inc. | Text message/email outreach |
| January 27, 2022 | \$117,788.78 | Action Squared Inc. | Text message/email outreach |
| February 24, 2022 | \$1,960.21 | Action Squared Inc. | Text message/email outreach |
| February 24, 2022 | \$11,642.13 | Action Squared Inc. | Text message/email outreach |
| February 24, 2022 | \$21,028.07 | Action Squared Inc. | Text message/email outreach |
| March 10, 2022 | \$600.00 | NGP VAN Inc. | Database subscription |
| March 10, 2022 | \$600.00 | NGP VAN Inc. | Database subscription |
| March 10, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| March 10, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| March 10, 2022 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| March 10, 2022 | \$8,000.00 | NGP VAN Inc. | Database subscription |
| March 31, 2022 | \$4,229.24 | Action Squared Inc. | Text message/email outreach |
| March 31, 2022 | \$25,582.00 | Action Squared Inc. | Text message/email outreach |
| March 31, 2022 | \$44,905.36 | Action Squared Inc. | Text message/email outreach |
| April 28, 2022 | \$7,420.00 | NGP VAN Inc. | Database subscription |
| April 28, 2022 | \$102,673.61 | Action Squared Inc. | Text message/email outreach |
| May 26, 2022 | \$7,420.00 | NGP VAN Inc. | Database subscription |
| June 30, 2022 | \$7,420.00 | NGP VAN Inc. | Database subscription |
| June 30, 2022 | \$291,795.24 | Action Squared Inc. | Text message/email outreach |
| July 28, 2022 | \$420.00 | NGP VAN Inc. | Database subscription |
| July 28, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| July 28, 2022 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| July 28, 2022 | \$9,341.69 | Action Squared Inc. | Text message outreach |
| July 28, 2022 | \$33,539.00 | Action Squared Inc. | Text message outreach |
| July 28, 2022 | \$122,155.81 | Action Squared Inc. | Text message outreach |
| August 18, 2022 | \$420.00 | NGP VAN Inc. | Database subscription |

MURs 7931, 8059 (Biden for President, *et al.*)

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| Date | Amount | Recipient | Description |
|--------------------|---------------|---------------------|-----------------------|
| August 18, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| August 18, 2022 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| September 27, 2022 | \$420.00 | NGP VAN Inc. | Database subscription |
| September 27, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| September 27, 2022 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| September 27, 2022 | \$4,616.71 | Action Squared Inc. | Text message outreach |
| September 27, 2022 | \$7,523.55 | Action Squared Inc. | Text message outreach |
| September 27, 2022 | \$25,892.95 | Action Squared Inc. | Text message outreach |
| September 27, 2022 | \$27,238.09 | Action Squared Inc. | Text message outreach |
| September 27, 2022 | \$51,052.20 | Action Squared Inc. | Text message outreach |
| September 27, 2022 | \$98,154.46 | Action Squared Inc. | Text message outreach |
| November 2, 2022 | \$420.00 | NGP VAN Inc. | Database subscription |
| November 2, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| November 2, 2022 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| November 2, 2022 | \$7,554.21 | Action Squared Inc. | Text message outreach |
| November 2, 2022 | \$27,611.60 | Action Squared Inc. | Text message outreach |
| November 2, 2022 | \$98,291.86 | Action Squared Inc. | Text message outreach |
| November 21, 2022 | \$420.00 | NGP VAN Inc. | Database subscription |
| November 21, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| November 21, 2022 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| December 16, 2022 | \$420.00 | NGP VAN Inc. | Database subscription |
| December 16, 2022 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| December 16, 2022 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| December 16, 2022 | \$5,767.36 | Action Squared Inc. | Text message outreach |
| December 16, 2022 | \$15,101.22 | Action Squared Inc. | Text message outreach |
| December 16, 2022 | \$81,021.47 | Action Squared Inc. | Text message outreach |
| January 31, 2023 | \$52,583.00 | Action Squared Inc | Text message outreach |
| January 31, 2023 | \$20,242.66 | Action Squared Inc | Text message outreach |
| January 31, 2023 | \$4,369.54 | Action Squared Inc | Text message outreach |
| January 31, 2023 | \$22,420.57 | Action Squared Inc | Text message outreach |
| January 31, 2023 | \$10,000.00 | Action Squared Inc | Text message outreach |
| January 31, 2023 | \$1,945.23 | Action Squared Inc | Text message outreach |
| January 31, 2023 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| January 31, 2023 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| January 31, 2023 | \$420.00 | NGP VAN Inc. | Database subscription |
| February 23, 2023 | \$5,000.00 | NGP VAN Inc. | Database subscription |
| February 23, 2023 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| February 23, 2023 | \$420.00 | NGP VAN Inc. | Database subscription |
| March 23, 2023 | \$31,051.75 | Action Squared Inc | Text message outreach |
| March 23, 2023 | \$16,178.99 | Action Squared Inc | Text message outreach |
| March 23, 2023 | \$2,833.84 | Action Squared Inc | Text message outreach |
| March 23, 2023 | \$48,828.18 | Action Squared Inc | Text message outreach |

MURs 7931, 8059 (Biden for President, *et al.*)

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| Date | Amount | Recipient | Description |
|----------------|-----------------------|--------------------|-----------------------|
| March 23, 2023 | \$14,192.23 | Action Squared Inc | Text message outreach |
| March 23, 2023 | \$3,781.22 | Action Squared Inc | Text message outreach |
| March 23, 2023 | \$2,000.00 | NGP VAN Inc. | Database subscription |
| March 23, 2023 | \$420.00 | NGP VAN Inc. | Database subscription |
| Total: | \$7,580,915.41 | | |

Total Disbursed to Action Squared Inc.: \$2,019,395.00

Total Disbursed to NGP VAN Inc.: \$478,158.91

Total Disbursed to Upland Software Inc.: \$5,083,361.49

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Biden for President and Keana Spencer
in her official capacity as treasurer

MURs 7931 and 8059

1. INTRODUCTION

These matters arise from Complaints alleging that Joseph R. Biden, Jr. became a candidate for President in the 2024 election cycle prior to his April 2023 formal announcement and failed to file a Statement of Candidacy with the Commission within 15 days of becoming a candidate in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

The Complaint in MUR 7931 alleges that Biden surpassed the \$5,000 threshold for candidacy via contributions received by his authorized committee, Biden for President and Keana Spencer in her official capacity as treasurer (the “Biden Committee”), and Biden Victory Fund and Monica Guardiola in her official capacity as treasurer (the “Victory Fund”), a joint fundraising committee in which the Biden Committee was a participant, as well as via disbursements made by the Biden Committee and the Victory Fund. The MUR 7931 Complaint further alleges that the Biden Committee violated the Act by failing to make necessary amendments to its Statement of Organization to reflect the 2024 presidential candidacy of Joseph R. Biden, Jr. The Complaint also questions whether disbursements by the Biden Committee to Upland Software Inc. for “software” were properly reported. In addition, the Complainant in MUR 7931 has filed three supplements to its Complaint documenting statements made by Biden and individuals associated with him and his administration in support of the MUR 7931 Complaint’s claim that Biden decided to run for reelection long before his formal declaration of candidacy.

1 The Complaint in MUR 8059 similarly alleges that Biden failed to timely file a Statement
2 of Candidacy despite consistent statements indicating that he had determined to run for
3 reelection and that Biden crossed the \$5,000 statutory threshold because the Biden Committee
4 had spent, at the time of that Complaint, more than \$5 million including for text messaging,
5 email, and database services.

6 The Respondents deny the allegations, asserting that, at the time the Responses were
7 submitted, Biden had not yet conclusively determined to run for reelection in 2024, nor had he or
8 his affiliated committees raised or spent \$5,000 or more in connection with the 2024 presidential
9 election. Regarding contributions, Respondents state that all contributions received by the Biden
10 Committee after the 2020 election were solicited and made prior to the election and that all funds
11 raised by the Victory Fund for the Biden Committee were contributions solicited and made prior
12 to Election Day. They state that other funds raised by the Victory Fund after Election Day 2020
13 were not allocated or transferred to the Biden Committee. Regarding disbursements,
14 Respondents state that all expenditures made by the Biden Committee after November 3, 2020,
15 including the disbursements to Upland Software Inc., were associated with winding-down
16 activities or maintenance of records or property, obligations incurred during the 2020 election
17 cycle, and expenses incurred in connection with fundraising for the Democratic National
18 Committee (the “DNC”) in the 2022 election cycle, and that the Biden Committee has made no
19 disbursements to influence the 2024 presidential election. Respondents state that expenditures
20 made by the Victory Fund were to pay for services received prior to Election Day and for
21 services to maintain the Victory Fund while it winds down its operations. The Biden Committee
22 further states that it was not required to include on its Statement of Organization the election
23 cycles in which Biden was or is a candidate for office.

1 After the filing of the Responses, on April 25, 2023, Biden filed a Statement of
2 Candidacy with the Commission indicating that he is running for reelection in 2024 and naming
3 both the Biden Committee and the Victory Fund as authorized committees.

4 As set forth below, the available information indicates that although Biden appears to
5 have made statements indicating that he had decided to become a candidate as early as March
6 2021, neither Biden nor the Biden Committee nor the Victory Fund appears to have accepted any
7 contributions, or made any expenditures, in excess of \$5,000 to satisfy the statutory threshold for
8 becoming a candidate. Further, the available information does not indicate that the Biden
9 Committee did not accurately disclose all of its spending. Accordingly, the Commission: (1)
10 finds no reason to believe that Biden violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1 by
11 failing to timely file a Statement of Candidacy and designate an authorized committee within 15
12 days of becoming a candidate; and (2) finds no reason to believe that the Biden Committee
13 violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to properly
14 disclose the purpose of its disbursements to Upland Software Inc. Additionally, the Biden
15 Committee had no obligation to amend its Statement of Organization to reflect the election cycle
16 relevant to Biden's candidacy, and the Commission therefore finds no reason to believe that the
17 Biden Committee violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to amend
18 its Statement of Organization.

2. FACTUAL BACKGROUND

A. Statements Made by Biden and His Surrogates Regarding a 2024 Presidential Candidacy

Joseph R. Biden, Jr., was elected the 46th President of the United States on November 3, 2020.¹ He filed a Statement of Candidacy for the 2024 election on April 25, 2023.²

Beginning in early 2021, Biden and his surrogates made a number of public statements about whether Biden had made a decision to run for President in 2024, as referenced in the Complaints. As early as March 25, 2021, when asked whether he had “decided whether [he was] going to run for reelection in 2024,” Biden responded that “the answer is ‘yes.’ My plan is to run for reelection. That’s my expectation.”³ Later that year, in November 2021, then-Press Secretary Jen Psaki was asked about “reports that President Biden was telling allies that he is going to run for reelection in 2024” and whether she could confirm whether he is “going to run in 2024,” to which Psaki responded that “[h]e is, that’s his intention.”⁴ Two months later, on January 19, 2022, when asked whether Vice President Kamala Harris would be his Vice President on the 2024 ticket and whether he thought she was doing a good job on voting rights,

¹ FEC, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE, AND THE U.S. HOUSE OF REPRESENTATIVES 5 (Oct. 2022), <https://www.fec.gov/resources/cms-content/documents/federalections2020.pdf>; Joe Biden: *The President*, WHITE HOUSE, <https://www.whitehouse.gov/administration/presidentbiden/> (last visited May 2, 2023).

² Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf> (regarding 2024 candidacy).

³ WHITE HOUSE, REMARKS BY PRESIDENT BIDEN IN PRESS CONFERENCE (Mar. 25, 2021) [hereinafter March 25, 2021 Biden Remarks], <https://www.whitehouse.gov/briefing-room/speechesremarks/2021/03/25/remarks-by-president-biden-in-press-conference/>.

⁴ Steven Nelson, *Psaki Says Biden Still Intends to Run in 2024 Despite Poor Polls, Old Age*, N.Y. POST (Nov. 22, 2021, 7:11 PM), <https://nypost.com/2021/11/22/psaki-says-biden-still-intends-to-run-in-2024-despite-poor-polls-old-age/> (quoting WHITE HOUSE, PRESS GAGGLE BY PRESS SECRETARY JEN PSAKI EN ROUTE FORT BRAGG, NC (Nov. 22, 2021, 5:00 PM) [hereinafter Nov. 22, 2021 White House Press Gaggle], <https://www.whitehouse.gov/briefing-room/press-briefings/2021/11/22/press-gaggle-by-press-secretary-jen-psaki-en-route-fort-bragg-nc/> (quoted in Compl. ¶ 11 (Aug. 30, 2022), MUR 8059 [hereinafter MUR 8059 Compl.]).

1 Biden responded “[y]es and yes,” indicating that he had determined to run in 2024 and again
2 would select Harris as his running mate.⁵

3 Subsequent press reports have reiterated that Biden had made up his mind regarding the
4 2024 election: *Intelligencer* reported on May 24, 2022, that “in [Biden’s] mind there’s no
5 question he’s running. . . . ‘Yes!’ he told an interviewer . . . , sighing a little performatively at
6 having to keep repeating it.”⁶ The article went on to state that:

7 Every one of the would-be candidates has consistently maintained that their own
8 presidential prospects are moot because Biden is running with their full support.
9 As far as Biden’s camp is concerned, there isn’t any ambiguity about 2024 at all.
10 He has said in private that he sees himself as the only thing standing between the
11 country and [the reelection of Donald Trump] and has instructed his aides to
12 redouble their planning for a rematch. “People ask me with some regularity,
13 ‘When is Biden going to come out and say what he’s going to do?’” an
14 exasperated longtime Biden adviser told me recently. “And I say, ‘Well, he
15 has!’”⁷

16 Biden was also later reported as being relieved that Senator Bernard Sanders would not challenge
17 him in 2024, and the same press article states that aides argue that Biden is not just intending to
18 run but also “laying the groundwork by building resources at the [DNC], restocking his operation

⁵ Claire Rafford, *Biden Commits to Harris as His Running Mate for 2024*, POLITICO (Jan. 19, 2022, 6:09 PM), <https://www.politico.com/news/2022/01/19/biden-commits-to-harris-as-his-running-mate-2024-527418> (quoting WHITE HOUSE, REMARKS BY PRESIDENT BIDEN IN PRESS CONFERENCE (Jan. 19, 2022, 4:02 PM) [hereinafter Jan. 19, 2022 Biden Remarks], <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/19/remarks-by-president-biden-in-press-conference-6/>) (quoted in MUR 8059 Compl. ¶ 15).

⁶ Gabriel Debenedetti, *There Has to Be a Backup Plan. There’s a Backup Plan, Right?*, INTELLIGENCER (May 24, 2022), <https://nymag.com/intelligencer/2022/05/biden-2024-democrats-search-for-alternative.html> (quoted in First Supp. Compl. at 1-2 (June 9, 2022), MUR 7931 [hereinafter MUR 7931 First Supp. Compl.]).

⁷ *Id.*

1 in battleground states[,] and looking to use his influence to shape the nomination process in his
 2 favor.”⁸

3 In addition to press accounts, individuals associated with Biden’s campaign and the
 4 White House have repeatedly stated that he will run for reelection. On June 13, 2022, Press
 5 Secretary Karine Jean-Pierre stated at a Press Briefing, “Yes, he’s running for reelection. I’m – I
 6 can’t say more than that.”⁹ The same day, Jean-Pierre tweeted, “To be clear, as the President has
 7 said repeatedly, he plans to run in 2024.”¹⁰ Four days later, *The Washington Post* reported that a
 8 dozen unnamed “Democrats close to the White House” had stated that, “[i]n public and private,
 9 Biden himself has emphasized that he is running, effectively shutting down any discussion of the
 10 topic between the president and his close advisers.”¹¹

11 Twice in late June 2022, Vice President Kamala Harris confirmed her understanding of
 12 Biden’s intention to run, stating first that “Joe Biden is running for reelection and I will be his
 13 ticket-mate. Full stop.”¹² Two days later, she said that “[t]he president intends to run and if he

⁸ Taegan Goddard, *Biden Irked by Democrats Who Don’t Think He’s Running*, TAEGEN GODDARD’S POL.WIRE (June 27, 2022, 7:30 PM), <https://politicalwire.com/2022/06/27/biden-irked-by-democrats-who-dont-think-hes-running/> (quoted in Third Supp. Compl. at 2, MUR 7931 (Mar. 8, 2023) [hereinafter MUR 7931 Third Supp. Compl.]).

⁹ WHITE HOUSE, PRESS BRIEFING BY SECRETARY KARINE JEAN-PIERRE (June 13, 2022, 3:42 PM) [hereinafter June 13, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/06/13/press-briefing-by-press-secretary-karine-jean-pierre/> (quoted in MUR 8059 Compl. ¶ 13).

¹⁰ Karine Jean-Pierre (@PressSec), TWITTER (June 13, 2022, 6:36 PM), <https://twitter.com/pressec/status/1536477522988343296> (cited in Second Supp. Compl. at 1 (June 22, 2022), MUR 7931 [hereinafter MUR 7931 Second Supp. Compl.]).

¹¹ Tyler Pager & Michael Scherer, *Biden Sends Every Signal He Is Running Again*, WASH. POST (June 17, 2022, 3:00 PM), <https://www.washingtonpost.com/politics/2022/06/17/biden-signals-run-for-reelection/> (quoted in MUR 8059 Compl. ¶ 17).

¹² Dana Bash (@DanaBashCNN), TWITTER (June 27, 2022, 8:07 PM), <https://twitter.com/DanaBashCNN/status/1541574009418039299> (including video of Bash’s interview of Harris on CNN that evening) (quoted in MUR 8059 Compl. ¶ 16, MUR 7931 Third Supp. Compl. at 1).

1 does, I will be his ticket mate. We will run together.”¹³ Regarding this remark, *The Los Angeles*
2 *Times* reported that an unnamed “prominent Democrat who is close to the White House” said
3 that Harris made the clarifying statement to “avoid using ‘trigger words’ that would set off
4 requirements for Biden to establish a formal campaign with the Federal Election Commission
5 and begin fundraising.”¹⁴

6 In July 2022, *CNN* reported that Biden had “insisted privately to donors and others [that
7 he is] their strongest candidate to beat Donald Trump – or another GOP candidate – in 2024.”¹⁵
8 It further reported that four unidentified aides stated that there are “muted worries . . . going
9 around the West Wing . . . that someone may yet emerge ahead of the President’s planned spring
10 2023 formal reelection campaign launch. Biden advisers expect to stick to that no matter what
11 happens, including if Trump decides to jump in early.”¹⁶ Later in July 2022, Press Secretary
12 Jean-Pierre stated, “I’m going to be very clear; I’m going to say this once – and the President has
13 been very clear about this: He intends to run in 2024. And he is going to – until then, he is
14 going to do the business of the American people as he has been doing for the past 18 months.”¹⁷
15 The next day, she twice reiterated during a press briefing that “[t]he President intends to run in

¹³ Erin B. Logan & Noah Bierman, *Vice President Harris Says Biden Intends to Seek Reelection, But Her Words Stir New Uncertainty*, L.A. TIMES (June 29, 2022, 4:38 PM), <https://www.latimes.com/politics/story/2022-06-29/vice-president-harris-creates-new-doubt-about-bidens-plans-for-reelection> (quoted in MUR 8059 Compl. ¶ 28).

¹⁴ *Id.*

¹⁵ Edward-Isaac Dove, *As Worries About Biden in 2024 Grow, Other Democrats Aren’t Stepping Forward to Challenge Him*, CNN (July 11, 2022, 8:26 AM), <https://www.cnn.com/2022/07/11/politics/biden-democratic-primary-challenge-2024/index.html> (quoted in MUR 8059 Compl. ¶¶ 18, 20).

¹⁶ *Id.*

¹⁷ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE (July 28, 2022, 4:11 PM) [hereinafter July 28, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/07/28/press-briefing-by-press-secretary-karine-jean-pierre-5/> (quoted in MUR 8059 Compl. ¶ 13, which misstates that Jean-Pierre tweeted this statement; she instead stated these words at a Press Briefing).

1 2024,”¹⁸ and on August 1, 2022, she stated twice more that the President “intends to run,” noting
 2 that he had “said that multiple times.”¹⁹ She was reported as stating so again on *This Week with*
 3 *George Stephanopoulos* on August 14, 2022.²⁰

4 In August 2022, Secretary of Transportation Pete Buttigieg stated while appearing on
 5 *CNBC* that he was “looking forward to supporting the president’s reelection. That is as much as
 6 I can say about these things while I’m here on an official capacity.”²¹ Less than a week later,
 7 *Bloomberg* reported that former White House aide Cedric Richmond had said that “[i]t is clear-
 8 cut that [Biden is] our best candidate. . . . If he says he’s planning on running, he’s running,”²²
 9 and that longtime aide Anita Dunn stated, “The president has said he’s planning on running
 10 again. People should take him at his word.”²³ *Bloomberg* further reported that unidentified

¹⁸ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE (July 29, 2022, 1:55 PM) [hereinafter July 29, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/07/29/press-briefing-by-press-secretary-karine-jean-pierre-july-29-2022/> (quoted in MUR 7931 Third Supp. Compl. at 2; the Third Supplemental Complaint cites a press article for one of Jean-Pierre’s statements, but both appear in the White House Press Briefing from July 29, 2022).

¹⁹ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE AND NATIONAL SECURITY COUNCIL COORDINATOR FOR STRATEGIC COMMUNICATIONS JOHN KIRBY (Aug. 1, 2022, 1:54 PM) [hereinafter Aug. 1, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/08/01/press-briefing-by-press-secretary-karine-jean-pierre-and-national-security-council-coordinator-for-strategic-communications-john-kirby-2/> (quoted in MUR 7931 Third. Supp. Compl. at 2; the Third Supplemental Complaint cites a press article for one of Jean-Pierre’s statements, but both appear in the White House Press Briefing from August 1, 2022).

²⁰ S.E. Cupp, Opinion, *Biden Should Speak Fully on His Plans to Run in 2024 or Not*, NEWS-HERALD (Aug. 21, 2022, 7:56 AM), <https://www.news-herald.com/2022/08/21/biden-should-speak-fully-on-his-plans-to-run-in-2024-or-not-s-e-cupp/>.

²¹ *Squawk Box* (CNBC television broadcast Aug. 4, 2022), https://archive.org/details/CNBC_20220804_100000_Squawk_Box/start/6600/end/6660 (quoted in MUR 8059 Compl. ¶ 14).

²² Justin Sink & Josh Wingrove, *Biden Plots a 2024 President Run — and a Trump Rematch*, BLOOMBERG (Aug. 11, 2022), <https://www.bloomberg.com/news/articles/2022-08-11/biden-primers-2024-run-eager-to-stop-trump-again-despite-doubts> (quoted in MUR 8059 Compl. ¶ 19; MUR 7931 Third. Supp. Compl. at 3).

²³ *Id.*

1 aides were “worried that [Biden] publicly declaring [his 2024 candidacy] before the [2022]
2 midterms [w]ould trigger legal restrictions on fundraising.”²⁴ In September 2022, Richmond
3 told a member of the press that Biden is “running and we’re building an infrastructure for him to
4 run and win. Right now, it’s all an early investment in 2024 while we’re helping 2022.”²⁵ In
5 late September 2022, Jean-Pierre again stated that Biden “intends to run. I don’t have any more
6 announcements on that.”²⁶

7 Though Biden claimed as late as February 2023 that he was “just not ready to make” the
8 decision of whether to run for reelection in 2024,²⁷ having stated the prior September that he
9 would “make a judgment on what to do . . . after [the 2022] election cycle here going into
10 [2023],”²⁸ he also made clear that it was his “intention to run again” and that part of his concern
11 about formally deciding to run was that, from the moment he did so, “a whole series of
12 regulations kick[ed] in and [he has] to be – [he] treat[s] [him]self as a candidate from that

²⁴ *Id.*

²⁵ Alex Gangitano, *Cedric Richmond on Biden 2024: “He’s Running,”* ABC27 (Sept. 17, 2022, 8:22 AM), <https://www.abc27.com/hill-politics/cedric-richmond-on-biden-2024-hes-running/> (quoted in MUR 7931 Third Supp. Compl. at 3).

²⁶ WHITE HOUSE, PRESS BRIEFING BY PRESS SECRETARY KARINE JEAN-PIERRE, (Sept. 26, 2022, 1:27 PM) [hereinafter Sept. 26, 2022 White House Press Briefing], <https://www.whitehouse.gov/briefing-room/press-briefings/2022/09/26/press-briefing-by-press-secretary-karine-jean-pierre-september-26-2022/> (quoted in MUR 7931 Third Supp. Compl. at 3).

²⁷ Noticias Telemundo, *Entrevista Completa con Joe Biden | Noticias Telemundo* at 0:01, YOUTUBE (Feb. 9, 2023), <https://www.youtube.com/watch?v=JnzCFhVVb1c>.

²⁸ Scott Pelley, *President Joe Biden: The 2022 60 Minutes Interview* (Sept. 18, 2022), <https://www.cbsnews.com/news/president-joe-biden-60-minutes-interview-transcript-2022-09-18/> (noting that if he were to announce his candidacy, “all of a sudden, a whole range of things come into play that I have — requirements I have to change and move and do” and confirming, when asked, that he was referring to “election laws”) (quoted in Biden & Biden Committee Joint Resp. at 1-2 n.3 (Oct. 24, 2022), MUR 8059 [hereinafter MUR 8059 Biden Resp.]).

1 moment on.”²⁹ In October 2022, *NBC* reported that Reverend Al Sharpton had told his staff at
 2 the National Action Network that Biden had told him, “I’m going to do it again. I’m going,”
 3 concerning running for reelection.³⁰ Further, in November 2022, when asked what he would say
 4 to the “[t]wo thirds of Americans in exit polls [who] say that they don’t think [Biden] should run
 5 for reelection,” Biden responded, “Watch me.”³¹ And in December 2022, *The New York Times*
 6 reported that Biden joined a toast at a state dinner with French President Emmanuel Macron to
 7 his 2024 campaign following an exchange in which Biden’s wife, Dr. Jill Biden, reportedly
 8 stated that she was “absolutely” ready for another campaign.³²

9 Subsequent to the filing of the Complaints and the Responses in these matters, on April
 10 25, 2023, Biden announced that he was running for reelection in 2024,³³ and filed a Statement of
 11 Candidacy with the Commission in which he designated the Biden Committee as his principal
 12 campaign committee and listed the Victory Fund as another authorized committee.³⁴

²⁹ MSNBC, *President Biden Vows to Protect Women’s Right to Choose if GOP Takes Control of Congress* at 4:53, YOUTUBE (Oct. 21, 2022), <https://www.youtube.com/watch?v=wdfulgUp6so> (“The reason I’m not making a judgment about formally running or not running, once I make that judgment, a whole series of regulations kick in and I have to be — I treat myself as a candidate from that moment on. I have not made that formal decision, but it’s my intention — my intention to run again. And we have time to make that decision.”).

³⁰ Jonathan Allen, *Biden Tells Al Sharpton He Will Run for President Again in 2024*, NBC NEWS (Oct. 3, 2022, 7:29 PM), <https://www.nbcnews.com/politics/white-house/biden-tells-al-sharpton-will-run-president-2024-rca50556> (quoted in MUR 7931 Third Supp. Compl. at 3).

³¹ WHITE HOUSE, REMARKS BY PRESIDENT BIDEN IN PRESS CONFERENCE (Nov. 9, 2022) [hereinafter Nov. 9, 2022 Biden Remarks], <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/11/09/remarks-by-president-biden-in-press-conference-8/>.

³² Katie Rogers & Annie Karni, *Bidens Toasted a 2024 Campaign with Macron at the State Dinner*, N.Y. TIMES (Dec. 6, 2022), <https://www.nytimes.com/2022/12/06/us/politics/biden-running-president-2024.html> (cited in MUR 7931 Third Supp. Compl. at 3).

³³ Joe Biden (@JoeBiden), TWITTER (Apr. 25, 2023, 6:00 AM), <https://twitter.com/JoeBiden/status/1650801827728986112> (“Every generation has a moment where they have had to stand up for democracy. To stand up for their fundamental freedoms. I believe this is ours. That’s why I’m running for reelection as President of the United States. Join us. Let’s finish the job. <http://JoeBiden.com>[.]”).

³⁴ Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf>.

1 **B. The Committees**

2
 3 1. The Biden Committee

4 The Biden Committee is the authorized campaign committee of 2020 and 2024
 5 presidential candidate Joseph R. Biden, Jr.³⁵ The Biden Committee was authorized by Biden in
 6 both the 2020 and 2024 election cycles.³⁶ None of the Biden Committee's original or amended
 7 Statements of Organization indicates the election cycle in which Biden is running for office.³⁷

8 Between November 4, 2020, and March 31, 2023, the Biden Committee reported
 9 \$134,048,699.80 in total receipts.³⁸ Of this amount, the Biden Committee reported receiving

³⁵ Biden for President, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/354/202304259581294354/202304259581294354.pdf>.

³⁶ Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Nov. 4, 2020), <https://docquery.fec.gov/pdf/260/202011069336972260/202011069336972260.pdf> (regarding 2020 candidacy); Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf> (regarding 2024 candidacy).

³⁷ *Id.*

³⁸ *See* Biden for President, 2020 30-Day Post-General Report (Dec. 3, 2020) [hereinafter Biden Committee, 2020 Post-General Report], <https://docquery.fec.gov/cgi-bin/forms/C00703975/1481223/> (reporting \$112,374,093.52 in receipts); Biden for President, Amended 2020 Year-End Report (June 24, 2021) [hereinafter Biden Committee, 2020 Year-End Report], <https://docquery.fec.gov/cgi-bin/forms/C00703975/1521558/> (reporting \$9,566,512.81 in receipts); Biden for President, 2021 April Quarterly Report (Apr. 15, 2021) [hereinafter Biden Committee, 2021 April Quarterly Report], <https://docquery.fec.gov/cgi-bin/forms/C00703975/1512502/> (reporting \$8,306,247.28 in receipts); Biden for President, 2021 July Quarterly Report (July 15, 2021) [hereinafter Biden Committee, 2021 July Quarterly Report], <https://docquery.fec.gov/pdf/289/202107159451654289/202107159451654289.pdf> (reporting \$2,158,612.93 in receipts); Biden for President, 2021 October Quarterly Report (Oct. 15, 2021) [hereinafter Biden Committee, 2021 October Quarterly Report], <https://docquery.fec.gov/pdf/966/202110159467807966/202110159467807966.pdf> (reporting \$793,042.37 in receipts); Biden for President, 2021 Year-End Report (Jan. 31, 2022) [hereinafter Biden Committee, 2021 Year-End Report], <https://docquery.fec.gov/pdf/602/202201319485852602/202201319485852602.pdf> (reporting \$533,586.29 in receipts); Biden for President, 2022 April Quarterly Report (Apr. 15, 2022) [hereinafter Biden Committee, 2022 April Quarterly Report], <https://docquery.fec.gov/pdf/058/202204159496652058/202204159496652058.pdf> (reporting \$35,698.04 in receipts); Biden for President, 2022 July Quarterly Report (July 15, 2022) [hereinafter Biden Committee, 2022 July Quarterly Report], <https://docquery.fec.gov/pdf/588/202207159521296588/202207159521296588.pdf> (reporting \$23,720.19 in receipts); Biden for President, 2022 October Quarterly Report (Oct. 15, 2022) [hereinafter Biden Committee, 2022 October Quarterly Report], <https://docquery.fec.gov/pdf/100/202210159532617100/202210159532617100.pdf> (reporting \$252,559.14 in receipts); Biden for President, 2022 Year-End Report (Jan. 31, 2023) [hereinafter Biden

1 \$103,362,129.86 in contributions during the 2020 Post-General reporting period;³⁹ \$151.80 in
 2 contributions received during the 2020 Year-End reporting period;⁴⁰ and \$280 in the 2021 April
 3 Quarterly reporting period.⁴¹ The Biden Committee contends that all of the reported post-2020
 4 election contributions were solicited and made prior to Election Day.⁴² The Biden Committee
 5 reported no additional contributions after the 2021 April Quarterly Report.⁴³ The remaining
 6 receipts included \$8,066,596.36 reported as offsets to operating expenditures⁴⁴ and

Committee, 2022 Year-End Report], <https://docquery.fec.gov/pdf/514/202301319577873514/202301319577873514.pdf> (reporting \$4,266.93 in receipts); Biden for President, 2023 April Quarterly Report (Apr. 15, 2023) [hereinafter Biden Committee, 2023 April Quarterly Report], <https://docquery.fec.gov/pdf/917/202304159581014917/202304159581014917.pdf> (reporting \$360.30 in receipts).

³⁹ Biden Committee, 2020 Post-General Report. Of this amount, \$68,465,679.20 was itemized, while \$34,833,704.04 was unitemized. *Id.*

⁴⁰ Biden Committee, 2020 Year-End Report. Of this amount, \$117.80 was itemized, and \$34 was unitemized. *Id.*

⁴¹ Biden Committee, 2021 April Quarterly Report. Of this amount, all \$280 was unitemized. *Id.*

⁴² Biden & Biden Committee Joint Resp. at 2 (Dec. 19, 2021), MUR 7931 [hereinafter MUR 7931 Biden Resp.]; MUR 7931 Biden Resp., Attach. ¶¶ 3-5 (Decl. of Taryn Vogel) [hereinafter MUR 7931 Vogel Decl.].

⁴³ See Biden Committee, 2021 July Quarterly Report; Biden Committee, 2021 October Quarterly Report; Biden Committee, 2021 Year-End Report; Biden Committee, 2022 April Quarterly Report; Biden Committee, 2022 July Quarterly Report; Biden Committee, 2022 October Quarterly Report; Biden Committee, 2022 Year-End Report; Biden Committee, 2023 April Quarterly Report.

⁴⁴ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?cycle=2022&data_type=processed&committee_id=C00703975&min_date=11%2F04%2F2020&line_number=F3P-20A (last visited May 2, 2023) (showing all offsets to operating expenditures reported by the Biden Committee between November 4, 2020, and March 31, 2023). Offsets to operating expenditures are defined on the Commission's website as "[r]eturns by vendors of deposits, reimbursements for expenses shared by committees, vendor refunds and rebates These receipts are not considered contributions." *Offsets to Operating Expenditures*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/filing-reports/offsets-operating-expenditures/> (last visited May 2, 2023).

1 \$36,003,662.60 in transfers from other authorized committees, of which \$20,221,129.23 came
2 from the Victory Fund, discussed below.⁴⁵

3 From November 4, 2020, through March 31, 2023, the Biden Committee also reported
4 making expenditures totaling \$294,730,269.94, all designated as for the 2020 election.⁴⁶ This
5 includes disbursements of, in the aggregate, \$478,158.91 to NGP Van Inc. for “database
6 subscription” and “processing fees,” \$5,083,361.49 to Upland Software Inc. for “software,” and
7 \$2,019,395.00 to Action Squared Inc. for “text message/email outreach” and “text message
8 outreach.”⁴⁷ The individual disbursements summarized above are listed in the Appendix to this
9 Analysis, span the time period from November 4, 2020, through March 23, 2023, and total
10 \$7,580,915.41.⁴⁸

11 The Biden Committee did not disclose any debt, nor indicate its engagement in debt
12 fundraising, in any of its reports following the 2020 general election.⁴⁹

⁴⁵ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?cycle=2022&data_type=processed&committee_id=C00703975&min_date=11%2F04%2F2020&line_number=F3P-18 (last visited May 2, 2023) (showing all transfers from author authorized committees reported by the Biden Committee between November 4, 2020, and March 31, 2023).

⁴⁶ This figure excludes contribution refunds. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00703975&min_date=11%2F04%2F2020&max_date=03%2F31%2F2023 [hereinafter Biden Committee Disbursements] (last visited May 2, 2023) (showing all reported disbursements made by the Biden Committee after the November 3, 2020 general election); see Compl. ¶ 36 (Oct. 12, 2021), MUR 7931 [hereinafter MUR 7931 Compl.]; MUR 8059 Compl. ¶ 10.

⁴⁷ Biden Committee Disbursements; see MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10. The Complaints do not identify Action Squared Inc. as the vendor to which these disbursements were made, but Action Squared Inc. is the only vendor to have received disbursements for the above-quoted enumerated purposes from the Biden Committee.

⁴⁸ See App’x.

⁴⁹ MUR 7931 Compl. ¶ 35; see Biden Committee, 2020 Post-General Report; Biden Committee, 2020 Year-End Report; Biden Committee, 2021 April Quarterly Report; Biden Committee, 2021 July Quarterly Report; Biden Committee, 2021 October Quarterly Report; Biden Committee, 2021 Year-End Report; Biden Committee, 2022 April Quarterly Report; Biden Committee, 2022 July Quarterly Report; Biden Committee, 2022 October Quarterly Report; Biden Committee, 2022 Year-End Report; Biden Committee, 2023 April Quarterly Report.

1 2. The Victory Fund

2 The Victory Fund is a joint fundraising representative for the Biden Committee, the
 3 DNC, and multiple state parties' federal committees.⁵⁰ In its Response, the Biden Committee
 4 asserted that the Victory Fund “is not authorized to, and has not,” raised any funds for Biden in
 5 the 2024 presidential election, to which the Victory Fund also attests.⁵¹ Since the 2020 general
 6 election, the Victory Fund has reported receiving \$73,740,037.29 in total receipts, of which
 7 \$73,172,580.88 was reported as contributions.⁵² It states that all contributions received for the
 8 Biden Committee were made to it on or before Election Day, and that no contributions received

⁵⁰ Biden Victory Fund, Amended Statement of Organization (July 1, 2022), <https://docquery.fec.gov/pdf/159/202207019517783159/202207019517783159.pdf>.

⁵¹ MUR 7931 Biden Resp. at 5; *see* MUR 7931 Vogel Decl. ¶ 9 (“[The Biden Committee] has not given consent to [the Victory Fund] to accept contributions or make expenditures on behalf of President Biden for the 2024 election cycle.”); Smolkis Decl. ¶ 11.

⁵² Biden Victory Fund, Amended 2020 Post-General Report (May 11, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00744946/1515838/> (reporting receipts of \$72,900,339.38, of which \$72,567,523.96 was contributions); Biden Victory Fund, 2020 Year-End Report (Jan. 31, 2021), <https://docquery.fec.gov/cgi-bin/forms/C00744946/1497210/> (reporting receipts of \$393,379.35 of which \$390,682.58 was contributions); Biden Victory Fund, Amended 2021 April Quarterly Report at 3 (July 15, 2021), <https://docquery.fec.gov/pdf/853/202107159451575853/202107159451575853.pdf> (reporting \$329,187.84 in receipts of which \$177,032.27 was contributions); Biden Victory Fund, 2021 July Quarterly Report at 3 (July 15, 2021), <https://docquery.fec.gov/pdf/154/202107159451638154/202107159451638154.pdf> (reporting receipts of \$34,865.35 of which \$34,611.00 was contributions); Biden Victory Fund, 2021 October Quarterly Report at 3 (Oct. 15, 2021), <https://docquery.fec.gov/pdf/609/202110159467790609/202110159467790609.pdf> (reporting \$2,709.07 in receipts of which all was contributions); Biden Victory Fund, 2021 Year-End Report at 3 (Jan. 31, 2022), <https://docquery.fec.gov/pdf/728/202201319485153728/202201319485153728.pdf> (reporting receipts of \$29,548.70 of which \$22.00 was contributions); Biden Victory Fund, 2022 April Quarterly Report at 3 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/973/202204159496307973/202204159496307973.pdf> (reporting no receipts); Biden Victory Fund, 2022 July Quarterly Report at 3 (July 15, 2022), <https://docquery.fec.gov/pdf/761/202207159521232761/202207159521232761.pdf> (reporting \$7.60 in receipts of which none was contributions); Biden Victory Fund, 2022 October Quarterly Report at 3 (Oct. 15, 2022), <https://docquery.fec.gov/pdf/658/202210159532615658/202210159532615658.pdf> (reporting no receipts); Biden Victory Fund, 2022 Post-General Report at 3 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/784/202212089557166784/202212089557166784.pdf> (reporting no receipts); Biden Victory Fund, 2022 Year-End Report at 3 (Jan. 31, 2023), <https://docquery.fec.gov/pdf/383/202301319576509383/202301319576509383.pdf> (reporting no receipts); Biden Victory Fund, 2023 April Quarterly Report at 3 (Apr. 15, 2023), <https://docquery.fec.gov/pdf/679/202304159581013679/202304159581013679.pdf> (reporting receipts of \$50,000.00 of which none was contributions); *see* MUR 7931 Compl. ¶¶ 25-28, 32.

- 1 after Election Day have been transferred to the Biden Committee.⁵³ It has also reported spending
 2 \$78,027,083.84,⁵⁴ including \$100,000 to Vox Media LLC on March 1, 2021, for “online
 3 fundraising.”⁵⁵ In addition, the Victory Fund transferred \$20,221,129.23 to the Biden
 4 Committee as shown below:

| Date | Amount | Description | Election Designation |
|-------------------|----------------|----------------------------|------------------------------------|
| November 17, 2020 | \$6,000,000.00 | Transfer Out Affiliated | 2020 General ⁵⁶ |
| November 24, 2020 | \$6,000,000.00 | Transfer Out Affiliated | <i>not indicated</i> ⁵⁷ |
| November 24, 2020 | \$554,438.30 | Salary & Overhead Expenses | <i>not indicated</i> ⁵⁸ |
| December 15, 2020 | \$1,500,000.00 | Transfer Out Affiliated | <i>not indicated</i> ⁵⁹ |
| January 5, 2021 | \$6,150,000.00 | Transfer Out Affiliated | 2020 General ⁶⁰ |
| March 5, 2021 | \$11,690.93 | Salary & Overhead Expenses | <i>not indicated</i> ⁶¹ |

⁵³ Biden Victory Fund Resp. at 2 (Dec. 19, 2021), MUR 7931 [hereinafter Victory Fund Resp.]. The Victory Fund notes that, after the 2020 election, it “also invited individuals to contribute via its online merchandise store for a period of time with the portion of the funds allocated to [the Biden Committee] designated for [the Biden Committee’s] recount account. None of these funds were transferred to [the Biden Committee]. Only five donors made contributions with any portion of funds allocated to [the Biden Committee’s] recount account, and the [Biden Committee] portion of those individuals’ contributions was refunded by [the Victory Fund] and never transferred to [the Biden Committee].” *Id.* Joseph Smolkis, the treasurer for the Victory Fund at the time of its Response, also attests that the Victory Fund “still has contributions made on or before Election Day that are allocated for, but not yet transferred to” the Biden Committee because it is necessary for the Victory Fund to “ensure that it has received and paid all invoices related to its 2020 fundraising and subsequent winddown before it can make final transfers to its participating committees.” Victory Fund Resp., Attach. ¶ 10 (Decl. of Joseph Smolkis) [hereinafter Smolkis Decl.].

⁵⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00744946&min_date=11%2F04%2F2020 (last visited May 2, 2023) (showing all disbursements by Biden Victory fund from November 4, 2020, through March 31, 2023).

⁵⁵ Biden Victory Fund, Amended 2021 April Quarterly Report, Sched. B at 84 (July 15, 2021), <https://docquery.fec.gov/pdf/853/202107159451575853/202107159451575853.pdf>; see MUR 7931 Compl. ¶ 34.

⁵⁶ Biden Victory Fund, 2020 30-Day Post-General Report, Sched. B at 76,741 (Dec. 3, 2020), <https://docquery.fec.gov/pdf/791/202012039342488791/202012039342488791.pdf>.

⁵⁷ Biden Victory Fund, 2020 Year-End Report, Sched. B at 1179 (Jan. 31, 2021), <https://docquery.fec.gov/pdf/779/202101319424071779/202101319424071779.pdf>.

⁵⁸ *Id.* at 1139.

⁵⁹ *Id.* at 1199.

⁶⁰ Biden Victory Fund, Amended 2021 April Quarterly Report, Sched. B at 101 (July 15, 2021),

⁶¹ *Id.* at 90.

| | | | |
|---------------|------------------------|-------------------------|----------------------------|
| June 30, 2021 | \$5,000.00 | Transfer Out Affiliated | 2020 General ⁶² |
| Total: | \$20,221,129.23 | | |

1
 2 In its 2020 Year-End Report, the Victory Fund disclosed debts of \$3,090.00 to Mal Warwick &
 3 Associates, Inc. for “Direct Mail,” but provided no indication that it had engaged in debt-
 4 settlement fundraising.⁶³

5 **C. The Complaints and Responses**

6 The Complaints allege that Biden became a candidate for President in the 2024 election
 7 cycle by both making a private determination to run and by raising and spending greater than
 8 \$5,000 in support of his candidacy via the Biden Committee and the Victory Fund⁶⁴ beginning
 9 shortly after his election in November 2020, and that he accordingly failed to timely file a
 10 Statement of Candidacy and designate a principal campaign committee.⁶⁵ The MUR 7931
 11 Complaint questions how certain disbursements made through 2021 can be designated for the
 12 2020 election cycle and alleges that the Biden Committee either incorrectly reported the election
 13 cycle for its expenditures or failed to report any debts or outstanding liabilities from the 2020

⁶² Biden Victory Fund, 2021 July Quarterly Report, Sched. B at 32 (July 15, 2021),
<https://docquery.fec.gov/pdf/154/202107159451638154/202107159451638154.pdf>

⁶³ Biden Victory Fund, 2020 Year-End Report, Sched. D at 1347 (Jan. 31, 2021),
<https://docquery.fec.gov/pdf/779/202101319424071779/202101319424071779.pdf>; see MUR 7931 Compl. ¶¶ 29-30.

⁶⁴ The MUR 7931 Complaint alleges that both the Biden Committee’s and the Victory Fund’s fundraising and spending has caused Biden to cross the \$5,000 statutory threshold for candidacy. See MUR 7931 Compl. ¶¶ 36, 49. The MUR 8059 Complaint makes the allegation solely as to the Biden Committee. See MUR 8059 Compl. ¶ 22.

⁶⁵ MUR 7931 Compl. ¶¶ 39-44; MUR 7931 First Supp. Compl. at 1-2; MUR 7931 Second Supp. Compl. at 1; MUR 8059 Compl. ¶¶ 22-31.

1 general election.⁶⁶ Finally, the MUR 7931 Complaint alleges that the Biden Committee has
2 failed to amend its Statement of Organization to reflect Biden’s 2024 candidacy.⁶⁷

3 The Responses and three attached sworn declarations deny that Biden had, at the time of
4 their submission, become a candidate for the 2024 election cycle, stating that Biden had neither
5 made a decision to run nor raised or spent \$5,000 or more in support of any 2024 campaign.⁶⁸
6 Regarding first whether Biden had determined to run, Biden and the Biden Committee state that
7 Biden had “a general intent to run for re-election, [b]ut he has not decided for certain that he will
8 do so,”⁶⁹ and that he “has repeatedly stated that he will make a final decision as to whether to run
9 for reelection after the [2022] mid-term elections.”⁷⁰

10 Regarding whether Biden or entities he has authorized to fundraise on his behalf have
11 *raised* greater than the \$5,000 threshold for candidacy under the Act, Biden and the Biden
12 Committee aver that the Biden Committee ceased soliciting contributions on Election Day 2020,
13 and that all contributions received thereafter were “solicited and made on or before Election Day
14 or else refunded.”⁷¹ They further state, as does the Victory Fund, that “all funds [the Victory
15 Fund] transferred to [the Biden Committee] were comprised solely of contributions made to [the

⁶⁶ MUR 7931 Compl. ¶¶ 37-38.

⁶⁷ Compl. ¶¶ 39-51, 66-82.

⁶⁸ MUR 7931 Biden Resp. at 3-7; Biden & Biden Committee Supp. Joint Resp. at 1-3 (July 29, 2022), MUR 7931 [hereinafter MUR 7931 Biden Supp. Resp.]; MUR 8059 Biden Resp. at 1-3; Victory Fund Resp. at 2-5.

⁶⁹ MUR 7931 Biden Supp. Resp. at 2.

⁷⁰ MUR 8059 Biden Resp. at 1 n.3.

⁷¹ MUR 7931 Biden Resp. at 2; *id.*, Attach. ¶¶ 3-5 (Decl. of Taryn Vogel) [hereinafter MUR 7931 Vogel Decl.]. Vogel is the founder of BlueBird Consulting LLC, which provides compliance consulting services for the Biden Committee. MUR 7931 Vogel Decl. ¶ 1.

1 Victory Fund] on or before Election Day.”⁷² With respect to funds received by the Victory Fund
2 after Election Day as a result of pre-Election Day solicitations, the Victory Fund states that
3 “none of the contributions made after Election Day were allocated or transferred to” the Biden
4 Committee,⁷³ and the Biden Committee notes that funds raised after Election Day by the Victory
5 Fund “were allocated to the accounts of other [joint fundraising] participants or refunded.”⁷⁴
6 Respondents attest that, as of the dates of the declarations and prior to Biden’s formal
7 announcement, the Victory Fund “has not received consent from President Biden or [the Biden
8 Campaign] to solicit or accept contributions on behalf of either for the 2024 election cycle.”⁷⁵

9 Regarding whether Biden or his committees have *spent* \$5,000 or more in support of his
10 2024 candidacy, both the Biden Committee and the Victory Fund deny that they had spent any
11 funds to “influence the 2024 presidential election” at the time of the Responses.⁷⁶ With respect
12 to the \$478,158.91 that the Biden Committee disbursed to NGP Van Inc. for a “database
13 subscription,” the Biden Committee states, relying on a sworn declaration from its campaign
14 consultant, that these payments were for an “accounting and compliance database subscription
15 necessary to maintain records to comply with the Act” and “necessary for operations during the

⁷² MUR 7931 Biden Resp. at 2; *see also* Biden Victory Fund Resp. at 2 (“The only funds [the Victory Fund] has transferred to [the Biden campaign] were for the 2020 primary or general election and were made from funds contributed to [the Victory Fund] on or before Election Day.”); MUR 7931 Vogel Decl. ¶ 5; Smolkis Decl. ¶ 7.

⁷³ Victory Fund Resp. at 2; Smolkis Decl. ¶¶ 7-8.

⁷⁴ MUR 7931 Biden Resp. at 3; MUR 7931 Vogel Decl. ¶ 5.

⁷⁵ Smolkis Decl. ¶ 11; *see* MUR 7931 Biden Resp. at 5 (“[The Victory Fund] is not authorized to, and has not, raised or spent any funds for President Biden in the 2024 presidential election.”); MUR 7931 Vogel Decl. ¶ 9 (“[The Biden Committee] has not given consent to [the Victory Fund] to accept contributions or make expenditures on behalf of President Biden for the 2024 election cycle.”).

⁷⁶ MUR 7931 Biden Resp. at 2; *see* MUR 7931 Biden Supp. Resp. at 3 (“In short, [the Biden Committee] has not made any expenditures for the purpose of influencing the 2024 presidential election.”); Victory Fund Resp. at 2 (“[The Victory Fund] has not made any expenditures that advocate for President Biden’s re-election in 2024 or that are otherwise in connection with that election.”).

1 wind down and the Commission’s reporting requirements, and costs necessary to protect [the
 2 Biden Committee’s] intellectual property.”⁷⁷ Concerning the \$5,083,361.49 disbursed to Upland
 3 Software Inc. for “software,” the Biden Committee states that the payments were “related to [the
 4 Biden Committee’s] ownership of a[n] SMS short code.”⁷⁸ With respect to the \$2,019,395 the
 5 Biden Committee has disbursed to Action Squared Inc. for “text message/email outreach” and
 6 “text message outreach,”⁷⁹ the Biden Committee states that these payments:
 7 relate to ongoing communications by the President to his supporters who have
 8 opted-in to receive messages, encouraging them to make contributions to the
 9 [DNC] . . . in 2021 and 2022. . . . The messages make no reference to the 2024
 10 election or the potential of President Biden running for re-election.⁸⁰
 11 With respect to the \$100,000 disbursed by the Victory Fund to Vox Media LLC for online
 12 fundraising, Respondents state that this “expenditure was for an advertisement purchased in
 13 August 2020 but for which [the Victory Fund] received an invoice in 2021.”⁸¹

⁷⁷ MUR 7931 Biden Resp. at 5. Vogel states that the Biden Committee “made disbursements to NGP VAN Inc. . . . to maintain and use an accounting and compliance database [that it uses] for filing reports with the Commission, maintaining [the Biden Committee’s] accounts, and other accounting and compliance needs.” *Id.* ¶ 7; *see also* MUR 8059 Biden Resp., Attach. ¶ 4 (Decl. of Taryn Vogel) [hereinafter MUR 8059 Vogel Decl.].

⁷⁸ MUR 7931 Biden Resp. at 2, 5; MUR 7931 Vogel Decl. ¶ 8 (“[The Biden Committee] made disbursements to Upland Software Inc. . . . to maintain ownership of [its] SMS short code phone number, used for communications with [the Biden Committee.]”). An SMS short code is an abbreviated phone number of generally five or six digits that can send and receive text messages at high volume without being flagged as spam by mobile carriers because they are pre-approved and not subject to the same filtering mechanisms applied to standard 10-digit telephone numbers. *See Short Code*, TWILIO, <https://www.twilio.com/docs/glossary/what-is-a-short-code> (last visited May 2, 2023).

⁷⁹ Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10.

⁸⁰ MUR 8059 Biden Resp. at 2; *see* MUR 8059 Vogel Decl. ¶ 5.

⁸¹ MUR 7931 Biden Resp. at 3; Victory Fund Resp. at 5 (“The online fundraising ads [the Victory Fund] ran through Vox Media, LLC were run in August 2020, but [the Victory Fund] received its invoice for this purchase in 2021. As such, the payment was made and reported in 2021.”); *see* Smolkis Decl. ¶ 6 (“[The Victory Fund] made a disbursement of \$100,000 to Vox Media, LLC on March 1, 2021 for online fundraising costs related to advertising run in August 2020. [The Victory Fund] received an invoice for these costs in 2021.”).

1 The Biden Committee further denies that it failed to amend its Statement of Organization
 2 with the Commission, “because [a Statement of Organization] does not require the campaign
 3 committee to identify the election for which the candidate seeks office.”⁸²

4 **3. LEGAL ANALYSIS**

5 **A. The Commission Finds No Reason to Believe that Joseph R. Biden Failed to** 6 **Timely File a Statement of Candidacy and Designate an Authorized** 7 **Committee**

8 As discussed below, the available information strongly supports the Complaints’
 9 allegations that Biden made a private decision to run for reelection prior to the time of his formal
 10 announcement in 2023. At the same time, the available information does not indicate that
 11 Respondents engaged in any spending in furtherance of that potential candidacy. Finally, the
 12 available information supports Respondents’ claim that they did not receive contributions for
 13 Biden’s reelection, at least until the April 2023 formal announcement.

14 1. The Available Information Indicates that Biden Decided to Run for Reelection 15 in 2024 as Early as March 2021

16 Under the Act and Commission regulations, an individual becomes a candidate when the
 17 person (1) decides to run for office⁸³ and (2) receives contributions or makes expenditures
 18 exceeding \$5,000, either directly or through an entity the candidate has consented to receive
 19 contributions or make expenditures on their behalf.⁸⁴

⁸² Resp. at 7.

⁸³ 11 C.F.R. §§ 100.72(b), 100.131(b). Though the Act defines candidacy in terms of crossing the \$5,000 threshold discussed below in note 83 and the accompanying text, by definition, a contribution or expenditure must be “for the purpose of influencing any election for Federal office.” See 52 U.S.C. § 30101(8)(A) (defining contribution); 11 C.F.R. § 100.52(a) (same); 52 U.S.C. § 30101(9)(A) (defining expenditure); 11 C.F.R. § 100.111(a) (same). Until an individual has decided to run for federal office, the money they raise and spend for themselves cannot be “for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A), (9)); 11 C.F.R. §§ 100.52(a), 100.111(a). Accordingly, an individual must have made this determination in order to cross the contribution or expenditure threshold at 52 U.S.C. § 30101(2).

⁸⁴ 52 U.S.C. § 30101(2).

1 Commission regulations set forth a non-exhaustive set of “[e]xamples of activities that
2 indicate that an individual has decided to become a candidate.”⁸⁵ Such indicia include: (1) using
3 “general public political advertising to publicize his or her intention to campaign for federal
4 office”;⁸⁶ (2) raising “funds in excess of what could reasonably be expected to be used for
5 exploratory activities or undertak[ing] activity designed to amass campaign funds that would be
6 spent after he or she becomes a candidate”;⁸⁷ (3) making or authorizing “written or oral
7 statements that refer to the individual as a candidate for a particular office”;⁸⁸ (4) conducting
8 “activities in close proximity to the election or over a protracted period of time”;⁸⁹ and (5) taking
9 “action to qualify for the ballot under state law.”⁹⁰

10 In previous matters, the Commission has found reason to believe that an individual had
11 become a candidate and failed to timely file a Statement of Candidacy when public statements
12 and other indicia showed that the respondent had determined to run for office. In MUR 6449
13 (Jon Bruning, *et al*), the Commission found that an individual who had publicly said “I want to
14 run. I’m ready to run” and made a solicitation to “help [him] defeat” his primary opponent had
15 made the decision to campaign for office and become a candidate under the Act.⁹¹ In MUR 6735
16 (Joseph A. Sestak, *et al.*), the Commission found that an individual who had solicited funds via
17 emails asking for support in his attempt to “seek the U.S. Senate” and to “help [him] serve you,
18 again” indicated that he had determined to run and was not testing the waters for a potential

⁸⁵ 11 C.F.R. §§ 100.72(b), 100.131(b).

⁸⁶ *Id.* §§ 100.72(b)(1), 100.131(b)(1).

⁸⁷ *Id.* §§ 100.72(b)(2), 100.131(b)(2).

⁸⁸ *Id.* §§ 100.72(b)(3), 100.131(b)(3).

⁸⁹ *Id.* §§ 100.72(b)(4), 100.131(b)(4).

⁹⁰ *Id.* §§ 100.72(b)(5), 100.131(b)(5).

⁹¹ Factual & Legal Analysis (“F&LA”) at 7-9, MUR 6449 (Jon Bruning, *et al.*).

1 campaign.⁹² And in MUR 5908 (Duncan Hunter, *et al.*), the Commission found that an
2 individual who stated, *inter alia*, “while I’ve announced that I am preparing to run for president,
3 I have not made a formal announcement of my candidacy” had, in fact, become a candidate.⁹³

4 Further, in Advisory Opinion 2015-09, the Commission advised that an individual
5 becomes a candidate when the individual passes the \$5,000 threshold and “when he or she makes
6 a private determination that he or she will run for federal office.”⁹⁴ When determining whether
7 an individual “has made a decision to run for federal office, [the Commission] assesses an
8 individual’s objectively deliberate actions to discern whether and when an individual decided to
9 become a candidate.”⁹⁵ The Commission has also advised that “[a] non-conditional statement by
10 an individual (directly or indirectly) that he or she ‘will’ announce his or her candidacy on a
11 given date unambiguously indicates that the individual has decided to become a candidate.”⁹⁶

12 Here, Biden’s activities indicate that he had decided to run for reelection in 2024 as early
13 as March 25, 2021. As set forth in the Commission’s non-exhaustive list of activities that
14 indicate when an individual has decided to become a candidate, one such indication is that the
15 individual has made or authorized statements that refer to the individual as a candidate for a
16 particular office.⁹⁷ Biden and his surrogates’ public statements have consistently indicated that
17 he had decided to run for reelection in 2024 well prior to his April 2023 formal announcement

⁹² F&LA at 7-8, MUR 6735 (Joseph A. Sestak, *et al.*).

⁹³ F&LA at 4-5, MUR 5908 (Duncan Hunter).

⁹⁴ Advisory Opinion 2015-09 at 5 (Senate Majority PAC & House Majority PAC) (“AO 2015-09”).

⁹⁵ F&LA at 17, MURs 6955, 6983 (John R. Kasich, *et al.*); see AO 2015-09 at 5 (noting that an individual becomes a candidate when she exceeds the \$5,000 threshold and “makes a private determination that . . . she will run for federal office”).

⁹⁶ AO 2015-09 at 6.

⁹⁷ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).

- 1 regarding his candidacy. Below is a chart detailing some of his statements since March 2021,
 2 discussed in Part II.A, above:

| Date | Speaker | Statement |
|---------------------|--------------------------------------|---|
| Mar. 25, 2021 | Joseph Biden | <i>Regarding whether he had decided to run in 2024, “[T]he answer is ‘yes.’ My plan is to run for reelection. That’s my expectation.”</i> ⁹⁸ |
| Nov. 22, 2021 | Jen Psaki (then-Press Secretary) | <i>Regarding whether Biden is going to run in 2024, “He is, that’s his intention.”</i> ⁹⁹ |
| Nov. 2021 (approx.) | Joseph Biden | <i>Regarding whether he would run for reelection in 2024, “Yes!”</i> ¹⁰⁰ |
| Jan. 19, 2022 | Joseph Biden | <i>Regarding whether Vice President Kamala Harris would be his Vice President on the 2024 ticket and whether he thought she was doing a good job on voting rights policies, “Yes and yes.”</i> ¹⁰¹ |
| June 13, 2022 | Karine Jean-Pierre (Press Secretary) | <i>“Yes, he’s running for reelection. I’m — I can’t say more than that.”</i> ¹⁰² |
| | | <i>To be clear, as the President has said repeatedly, he plans to run in 2024.”</i> ¹⁰³ |
| June 27, 2022 | Kamala Harris (Vice President) | <i>“Joe Biden is running for reelection and I will be his ticket-mate. Full stop.”</i> ¹⁰⁴ |

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⁹⁸ March 25, 2021 Biden Remarks.

⁹⁹ Nov. 22, 2021 White House Press Gaggle.

¹⁰⁰ Debenedetti, *supra* note 6.

¹⁰¹ Jan. 19, 2022 Biden Remarks.

¹⁰² June 13, 2022 White House Press Briefing.

¹⁰³ Jean-Pierre, *supra* note 10.

¹⁰⁴ Bash, *supra* note 12.

| Date | Speaker | Statement |
|---------------------|--|--|
| June 29, 2022 | Kamala Harris | “The president intends to run and if he does, I will be his ticket mate. We will run together.” ¹⁰⁵ |
| July 2022 (approx.) | Joseph Biden | <i>Reportedly stating to donors and others that he is</i> “their strongest candidate to beat Donald Trump — or another GOP candidate — in 2024.” ¹⁰⁶ |
| July 28, 2022 | Karine Jean-Pierre | “I’m going to be very clear; I’m going to say this once — and the President has been very clear about this: He intends to run in 2024. And he is going to — until then, he is going to do the business of the American people as he has been doing for the past 18 months.” ¹⁰⁷ |
| July 29, 2022 | Karine Jean-Pierre | <i>Stating twice</i> , “The President intends to run in 2024.” ¹⁰⁸ |
| August 1, 2022 | Karine Jean-Pierre | <i>Stating twice that Biden</i> “intends to run” and that he has “said that multiple times.” ¹⁰⁹ |
| Aug. 4, 2022 | Pete Buttigieg (Secretary of Transportation) | “I’m looking forward to supporting the president’s reelection. That is as much as I can say about these things while I’m here on an official capacity.” ¹¹⁰ |
| Aug. 14, 2022 | Karine Jean-Pierre | “He intends to run. He intends to run.” ¹¹¹ |
| Aug. 2022 (approx.) | Cedric Richmond (former aide) | “It is clear-cut that [Biden’s] our best candidate If he says he’s planning on running, he’s running.” ¹¹² |
| | Anita Dunn (longtime aide) | “The president has said he’s planning on running again. People should take him at his word.” ¹¹³ |

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¹⁰⁵ Logan & Bierman, *supra* note 13.

¹⁰⁶ Dovert, *supra* note 15.

¹⁰⁷ July 28, 2022 White House Press Briefing.

¹⁰⁸ July 29, 2022 White House Press Briefing.

¹⁰⁹ Aug. 1, 2022 White House Press Briefing.

¹¹⁰ *Squawk Box*, *supra* note 21.

¹¹¹ Cupp, *supra* note 20.

¹¹² Sink & Wingrove, *supra* note 22.

¹¹³ *Id.*

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| Date | Speaker | Statement |
|----------------------|-----------------------------|--|
| Sept. 2, 2022 | Joseph Biden | <i>Reportedly</i> , “I’m going to do it again. I’m going.” ¹¹⁴ |
| Sept. 26, 2022 | Karine Jean-Pierre | “So, as you know, I’m — I’m very limited on how I can discuss any kind of elections. I will reiterate what we have said many times from here, what the President has said many times, even recently — as recently as the <i>60 Minutes</i> interview — is that he intends to run. I don’t have any more announcements on that.” ¹¹⁵ |
| Sept. 2022 (approx.) | Cedric Richmond | “He’s running and we’re building an infrastructure for him to run and win. Right now, it’s all an early investment in 2024 while we’re helping 2022.” ¹¹⁶ |
| Oct. 21, 2022 | Joseph Biden | “The reason I’m not making a judgment about formally running or not running, once I make that judgment, a whole series of regulations kick in and I have to be — I treat myself as a candidate from that moment on. I have not made that formal decision, but it’s my intention — my intention to run again. And we have time to make that decision.” ¹¹⁷ |
| Nov. 9, 2022 | Joseph Biden | <i>When asked what he would say to the Americans who do not think he should run for reelection</i> , “Watch me.” ¹¹⁸ |
| Dec. 1, 2022 | Dr. Jill Biden (First Lady) | <i>When asked if she was ready for another campaign</i> , responding, “Absolutely.” ¹¹⁹ |
| | Joseph Biden | <i>Reportedly joined in a toast with French President Emmanuel Macron made to his 2024 campaign.</i> ¹²⁰ |

2

3 Though the Responses state that Biden had not, at the time of their submission,
4 “decided for certain” to run for reelection in 2024,¹²¹ Biden’s and his surrogates’ public
5 statements as early as March 2021 indicate that he intended to do so. In MUR 5908, the
6 Commission found that a statement that the individual had “announced that I am preparing to run
7 for president, [but] I have not made a formal announcement of my candidacy” was sufficient

¹¹⁴ Allen, *supra* note 30.

¹¹⁵ Sept. 26, 2022 White House Press Briefing.

¹¹⁶ Gangitano, *supra* note 25.

¹¹⁷ MSNBC, *supra* note 29.

¹¹⁸ Nov. 9, 2022 Biden Remarks.

¹¹⁹ Rogers & Karni, *supra* note 32.

¹²⁰ *Id.*

¹²¹ MUR 7931 Biden Supp. Resp. at 2.

1 basis on which to determine the individual had decided to run for office and become a
2 candidate;¹²² accordingly, Biden’s statements that he intended to run for reelection likewise
3 present a sufficient basis for the Commission to conclude that Biden had decided to become a
4 candidate. In addition to the statements already discussed, press reports relying on unnamed
5 sources close to the White House indicate that Biden planned a “spring 2023 formal reelection
6 campaign launch,”¹²³ precisely in line with the timing of Biden’s actual formal announcement on
7 April 25, 2023.¹²⁴

8 Respondents principally appear to contend that the numerous statements do not indicate
9 that Biden has made a private determination to run. However, while Biden’s statements that he
10 “intends” to run may be arguably less direct than a statement indicating that he “will” run, Biden
11 said that he had made a decision that he “*plan[s]* to run for reelection,”¹²⁵ with both the Press
12 Secretary stating, “Yes, he’s running for reelection. I’m – I can’t say more than that,”¹²⁶ and
13 Vice President Harris stating, “Joe Biden is running for reelection and I will be his ticket-mate.
14 Full stop.”¹²⁷ Though Biden and his surrogates subsequently stated that he had not made a
15 formal decision regarding his 2024 candidacy, the Commission has previously advised that,
16 where an individual makes a statement evincing that they have decided to become a candidate,

¹²² F&LA at 4-5, MUR 5908 (Duncan Hunter).

¹²³ *Dovere*, *supra* note 15.

¹²⁴ Joe Biden (@JoeBiden), TWITTER (Apr. 25, 2023, 6:00 AM),
<https://twitter.com/JoeBiden/status/1650801827728986112>.

¹²⁵ March 25, 2021 Biden Remarks (emphasis added).

¹²⁶ June 13, 2022 White House Press Briefing.

¹²⁷ *Bash*, *supra* note 12.

1 “the statement may trigger candidacy regardless of subsequent retraction attempts.”¹²⁸ Further,
2 in MURs 6955, 6983 (John R. Kasich, *et al.*), the Commission found that a “‘non-conditional
3 statement’ by an individual . . . that he or she ‘*will* announce his or her candidacy on a given date
4 unambiguously indicates that the individual has decided to become a candidate.’”¹²⁹

5 The Responses do not dispute the accuracy of any of the statements attributed to Biden or
6 his surrogates in the Complaints, and instead assert that one of the Complaints “‘focuses on
7 anonymously sourced news stories, musings by political insiders, and half-quotes from White
8 House staff’”¹³⁰ and that the statements do not have “‘any bearing on the question at issue’”
9 regarding whether Biden has raised or spent \$5,000 or more for the 2024 presidential election.¹³¹
10 Here, as in the matters discussed above in which the Commission evaluated candidate statements
11 using objective criteria, Biden’s and his surrogate’s public statements have made clear that he
12 determined to run for reelection in 2024 as early as March 25, 2021. These statements alone
13 would be sufficient to indicate that Biden has “‘made a decision to become a candidate.’”¹³²

14 Further, one of the factors the Commission has identified as indicia that a candidate has
15 determined to run for office is whether the individual is “‘conducting activities in close proximity
16 to the election or over a protracted period of time.’”¹³³ As discussed above, at the time of the
17 First General Counsel’s Report, Biden had made public statements indicating that he had

¹²⁸ AO 2015-09 at 6 (citing F&LA at 4-8, MUR 5363 (Sharpton) (finding that once individual’s actions trigger candidate status, “equivocal statements of intent . . . do not eradicate the [Act’s candidate] registration and reporting requirements”)).

¹²⁹ F&LA at 17-18, MURs 6955, 6983 (John R. Kasich, *et al.*) (quoting AO 2015-09 at 6 (emphasis in original) (internal quotation marks omitted)).

¹³⁰ MUR 8059 Joint Resp. at 2 n.4.

¹³¹ MUR 7931 Joint Supp. Resp. at 2.

¹³² F&LA at 17, MURs 6955, 6983 (John R. Kasich, *et al.*).

¹³³ 11 C.F.R. §§ 100.72(b), 100.131(b).

1 determined to run for president over a period spanning approximately two years. Though the
 2 Commission has not elaborated on what constitutes a “protracted period of time,” and noted in
 3 the testing-the-waters context that “the length of time that an individual spends deliberating
 4 whether to become a candidate is one factor and does not, in and of itself, determine whether the
 5 individual has become a candidate,”¹³⁴ two years, or half a presidential term, appears to fall
 6 within the scope of a “protracted period of time.”¹³⁵

7 2. The Available Information Does Not Indicate That Biden or the Biden
 8 Committee Made More Than \$5,000 in Expenditures

9 As discussed above, once an individual decides to run for office, the individual becomes
 10 a candidate under the Act when: (a) such individual receives contributions or makes
 11 expenditures in excess of \$5,000; or (b) such individual gives their consent to another person to
 12 receive contributions or make expenditures on behalf of such individual and if such person has
 13 received contributions or has made such expenditures in excess of \$5,000.¹³⁶ Once the \$5,000
 14 threshold has been met, the candidate has 15 days to designate a principal campaign committee
 15 by filing a Statement of Candidacy with the Commission.¹³⁷ The principal campaign committee

¹³⁴ AO 2015-09 at 6.

¹³⁵ Cf. F&LA at 2, 12, MUR 6776 (Niger Innis, et al.) (dismissing where candidate had tested the waters for a period of approximately six months); F&LA at 8-9, MURs 7689, 7794 (Amanda Adkins for Congress, et al.) (same). The Commission has previously advised that, if an individual engaged in testing-the-waters activities for “several months” in one year, and his activities extended into the next year, the duration of those activities “would be very significant in determining the applicability of the [testing-the-waters] exemptions” in the latter year. See Advisory Opinion 1981-32 at 5 (Reubin Askew) (“AO 1981-32”). This would appear to indicate that the Commission would consider periods of time greater than a year are generally a “protracted period of time” as contemplated by 11 C.F.R. §§ 100.72(b)(4), 100.131(b)(4).

¹³⁶ 52 U.S.C. § 30101(2); see also AO 2015-09 at 5 (reiterating the “consent” standard).

¹³⁷ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

1 must file a Statement of Organization within ten days of its designation,¹³⁸ and it must file
2 disclosure reports with the Commission.¹³⁹

3 The Commission has established “testing-the-waters” regulations excepting from the
4 definitions of “contribution” and “expenditure” funds received and payments made solely to
5 determine whether an individual should become a candidate, thereby permitting an individual to
6 test the feasibility of a campaign for federal office without becoming a candidate under the
7 Act.¹⁴⁰ These testing-the-waters regulations seek to draw a distinction between activities
8 directed to evaluating the feasibility of one’s candidacy and conduct signifying that a decision to
9 become a candidate has been made.¹⁴¹ The testing-the-waters exceptions are not available to an
10 individual who has decided to become a candidate, even if the individual has made only “a
11 private determination that he or she will run for federal office.”¹⁴²

12 The Commission’s regulations further provide that funds in a campaign account may be
13 used for the “ordinary and necessary expenses incurred in connection with the recipient’s duties
14 as a holder of Federal office,” such as “[t]he costs of winding down the office of a former
15 Federal officeholder for a period of [six] months after he or she leaves office.”¹⁴³ The
16 Commission has advised that winding-down costs include “the ‘necessary administrative costs’
17 of terminating a campaign or congressional office, such as office space rental, staff salaries and

¹³⁸ See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

¹³⁹ 52 U.S.C. § 30104(a), (b); *see, e.g.*, F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*); F&LA at 5, MUR 6449 (Jon Bruning, *et al.*); F&LA at 2, MUR 5363 (Alfred C. Sharpton).

¹⁴⁰ See 11 C.F.R. §§ 100.72, 100.131; F&LA at 8, MUR 6776 (Niger Innis, *et al.*); F&LA at 7, MUR 6775 (Hillary Clinton, *et al.*); F&LA at 6, MUR 6735 (Joseph A. Sestak, *et al.*).

¹⁴¹ See AO 1981-32.

¹⁴² See AO 2015-09 at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (noting exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”).

¹⁴³ 11 C.F.R. § 113.2(a)(2), (e).

1 office supplies.”¹⁴⁴ Although Commission regulations contemplate a time limit of six months for
2 when a campaign for a former officeholder may use funds to pay for winding down costs,¹⁴⁵ the
3 Commission has explained that this provision is a safe harbor that “does not preclude a former
4 officeholder who can demonstrate that he or she has incurred ordinary and necessary winding
5 down expenses more than six months after leaving office from using campaign funds to pay
6 those expenses.”¹⁴⁶

7 As discussed above, Biden appears to have made a decision to run for reelection in 2024
8 as early as March 2021, but he does not become a candidate under the Act unless he, or another
9 person to whom he has given consent to do so, raises or spends in excess of \$5,000 in support of
10 a 2024 candidacy.¹⁴⁷

11 Here, the available information does not indicate that Biden passed the \$5,000 threshold
12 triggering status as a candidate via funds spent by the Biden Committee in support of his 2024
13 candidacy prior to his formal campaign announcement.¹⁴⁸

¹⁴⁴ Advisory Opinion 2013-05 at 3 (Elton Gallegly); *see* Advisory Opinion 1993-06 at 1, 5-6 (Citizens for Congressman Panetta) (advising that committee could use campaign funds for expenses such as “telephone and clerical costs of winding down previous campaign activity” up to six months after officeholder resigned); F&LA at 8, MUR 7310 (Lanakila Strategies LLC, *et al.*).

¹⁴⁵ 11 C.F.R. § 113.2(a)(2).

¹⁴⁶ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862 at 7873 (Feb. 9, 1995).

¹⁴⁷ 52 U.S.C. § 30101(2).

¹⁴⁸ Though the Biden Committee attests that Biden had not at the time of its Responses authorized the Biden Committee to solicit or spend funds on his behalf with respect to the 2024 election cycle, *see* MUR 7931 Vogel Decl. ¶ 2, because Biden designated the Biden Committee as his principal campaign committee, Biden has given consent to the Biden Committee to “receive contributions or make expenditures” on his behalf. 52 U.S.C. § 30101(2). It is and has been his authorized campaign committee through which he received contributions and made expenditures during the 2020 election cycle and which he has maintained as his authorized campaign committee for 2024. Biden for President, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/354/202304259581294354/202304259581294354.pdf>; Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf>.

1 As discussed in Part II.B, above, the Biden Committee disbursed nearly \$295 million
2 between November 4, 2020, and March 31, 2023.¹⁴⁹ Given the numerous statements made by
3 Biden and his surrogates indicating that Biden had decided to run as a presidential candidate in
4 2024 or intended to do so, the Complaints question the substantial spending by the Biden
5 Committee and whether it has made more than \$5,000 in expenditures to support his 2024
6 candidacy, especially as more than two years have passed since the 2020 general election.

7 The Biden Committee denies that it has spent any funds to “influence the 2024
8 presidential election.”¹⁵⁰ First, with respect to the Biden Committee’s \$478,158.91 in
9 disbursements to NGP Van Inc. for “database subscription,” the Biden Committee avers that
10 these disbursements were for “a compliance and accounting database necessary for operations
11 during the wind down and the Commission’s reporting requirements.”¹⁵¹ There is no available
12 information to contradict those assertions.¹⁵² Accordingly, Respondents have credibly rebutted
13 the Complaints’ allegations that these expenditures were associated with Biden’s 2024
14 candidacy.

15 With respect to the disbursements to Upland Software Inc. for “software,” the Biden
16 Committee states in a sworn declaration that these disbursements were to “maintain ownership of

¹⁴⁹ *Supra* note 46 and accompanying text.

¹⁵⁰ MUR 7931 Biden Resp. at 2; *see* MUR 7931 Biden Supp. Resp. at 3 (“In short, [the Biden Committee] has not made any expenditures for the purpose of influencing the 2024 presidential election.”).

¹⁵¹ MUR 7931 Biden Resp. at 5; *see* MUR 7931 Vogel Decl. ¶ 7.

¹⁵² These expenditures appear to be consistent with those of at least one prior successful presidential candidate with respect to the same recipient: After his reelection in 2012, for President Barack Obama’s campaign committee reported total disbursements of \$315,784.60 to NGP Van Inc. for “technology consulting” and “telemarketing.” *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00431445&recipient_name=NGP+Van&min_date=11%2F07%2F2012&max_date=12%2F31%2F2014 (last visited May 2, 2023) (showing all disbursements by Obama for America to NGP Van between November 7, 2012, and December 31, 2014).

1 [the Biden Committee’s] SMS short code phone number, used for communications with [the
 2 Biden Committee],”¹⁵³ and which the Biden Committee describes as its “intellectual
 3 property.”¹⁵⁴ Although prior presidential campaign committees do not appear to have identified
 4 expenditures for similar purposes, this is likely because of the relative newness of the technology
 5 involved: For example, a search across all disbursements by the authorized committees of
 6 former presidential candidates Obama, Clinton, Romney, and McCain for disbursements with
 7 purposes containing any of “short code,” “SMS,” “text number,” “phone number” or “text id”
 8 revealed no results.¹⁵⁵

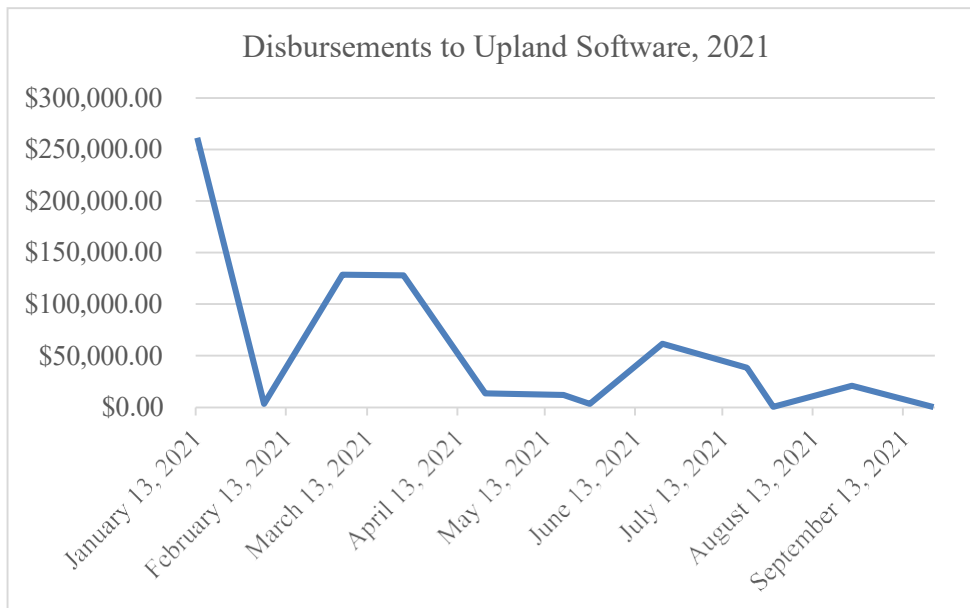
9 As shown in the Appendix to this Factual and Legal Analysis and the figure below, the
 10 amount and timing of the Biden Committee’s disbursements to Upland Software Inc. varied
 11 widely over the period between January 13, 2021, the first disbursement following the immediate
 12 aftermath of the 2020 election, and September 23, 2021, the date of the Biden Committee’s last
 13 reported disbursement to this vendor, with disbursements ranging from \$2.34 to \$261,449,
 14 including multiple disbursements occurring on the same day for different amounts, and each

¹⁵³ MUR 7931 Vogel Decl. ¶ 8; see MUR 7931 Biden Resp. at 2. While the Vogel declaration refers specifically to disbursements to Upland Software Inc. “in June 2021,” this is likely because the MUR 7931 Complaint specifically identifies “multiple disbursements to Upland Software Inc. on June 22, 2021 totaling \$61,692.52” when questioning whether such disbursements “should be designated for the 2020 General Election.” MUR 7931 Compl. ¶ 37.

¹⁵⁴ MUR 7931 Biden Resp. at 5.

¹⁵⁵ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00431171&committee_id=C00431445&committee_id=C00453928&committee_id=C00575795&committee_id=C00580100&disbursement_description=sms&disbursement_description=short+code&disbursement_description=text+number&disbursement_description=phone+number&disbursement_description=text+id (last visited May 2, 2023) (showing all disbursements by Obama for America, Hillary for America, Make America Great Again PAC f/k/a Donald J. Trump for President, Inc., Romney for President, Inc., and McCain-Palin 2008 Inc. with purposes containing any of “short code,” “sms,” “text number,” “phone number,” or “text id”). Trump’s authorized committee reported 34 disbursements aggregating \$69.52 million during the 2020 election cycle for, inter alia, “SMS advertising,” “digital SMS/online advertising,” and “online & SMS advertising,” none of which appear to be for maintenance or ownership of an SMS short code. *Id.*

1 disbursement reported as for “software.”¹⁵⁶ Though the data reflects various jumps in spending
 2 throughout 2021, the amounts disbursed decreased over time, as one might expect with a
 3 campaign winding down its operations, and ceased on September 23, 2021, less than one year
 4 following the general election:
 5



6
7

8 Given the context of a sophisticated presidential campaign, the declaration’s statement
 9 may accurately describe a complex maintenance arrangement that happens to be subject to
 10 external events.¹⁵⁷ Moreover, given the declaration’s assertion that the SMS short code was

¹⁵⁶ See App’x.

¹⁵⁷ For example, Upland Software’s website lists among its software services for Mobile Messaging “[i]ndustry-standard security and encryption technology” and “24/7 system and short code monitoring.” Upland Security, *Why Mobile Messaging?*, <https://uplandsoftware.com/mobile-messaging/> (last visited July 3, 2023). Further, an explainer published by CTIA on best practices for political text messaging includes a recommendation that “message senders should take affirmative steps and employ tools to monitor and prevent unwanted messages and content.” CTIA, *Political Text Messaging: Engaging and Organization Voters While Protecting Consumers* (July 21, 2022), <https://www.ctia.org/news/political-text-messaging-engaging-and-organizing-voters-while-protecting-consumers> (last visited July 3, 2023). CTIA notes that part of these best practices includes “[m]aintain[ing] and updat[ing] recipient lists by processing deactivation/opt-out files regularly (e.g. daily).” *Id.*

1 “used for communications with [the Biden Committee],”¹⁵⁸ it is reasonable that the Biden
2 Committee may have viewed it necessary as a communications tool to further appropriate wind-
3 down activities. Though not directly supported by the declaration, the Biden Committee also
4 asserts that the expenditures were “to maintain records or property related to the 2020
5 election.”¹⁵⁹ These explanations are plausible, particularly given that the payments to Upland
6 Software Inc. ceased after September 2021. It is possible that, consistent with the Complaints’
7 allegations, the Biden Committee was maintaining the SMS short code as campaign
8 infrastructure in the event that Biden would run for reelection in 2024, thus making the
9 expenditures fairly linked to the 2024 presidential election. However, the Complaints do not
10 provide any specific information that indicate that the payments to Upland Software Inc. were
11 not for the purposes stated by the Respondents. Indeed, if the Complaints are correct in asserting
12 that Biden had made up his mind to run for reelection as early as March 2021 and that the
13 payments to Upland Software Inc. were to maintain campaign infrastructure for a 2024 election
14 campaign, then it is unclear why those payments would cease nearly three years before the
15 election.

16 With respect to the Biden Committee’s \$2.02 million in disbursements to Action Squared
17 Inc. for “text message/email outreach” and “text message outreach,”¹⁶⁰ the Biden Committee
18 states that the disbursements were for “ongoing communications by the President to his
19 supporters who have opted-in to receive messages, encouraging them to make contributions to

¹⁵⁸ MUR 7931 Vogel Decl. ¶ 8.

¹⁵⁹ MUR 7931 Biden Committee Resp. at 2.

¹⁶⁰ Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10.

1 the [DNC] . . . in 2021 and 2022.”¹⁶¹ However, on its disclosure reports, the Biden Committee
2 reported each disbursement to Action Squared Inc. as being for the 2020 general election.¹⁶²
3 Notwithstanding the discrepancy between which election these expenditures were associated
4 with – 2020, as stated in the reports, versus 2021 and 2022,¹⁶³ as stated in the Responses – in
5 neither event do they appear to be associated with Biden’s 2024 candidacy.
6

¹⁶¹ MUR 8059 Biden Resp. at 2; *see* MUR 8059 Vogel Decl. ¶ 5.

¹⁶² *See, e.g.*, Biden Committee, 2022 Year-End Report, Sched. B-P at 35 (reporting \$5,767.36 disbursement to Action Squared Inc. for “text message outreach” labeled “Disbursement for: 2020 General”); Biden Committee, 2022 April Quarterly Report, Sched. B-P at 57 (reporting two disbursements to Action Squared Inc. for “text message/email outreach” for \$44,905.36 and \$25,582.00, both labeled with “Disbursement for: 2020 General”); Biden Committee, 2021 October Quarterly Report, Sched. B-P at 18 (reporting a \$150,000 disbursement to Action Squared Inc. for “text message/email outreach” labeled “Disbursement for: 2020 General”).

¹⁶³ A political committee has a duty to ensure that its disclosure reports are generally accurate and correct. *See* 11 C.F.R. § 104.14(d) (“Each treasurer of a political committee . . . shall be personally responsible for the timely and complete filing of [any disclosure report] . . . and for the accuracy of any information or statement contained in it.”). However, there is no statutory or regulatory requirement for committees to designate the election cycle for their disbursements.

1 3. The Available Information Does Not Indicate That Biden or the Biden
2 Committee Accepted More than \$5,000 in Contributions

3 Regarding Biden and the Biden Committee's receipts, since November 4, 2020, the
4 Biden Committee has reported receiving \$134,048,699.80,¹⁶⁴ including \$20,221,129.23 received
5 as a transfer from the Victory Fund.¹⁶⁵ Of the \$134 million in total receipts, the Biden
6 Committee reported receiving \$103,362,129.86 in contributions during the 2020 Post-General
7 reporting period,¹⁶⁶ with only \$482 in additional contributions disclosed on subsequent
8 Reports.¹⁶⁷ Although the Complaints raise questions as to the amount of contributions accepted
9 by the Biden Committee after the 2020 general election, the Respondents credibly rebut the
10 allegations that those post-election contributions were attributable to a 2024 Biden candidacy.

11 The Biden Committee does not appear to have solicited or accepted contributions for
12 Biden's reelection campaign prior to Biden's formal campaign announcement. First, the Biden
13 Committee states in its MUR 7931 Response that it neither solicited nor accepted contributions
14 made after Election Day 2020, and that it had not at the time of the Response accepted any
15 contributions for the 2024 election cycle; the sworn statement attached to the MUR 7931
16 Response asserts this statement.¹⁶⁸ The Commission is aware of no information that contradicts
17 these assertions.

164 *See supra* note 38 and accompany text.

165 *Supra* note 39 and accompanying text.

166 Biden Committee, 2020 Post-General Report.

167 Biden Committee, 2020 Year-End Report; Biden Committee, 2021 April Quarterly Report.

168 MUR 7931 Biden Resp. at 2; MUR 7931 Vogel Decl. ¶¶ 3, 4 (“To the best of my knowledge, [the Biden Committee] has not solicited any funds, including through mail, online, or any other source since then. . . . [The Biden Committee] did not accept any contributions made after Election Day 2020. . . . [The Biden Committee] has not accepted any contributions for the 2024 election cycle.”).

1 4. The Victory Fund Does Not Appear to Have Accepted Contributions or Made
 2 Expenditures in Support of Biden’s 2024 Candidacy

3 Like the Biden Committee, the Victory Fund denies that it has spent any funds to
 4 “influence the 2024 presidential election.”¹⁶⁹ Since the 2020 general election, the Victory Fund
 5 has reported receiving \$2,414,952.90 in contributions.¹⁷⁰ Although the Complaints raise
 6 questions as to the amount of contributions accepted by the Biden Committee and the Victory
 7 Fund after the 2020 general election, the Respondents credibly rebut the allegations that those
 8 post-election contributions were attributable to a 2024 Biden candidacy.¹⁷¹ The Victory Fund
 9 also does not appear to have solicited or accepted contributions for Biden’s reelection campaign
 10 prior to Biden’s formal campaign announcement. As noted above, the Biden Committee avers
 11 that the Victory Fund “is not authorize to, and has not,” raised any funds for Biden in the 2024

¹⁶⁹ Victory Fund Resp. at 2 (“[The Victory Fund] has not made any expenditures that advocate for President Biden’s re-election in 2024 or that are otherwise in connection with that election.”).

¹⁷⁰ *Supra* note 52 and accompanying text.

¹⁷¹ Additionally, as noted by Respondents, the size of the post-election receipts reported by the Victory Fund’s joint fundraising operation is consistent with, and in fact smaller than, those in prior successful presidential campaigns. *See* MUR 7931 Biden Resp. at 5 & n.27. According to the Reports Analysis Division (“RAD”), it is not unusual for joint fundraising committees to report large post-election transfers, and RAD commonly sees this activity. While all of the transfers took place after the election, none of the itemized contributions disclosed on the report are reported as having been received after the general election, and the Biden Committee appears to have followed the correct reporting format for these transfers. For the unitemized component of the joint fundraising transfers, there is no information on the face of the report that the underlying transferred contributions were received after the election. Between the 2016 general election and the end of the 2018 election cycle, former President Donald J. Trump’s joint fundraising committee, Trump Victory, reported nearly \$31.26 million in individual contributions, though Trump had declared his candidacy for 2020 on the first day of his term in office. *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00618389&min_date=11%2F09%2F2016&max_date=12%2F31%2F2018 (last visited May 2, 2023) (showing all individual contributions reported by Trump Victory between November 9, 2016, and December 31, 2018). In the prior election cycle, between the 2012 general election and the end of the 2014 election cycle, former President Barack Obama’s joint fundraising committee, Obama Victory Fund 2012, reported \$2,890,741.23 in individual contributions. *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/individual-contributions/?committee_id=C00494740&min_date=11%2F07%2F2012&max_date=12%2F31%2F2014 (last visited May 2, 2023) (showing all individual contributions reported by Obama Victory Fund 2012 between November 7, 2012, and December 31, 2014). Both figures exceed the \$2,414,952.90 in contributions reported by the Victory Fund.

1 presidential election, to which the Victory Fund also attests.¹⁷² Further, the Victory Fund has
 2 provided a sworn statement attesting that it did not transfer any contributions to the Biden
 3 Committee that were made after Election Day 2020.¹⁷³ The Commission is aware of no
 4 information that contradicts these assertions. Accordingly, the available information does not
 5 indicate that Biden and those authorized to fundraise on his behalf have raised \$5,000 or more in
 6 support of his 2024 candidacy for reelection prior to his formal campaign announcement.

7 **B. The Commission Finds No Reason to Believe That the Biden Committee**
 8 **Failed to Accurately Report the Purpose of the Disbursements Made to**
 9 **Upland Software**

10 The Act and Commission regulations require political committees to report the name and
 11 address of each person to whom they make expenditures or other disbursements aggregating
 12 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
 13 date, amount, and purpose of such payments.¹⁷⁴ Commission regulations define “purpose” as a
 14 “brief statement or description of why the disbursement was made.”¹⁷⁵ “The ‘purpose of
 15 disbursement’ entry, when considered along with the identity of the disbursement recipient, must
 16 be sufficiently specific to make the purpose of the disbursement clear.”¹⁷⁶ The Commission has

¹⁷² MUR 7931 Biden Resp. at 5; *see* MUR 7931 Vogel Decl. ¶ 9 (“[The Biden Committee] has not given consent to [the Victory Fund] to accept contributions or make expenditures on behalf of President Biden for the 2024 election cycle.”); Smolkis Decl. ¶ 11.

¹⁷³ Victory Fund Resp. at 2; Smolkis Decl. ¶¶ 7-10. While the Victory Fund acknowledges that it received contributions after the 2020 general Election Day, it notes that those contributions resulted from pre-Election Day solicitations, and none of those contributions were transferred to the Biden Committee, and that it has transferred or will transfer all such post-election contributions to the other joint fundraising participants per its allocation formula. Victory Fund Resp. at 4.

¹⁷⁴ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (regarding political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (regarding authorized committees); *id.* § 104.9(a), (b) (regarding all political committees).

¹⁷⁵ 11 C.F.R. § 104.3(b)(3)(i)(A).

¹⁷⁶ Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887, 887 (Jan. 9, 2007) [hereinafter Purpose Statement of Policy] (citing 11 C.F.R. § 104.3(b)(3)(i)(B), (4)(i)(A)).

1 determined that the description of the purpose should be sufficient to allow “a person not
2 associated with the committee [to] easily discern why the disbursement was made when reading
3 the name of the recipient and the purpose.”¹⁷⁷ Examples of sufficient statements of purpose
4 include, but are not limited to, dinner expenses, media, salary, polling, travel, party fees, phone
5 banks, travel expenses, travel expense reimbursement, and catering costs.¹⁷⁸ The Commission’s
6 website also states that “software” can be an adequate statement of the purpose of a
7 disbursement.¹⁷⁹

8 As discussed above, the Biden Committee states in a sworn declaration that its
9 disbursements to Upland Software Inc. were to “maintain ownership of [the Biden Committee’s]
10 SMS short code phone number, used for communications with [the Biden Committee],”¹⁸⁰ and
11 which the Biden Committee describes as its “intellectual property.”¹⁸¹ As shown in the
12 Appendix to this Analysis and the figure above, the amount and timing of the Biden Committee’s
13 disbursements to Upland Software Inc. varied widely over the period between January 13, 2021,
14 the first disbursement following the immediate aftermath of the 2020 election, and September
15 23, 2021, the date of the Biden Committee’s last reported disbursement to this vendor.
16 Notwithstanding the variation, the amounts disbursed decreased over time and ceased
17 approximately 11 months after the 2020 election, as one might expect with a campaign winding
18 down its operations.¹⁸²

¹⁷⁷ *Id.* at 888.

¹⁷⁸ 11 C.F.R. § 104.3(b)(3)(i)(B).

¹⁷⁹ *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited May 2, 2023).

¹⁸⁰ Vogel Decl. ¶ 8; *see Resp.* at 2.

¹⁸¹ *Resp.* at 5.

¹⁸² *See supra* note 164 and accompanying text.

1 As discussed above, there is no information in the Complaints to suggest that these
2 disbursements were for something other than the software expenses described by the
3 Respondents. Accordingly, the Commission finds no reason to believe that the Biden Committee
4 violated 52 U.S.C. § 30104(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) by failing to properly
5 disclose the purpose of its disbursements to Upland Software Inc..

6 **C. The Commission Finds No Reason to Believe That the Biden Committee**
7 **Failed to Amend Its Statement of Organization**

8 The Act requires all political committees to file a Statement of Organization with the
9 Commission no later than 10 days after they are designated or established.¹⁸³ The Statement of
10 Organization must include the name, address, and type of committee; the name, address,
11 relationship, and type of any connected organization or committee; the name and address of the
12 committee's custodian of books and accounts and the committee's treasurer; a listing of all
13 depositories used by the committee; and, if an authorized committee, the name, address, office
14 sought, and party affiliation of the authorizing candidate.¹⁸⁴ Changes or corrections to the
15 information contained in a Statement of Organization must be reported no later than 10 days
16 after the date of the change.¹⁸⁵

17 With respect to the allegation that the Biden Committee failed to amend its Statement of
18 Organization to reflect Biden's 2024 candidacy,¹⁸⁶ the facts as presented in the Complaint and
19 supported by the available information do not indicate any violation of the Act in this regard. As
20 the Biden Committee notes, neither the Act nor Commission regulations require committees to

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

¹⁸⁴ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2.

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

¹⁸⁶ Compl. ¶¶ 39-51, 66-82.

1 designate the election cycle in which an affiliated or authorizing candidate is running, instead
2 requiring only the “name, address, office sought, and party affiliation” of that individual.¹⁸⁷
3 Indeed, the form on which Statements of Organization are submitted has no line on which this
4 information could be provided.¹⁸⁸

5 Accordingly, the Commission finds no reason to believe that the Biden Committee
6 violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to amend its Statement of
7 Organization reflecting Biden’s 2024 candidacy.

¹⁸⁷ 52 U.S.C. § 30103(b)(5); *see* 11 C.F.R. § 102.2(a)(v).

¹⁸⁸ *See, e.g.*, Biden for President, Amended Statement of Organization (Apr. 25, 2023), <https://docquery.fec.gov/pdf/354/202304259581294354/202304259581294354.pdf>.

AppendixDisbursements by the Biden Committee to Upland Software Following the 2020 Election¹⁸⁹

| Date | Amount | Recipient | Description |
|--------------------|-----------------------|----------------------|--------------------|
| November 10, 2020 | \$1,176.17 | Upland Software Inc. | Software |
| November 16, 2020 | \$138,604.11 | Upland Software Inc. | Software |
| November 18, 2020 | \$3,932,643.40 | Upland Software Inc. | Software |
| December 17, 2020 | \$336,046.40 | Upland Software Inc. | Software |
| December 31, 2020 | \$3,180.00 | Upland Software Inc. | Software |
| January 13, 2021 | \$261,449.00 | Upland Software Inc. | Software |
| February 5, 2021 | \$3,180.00 | Upland Software Inc. | Software |
| March 4, 2021 | \$128,503.00 | Upland Software Inc. | Software |
| March 25, 2021 | \$128,021.73 | Upland Software Inc. | Software |
| April 22, 2021 | \$13,595.60 | Upland Software Inc. | Software |
| May 19, 2021 | \$678.90 | Upland Software Inc. | Software |
| May 19, 2021 | \$11,315.22 | Upland Software Inc. | Software |
| May 28, 2021 | \$180.00 | Upland Software Inc. | Software |
| May 28, 2021 | \$3,000.00 | Upland Software Inc. | Software |
| June 22, 2021 | \$756.88 | Upland Software Inc. | Software |
| June 22, 2021 | \$2,735.13 | Upland Software Inc. | Software |
| June 22, 2021 | \$12,614.97 | Upland Software Inc. | Software |
| June 22, 2021 | \$45,585.54 | Upland Software Inc. | Software |
| July 21, 2021 | \$708.97 | Upland Software Inc. | Software |
| July 21, 2021 | \$1,465.25 | Upland Software Inc. | Software |
| July 21, 2021 | \$11,815.80 | Upland Software Inc. | Software |
| July 21, 2021 | \$24,420.90 | Upland Software Inc. | Software |
| July 30, 2021 | \$30.00 | Upland Software Inc. | Software |
| July 30, 2021 | \$500.00 | Upland Software Inc. | Software |
| August 26, 2021 | \$1,181.78 | Upland Software Inc. | Software |
| August 26, 2021 | \$19,696.29 | Upland Software Inc. | Software |
| September 23, 2021 | \$2.34 | Upland Software Inc. | Software |
| September 23, 2021 | \$13.31 | Upland Software Inc. | Software |
| September 23, 2021 | \$39.04 | Upland Software Inc. | Software |
| September 23, 2021 | \$221.76 | Upland Software Inc. | Software |
| Total: | \$5,083,361.49 | | |

¹⁸⁹ Upland Disbursements.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Biden Victory Fund and Monica Guardiola
in her official capacity as treasurer

MUR 7931

I. INTRODUCTION

This matter arises from a Complaint alleging that Biden Victory Fund and Monica Guardiola in her official capacity as treasurer (the “Committee”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to make necessary amendments to its Statement of Organization to reflect the 2024 presidential candidacy of Joseph R. Biden, Jr. The Complaint also questions whether a disbursement by the Committee to Vox Media LLC on March 1, 2021, for “online fundraising” was properly reported.

The Committee denies the allegations, and states that it was not required to include on its Statement of Organization the election cycles in which Biden was or is a candidate for office. The Committee further provides the sworn declaration of its treasurer who asserts that the disbursement to Vox Media LLC was for advertising in August 2020 for which it was not invoiced until 2021.

Because the Committee had no obligation to amend its Statement of Organization to reflect the election cycle relevant to Biden’s candidacy, the Commission finds no reason to believe that the Committee violated 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to amend its Statement of Organization. Additionally, the Commission exercises its prosecutorial discretion and dismisses the allegation that the Committee failed to report a debt of \$100,000 in August 2020.

1 II. FACTUAL BACKGROUND

2 The Committee is a joint fundraising representative for Biden for President, the
3 authorized campaign committee of 2020 and 2024 presidential candidate Joseph R. Biden, Jr.;
4 the Democratic National Committee; and multiple state parties' federal committees.¹ The
5 Committee was authorized by Biden in both the 2020 and 2024 election cycles.²

6 On its 2021 April Quarterly Report, the Committee reported a disbursement of \$100,000
7 to Vox Media LLC for "Online Fundraising" on March 1, 2021.³ The Complaint questions
8 whether this expenditure was in connection with the 2020 election cycle, given that it was
9 reported in 2021, and alleges that the expenditure indicates that Biden triggered candidacy in
10 2024.⁴

11 The Committee's treasurer attests that the Committee "made a disbursement of \$100,000
12 to Vox Media, LLC on March 1, 2021 for online fundraising costs related to advertising run in
13 August 2020. [The Committee] received an invoice for these costs in 2021."⁵

14 The Complaint also alleges that the Committee has failed to amend its Statement of
15 Organization to reflect Biden's 2024 candidacy.⁶ The Committee denies this allegation because:

16 There is nothing in the Act or Commission regulations requiring a
17 joint fundraising committee to indicate on its Statement of
18 Organization that it is raising funds in connection with any particular

¹ Biden Victory Fund, Amended Statement of Organization (July 1, 2022), <https://docquery.fec.gov/pdf/159/202207019517783159/202207019517783159.pdf>.

² Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Nov. 4, 2020), <https://docquery.fec.gov/pdf/260/202011069336972260/202011069336972260.pdf> (regarding 2020 candidacy); Joseph R. Biden, Jr., Amended Statement of Candidacy at 1 (Apr. 25, 2023), <https://docquery.fec.gov/pdf/792/202304259581293792/202304259581293792.pdf> (regarding 2024 candidacy).

³ Biden Victory Fund, Amended 2021 April Quarterly Report, sched. B at 84 (July 15, 2021), <https://docquery.fec.gov/pdf/853/202107159451575853/202107159451575853.pdf>

⁴ Compl. ¶¶ 34-38 (Oct. 12, 2021).

⁵ Resp., Attach. ¶ 6 (Decl. of Joseph Smolskis) [hereinafter Smolskis Decl.].

⁶ Compl. ¶¶ 39-51, 66-82.

1 election or to indicate on its Statement of Organization which office
2 in which election year its participating candidate committees are
3 seeking. There is simply no place to put this information on the
4 Commission’s current version of [the Statement of Organization
5 form].⁷

6 The Committee further asserts that it was “not even required to disclose on its Statement of
7 Organization that President Biden was running in the 2020 election . . . , much less amend this
8 information.”⁸

9 III. LEGAL ANALYSIS

10 A. The Commission Finds No Reason to Believe That the Committee Failed to 11 Amend Its Statement of Organization

12 The Act requires all political committees to file a Statement of Organization with the
13 Commission no later than 10 days after they are designated or established.⁹ The Statement of
14 Organization must include the name, address, and type of committee; the name, address,
15 relationship, and type of any connected organization or committee; the name and address of the
16 committee’s custodian of books and accounts and the committee’s treasurer; a listing of all
17 depositories used by the committee; and, if an authorized committee, the name, address, office
18 sought, and party affiliation of the authorizing candidate.¹⁰ Changes or corrections to the
19 information contained in a Statement of Organization must be reported no later than 10 days
20 after the date of the change.¹¹

⁷ Resp. at 2-3.

⁸ *Id.* at 3.

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

¹⁰ 52 U.S.C. § 30103(b); 11 C.F.R. § 102.2.

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

1 With respect to the allegation that the Committee failed to amend its Statement of
2 Organization to reflect Biden’s 2024 candidacy,¹² the facts as presented in the Complaint and
3 supported by the available information do not indicate any violation of the Act. As the
4 Committee notes, neither the Act nor Commission regulations require committees to designate
5 the election cycle in which an affiliated or authorizing candidate is running, instead requiring
6 only the “name, address, office sought, and party affiliation” of that individual.¹³ Indeed, the
7 form on which Statements of Organization are submitted has no line on which this information
8 could be provided.¹⁴

9 Accordingly, the Commission finds no reason to believe that the Committee violated
10 52 U.S.C. § 30103(c) and 11 C.F.R. § 102.2(a)(2) by failing to amend its Statement of
11 Organization reflecting Biden’s 2024 candidacy.

12 **B. The Commission Dismisses pursuant to its Prosecutorial Discretion the**
13 **Allegation That the Committee Failed to Report a Debt**

14 The Act requires political committees to file reports accurately disclosing their receipts,
15 disbursements, and debts.¹⁵ In addition, political committees must accurately itemize
16 contributions and disbursements for each election cycle and must also indicate the amount and
17 nature of outstanding debts and obligations until those debts are extinguished.¹⁶ Under
18 Commission regulations, a debt or obligation of \$500 or less must be reported as of the time that
19 payment is made or within sixty days of the date on which the political committee incurs the

¹² Compl. ¶¶ 39-51, 66-82.

¹³ 52 U.S.C. § 30103(b)(5); *see* 11 C.F.R. § 102.2(a)(v).

¹⁴ *See, e.g.*, Biden Victory Fund, Amended Statement of Organization (July 1, 2022), <https://docquery.fec.gov/pdf/159/202207019517783159/202207019517783159.pdf>.

¹⁵ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a).

¹⁶ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

1 debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that
2 covers the date on which the debt was incurred.¹⁷ If the exact amount of a debt or obligation is
3 not known, the report shall state that the amount reported is an estimate.¹⁸ Once the exact
4 amount is determined, a political committee must either: (1) amend the report(s) containing the
5 estimate; or (2) indicate the correct amount on the report for the reporting period in which such
6 amount is determined.¹⁹

7 The Complaint questions whether the Committee’s \$100,000 disbursement to Vox
8 Media LLC on March 1, 2021, for “online fundraising” relates to the 2020 presidential election,
9 noting that such disbursements are normally made to maintain the committee’s infrastructure and
10 operations for ongoing and future campaign activity.²⁰ The Committee states that this
11 disbursement relates to “online fundraising ads [the Committee] ran through Vox Media,
12 LLC . . . in August 2020.”²¹ It goes on to state that it received the invoice for this expense in
13 2021, and “[a]s such, the payment was made and reported in 2021.”²²

14 To devote scarce Commission resources to higher priority matters, the Commission
15 exercises its prosecutorial discretion to dismiss the allegation.²³

¹⁷ 11 C.F.R. § 104.11(b).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Compl. ¶ 34.

²¹ Resp. at 5; Smolskis Decl. ¶ 6.

²² Resp. at 5.

²³ *Heckler v. Chaney*, 470 U.S. 821 (1985).