



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of	)	
	)	
Joseph R. Biden, Jr.	)	MURs 7931 and 8059
Biden for President and Keana Spencer	)	
in her official capacity as treasurer	)	
Biden Victory Fund and Monica Guardiola	)	
in her official capacity as treasurer	)	
	)	

**STATEMENT OF REASONS OF CHAIR DARA LINDENBAUM AND  
COMMISSIONERS SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

The Complaints in these matters alleged 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 MUR 7931 Complaint further alleges that both 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”) failed to make necessary amendments to their Statements of Organization to reflect Biden’s 2024 candidacy. The record also gave rise to allegations that the Biden Committee failed to properly disclose the purpose of a disbursement and that the Victory Fund failed to properly report a debt.

On October 5, 2023, the Commission unanimously found: (1) no reason to believe that Biden failed to timely file a Statement of Candidacy; (2) no reason to believe that the Biden Committee failed to properly disclose the purpose of its disbursements; and (3) no reason to believe that the Biden Committee or the Victory Fund failed to amend their Statements of Organization.<sup>1</sup> The Commission further unanimously dismissed the allegations concerning the Victory Fund failing to report a debt in an exercise of prosecutorial discretion.<sup>2</sup> At the same time, each of us voted to adopt one or more Factual and Legal Analyses, which were not adopted by

<sup>1</sup> Certification ¶ 1.a-c (Oct. 6, 2023) (Chair Lindenbaum, Vice Chair Cooksey, and Commissioners Broussard, Dickerson, Trainor, and Weintraub voted in favor).

<sup>2</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985); Certification ¶ 1.d (Oct. 6, 2023) (Chair Lindenbaum, Vice Chair Cooksey, and Commissioners Broussard, Dickerson, Trainor, and Weintraub voted in favor).

MURs 7931 and 8059 (Joseph R. Biden, Jr., *et al.*)

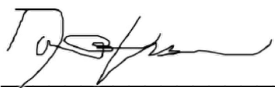
Statement of Chair Dara Lindenbaum, and Commissioners Shana M. Broussard and Ellen L. Weintraub

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the Commission in these matters.<sup>3</sup> We attach here the proposed Factual and Legal Analyses, which provide the explanations for our votes.<sup>4</sup>


October 13, 2023

Date

  
\_\_\_\_\_  
Dara Lindenbaum  
Chair


October 13, 2023

Date

  
\_\_\_\_\_  
Shana M. Broussard  
Commissioner

October 13, 2023

Date

  
\_\_\_\_\_  
Ellen L. Weintraub  
Commissioner

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<sup>3</sup> Chair Lindenbaum did not vote to approve the Factual & Legal Analysis for Biden and the Biden Committee; however, she would have supported Part III.B, which explained the basis for finding no reason to believe that the Biden Committee failed to properly disclose the purpose of its disbursements. Certification ¶ 2 (Oct. 6, 2023) (Commissioners Broussard and Weintraub voted in favor of the Factual & Legal Analysis for Biden and the Biden Committee; Chair Lindenbaum, Vice Chair Cooksey, and Commissioners Dickerson and Trainor dissented); Certification ¶ 3 (Oct. 6, 2023) (Chair Lindenbaum, and Commissioners Broussard and Weintraub voted in favor of the Factual & Legal Analysis for the Victory Fund; Vice Chair Cooksey, and Commissioners Dickerson and Trainor dissented).

<sup>4</sup> Attachments A and B. As noted, these were not adopted by the Commission.

**PROPOSED F&LA**1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Biden for President and Keana Spencer **MURs** 7931 and 8059  
4 in her official capacity as treasurer

5 **1. INTRODUCTION**

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

10 The Complaint in MUR 7931 alleges that Biden surpassed the \$5,000 threshold for  
11 candidacy via contributions received by his authorized committee, Biden for President and  
12 Keana Spencer in her official capacity as treasurer (the “Biden Committee”), and Biden Victory  
13 Fund and Monica Guardiola in her official capacity as treasurer (the “Victory Fund”), a joint  
14 fundraising committee in which the Biden Committee was a participant, as well as via  
15 disbursements made by the Biden Committee and the Victory Fund. The MUR 7931 Complaint  
16 further alleges that the Biden Committee violated the Act by failing to make necessary  
17 amendments to its Statement of Organization to reflect the 2024 presidential candidacy of Joseph  
18 R. Biden, Jr. The Complaint also questions whether disbursements by the Biden Committee to  
19 Upland Software Inc. for “software” were properly reported. In addition, the Complainant in  
20 MUR 7931 has filed three supplements to its Complaint documenting statements made by Biden  
21 and individuals associated with him and his administration in support of the MUR 7931  
22 Complaint’s claim that Biden decided to run for reelection long before his formal declaration of  
23 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.

1    **2.    FACTUAL BACKGROUND**

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

4           Joseph R. Biden, Jr., was elected the 46<sup>th</sup> President of the United States on November 3,  
5    2020.<sup>1</sup> He filed a Statement of Candidacy for the 2024 election on April 25, 2023.<sup>2</sup>

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

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<sup>1</sup>       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).

<sup>2</sup>       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).

<sup>3</sup>       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/>.

<sup>4</sup>       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.<sup>5</sup>

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.”<sup>6</sup> 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!’”<sup>7</sup>

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

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<sup>5</sup> 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).

<sup>6</sup> 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.]).

<sup>7</sup> *Id.*

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

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.”<sup>9</sup> The same day, Jean-Pierre tweeted, “To be clear, as the President has  
7 said repeatedly, he plans to run in 2024.”<sup>10</sup> 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.”<sup>11</sup>

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.”<sup>12</sup> Two days later, she said that “[t]he president intends to run and if he

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<sup>8</sup> 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.]).

<sup>9</sup> 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).

<sup>10</sup> 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.]).

<sup>11</sup> 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).

<sup>12</sup> 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.”<sup>13</sup> 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.”<sup>14</sup>

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.”<sup>15</sup>  
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.”<sup>16</sup> 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.”<sup>17</sup>  
15 The next day, she twice reiterated during a press briefing that “[t]he President intends to run in

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<sup>13</sup> 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).

<sup>14</sup> *Id.*

<sup>15</sup> 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).

<sup>16</sup> *Id.*

<sup>17</sup> 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,”<sup>18</sup> and on August 1, 2022, she stated twice more that the President “intends to run,” noting  
 2 that he had “said that multiple times.”<sup>19</sup> She was reported as stating so again on *This Week with*  
 3 *George Stephanopoulos* on August 14, 2022.<sup>20</sup>

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.”<sup>21</sup> 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,”<sup>22</sup>  
 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.”<sup>23</sup> *Bloomberg* further reported that unidentified

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<sup>18</sup> 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).

<sup>19</sup> 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).

<sup>20</sup> 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/>.

<sup>21</sup> *Squawk Box* (CNBC television broadcast Aug. 4, 2022), [https://archive.org/details/CNBC\\_20220804\\_100000\\_Squawk\\_Box/start/6600/end/6660](https://archive.org/details/CNBC_20220804_100000_Squawk_Box/start/6600/end/6660) (quoted in MUR 8059 Compl. ¶ 14).

<sup>22</sup> 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).

<sup>23</sup> *Id.*

1 aides were “worried that [Biden] publicly declaring [his 2024 candidacy] before the [2022]  
2 midterms [w]ould trigger legal restrictions on fundraising.”<sup>24</sup> 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.”<sup>25</sup> In  
5 late September 2022, Jean-Pierre again stated that Biden “intends to run. I don’t have any more  
6 announcements on that.”<sup>26</sup>

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,<sup>27</sup> 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],”<sup>28</sup> 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

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<sup>24</sup> *Id.*

<sup>25</sup> 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).

<sup>26</sup> 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).

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

<sup>28</sup> 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.”<sup>29</sup> 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.<sup>30</sup> 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.”<sup>31</sup> 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.<sup>32</sup>

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,<sup>33</sup> 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.<sup>34</sup>

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<sup>29</sup> 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.”).

<sup>30</sup> 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).

<sup>31</sup> 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/>.

<sup>32</sup> 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).

<sup>33</sup> 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>[.]”).

<sup>34</sup> 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 the authorized campaign committee of 2020 and 2024  
 4                    presidential candidate Joseph R. Biden, Jr.<sup>35</sup> The Biden Committee was authorized by Biden in  
 5                    both the 2020 and 2024 election cycles.<sup>36</sup> None of the Biden Committee's original or amended  
 6                    Statements of Organization indicates the election cycle in which Biden is running for office.<sup>37</sup>

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

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

<sup>36</sup> 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).

<sup>37</sup> *Id.*

<sup>38</sup> *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;<sup>39</sup> \$151.80 in  
 2 contributions received during the 2020 Year-End reporting period;<sup>40</sup> and \$280 in the 2021 April  
 3 Quarterly reporting period.<sup>41</sup> The Biden Committee contends that all of the reported post-2020  
 4 election contributions were solicited and made prior to Election Day.<sup>42</sup> The Biden Committee  
 5 reported no additional contributions after the 2021 April Quarterly Report.<sup>43</sup> The remaining  
 6 receipts included \$8,066,596.36 reported as offsets to operating expenditures<sup>44</sup> and

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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).

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

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

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

<sup>42</sup> 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.].

<sup>43</sup> *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.

<sup>44</sup> *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](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.<sup>45</sup>

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.<sup>46</sup> 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.”<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup>

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<sup>45</sup> *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](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).

<sup>46</sup> 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](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.

<sup>47</sup> 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.

<sup>48</sup> See App’x.

<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> 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

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

<sup>51</sup> 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.

<sup>52</sup> 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.<sup>53</sup> It has also reported spending  
 2 \$78,027,083.84,<sup>54</sup> including \$100,000 to Vox Media LLC on March 1, 2021, for “online  
 3 fundraising.”<sup>55</sup> 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 <sup>56</sup>
November 24, 2020	\$6,000,000.00	Transfer Out Affiliated	<i>not indicated</i> <sup>57</sup>
November 24, 2020	\$554,438.30	Salary & Overhead Expenses	<i>not indicated</i> <sup>58</sup>
December 15, 2020	\$1,500,000.00	Transfer Out Affiliated	<i>not indicated</i> <sup>59</sup>
January 5, 2021	\$6,150,000.00	Transfer Out Affiliated	2020 General <sup>60</sup>
March 5, 2021	\$11,690.93	Salary & Overhead Expenses	<i>not indicated</i> <sup>61</sup>

<sup>53</sup> 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.].

<sup>54</sup> *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00744946&min\\_date=11%2F04%2F2020](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).

<sup>55</sup> 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.

<sup>56</sup> 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>.

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

<sup>58</sup> *Id.* at 1139.

<sup>59</sup> *Id.* at 1199.

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

<sup>61</sup> *Id.* at 90.

June 30, 2021	\$5,000.00	Transfer Out Affiliated	2020 General <sup>62</sup>
<b>Total:</b>	<b>\$20,221,129.23</b>		

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.<sup>63</sup>

### 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 Fund<sup>64</sup> 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.<sup>65</sup> 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

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

<sup>63</sup> 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.

<sup>64</sup> 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.

<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

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.<sup>68</sup>  
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,”<sup>69</sup> 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.”<sup>70</sup>

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.”<sup>71</sup> 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

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<sup>66</sup> MUR 7931 Compl. ¶¶ 37-38.

<sup>67</sup> Compl. ¶¶ 39-51, 66-82.

<sup>68</sup> 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.

<sup>69</sup> MUR 7931 Biden Supp. Resp. at 2.

<sup>70</sup> MUR 8059 Biden Resp. at 1 n.3.

<sup>71</sup> 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.”<sup>72</sup> 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,<sup>73</sup> 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.”<sup>74</sup>  
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.”<sup>75</sup>

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.<sup>76</sup> 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 upon 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

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<sup>72</sup> 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.

<sup>73</sup> Victory Fund Resp. at 2; Smolkis Decl. ¶¶ 7-8.

<sup>74</sup> MUR 7931 Biden Resp. at 3; MUR 7931 Vogel Decl. ¶ 5.

<sup>75</sup> 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.”).

<sup>76</sup> 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.”<sup>77</sup> 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.”<sup>78</sup> 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,”<sup>79</sup> 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.<sup>80</sup>  
 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.”<sup>81</sup>

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<sup>77</sup> 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.].

<sup>78</sup> 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).

<sup>79</sup> Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10.

<sup>80</sup> MUR 8059 Biden Resp. at 2; *see* MUR 8059 Vogel Decl. ¶ 5.

<sup>81</sup> 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.”<sup>82</sup>

### 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 office<sup>83</sup> 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.<sup>84</sup>

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<sup>82</sup> Resp. at 7.

<sup>83</sup> 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).

<sup>84</sup> 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.”<sup>85</sup> Such indicia include: (1) using  
3 “general public political advertising to publicize his or her intention to campaign for federal  
4 office”;<sup>86</sup> (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”;<sup>87</sup> (3) making or authorizing “written or oral  
7 statements that refer to the individual as a candidate for a particular office”;<sup>88</sup> (4) conducting  
8 “activities in close proximity to the election or over a protracted period of time”;<sup>89</sup> and (5) taking  
9 “action to qualify for the ballot under state law.”<sup>90</sup>

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.<sup>91</sup> 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

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<sup>85</sup> 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>86</sup> *Id.* §§ 100.72(b)(1), 100.131(b)(1).

<sup>87</sup> *Id.* §§ 100.72(b)(2), 100.131(b)(2).

<sup>88</sup> *Id.* §§ 100.72(b)(3), 100.131(b)(3).

<sup>89</sup> *Id.* §§ 100.72(b)(4), 100.131(b)(4).

<sup>90</sup> *Id.* §§ 100.72(b)(5), 100.131(b)(5).

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

1 campaign.<sup>92</sup> 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.<sup>93</sup>

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.”<sup>94</sup> 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.”<sup>95</sup> 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.”<sup>96</sup>

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.<sup>97</sup> 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

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

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

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

<sup>95</sup> 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”).

<sup>96</sup> AO 2015-09 at 6.

<sup>97</sup> 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).



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- 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> <sup>98</sup>
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> <sup>99</sup>
Nov. 2021 (approx.)	Joseph Biden	<i>Regarding whether he would run for reelection in 2024, “Yes!”</i> <sup>100</sup>
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> <sup>101</sup>
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> <sup>102</sup>
		<i>To be clear, as the President has said repeatedly, he plans to run in 2024.”</i> <sup>103</sup>
June 27, 2022	Kamala Harris (Vice President)	<i>“Joe Biden is running for reelection and I will be his ticket-mate. Full stop.”</i> <sup>104</sup>

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<sup>98</sup> March 25, 2021 Biden Remarks.

<sup>99</sup> Nov. 22, 2021 White House Press Gaggle.

<sup>100</sup> Debenedetti, *supra* note 6.

<sup>101</sup> Jan. 19, 2022 Biden Remarks.

<sup>102</sup> June 13, 2022 White House Press Briefing.

<sup>103</sup> Jean-Pierre, *supra* note 10.

<sup>104</sup> Bash, *supra* note 12.

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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.” <sup>105</sup>
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.” <sup>106</sup>
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.” <sup>107</sup>
July 29, 2022	Karine Jean-Pierre	<i>Stating twice</i> , “The President intends to run in 2024.” <sup>108</sup>
August 1, 2022	Karine Jean-Pierre	<i>Stating twice that Biden</i> “intends to run” and that he has “said that multiple times.” <sup>109</sup>
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.” <sup>110</sup>
Aug. 14, 2022	Karine Jean-Pierre	“He intends to run. He intends to run.” <sup>111</sup>
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.” <sup>112</sup>
	Anita Dunn (longtime aide)	“The president has said he’s planning on running again. People should take him at his word.” <sup>113</sup>

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2<sup>105</sup> Logan & Bierman, *supra* note 13.<sup>106</sup> Dovert, *supra* note 15.<sup>107</sup> July 28, 2022 White House Press Briefing.<sup>108</sup> July 29, 2022 White House Press Briefing.<sup>109</sup> Aug. 1, 2022 White House Press Briefing.<sup>110</sup> *Squawk Box*, *supra* note 21.<sup>111</sup> Cupp, *supra* note 20.<sup>112</sup> Sink & Wingrove, *supra* note 22.<sup>113</sup> *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.” <sup>114</sup>
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.” <sup>115</sup>
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.” <sup>116</sup>
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.” <sup>117</sup>
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.” <sup>118</sup>
Dec. 1, 2022	Dr. Jill Biden (First Lady)	<i>When asked if she was ready for another campaign</i> , responding, “Absolutely.” <sup>119</sup>
	Joseph Biden	<i>Reportedly joined in a toast with French President Emmanuel Macron made to his 2024 campaign.</i> <sup>120</sup>

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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,<sup>121</sup> 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

<sup>114</sup> Allen, *supra* note 30.

<sup>115</sup> Sept. 26, 2022 White House Press Briefing.

<sup>116</sup> Gangitano, *supra* note 25.

<sup>117</sup> MSNBC, *supra* note 29.

<sup>118</sup> Nov. 9, 2022 Biden Remarks.

<sup>119</sup> Rogers & Karni, *supra* note 32.

<sup>120</sup> *Id.*

<sup>121</sup> 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;<sup>122</sup> 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,”<sup>123</sup> precisely in line with the timing of Biden’s actual formal announcement on  
7 April 25, 2023.<sup>124</sup>

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,”<sup>125</sup> with both the Press  
12 Secretary stating, “Yes, he’s running for reelection. I’m – I can’t say more than that,”<sup>126</sup> and  
13 Vice President Harris stating, “Joe Biden is running for reelection and I will be his ticket-mate.  
14 Full stop.”<sup>127</sup> 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,

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

<sup>123</sup> *Dovere*, *supra* note 15.

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

<sup>125</sup> March 25, 2021 Biden Remarks (emphasis added).

<sup>126</sup> June 13, 2022 White House Press Briefing.

<sup>127</sup> *Bash*, *supra* note 12.

1 “the statement may trigger candidacy regardless of subsequent retraction attempts.”<sup>128</sup> 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.’”<sup>129</sup>

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’”<sup>130</sup> 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.<sup>131</sup>  
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.’”<sup>132</sup>

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.’”<sup>133</sup> As discussed above, at the time of the  
17 First General Counsel’s Report, Biden had made public statements indicating that he had

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<sup>128</sup> 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”)).

<sup>129</sup> 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)).

<sup>130</sup> MUR 8059 Joint Resp. at 2 n.4.

<sup>131</sup> MUR 7931 Joint Supp. Resp. at 2.

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

<sup>133</sup> 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,”<sup>134</sup> two years, or half a presidential term, appears to fall  
 6 within the scope of a “protracted period of time.”<sup>135</sup>

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.<sup>136</sup> 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.<sup>137</sup> The principal campaign committee

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<sup>134</sup> AO 2015-09 at 6.

<sup>135</sup> 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).

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

<sup>137</sup> 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,<sup>138</sup> and it must file  
2 disclosure reports with the Commission.<sup>139</sup>

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.<sup>140</sup> 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.<sup>141</sup> 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.”<sup>142</sup>

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.”<sup>143</sup> 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

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

<sup>139</sup> 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).

<sup>140</sup> 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.*).

<sup>141</sup> See AO 1981-32.

<sup>142</sup> 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”).

<sup>143</sup> 11 C.F.R. § 113.2(a)(2), (e).

1 office supplies.”<sup>144</sup> 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,<sup>145</sup> 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.”<sup>146</sup>

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.<sup>147</sup>

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.<sup>148</sup>

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<sup>144</sup> 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.*).

<sup>145</sup> 11 C.F.R. § 113.2(a)(2).

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

<sup>147</sup> 52 U.S.C. § 30101(2).

<sup>148</sup> 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.<sup>149</sup> 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.”<sup>150</sup> 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.”<sup>151</sup> There is no available  
12 information to contradict those assertions.<sup>152</sup> 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

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<sup>149</sup> *Supra* note 46 and accompanying text.

<sup>150</sup> 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.”).

<sup>151</sup> MUR 7931 Biden Resp. at 5; *see* MUR 7931 Vogel Decl. ¶ 7.

<sup>152</sup> 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](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],”<sup>153</sup> and which the Biden Committee describes as its “intellectual  
 3 property.”<sup>154</sup> 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.<sup>155</sup>

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

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<sup>153</sup> 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.

<sup>154</sup> MUR 7931 Biden Resp. at 5.

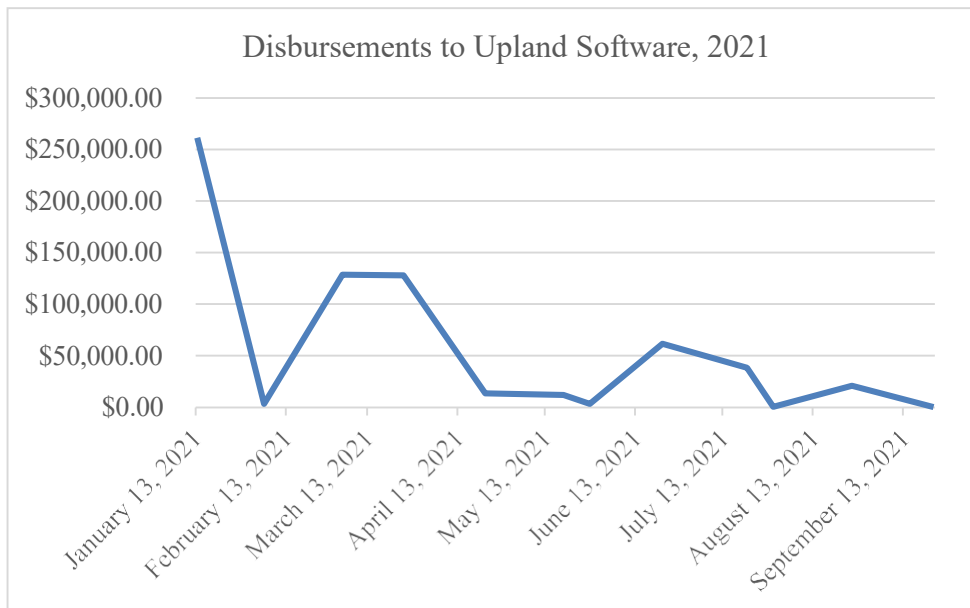
<sup>155</sup> *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00431171&committee\\_id=C00431445&committee\\_id=C00453928&committee\\_id=C00575795&committee\\_id=C00580100&disbursement\\_description=sms&disbursement\\_description=short+code&disbursement\\_description=text+number&disbursement\\_description=phone+number&disbursement\\_description=text+id](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.*

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1 disbursement reported as for “software.”<sup>156</sup> 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:  
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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.<sup>157</sup> Moreover, given the declaration’s assertion that the SMS short code was

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<sup>156</sup> See App’x.

<sup>157</sup> 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],”<sup>158</sup> 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.”<sup>159</sup> 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,”<sup>160</sup> 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

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<sup>158</sup> MUR 7931 Vogel Decl. ¶ 8.

<sup>159</sup> MUR 7931 Biden Committee Resp. at 2.

<sup>160</sup> Biden Committee Disbursements; *see* MUR 7931 Compl. ¶ 37; MUR 8059 Compl. ¶ 10.

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

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<sup>161</sup> MUR 8059 Biden Resp. at 2; *see* MUR 8059 Vogel Decl. ¶ 5.

<sup>162</sup> *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”).

<sup>163</sup> 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,<sup>164</sup> including \$20,221,129.23 received  
 5 as a transfer from the Victory Fund.<sup>165</sup> 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,<sup>166</sup> with only \$482 in additional contributions disclosed on subsequent  
 8 Reports.<sup>167</sup> 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.<sup>168</sup> The Commission is aware of no information that contradicts  
 17 these assertions.

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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.”<sup>169</sup> Since the 2020 general election, the Victory Fund  
 5                   has reported receiving \$2,414,952.90 in contributions.<sup>170</sup> 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.<sup>171</sup> 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

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<sup>169</sup> 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.”).

<sup>170</sup> *Supra* note 52 and accompanying text.

<sup>171</sup> 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](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](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.

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1 presidential election, to which the Victory Fund also attests.<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> Commission regulations define “purpose” as a  
 14 “brief statement or description of why the disbursement was made.”<sup>175</sup> “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.”<sup>176</sup> The Commission has

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<sup>172</sup> 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.

<sup>173</sup> 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.

<sup>174</sup> 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).

<sup>175</sup> 11 C.F.R. § 104.3(b)(3)(i)(A).

<sup>176</sup> 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.”<sup>177</sup> 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.<sup>178</sup> The Commission’s  
6 website also states that “software” can be an adequate statement of the purpose of a  
7 disbursement.<sup>179</sup>

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],”<sup>180</sup> and  
11 which the Biden Committee describes as its “intellectual property.”<sup>181</sup> 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.<sup>182</sup>

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<sup>177</sup> *Id.* at 888.

<sup>178</sup> 11 C.F.R. § 104.3(b)(3)(i)(B).

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

<sup>180</sup> Vogel Decl. ¶ 8; *see* Resp. at 2.

<sup>181</sup> Resp. at 5.

<sup>182</sup> *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.<sup>183</sup> 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.<sup>184</sup> 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.<sup>185</sup>

17           With respect to the allegation that the Biden Committee failed to amend its Statement of  
18 Organization to reflect Biden's 2024 candidacy,<sup>186</sup> 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

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

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

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

<sup>186</sup> 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.<sup>187</sup>  
3 Indeed, the form on which Statements of Organization are submitted has no line on which this  
4 information could be provided.<sup>188</sup>

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.

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

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

**PROPOSED F&LA****Appendix**Disbursements by the Biden Committee to Upland Software Following the 2020 Election<sup>189</sup>

<b>Date</b>	<b>Amount</b>	<b>Recipient</b>	<b>Description</b>
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
<b>Total:</b>	<b>\$5,083,361.49</b>		

<sup>189</sup>

Upland Disbursements.

**PROPOSED F&LA****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.<sup>1</sup> The  
5 Committee was authorized by Biden in both the 2020 and 2024 election cycles.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.”<sup>5</sup>

14            The Complaint also alleges that the Committee has failed to amend its Statement of  
15 Organization to reflect Biden’s 2024 candidacy.<sup>6</sup> 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

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

<sup>2</sup> 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).

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

<sup>4</sup> Compl. ¶¶ 34-38 (Oct. 12, 2021).

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

<sup>6</sup> 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].<sup>7</sup>

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.”<sup>8</sup>

### 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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<sup>7</sup> Resp. at 2-3.

<sup>8</sup> *Id.* at 3.

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

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

<sup>11</sup> 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,<sup>12</sup> 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.<sup>13</sup> Indeed, the  
7 form on which Statements of Organization are submitted has no line on which this information  
8 could be provided.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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

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<sup>12</sup> Compl. ¶¶ 39-51, 66-82.

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

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

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

<sup>16</sup> 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.<sup>17</sup> If the exact amount of a debt or obligation is  
3 not known, the report shall state that the amount reported is an estimate.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> The Committee states that this  
11 disbursement relates to “online fundraising ads [the Committee] ran through Vox Media,  
12 LLC . . . in August 2020.”<sup>21</sup> 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.”<sup>22</sup>

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

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<sup>17</sup> 11 C.F.R. § 104.11(b).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Compl. ¶ 34.

<sup>21</sup> Resp. at 5; Smolskis Decl. ¶ 6.

<sup>22</sup> Resp. at 5.

<sup>23</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).