



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
)	MUR 7220
Make America Great Again PAC f/k/a)	
Donald J. Trump for President, Inc., and)	
Bradley T. Crate in his official capacity as)	
treasurer, <i>et al.</i>)	

STATEMENT OF REASONS OF COMMISSIONER ELLEN L. WEINTRAUB

The Complaint in this matter involved serious allegations that Make America Great Again PAC, formerly known as Donald J. Trump for President, Inc. (the “Trump Committee” or “Committee”) and the Trump Make America Great Again Committee, a joint fundraising committee between the Trump Committee and the Republican National Committee, improperly raised millions of dollars in contributions after the 2016 general election, despite the Trump Committee reporting no outstanding debts.¹ It further alleged, among other things, that the Committee filed false reports with the Commission regarding the Committee’s debt.² At a minimum, this matter involved significant reporting violations by a well-resourced and well-represented candidate and committee in a campaign for the highest office in the land. Unfortunately, the Commission did not achieve the necessary four votes to move forward on any of these allegations.

Unsurprisingly, barring a specific designation to the contrary, contributions are generally presumed to be intended for the next election, not the last one.³ Raising funds for a particular election after the date of that election risks evading campaign contribution limits and thus is only permissible to retire remaining debt.⁴ The Federal Election Campaign Act of 1971, as amended (the “Act” or “FECA”), prohibits making or knowingly accepting a campaign contribution in excess of contribution limits.⁵ Contribution limits were adopted by Congress and upheld by the Supreme Court to “deal with the reality or appearance of corruption inherent in a system permitting unlimited financial

¹ See Compl., dated March 2, 2017.

² See *id.*

³ See 11 C.F.R. § 110.1(b)(2)(ii).

⁴ See *id.* § 110.1(b)(3); Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) (“Explanation and Justification”) (“The Commission believes that funds given to a candidate after an election is over cannot meet the Act’s requirements that contributions be made with respect to and for the purpose of influencing that election unless they could be used to retire outstanding debts from that election.”).

⁵ 52 U.S.C. § 30116.

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contributions”⁶ Contribution limits apply on a per-election basis.⁷ During the 2016 cycle, federal law limited individual contributions to campaign committees to \$2,700.⁸

Whether a committee has net debts outstanding such that it may accept contributions for a prior election is determined by subtracting unpaid debts and obligations from cash on hand as of the date of the election.⁹ Committees must accurately report the amount and nature of outstanding debts and obligations until those debts are extinguished.¹⁰ As the Commission has explained, “Absent such debts, contributions to past elections would, in reality, influence future elections.”¹¹ The net debts outstanding rule thus prevents the circumvention of contribution limits and “furthers the fundamental goal of the FECA, which is to protect the integrity of the electoral process.”¹²

The Trump Committee reported over \$5 million in contributions designated for the 2016 general election after Election Day and reported those contributions as being used for debt retirement.¹³ It is unclear if the Committee had sufficient net debts outstanding to permissibly designate post-election contributions to the 2016 general election. The Committee has repeatedly moved the goalposts with its representations on debt. Its 2016 post-general report disclosed \$766,756.67 in outstanding net debts from the 2016 general election, far below the debt necessary to designate \$5 million to the 2016 general election.¹⁴ On a subsequent 2016 year-end report and on the next quarterly report, it reported no outstanding 2016 election debts.¹⁵ But in a sworn affidavit from its treasurer, the Committee reported that on Election Day it “knew of approximately \$19 million in outstanding liabilities,” including a \$10 million loan to the Committee from Trump himself, at a time when it had approximately \$15 million cash-on-hand.¹⁶ The Committee claimed to be aware of millions of dollars in outstanding debt but appears to have failed to accurately disclose those obligations.¹⁷

Without conducting an investigation, we simply cannot verify if the Committee had sufficient net debts to continue raising funds for the 2016 general election. The Committee ultimately redesignated approximately \$4.4 million of the contributions received after the 2016 election to the 2020 primary election, potentially undercutting its claim of sufficient net debts outstanding.¹⁸

⁶ *Buckley v. Valeo*, 424 U.S. 1, 28 (1976).

⁷ *See* 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

⁸ *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contributions & Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-52 (Feb. 3, 2015).

⁹ *See* 11 C.F.R. § 110.1(b)(3)(ii).

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

¹¹ Explanation and Justification at 761.

¹² *Id.*

¹³ *See* First Gen. Counsel’s Report in MUR 7220 (Make America Great Again PAC, *et al.*) (“FGCR”) at 13.

¹⁴ *See id.* at 16 (citing Trump Committee, Amended 2016 Post-General Report (May 12, 2017) (covering the period of October 20, 2016 through November 28, 2016) and Trump Committee, Amended 2016 Year-End Report (July 20, 2017) (covering the period of November 29, 2016 through December 31, 2016)).

¹⁵ *See id.* (citing Trump Committee, Amended 2017 April Quarterly Report (July 20, 2017) (covering the period of January 1, 2017 through March 31, 2017)).

¹⁶ Resp., Ex. A ¶¶ 4-6 (Affidavit of Bradley T. Crate).

¹⁷ *See* FGCR at 15-19 (explaining that the record is unclear as to the overall amount of debt that should have been disclosed but that, at a minimum, the Committee appears to have failed to properly disclose at least \$1.9 million in debt or obligations reported as 2016 disbursements).

¹⁸ *See id.* at 14.

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Even if the Committee had the debts it claimed, it does not appear to have accurately reported those debts. The Office of General Counsel therefore recommended finding reason to believe that the Committee failed to accurately disclose its debts and obligations. I voted to approve that recommendation. My Republican colleagues, however, argue that the “Trump Committee was not given fair notice or an opportunity to respond to [the Office of General Counsel’s] assertion that it misreported its debt obligations in the wake of the 2016 election” as a ground for dismissal.¹⁹ They argue that the Complaint “simply notes that the Trump Committee had initially reported no debt, which is insufficient to put the Respondents on notice that they may be subject to investigation or enforcement on the issue.”²⁰ But the Complaint was clear:

[D]espite showing no net debt as of the date of the 2016 election, and showing a surplus of more than \$7 million, Donald J. Trump for President, Inc. attributed the millions of dollars in contributions made after November 8, 2016 to ‘2016 General Debt Retirement.’ *This is a serious reporting error* that, left uncorrected, could have the effect of allowing a contributor to effectively illegally double her contribution limit for the 2020 Trump reelection campaign by having her post-2016 election contribution improperly designated for the 2016 limit.²¹

It is true that the Complaint did not specify the details of the reporting inaccuracies. How could it have? The public may never have accurate information to assess the Committee’s debt reporting. Indeed, the apparent inaccuracies in the Committee’s reporting was the basis of the Complaint’s allegations. The Committee, a presidential campaign represented by experienced counsel who regularly appear before the Commission, submitted a response stating unequivocally that it was aware of millions of dollars in debt at the time of the election. In doing so, it provided information to the Commission integral to understanding the allegations and not supported by its disclosure reports. That such debt had to be reported accurately should come as no surprise.

Without the transparency provided by accurate reporting, as is required by law, the Commission is deprived of the information necessary to ensure that the Trump Committee did not accept excessive or prohibited contributions. This lack of transparency demanded that the Commission find reason to believe that violations have occurred. Instead, once again, the Commission took no action.²² I moved to find reason to believe that violations occurred and to enter into pre-probable cause conciliation with respect to apparent reporting violations.²³ I also voted to authorize a targeted investigation to shed light on whether the Trump Committee accepted excessive contributions by raising money for the 2016 election in excess of its net debts outstanding.²⁴

¹⁹ See Statement of Reasons of Vice Chair Allen Dickerson & Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III in MUR 7220 (Make America Great Again PAC, *et al.*), at 4-5, dated Sept. 24, 2021. My colleagues reference a Statement of Reasons I wrote in 2003 as supposed support for the idea that failure to notify *respondents* of charges raised outside of the Complaint raises due process concerns. See *id.* at 4, n. 23. This mischaracterizes the 2003 matter. They fail to mention that the matter they cite involved a determination about an entity not named in the Complaint and never notified as a Respondent. The current matter raises no such due process concerns.

²⁰ *Id.* at 5.

²¹ Compl. ¶ 3 (emphasis added); see also FGCR at 16.

²² See Certification, MUR 7220 (Make America Great Again PAC, *et al.*), dated Aug. 5, 2021.

²³ See *id.*; see also FGCR at 18.


²⁴ See Certification, MUR 7220 (Make America Great Again PAC, *et al.*), dated Aug. 5, 2021.

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It is unfortunate that this decision was presented to the Commission years after the alleged misconduct.²⁵ But the imminence of the statute of limitations is only one factor to be considered. The Commission must also weigh the seriousness of the violation, in this case involving multi-million-dollar allegations against the former President of the United States. I believe there was enough time left on the statute of limitations to get to the bottom of these serious violations and vindicate the interest of the Commission and the American people in ensuring that no one is above the law.²⁶

Candidates and officeholders, especially at the very highest levels, must comply with contribution limits and provide the transparency that is at the heart of this agency's mission. And as recent news has shown, other enforcement agencies have not abandoned their responsibility to pursue serious violations arising out of the 2016 election.²⁷ Neither should we.

September 24, 2021
Date


Ellen L. Weintraub
Commissioner

²⁵ See FGCR at 14.

²⁶ Even if the five-year statute of limitations at 28 U.S.C. § 2462 were to expire, that does not bar potential injunctive relief, such as requiring the Committee to amend apparently incorrect disclosure reports. See *FEC v. Christian Coal.*, 965 F. Supp. 66, 71 (D.D.C. 1997) (holding that injunctive relief is not a penalty); *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 20-21 (D.D.C. 1995) (same).

²⁷ See, e.g., Press Release, Dep't of Justice, Political Operatives Indicted for Alleged Scheme Involving Illegal Campaign Contribution to 2016 Presidential Campaign (Sept. 20, 2021), <https://www.justice.gov/opa/pr/political-operatives-indicted-alleged-scheme-involving-illegal-campaign-contribution-2016>.