

BEFORE THE FEDERAL ELECTION COMMISSION OF THE UNITED STATES OF
AMERICA**RECEIVED**

FEDERAL ELECTION COMMISSION

AUGUST 30, 2022 12:20 PM

OFFICE OF GENERAL COUNSEL

In the Matter of:
President Joseph R. Biden, Jr.
Biden for President
Keana Spencer, Treasurer

MUR No. **8059****COMPLAINT**

1. Complainant brings this complaint before the Federal Election Commission (“FEC” or “Commission”) seeking an immediate investigation and enforcement action against President Joseph R. Biden, Jr. and Biden for President and Keana Spencer as Treasurer (“Committee”) for violations of the Federal Election Campaign Act (“FECA” or “Act”).
2. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that:
3. Respondent President Joseph R. Biden, Jr. is a candidate for the 2024 presidential election as defined by 52 U.S.C. § 30101(2)(A) and 11 C.F.R. § 100.3 and has failed to properly file a Statement of Candidacy in violation of 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1.

STATEMENT OF THE LAW

4. 52 U.S.C. § 30101(2)(A) and 11 C.F.R. § 100.3 define a candidate as an individual who has either received contributions in excess of \$5,000 or made expenditures in excess of \$5,000 during an election cycle.
5. 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1 require an individual to file a Statement of Candidacy within 15 days of becoming a candidate.
6. 11 C.F.R. § 100.72(a) provides an exemption for “testing-the-waters” of candidacy, and therefore allows individuals to receive contributions or make expenditures in excess of \$5,000, as long as those funds are only used to determine whether or not an individual should become a candidate.
7. 11 C.F.R. § 100.72(b) provides that the “testing-the-waters” exemption is not applicable to individuals who have decided to become candidates.
8. Individuals who have met the \$5,000 threshold and who have privately determined to become candidates, those who have made or authorized others to make written or oral statements indicating they have decided to become candidates, or those who directly or indirectly make a non-conditional statement that they “will” announce their candidacy on a future date, are deemed to be candidates by the FEC.¹

¹ 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3; 11 C.F.R. § 100.72(b); Federal Election Commission, Advisory Opinion [2015-09](#).

STATEMENT OF FACTS

9. President Joseph R. Biden, Jr. was elected as President of the United States in 2020 and was sworn in on January 20, 2021.²
10. Since January 20, 2021, President Biden's principal campaign committee, Biden for President, has spent more than \$5 million dollars, including \$1 million on "text message/email outreach" and almost \$250,000 on a "database subscription" – thereby exceeding the \$5,000 threshold to be declared a candidate.³
11. In addition to significant campaign expenditures, President Biden's White House staff, spokespersons, Vice President, and surrogates have made numerous on-the-record statements indicating that he has commenced his candidacy for the 2024 presidential election.
12. Beginning in November of 2021, in response to a reporter's question, "[t]here were reports that President Biden was telling allies that he is going to run for re-election in 2024. Can you confirm, is he going to run in 2024? Is he telling staff that?," then-White House Press Secretary Jen Psaki stated, "[h]e is, that's his intention."⁴
13. President Biden's current Press Secretary – Karine Jean-Pierre – conclusively stated on June 13, 2022, "[y]es, he's running for reelection. I'm — I can't say more than that." Later that day, she doubled down and tweeted that, "[t]o be clear, as the President has said repeatedly, he plans to run in 2024," and a month later again tweeted that, "[t]he president has been very clear about this. He intends to run in 2024."⁵
14. U.S. Transportation Secretary Pete Buttigieg has also gone on-the-record to discuss President Biden's campaign for reelection, stating, "I'm looking forward to supporting the president's reelection. Ah, that is as much as I can say about these things while I'm here on an official...capacity"⁶
15. President Biden himself has gone so far as to confirm that Vice President Kamala Harris will be his running mate in 2024: "'Yes' and 'yes,' Biden responded during his first news conference of the year [2022] when a reporter asked whether Harris would be on his ticket and whether he thought she was doing a good job on voting rights policies."⁷
16. Vice President Kamala Harris emphatically told CNN's Dana Bash – when asked about the president's campaign for reelection in 2024 – that, "Joe Biden is running for reelection and I will be his ticket mate...Full stop. That's it."⁸
17. Public reporting has stated 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

² Toluse Olorunnipa and Annie Linskey, Joe Biden is Sworn In as the 46th President, Pleads for Unity in Inaugural Address to a Divided Nation, [The Washington Post](#) (Jan. 20, 2021).

³ Federal Election Commission, Statement of Organization, [Biden for President](#) (Apr. 25, 2019). Federal Election Commission, Disbursements (search for spender "Biden for President" and Disbursement Type "[Made By Presidential Committees: Operating Expenditures](#)," time period "1/20/21 to date"); Federal Election Commission, Disbursements (search for spender "Biden for President" and Disbursement Detail "[text message/email outreach](#)," reporting time period "2021-2022"); Federal Election Commission, Disbursements (search for spender "Biden for President" and Disbursement Detail "[database subscription](#)," reporting time period "2021-2022"); 11 C.F.R. § 100.3.

⁴ Steve Nelson, Psaki Says Biden Still Intends to Run in 2024 Despite Poor Polls, Old Age, [New York Post](#) (Nov. 22, 2021).

⁵ The White House, [Press Briefing by Press Secretary Karine Jean-Pierre](#) (June 13, 2022); Karine Jean-Pierre (@PressSec), [Twitter](#) (June 13, 2022); CBS News (@CBSNews), [Twitter](#) (July 28, 2022).

⁶ CNBC, [Squawk Box](#), Squawk Newsmaker: Prices at the Pump: Transportation Secretary Weighs In, Clip begins at 0:54 (Aug. 4, 2022).

⁷ Claire Rafford, Biden Commits to Harris as His Running Mate for 2024, [Politico](#) (Jan. 19, 2022).

⁸ Dana Bash (@DanaBashCNN), [Twitter](#) (June 27, 2022).

his close advisers, according to interviews with more than a dozen Democrats close to the White House, most of whom spoke on the condition of anonymity to discuss private conversations.”⁹

18. Additional reporting indicates that President Biden has “insisted privately to donors and others” that he is the Democrats’ “strongest candidate to beat Donald Trump -- or another GOP candidate -- in 2024.”¹⁰
19. Former White House aide Cedric Richmond even said, “[i]t is clear-cut that he’s [Biden] our best candidate,” and, “[i]f he says he’s planning on running, he’s running.”¹¹
20. Four of President Biden’s aides have even expressed concern to the press that “someone may yet emerge ahead of the President’s planned spring 2023 formal reelection campaign launch.”¹²
21. And other aides have stated that “they are worried that publicly declaring [his reelection] before the midterms could trigger legal restrictions on fundraising.”¹³

CAUSE OF ACTION

AGAINST RESPONDENTS PRESIDENT JOSEPH R. BIDEN, JR. AND COMMITTEE

Failure to File by President Joseph R. Biden, Jr. and His Committee a Statement of Candidacy Pursuant to 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1

22. Federal law and FEC regulations define a candidate as an individual who has received contributions in excess of \$5,000 or made expenditures in excess of \$5,000.¹⁴ President Biden’s principal campaign committee has spent more than \$5 million dollars, including massive expenditures for text messaging, email, and database services.¹⁵
23. Individuals are allowed to exceed the \$5,000 threshold to “test-the-waters” as long as those funds are only used to determine whether or not an individual should become a candidate.¹⁶ However, even if President Biden’s considerable text messaging and email campaign is deemed to be “testing-the-waters,” the FEC has made clear that “testing-the-waters” activity *combined with* the statements and behaviors of the candidate and his or her advisers can trigger the filing of a Statement of Candidacy.¹⁷
24. Specifically, factors that remove an individual from the protection of the “testing-the-waters” exemption have been stated by the FEC to be the individual’s private determination that he or she will run for federal office, public statements of the individual or his or her advisers, and statements made by the individual or his or her advisers to the media that the individual will announce candidacy on a date certain in the future.¹⁸

⁹ Tyler Pager and Michael Scherer, Biden Sends Every Signal He is Running Again, [The Washington Post](#) (June 17, 2022).

¹⁰ Edward-Isaac Dove, As Worries About Biden in 2024 Grow, Other Democrats Aren’t Stepping Forward to Challenge Him, [CNN](#) (July 11, 2022).

¹¹ Justin Sink and Josh Wingrove, Biden Plots a 2024 Presidential Run—and a Trump Rematch, [Bloomberg](#) (Aug. 11, 2022).

¹² *Supra* note 10.

¹³ *Supra* note 11.

¹⁴ 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3.

¹⁵ *Supra* note 3.

¹⁶ 11 C.F.R. § 100.72(a).

¹⁷ *Supra* note 1.

¹⁸ *Supra* note 1.

25. The FEC has interpreted its regulations to distinguish conduct that is “directed to an evaluation of the feasibility of one’s candidacy...from conduct signifying that a private decision to become a candidate has been made.”¹⁹ President Biden’s utilization of text messaging, email, and database services is all conduct that resembles traditional campaigning and triggers the filing of a Statement of Candidacy.
26. Various whisper campaigns and anonymous comments to the press by Biden aides indicate that President Biden has made the private determination that he is running for president in 2024. Furthermore, Biden staff comments have even noted the legal ramifications of announcing his candidacy, citing the “legal restrictions on fundraising” as a reason to *not* announce President Biden’s candidacy for 2024.²⁰ The intentional evasion of federal law and FEC regulations is an affront to transparency, and a sure-fire indication that President Biden has, at minimum, made the private determination that he will be running for reelection in 2024.
27. Moreover, public statements by President Biden’s advisers have doubled down on the background reports from his staff members. In fact, two different press secretaries confirmed his candidacy when Jen Psaki said, “[h]e is,” and when Karine Jean-Pierre stated at her White House podium that, “yes, he’s running for reelection.” Even the presidentially appointed Transportation Secretary Pete Buttigieg is “looking forward to supporting the President’s reelection.”²¹
28. Statements made by President Biden and his staff, including Vice President Harris, allow for no other conclusion other than President Biden has commenced his 2024 campaign. Reports of President Biden telling donors that he is “their strongest candidate,” along with President Biden’s confirmation that current Vice President Kamala Harris will be his running mate in 2024, weigh heavily in favor of the FEC finding that the president has become a candidate for 2024.²² Additionally, Vice President Kamala Harris’ inclusion of, “Full stop. That’s it,” to her remark that “Joe Biden is running for reelection and I will be his ticket mate” is a decisive indication that President Biden’s 2024 campaign has commenced.²³ Her feint attempt two days later to walk-back those comments – stating that, “[t]he president intends to run, and if he does, I will be his ticket mate” – is also unpersuasive.²⁴ The FEC has stated that once an individual makes a public statement which triggers candidacy, a subsequent withdrawal of the statement is inconsequential.²⁵ Here, Vice President Harris is clearly aware of the prohibitions on which she infringed when she attempted to “clarify” her comments. One anonymous party official even relayed “internal discussions,” revealing that the Vice President’s follow-up statement “was intended to avoid using ‘trigger words’ that would set off requirements for Biden to establish a formal campaign with the Federal Election Commission”²⁶
29. Former White House adviser Cedric Richmond, who now works for the Democratic National Committee, seems uniquely positioned to understand the campaign strategy of the sitting president, stating, “[i]f he says he’s planning on running, he’s running.”²⁷

¹⁹ Advisory Opinion 1981-32; 11 C.F.R. § 100.72(b).

²⁰ *Supra* note 11.

²¹ *Supra* note 4; *Supra* note 5; *Supra* note 6.

²² *Supra* note 10; *Supra* note 7.

²³ *Supra* note 8.

²⁴ Erin B. Logan and Noah Bierman, Vice President Harris Says Biden Intends to Seek Reelection, But Her Words Stir New Uncertainty, *LA Times* (June 29, 2022).

²⁵ *Supra* note 1.

²⁶ *Supra* note 24.

²⁷ *Supra* note 11; Josh Wingrove and John Hamey, Top Biden Aide Cedric Richmond Leaving White House for DNC, *Bloomberg* (Apr. 25, 2022).

30. And despite the clear intent of the FEC to enforce the candidacy triggers when a future date is identified for announcement, President Biden's advisers have revealed that they have gone so far as to plan the formal announcement of his reelection campaign for the Spring of 2023.²⁸
31. All factors taken into consideration, including the sheer numerosity of public statements coming from President Biden and his advisers and the statements made by aides to the press – as well as the pre-determined date for formally announcing his campaign – weigh heavily in support of finding that President Biden has triggered the requirement to file a Statement of Candidacy for the 2024 presidential election.

PRAYER FOR RELIEF

32. Wherefore, the Commission should find reason to believe that President Joseph R. Biden, Jr. has become a candidate pursuant to 52 U.S.C. § 30101(2)(A) and 11 C.F.R. § 100.3, and has failed to file, within 15 days, a Statement of Candidacy with the Federal Election Commission pursuant to 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1. The Commission should conduct an immediate investigation under 52 U.S.C. § 30109(a)(2) and determine and impose appropriate sanctions for any and all violations. Furthermore, the Commission should enjoin respondents from any future violations, and impose any necessary and appropriate remedies to ensure respondents' future compliance with FECA.

August 30, 2022

Respectfully Submitted,



Caitlin Sutherland, Executive Director
Americans for Public Trust
107 South West Street, Suite 442
Alexandria, VA 22314

²⁸ *Supra* note 1; *Supra* note 10.

VERIFICATION

33. The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

For Complainant "Americans for Public Trust"

Caitlin Sutherland
Caitlin Sutherland

City of Alexandria
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn to before me this 30th day of August 2022 by Caitlin Sutherland.

[Signature]
Notary Public

Notary registration number: 7969380

My commission expires: 04/30/2025

