



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 26, 2021

Via First Class Mail

Kellyanne Conway

Alpine, NJ 07620

Re: MUR 7147
Kellyanne Conway

Dear Ms. Conway:

On November 15, 2016, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (“the Act”). A copy of the complaint was forwarded to you at that time. The initial complaint in which you were named was designated MUR 7193. As part of its administrative process, the Commission severed the allegations as to you in MUR 7193 and merged them with this matter, where they could more appropriately be addressed.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 23, 2021, voted to dismiss the allegations that you violated 52 U.S.C. § 30116 by making excessive contributions in the form of services rendered to Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer. The Factual and Legal Analysis, which more fully explains the Commission’s decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650 or cjacksonjones@fec.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Kellyanne Conway **MUR 7147**

6
7
8 **I. INTRODUCTION**

9
10 The Complaint in MUR 7147 alleges that, during the 2016 general election, Make
11 America Number 1 and Jacquelyn James in her official capacity as treasurer (“MAN1”), an
12 independent expenditure-only political committee (“IEOPC”) supporting Donald J. Trump for
13 President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”)¹
14 paid for the personal services of senior Trump campaign staffer Kellyanne Conway, which
15 resulted in excessive contributions from Conway to the Trump campaign, in violation of
16 52 U.S.C. § 30116(a).²

17 For the reasons that follow, the Commission dismisses the allegation that Kellyanne
18 Conway violated 52 U.S.C. § 30116(a) by making excessive contributions in the form of services
19 rendered to the Trump campaign and closes the file as to Kellyanne Conway.

20 **II. FACTS**

21 On June 22, 2015, Donald Trump filed a Statement of Candidacy with the Commission
22 for the 2016 presidential election, designating Donald J. Trump for President, Inc., as his

¹ Bradley T. Crate became treasurer for Donald J. Trump for President, Inc. on January 20, 2017. Timothy Jost was the treasurer at the time the Committee was notified of the allegations raised in the Complaint.

² See MUR 7147 Compl.at ¶ 6 (Oct. 6, 2016); MUR 7147 First Supp. Compl. at 1 (Dec. 2, 2016); MUR 7147 Second Supp. Compl. at 1 (Apr. 12, 2017). Conway was initially named as a respondent in MUR 7193. MUR 7193 Compl. (Nov. 7, 2016). However, as part of its administrative process, the Commission severed the allegations as to Conway in MUR 7193 and merged them with this matter, where they could more appropriately be addressed.

1 principal campaign committee.³ MAN1 initially registered with the Commission on April 6,
2 2015 as an IEOPC named “Keep the Promise 1” (“KTP1”); on June 22, 2016, it filed an
3 amended Statement of Organization with the “Make America Number 1” name.⁴

4 The Complaint alleges that MAN1 paid compensation to Kellyanne Conway, through
5 companies in which she had ownership interests, for personal services Conway rendered to the
6 Trump campaign. Conway joined the Trump campaign as an independent contractor on July 1,
7 2016, serving first as Senior Advisor and Pollster and then as Campaign Manager.⁵ Prior to
8 joining the Trump campaign, Conway served as president of MAN1 in its former iteration as
9 KTP1.⁶ Conway was also the President and founder of The Polling Company, Inc./Women
10 Trend (“Polling Company”), a “primary research and consulting firm.”⁷

11 Throughout the primary election season, Polling Company provided substantial services
12 to KTP1, including polling, assisting with media strategy and identifying potential donors.⁸ In
13 early June 2016, Conway states that she was contacted by the Trump campaign to assist the
14 campaign with its media strategy. She avers that “from that point forward,” she stopped
15 performing work for or receiving information regarding KTP1’s plans or strategies.⁹ Though

³ Donald J. Trump Statement of Candidacy (June 22, 2015).

⁴ MAN1 Statement of Organization (Apr. 6, 2015); MAN1 Amended Statement of Organization (June 22, 2016).

⁵ Kellyanne Conway Affidavit (Feb. 14, 2017) (“Conway Aff.”) ¶ 1.

⁶ *Id.* ¶ 2.

⁷ *Id.* ¶¶ 2-3.

⁸ *Id.* ¶ 4.

⁹ *Id.* ¶ 5.

1 Conway invoiced the Trump campaign for her “consulting services” through Polling Company
2 and maintained her ownership interest in Polling Company, she avers that she was the only
3 individual from Polling Company involved in her “consulting” work for the Trump campaign
4 and that she “ceased involvement with” Polling Company operations when she “began working
5 for the campaign.”¹⁰

6 From July 10, 2016, through the general election, the Trump campaign retained Polling
7 Company to perform polling.¹¹ MAN1 also retained Polling Company for polling work. In
8 August 2016, two months after Conway joined the Trump campaign, MAN1 paid Polling
9 Company approximately \$247,000 and the Trump campaign paid Polling Company \$111,000 for
10 polling.¹² The Complaint cites press reports in which Conway is quoted saying that this payment
11 was for work done by Polling Company for MAN1 in late June and early July, later correcting
12 that statement to assert the work was limited to June 2016.¹³ According to Polling Company’s
13 CEO Brett Loyd, the \$247,000 payment from MAN1 on August 23, 2016, was for services

¹⁰ *Id.* ¶¶ 6-7 (not specifying whether commencement of “working for” the campaign was at time she was retained as an independent contractor for “consulting services” in early June 2016 or at time she “join[ed]” campaign on July 1, 2016). Current Polling Company President and CEO, Brett Loyd, avers that Conway billed her political consulting services through Polling Company, but otherwise did not use Polling Company resources to provide any political consulting services to Trump’s campaign. Brett Loyd Aff. (Feb. 13, 2017) (“Loyd Aff.”) ¶¶ 11-12.

¹¹ Loyd Aff. ¶¶ 13-14.

¹² MUR 7147 Compl. ¶¶ 38, 42; *see also* MAN1 Amended September Monthly Report at 12 (May 22, 2017).

¹³ MUR 7147 Compl. ¶ 42 (quoting press report that Conway indicated that she did not know details of Polling Company’s work for MAN1, but also indicated that it was MAN1’s then-president “Bossie’s decision to hire” Polling Company).

1 Polling Company provided in late June through July 7, after which Polling Company asserts it
2 did no further work for MAN1.¹⁴

3 **III. LEGAL ANALYSIS**

4 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
5 deposit of money or anything of value made by any person for the purpose of influencing any
6 election for Federal office.”¹⁵ “Anything of value” includes in-kind contributions.¹⁶ When a
7 person makes an expenditure in cooperation, consultation, or in concert with, or at the request or
8 suggest of, a candidate or the candidate’s authorized committee or their agents, it is treated as an
9 in-kind contribution.¹⁷ In-kind contributions also include “any goods or services [provided]
10 without charge or at a charge that is less than the usual and normal charge for such goods or
11 services.”¹⁸ However, the value of services provided without compensation by any individual
12 who volunteers on behalf of a candidate or political committee is not a contribution.¹⁹

¹⁴ Loyd Aff. ¶ 9.

¹⁵ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

¹⁶ 11 C.F.R. § 100.52(d)(1).

¹⁷ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

¹⁸ 11 C.F.R. § 100.52(d)(1). Usual and normal charge for “goods” means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; usual and normal charge for “services,” other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

¹⁹ 11 C.F.R. § 100.74. Generally, the payment by any person of compensation to an individual for providing services to a political committee without charge is a contribution from the payor to the political committee; however, Commission regulations provide that payments to an employee who provides personal services to a political committee do not result in a contribution from the payor to the political committee where (a) an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period provided that the taken or released time is made up or completed by the employee within a reasonable time; (b) an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is

1 The Complaint alleges that MAN1’s payments to Polling Company, a company in which
2 Conway had an ownership interest, was in reality disguised salary payments to Conway for
3 services she rendered to the Trump campaign. Conway resigned her managerial positions in
4 Polling Company upon joining the campaign. However, she did not divest her ownership
5 interests in the company and continued to benefit financially from the company’s business, while
6 purportedly volunteering for the campaign and steering business to her company.

7 Commission regulations provide that, in order for payment to a campaign volunteer to be
8 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
9 must receive compensation for work performed on behalf of that candidate.²⁰ Conway does not
10 deny that she retained her ownership stake in Polling Company even after she resigned as
11 President and CEO to work for the campaign.²¹ In fact, she continued to invoice for her
12 consulting services rendered to the Trump campaign through Polling Company.²² MAN1 paid
13 its final invoice for services rendered by Polling Company on August 23, 2016, and does not
14 appear to have used Polling Company as a vendor thereafter.²³ Polling Company submits sworn
15 affidavits attesting that the August 23rd payment was for services rendered by Polling Company
16 prior to Conway’s joining the Trump campaign. Because there is insufficient information to
17 suggest that Polling Company provided services to MAN1 while Conway was a Trump

considered his or her own to use as he or she sees fit; or (c) the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. 11 C.F.R. § 100.54.

²⁰ 11 C.F.R. § 100.74. *See* MURs 6566 and 6604 (Lisa Wilson-Foley for Congress); MUR 6494 (Schmidt for Congress); *cf.* 11 C.F.R. §§ 100.54, 114.9 (compensation for personal services as contributions, use of corporate resources by stockholder volunteers, respectively).

²¹ Conway Aff. ¶¶ 6-7.

²² *Id.*

²³ Loyd Aff. ¶ 9.

1 campaign employee, or that Conway was paid less than her usual market rate for her consulting
2 services, there is insufficient information to suggest that the MAN1's payments to Polling
3 Company were actually payments for personal services rendered by Conway to the Trump
4 campaign. Moreover, even if MAN1's payments to the Polling Company were compensation to
5 Conway for personal services rendered to the Trump campaign, the Commission has never
6 concluded that the payment of compensation to an individual who renders services without
7 charge to a political committee results in a contribution from the individual to the political
8 committee.²⁴

9 Accordingly, the Commission dismisses the allegation that Kellyanne Conway violated
10 52 U.S.C. § 30116(a) by making excessive contributions in the form of services rendered to the
11 Trump campaign, and closes the file as to Conway.

²⁴ Advisory Opinion 1982-04 (Apodaca) at 2 (volunteer services provided by individuals need not be reported by the political committee as contributions; however, if any of the individuals were paid by their employer for the work, those payments would be considered contributions to the political committee by the payor); *see also* Advisory Opinion 2006-22 (Jenkins & Gilchrist) at 4 (concluding that law firm's provision of free legal services would be a prohibited corporate contribution to political committee, but not addressing whether individual lawyer who provided such services would have made contribution); *cf.* MUR 6566 (Lisa Wilson-Foley for Congress), Factual and Legal Analysis to John Rowland (finding no reason to believe that individual who was paid by corporation while providing services for free to committee made contribution to political committee because individual was not an officer or director of the corporation and did not authorize the payment); *but see* Advisory Opinion 2011-14 (Utah Bankers Association) at 6 (concluding that individuals who serve on councils organized by SSF would be considered to serve as volunteers and the value of their service would not be a contribution to the SSF, provided that they do not receive any payment or other form of compensation for their services).