



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

April 19, 2023

**VIA ELECTRONIC MAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Campaign Legal Center  
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RE: MUR 7634  
De Blasio 2020, *et al.*

Dear Mses. Chlopak and Gonsalves-Brown:

This is in reference to the complaint you filed with the Federal Election Commission on August 7, 2019, concerning allegations that De Blasio 2020 and Herbert Block in his official capacity as treasurer, Bill de Blasio, Fairness PAC and Herbert Block in his official capacity as treasurer, and NY Fairness PAC violated 52 U.S.C. §§ 30104(a), (b), 30116(a), (f), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. §§ 100.72(a) and 100.131(a) in connection with various expenses paid for by Fairness PAC and NY Fairness PAC that supported de Blasio's 2020 presidential campaign or his testing the waters in advance of that campaign.

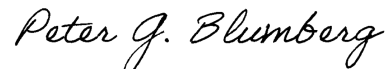
Based on that Complaint, on August 11, 2022, the Commission found that there was reason to believe that: De Blasio 2020 and Herbert Block in his official capacity as treasurer violated 52 U.S.C. §§ 30104(a), (b), 30116(f) and 11 C.F.R. §§ 100.72(a) and 100.131(a); Bill de Blasio violated 52 U.S.C. § 30116(f); Fairness PAC and Herbert Block in his official capacity as treasurer violated 52 U.S.C. § 30116(a); and NY Fairness PAC violated 52 U.S.C. § 30116(a). Subsequently, the Commission on April 17, 2023, entered into a conciliation agreement with De Blasio 2020 and Herbert Block in his official capacity as treasurer, Fairness PAC and Herbert Block in his official capacity as treasurer, and NY Fairness PAC and determined to take no further action concerning the remaining allegations and close the file.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

The Factual and Legal Analyses, which explains the Commission's findings, and a copy of the conciliation agreement are enclosed. If you have any questions, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or [arabinowitz@fec.gov](mailto:arabinowitz@fec.gov).

Sincerely,

Lisa J. Stevenson  
Acting General Counsel



By: Peter G. Blumberg  
Special Counsel to The  
Associate General Counsel

Enclosures  
Factual and Legal Analyses  
Conciliation Agreement

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 RESPONDENT: De Blasio 2020 and Herbert Block MURs 7631 and 7634  
7 as Treasurer  
8 Bill de Blasio  
9

10 **I. INTRODUCTION**

11 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
12 established Fairness PAC, a federal multi-candidate committee, and NY Fairness PAC, a non-  
13 federal committee registered with the state of New York (collectively, the “Committees”). The  
14 Complaints allege that these Committees funded exploratory activity and made other  
15 contributions to de Blasio’s campaign in excess of federal contribution limits as set forth in the  
16 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.  
17 The Complaints further allege that 25 individuals made excessive contributions to de Blasio’s  
18 campaign because their aggregate contributions to the Committees and De Blasio 2020 exceeded  
19 the \$2,800 limit on individual contributions to a campaign.

20 Respondents admit that NY Fairness PAC made approximately \$53,000 in expenditures  
21 for travel and consulting services that benefited the campaign after it was formed. Respondents  
22 also admit that Fairness PAC paid for \$123,000 in polling expenses that it contends were for  
23 testing-the-waters purposes and that the campaign reimbursed late. Respondents otherwise deny  
24 the allegations. Respondents request that the Commission enter into pre-probable cause  
25 conciliation with respect to the approximately \$176,000 in contributions from the Committees  
26 and otherwise dismiss the allegations.

27 Based on the available information, De Blasio 2020 and de Blasio appear to have  
28 accepted excessive in-kind contributions from Fairness PAC and NY Fairness PAC when the

Committees made \$121,000 in payments related to de Blasio’s testing-the-waters and campaign activities. Further, De Blasio 2020 has not properly disclosed these contributions.

Accordingly, the Commission finds reason to believe that: (1) De Blasio 2020 and Herbert Block in his official capacity as treasurer (“De Blasio 2020”) and de Blasio accepted excessive in-kind contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 100.72(a); and (2) De Blasio 2020 failed to properly report its testing-the-waters and campaign activities in violation of 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a).

## **II. FACTUAL BACKGROUND**

### **A. Establishment of Fairness PAC and NY Fairness PAC**

Bill de Blasio served as mayor of New York from January 1, 2014 to December 31, 2021.<sup>1</sup> According to the Response submitted on his behalf in connection with these matters, de Blasio decided to become a candidate for President of the United States on May 15, 2019, and publicly announced his decision the following day, on May 16, 2019.<sup>2</sup> That same day, de Blasio filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.<sup>3</sup> De Blasio’s campaign ran until September 20, 2019, when he announced its suspension.<sup>4</sup>

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio’s NYC Mayoral Tenure, What’s Next and What’s Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

<sup>2</sup> Resp. at 2 (Oct. 15, 2019), MUR 7631.

<sup>3</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>4</sup> Resp. at 2, MUR 7631; Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

Before announcing his candidacy, de Blasio “and others” established two committees in July 2018: Fairness PAC and NY Fairness PAC, both organized as unincorporated political organizations under section 527 of the Internal Revenue Code.<sup>5</sup> First, on July 25, 2018, Fairness PAC filed its Statement of Organization with the Commission<sup>6</sup> and became a multicandidate committee in January 2019.<sup>7</sup> The available information indicates that Fairness PAC’s purpose was to support federal Democratic candidates and progressive causes in New York State and elsewhere.<sup>8</sup> Then, on July 27, 2018, NY Fairness PAC, registered with the New York State Board of Elections (“NYSBOE”) as a state political action committee.<sup>9</sup> Available information indicates that NY Fairness PAC’s purpose was to support nonfederal Democratic Party candidates and progressive causes in New York State and elsewhere — and that it did so by making contributions and public communications and by travel by Mayor de Blasio for activities, events and conferences to promote progressive positions on issues and to support who embraced those positions.

The two political committees entered into and operated under a joint fundraising agreement pursuant to Commission regulations, with Fairness PAC as the joint fundraising

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<sup>5</sup> Resp. at 1 (Oct. 15, 2019), MUR 7634.

<sup>6</sup> Fairness PAC, Statement of Organization (July 25, 2018); *see also* Fairness PAC, Amended Statement of Organization (July 25, 2019) (same).

<sup>7</sup> The Committee informed the Commission that it had reached multicandidate status on January 31, 2019. Fairness PAC, Notification of Multicandidate Status (Jan. 31, 2019).

<sup>8</sup> *See* Laura Nahmias and Gloria Pazmino, *De Blasio Launches Federal PAC and Considers Post-Mayoral Run*, POLITICO (July 26, 2018), <https://www.politico.com/states/new-york/albany/story/2018/07/25/de-blasio-launches-federal-pac-and-considers-post-mayoral-run-529622> (stating that de Blasio had stated he formed Fairness PAC in order “to support national Democratic candidates in their efforts to retake the House, Senate and New York state Senate”).

<sup>9</sup> Resp. at 1, MUR 7631.

1 representative. According to the Complaint in MUR 7634, the two committees conducted their  
2 joint fundraising through an ActBlue fundraising page that indicated that the Committees would  
3 accept contributions from individuals of up to \$5,000 total, or \$2,500 each<sup>10</sup> and that  
4 contributions from individuals would be allocated 50% to Fairness PAC and 50% to NY Fairness  
5 PAC.<sup>11</sup>

6 At the time it filed its initial statement of organization, Fairness PAC represented its  
7 website to be billdeblasio.com<sup>12</sup> — which, according to the Complaint in MUR 7634, previously  
8 had been associated with de Blasio’s mayoral campaign.<sup>13</sup> However, Fairness PAC did not  
9 mention the website in an amended statement of organization it filed on July 25, 2019, or  
10 thereafter.<sup>14</sup> Archived versions of the website show that as of July, 2018, billdeblasio.com  
11 provided information regarding Fairness PAC and stated that it was paid for by Fairness PAC,  
12 while as of May, 2019, billdeblasio.com solicited contributions for, and stated that it was paid for  
13 by, De Blasio 2020.<sup>15</sup>

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<sup>10</sup> See Compl. at 3-4 (Aug. 7, 2019), MUR 7634; Resp. at 2, MUR 7634 (citing 11 C.F.R. § 102.17, which permits federal and non-federal committees to engage in joint fundraising so long as participants comply with the Act’s contribution prohibitions and limitations).

<sup>11</sup> Compl. ¶ 9, MUR 7634 (citing Donate to Fairness PAC, ActBlue, <https://secure.actblue.com/donate/fairnesspac>) (quotation marks omitted). The underlying ActBlue page is no longer available.

<sup>12</sup> Fairness PAC, Statement of Organization (July 25, 2018).

<sup>13</sup> Compl. at 3, MUR 7634. According to the Complaint, after the formation of Fairness PAC, the disclaimer on billdeblasio.com was changed from “Paid for by de Blasio 2017,” the name of de Blasio’s mayoral committee, to “Paid for by Fairness PAC.” *Id.*

<sup>14</sup> Fairness PAC, Amended Statement of Organization (July 25, 2019).

<sup>15</sup> Compare deblasio.com [<https://web.archive.org/web/20180727015840/https://billdeblasio.com/>] (July 27, 2018, archived snapshot of website), with deblasio.com [[https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de\\_blasio\\_donate\\_is/](https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de_blasio_donate_is/)] (May 17, 2019, archived snapshot of website).

**B. Payments Made by the Committees Allegedly for Financing de Blasio's Testing-the-Waters and Campaign Activities**

According to Respondents, de Blasio began to test the waters for a potential 2020 presidential run in early March 2019.<sup>16</sup> De Blasio 2020's July 2019 Quarterly Report, which was the first report the Committee filed with the Commission after de Blasio announced his candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7 through May 14, 2019.<sup>17</sup> Despite this level of spending, that report does not indicate how any of those expenses were funded because it discloses no contributions received during the testing-the-waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the Committee reported accepting its first contribution.<sup>18</sup>

Although neither Committee has been disclosed as a contributor to de Blasio's campaign, Respondents admit that the Committees paid for at least some of de Blasio's exploratory activities. The Responses represent that NY Fairness PAC paid for travel expenses that benefited the campaign,<sup>19</sup> which is reflected in reports filed with the NYSBOE and the

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<sup>16</sup> See, e.g., Resp. at 2, MUR 7634.

<sup>17</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

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

<sup>19</sup> Resp. at 9, MUR 7634; see also De Blasio 2020, Amended July 2019 Quarterly Report at 364; New York State Board of Elections, Campaign Finance Disclosure, NY Fairness PAC, [https://cfapp.elections.ny.gov/ords/plsql\\_browser/EXPENSESA\\_county?ID\\_in=A22609&date\\_From=&date\\_to=&OFFICE\\_in=ALL&AMOUNT\\_From=&AMOUNT\\_to=&ZIP1=&ZIP2=&ORDERBY\\_IN=N](https://cfapp.elections.ny.gov/ords/plsql_browser/EXPENSESA_county?ID_in=A22609&date_From=&date_to=&OFFICE_in=ALL&AMOUNT_From=&AMOUNT_to=&ZIP1=&ZIP2=&ORDERBY_IN=N) (hereafter "NY Fairness PAC NYSBOE Disclosures"). Although not specifically admitted by the Respondents, the campaign disclosed expenditures related to a press list and consulting services that it described as "exploratory" on March 7 and March 8, respectively. The campaign disclosed additional disbursements for travel and described as "exploratory" taking place in March, April, and May. De Blasio 2020, Amended July 2019 Quarterly Report. They included exploratory expenditures for travel, food, and lodging in Illinois, Massachusetts, Nevada, New Hampshire, South Carolina, and Virginia. *Id.*

Commission.<sup>20</sup> De Blasio 2020 has reported in its initial filing a \$52,851.89 debt owed to NY Fairness PAC,<sup>21</sup> which Respondents acknowledge includes travel expenses.<sup>22</sup>

As alleged in the Complaint in MUR 7634, De Blasio 2020's Amended July 2019 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as "Exploratory" in memo entries.<sup>23</sup> A number of those expenditures are identical to expenditures that appear in Fairness PAC or NY Fairness PAC's reports, reflecting the same amounts and dates of disbursement.<sup>24</sup> These include: approximately \$13,000 in consulting services to various individuals and entities; an \$8,600 payment for rent to The Yard; a payment of \$1,769.22 to Cision, Inc., for a press list; and various payments for travel, food, and lodging.<sup>25</sup> The 78 expenditures listed in De Blasio 2020's initial report as "exploratory" also include a payment of \$68,000 to Brilliant Corners Research and Strategies for "polling."<sup>26</sup>

The 78 exploratory expenditures further include a payment to Freedomland Media for \$19,964 on May 12, 2019.<sup>27</sup> This corresponds to a payment by NY Fairness PAC in the same

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<sup>20</sup> De Blasio 2020, Amended 2019 July Quarterly Report; NY Fairness PAC NYSBOE Disclosures.

<sup>21</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>22</sup> Resp. at 9, MUR 7634.

<sup>23</sup> *See* Compl. ¶ 11, MUR 7634; De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>24</sup> *Compare* De Blasio 2020, Amended 2019 July Quarterly Report, *with* Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020); NY Fairness PAC NYSBOE Disclosures.

<sup>25</sup> *See* De Blasio 2020, Amended 2019 July Quarterly Report.

<sup>26</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

<sup>27</sup> *Id.* at 378.



1 amount and on the same day to Freedomland Media for “Video Production Services.”<sup>28</sup>  
2 Respondents acknowledge that NY Fairness PAC thereby paid for a portion of the cost of what  
3 became de Blasio’s presidential campaign announcement video, which De Blasio 2020 released  
4 four days later.<sup>29</sup> De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this  
5 payment. De Blasio 2020 later made additional payments to Freedomland Media in the amounts  
6 of \$19,694 on June 13,<sup>30</sup> \$24,694 on July 9,<sup>31</sup> and \$8,000 on August 7.<sup>32</sup>

7 The Complaints also identify three groups of expenditures by the Committees that De  
8 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, De Blasio  
9 2020 allegedly failed to disclose as an expenditure a \$55,000 payment by Fairness PAC to  
10 Keating Research on May 13, 2019 that is described as for “exploratory” purposes in Fairness  
11 PAC’s 2019 Mid-Year Report.<sup>33</sup>

12 *Second*, on April 12, 2019, NY Fairness PAC and Fairness PAC each made  
13 disbursements of \$46,000 — \$92,000 in total — to “Trilogy Interactive” for a “digital media  
14 buy.”<sup>34</sup> Within days of the April disbursements, de Blasio’s Facebook page began running

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<sup>28</sup> NY Fairness PAC NYSBOE Disclosures.

<sup>29</sup> Resp. at 2, MUR 7631.

<sup>30</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 379.

<sup>31</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 273 (June 22, 2020).

<sup>32</sup> *Id.* at 273.

<sup>33</sup> Compl. ¶ 13, MUR 7634; Fairness PAC, Amended July Mid-Year Report at 143, 151 (Jan, 31, 2020).

<sup>34</sup> Compl. ¶ 15, MUR 7634; Fairness PAC, Amended 2019 Mid-Year Report at 157; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9 (July 15, 2019), [https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs\\_sch\\_report+p\\_filer\\_id=A22609+p\\_e\\_year=2019+p\\_freort\\_id=K+p\\_transaction\\_code=F](https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs_sch_report+p_filer_id=A22609+p_e_year=2019+p_freort_id=K+p_transaction_code=F). NY Fairness PAC reported another payment to Trilogy Interactive of \$9,130 on July 1, 2019; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 15.

dozens of ads (with disclaimers stating that they were paid for by Fairness PAC) that criticized President Trump or promoted de Blasio’s policy agenda, and asked recipients to share their names and email addresses.<sup>35</sup> The Complaints allege that those payments to Trilogy Interactive were made for de Blasio’s exploratory activities because after de Blasio announced his candidacy, the same Facebook page continued running ads “with similar messages,” but now with disclaimers stating that the ads were paid for by De Blasio 2020.<sup>36</sup> Respondents deny that those payments were related to de Blasio’s testing-the-waters activities on the basis that the advertisements in question were issue-oriented and made no reference to any election or potential candidacy.<sup>37</sup>

*Third*, the Complaint in MUR 7634 alleges that \$5,069 in expenditures by NY Fairness PAC for “digital services” and “digital consulting” to various vendors that took place from January 4 to April 23, 2019, were in fact contributions to the campaign because NY Fairness PAC does not have an online presence or purchase ads.<sup>38</sup> Respondents contend that these payments were for “fundraising emails and emails concerning the 2018 elections.”<sup>39</sup>

De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>40</sup> De

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<sup>35</sup> Compl. ¶ 15, MUR 7634; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook, <https://www.facebook.com/ads/library/?id=1303967669741097>.

<sup>36</sup> Compl. ¶ 15, MUR 7634.

<sup>37</sup> Resp. at 5, MUR 7634.

<sup>38</sup> Compl. ¶ 15, MUR 7634.

<sup>39</sup> Resp. at 5, MUR 7634.

<sup>40</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

Blasio 2020's first report disclosed \$1,087,564.24 in contributions from individuals but no contributions from the Committees.<sup>41</sup> However, it listed a \$52,851.89 debt owed to NY Fairness PAC for "Travel Expenses, Digital Advertising, [and] Rent," which Respondents represent comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020, \$4,200 in rent for office space that the campaign used, and other campaign-related travel costs.<sup>42</sup>

### **C. Reimbursement of Testing-the-Waters and Campaign Expenses**

Although Respondents dispute that many of the disbursements made by the Committees supported de Blasio's future or actual candidacy, the campaign committee has reimbursed the Committees for some of the payments in question. On September 11, 2019, De Blasio 2020 paid NY Fairness PAC the \$52,851.89 listed as a debt on the campaign's July report.<sup>43</sup> De Blasio 2020 reported two other disbursements to NY Fairness PAC on September 30, 2019: \$1,047.50 for a "website" and \$19,397.78 for "digital assets,"<sup>44</sup> and the campaign made a similar \$1,047.50 payment to Fairness PAC for a "website" the same day.<sup>45</sup> Further, De Blasio 2020 reported making a \$123,000 payment to Fairness PAC on June 30, 2019, for "polling."<sup>46</sup> Respondents admit that this corresponds to the disbursements by Fairness PAC of \$55,000 to Keating Research on May 13, 2019, and \$68,000 to Brilliant Corners Research & Strategies on March 27,

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<sup>41</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

<sup>42</sup> *Id.* at 417; De Blasio 2020, Amended 2019 October Quarterly Report at 352 (Oct. 15, 2019).

<sup>43</sup> Resp. at 4, MUR 7631; De Blasio 2020, Amended October 2019 Quarterly Report.

<sup>44</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 316.

<sup>45</sup> *Id.* at 273.

<sup>46</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378.

1 2019.<sup>47</sup> In its initial FEC filing in July 2019, De Blasio 2020 reported the expenditure to  
2 Brilliant Corners<sup>48</sup> but not the expenditure to Keating Research, and the committee has not  
3 amended this report. The campaign has reported no other disbursements to either Committee.

4 The following chart summarizes the payments by the Committees specifically identified  
5 by the Complaints that were allegedly either testing-the-waters or campaign expenses, when if  
6 ever De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed the  
7 Committee:

8 **Alleged Payments Made by Fairness PAC and/or NY Fairness PAC to Support de Blasio**<sup>49</sup>

| PAYOR           | Amount   | Recipient                                 | Date of Payment | Date of Reporting by De Blasio 2020 | Description                 | Date of Reimbursement |
|-----------------|----------|-------------------------------------------|-----------------|-------------------------------------|-----------------------------|-----------------------|
| Fairness PAC    | \$68,000 | Brilliant Corners Research and Strategies | March 27, 2019  | July 19, 2019                       | Polling                     | June 30, 2019         |
| NY Fairness PAC | \$46,000 | Trilogy Interactive                       | April 12, 2019  | Not Disclosed                       | Digital Media Buy           | None                  |
| Fairness PAC    | \$46,000 | Trilogy Interactive                       | April 12, 2019  | Not Disclosed                       | Digital Media Buy           | None                  |
| NY Fairness PAC | \$4,200  | The Yard                                  | May 2, 2019     | July 19, 2019                       | Office Space                | September 11, 2019    |
| NY Fairness PAC | \$19,964 | Freedomland Media                         | May 12, 2019    | July 19, 2019                       | Campaign Announcement Video | None                  |

<sup>47</sup> Resp. at 10, MUR 7634; *see also* Fairness PAC, Amended 2019 July Mid-Year Report at 143, 151 (Jan, 31, 2020) (disclosing both payments and describing them as “exploratory”).

<sup>48</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

<sup>49</sup> As stated above, De Blasio 2020 also made payments to NY Fairness PAC on September 30 of \$1,047.50 for a “website” and \$19,397.78 for “digital assets. It also paid Fairness PAC \$1,047.50 for a “website” on the same day. It is not clear whether De Blasio 2020 reimbursed the Committees for any of the expenditures listed.

| PAYOR           | Amount           | Recipient                                        | Date of Payment       | Date of Reporting by De Blasio 2020 | Description                                | Date of Reimbursement |
|-----------------|------------------|--------------------------------------------------|-----------------------|-------------------------------------|--------------------------------------------|-----------------------|
| Fairness PAC    | \$55,000         | Keating Research                                 | May 13, 2019          | Not Disclosed                       | Polling                                    | June 30, 2019         |
| NY Fairness PAC | \$40,000         | Clarify Agency                                   | May 15, 2019          | July 19, 2019                       | Digital Services                           | September 11, 2019    |
| NY Fairness PAC | \$9,130          | Trilogy Interactive                              | July 1, 2019          | Not Disclosed                       | Digital Media Buy                          | None                  |
| NY Fairness PAC | \$8,651.89       | Various Recipients                               | Various               | July 19, 2019                       | Travel                                     | September 11, 2019    |
| Both            | \$60,695.16      | Various Recipients                               | Various               | July 19, 2019                       | Various travel and administrative expenses | None                  |
| NY Fairness PAC | \$5,069          | Blue State Digital and Aisle 518 Strategies, LLC | Various <sup>50</sup> | Not Disclosed                       | Digital Services                           | None                  |
| <b>TOTAL</b>    | <b>\$362,710</b> |                                                  |                       |                                     |                                            |                       |

### 1 III. LEGAL ANALYSIS

#### 2 A. The Commission Finds Reason to Believe that Fairness PAC and NY 3 Fairness PAC Made, and de Blasio and De Blasio 2020 Accepted, Excessive 4 In-Kind Contributions

##### 5 1. The Committees' Payment of de Blasio's Testing-the-Waters Activities

6 An individual becomes a candidate under the Act if he or she receives contributions or  
7 makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>51</sup>

<sup>50</sup> The Complaint in MUR 7634 appears to be referring to four payments to Blue State Digital and two payments to Aisle 518 Strategies, LLC taking place between January 4 and April 23, 2019. *See* NY Fairness PAC NYSBOE Disclosures.

<sup>51</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

1 The Commission’s regulations create exemptions to the definitions of contribution and  
2 expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy,  
3 *i.e.*, to “test the waters.”<sup>52</sup> These exemptions exclude from the definitions of “contribution” and  
4 “expenditure” those funds received and payments made solely to determine whether an  
5 individual should become a candidate.<sup>53</sup> Testing-the-waters activities include, but are not limited  
6 to, payments for polling, telephone calls, and travel, and only funds permissible under the Act  
7 may be used for such activities.<sup>54</sup> If the individual subsequently becomes a candidate, the funds  
8 previously received for testing-the-waters activities are thereafter considered contributions  
9 subject to the reporting requirements of the Act.<sup>55</sup> Commission regulations further require that  
10 “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”<sup>56</sup> The  
11 Act prohibits any person from making contributions to any candidate and his authorized political  
12 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800  
13 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>57</sup> The  
14 Act also prohibits any candidate or political committee from knowingly accepting any excessive  
15 contribution.<sup>58</sup> Consequently, in order to comply with these requirements, de Blasio was limited

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<sup>52</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>53</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>54</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>55</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>56</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>57</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>58</sup> 52 U.S.C. § 30116(f).

1 to accepting contributions that complied with the Act’s source and amount restrictions while  
2 testing the waters.

3 Respondents contend that the Commission has never restricted the type of organizational  
4 vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides that funds  
5 received for testing the waters become contributions once an individual becomes a candidate and  
6 that those contributions “must be reported with the first report filed by the principal campaign  
7 committee of the candidate, regardless of the date the funds were received.”<sup>59</sup> Therefore, in past  
8 matters, the Commission has determined that a payment made by a multi-candidate committee  
9 for an individual’s testing-the-waters activities constitutes an in-kind contribution and must be  
10 reported as such by the candidate’s authorized committee after that individual becomes a  
11 candidate.<sup>60</sup> Pursuant to the Act’s contribution limits, a multicandidate committee would be  
12 limited to spending up to \$5,000 on the candidate’s exploratory efforts; if such committee were  
13 to spend more, that committee would be making an excessive in-kind contribution to the  
14 candidate’s authorized committee.<sup>61</sup> With respect to non-federal organizations, the Commission  
15 has similarly found that payments for testing-the-waters activities by such entities also constitute

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<sup>59</sup> 11 C.F.R. § 100.72(a).

<sup>60</sup> Factual & Legal Analysis (“F&LA”) at 5, MUR 5908 (Peace Through Strength PAC) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter’s leadership PAC paid for travel expenses properly attributable to Hunter’s presidential campaign); *see also* AO 1985-40 (Republican Majority Fund) (addressing specifically multicandidate committees); AO 1981-32 at 5 (explaining that “in kind gifts or loans of goods or services provided in connection with . . . testing the waters activities” are contributions under the Act).

<sup>61</sup> 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

1 in-kind contributions to a candidate.<sup>62</sup> Non-federal organizations are limited to the individual  
2 \$2,800 contribution threshold.<sup>63</sup>

3 Here, respondents admit that De Blasio 2020 accepted \$52,851.89 from NY Fairness  
4 PAC for travel and digital services that ultimately benefitted the campaign and \$123,000 from  
5 Fairness PAC for polling that was for testing-the-waters purposes.

6 2. Pre-Candidacy Expenditures Deemed as In-Kind Contributions under  
7 11 C.F.R. § 110.2(l)

8 Along with the exploratory expenditures reported on the campaign’s initial report, the  
9 campaign reported a reimbursement on June 30, 2019, to Fairness PAC for \$123,000 in polling  
10 expenses, which corresponds to a \$68,000 payment to Brilliant Corners Research and Strategies  
11 on March 27 and \$55,000 to Keating Research on May 13.<sup>64</sup>

12 Commission regulations provide that a pre-candidacy payment by a multicandidate  
13 political committee of a presidential candidate’s expenses will be deemed an in-kind contribution  
14 — regardless of whether the payment is made before the individual becomes a candidate — if  
15 the following conditions are met: (1) “[t]he expenditure is made on or after January 1 of the year  
16 immediately following the last Presidential election year;” (2) “the candidate accepted or  
17 received [the goods or services involved], requested or suggested their provision, was materially

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<sup>62</sup> F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*) (finding reason to believe that non-federal entity made contributions to campaign by paying for candidate’s testing-the-waters expenses) F&LA at 11, MURs 6917, 6929 (Scott Walker, *et al.*) (same); *see also* F&LA at 15, MUR 4323 (Huckabee Election Committee) (concluding that a state committee “could not . . . use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential . . . federal campaign”); AO 2015-09 (Senate Majority PAC and House Majority PAC) at 5 (concluding that 527 organizations’ payments for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.13(a)).

<sup>63</sup> *See* 52 U.S.C. § 30116(a)(1)(A).

<sup>64</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378; Resp. at 10, MUR 7634.



involved in the decision to provide them, or was involved in substantial discussions about their provision;” and (3) the goods or services involved are — among other categories — “[p]olling expenses for determining the favorability, name recognition, or relative support level of the candidate involved.”<sup>65</sup> However, “if the candidate, through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate, the payment shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an expenditure of the candidate.”<sup>66</sup> In addition, where an in-kind contribution exceeds the applicable contribution limit, whether on its face or when aggregated with other contributions, the treasurer may request redesignation or reattribution or, if neither is requested, must refund the contribution within 60 days of receipt.<sup>67</sup>

Respondents admit that Fairness PAC made payments for polling that qualify as pre-candidacy expenditures under 11 C.F.R. § 110.2(l): (1) \$68,000 to Brilliant Corners Research and Strategies on March 27, 2019; and (2) \$55,000 to Keating Research on May 13, 2020.<sup>68</sup> Further, because De Blasio 2020 did not reimburse Fairness PAC until June 30 for those expenditures, De Blasio 2020 failed to reimburse those expenses within 30 days after de Blasio announced his candidacy.<sup>69</sup> The campaign reimbursed Fairness PAC for the polling by Keating Research within 60 days of Fairness PAC’s disbursement, but it did not reimburse the

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<sup>65</sup> 11 C.F.R. § 110.2(l).

<sup>66</sup> 11 C.F.R. § 110.2(l)(2); *accord* F&LA at 6, MUR 7191 (Rand Paul).

<sup>67</sup> 11 C.F.R. § 103.3(b)(3).

<sup>68</sup> *See* Resp. at 10, MUR 7634.

<sup>69</sup> Resp. at 10, MUR 7634.

1 Committee for the payment to Brilliant Corners Research and Strategies until 95 days after that  
2 disbursement. Consequently, Fairness PAC made, and De Blasio 2020 and Bill de Blasio  
3 accepted, excessive in-kind contributions in the form of polling expenditures.

4 3. Committees' Payment of de Blasio's Campaign Activities

5 The Committees' support of de Blasio was not limited to his testing-the-waters activities;  
6 they also purchased goods and services that they transferred to the campaign after it was formed.  
7 NY Fairness PAC admits to paying for \$52,851.89 for consulting, rent, and travel expenses in  
8 early-to-mid May that benefited de Blasio's candidacy.<sup>70</sup> De Blasio 2020 disclosed these  
9 payments as a debt in its 2019 July Quarterly Report.<sup>71</sup> Respondents explain that the payments  
10 were specifically for: (1) a \$40,000 fee paid by NY Fairness PAC to Clarify Agency for digital  
11 services that were ultimately performed for the campaign; (2) a \$4,200 payment for "rent for  
12 office space that by then was used solely by De Blasio 2020"; and (3) "travel that was previously  
13 arranged for that time irrespective of whether or not the Mayor then would be a candidate."<sup>72</sup>  
14 The campaign reimbursed NY Fairness PAC for these expenses on September 11, 2019, long  
15 after the 60-day deadline to do so under Commission regulations.<sup>73</sup>

16 4. Conclusion

17 Based on the foregoing discussion, the available information indicates that the  
18 Committees exceeded their respective contribution limits to the campaign — \$2,800 as to NY

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<sup>70</sup> *Id.* at 9.

<sup>71</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>72</sup> Resp. at 9, MUR 7634.

<sup>73</sup> *See* 11 C.F.R. § 103.3(b)(3).

1 Fairness PAC and \$5,000 as to Fairness PAC. Respondents concede that NY Fairness PAC  
2 made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent, and  
3 consulting services and that Fairness PAC paid for \$68,000 in polling expenses that benefited the  
4 campaign and that was not refunded within 60 days of the disbursement. The Commission  
5 therefore finds reason to believe that de Blasio and De Blasio 2020 accepted excessive  
6 contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 100.72(a).

7 **B. The Commission Finds Reason to Believe that De Blasio 2020 Failed to**  
8 **Report In-Kind Contributions**

9 When an individual becomes a candidate under the Act, any funds received or payments  
10 made for testing-the-waters activities become contributions or expenditures subject to the  
11 reporting requirements of the Act and are to be reported as such on the first disclosure report  
12 filed by the candidate's authorized committee.<sup>74</sup>

13 Though the record indicates that Fairness PAC and NY Fairness PAC made  
14 disbursements for testing-the-waters activities by de Blasio and otherwise contributed to his  
15 campaign, De Blasio 2020 did not report any in-kind contributions from either Committee.  
16 Respondents also acknowledge that De Blasio 2020 failed to properly itemize polling  
17 expenditures paid for by Fairness PAC.<sup>75</sup>

18 The Commission therefore finds reason to believe that De Blasio 2020 violated 52 U.S.C.  
19 § 30104(a), (b) and 11 C.F.R §§ 100.72(a) and 100.131(a) by failing to report in-kind

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<sup>74</sup> 11 C.F.R. §§ 100.72(a); 100.131(a).

<sup>75</sup> Resp. at 10, MUR 7634 (“Although De Blasio 2020’s original July Quarterly Report disclosed, on page 378, its reimbursement of Fairness PAC for \$123,000 for ‘polling,’ it did not itemize either of the two underlying exploratory expenditures. De Blasio 2020 amended its report on July 19 and disclosed the payment to Brilliant Corners Research and Strategies, but it again omitted the payment to Keating Research.”).

- 1 contributions from Fairness PAC and NY Fairness PAC and by failing to properly report
- 2 expenditures.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4  
5  
6 RESPONDENT: NY Fairness PAC

MURs 7631 and 7634

7  
8 **I. INTRODUCTION**

9 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
10 established and NY Fairness PAC, a non-federal committee registered with the state of New  
11 York. The Complaints allege that NY Fairness PAC, along with Fairness PAC, a federal multi-  
12 candidate committee, funded exploratory activity and made other contributions to de Blasio's  
13 campaign in excess of federal contribution limits as set forth in the Federal Election Campaign  
14 Act of 1971, as amended (the "Act"), and Commission regulations.

15 NY Fairness PAC admits that it made approximately \$53,000 in expenditures for travel  
16 and consulting services that benefited the campaign after it was formed. It otherwise denies the  
17 allegations and requests that the Commission enter into pre-probable cause conciliation with  
18 respect to the approximately \$53,000 in contributions and otherwise dismiss the allegations.

19 Based on the available information, the Commission finds reason to believe that NY  
20 Fairness PAC made excessive in-kind contributions in violation of 52 U.S.C. § 30116(a).

21 **II. FACTUAL BACKGROUND**

22 **A. Establishment of NY Fairness PAC**

23 Bill de Blasio served as mayor of New York from January 1, 2014 to December 31,  
24 2021.<sup>1</sup> According to available information, de Blasio decided to become a candidate for

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio's NYC Mayoral Tenure, What's Next and What's Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

1 President of the United States on May 15, 2019, and publicly announced his decision the  
2 following day, on May 16, 2019. That same day, de Blasio filed his Statement of Candidacy and  
3 designated De Blasio 2020 as his authorized committee.<sup>2</sup> De Blasio’s campaign ran until  
4 September 20, 2019, when he announced its suspension.<sup>3</sup>

5 Before announcing his candidacy, de Blasio “and others” established NY Fairness PAC  
6 in July 2018 as an unincorporated political organization under section 527 of the Internal  
7 Revenue Code.<sup>4</sup> On July 27, 2018, NY Fairness PAC, registered with the New York State Board  
8 of Elections (“NYSBOE”) as a state political action committee.<sup>5</sup> NY Fairness PAC states that its  
9 purpose was “to support nonfederal Democratic Party candidates and progressive causes in New  
10 York State and elsewhere, and it did so, including by making contributions and public  
11 communications and by travel by Mayor de Blasio for activities, events and conferences . . . to  
12 promote progressive positions on issues and to support who embraced those positions.”<sup>6</sup>

13 **B. Payments Made by NY Fairness PAC Allegedly for Financing de Blasio’s**  
14 **Testing-the-Waters and Campaign Activities**

15 According to available information, de Blasio began to test the waters for a potential  
16 2020 presidential run in early March 2019. De Blasio 2020’s July 2019 Quarterly Report, which  
17 was the first report the Committee filed with the Commission after de Blasio announced his

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<sup>2</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>3</sup> Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

<sup>4</sup> Resp. at 1 (Oct. 15, 2019), MUR 7631.

<sup>5</sup> *Id.*

<sup>6</sup> Resp. at 2, MUR 7634 (Oct. 15, 2010).

1 candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7  
2 through May 14, 2019.<sup>7</sup> Despite this level of spending, that report does not indicate how any of  
3 those expenses were funded because it discloses no contributions received during the testing-the-  
4 waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the  
5 Committee reported accepting its first contribution.<sup>8</sup>

6 Although NY Fairness PAC has not been disclosed as a contributor to de Blasio's  
7 campaign, it admits to paying for at least some of de Blasio's exploratory activities. NY Fairness  
8 PAC represents that it made the first payment for de Blasio's exploratory expenses by paying for  
9 travel on March 13, 2019,<sup>9</sup> and that NY Fairness PAC continued to pay for such expenses  
10 "during the ensuing two months,"<sup>10</sup> which is reflected in reports filed with the NYSBOE and the  
11 Commission.<sup>11</sup> De Blasio 2020 has reported in its initial filing a \$52,851.89 debt owed to NY

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<sup>7</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

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

<sup>9</sup> Resp. at 2, MUR 7631; *see also* De Blasio 2020, Amended July 2019 Quarterly Report at 364; New York State Board of Elections, Campaign Finance Disclosure, NY Fairness PAC, [https://cfapp.elections.ny.gov/ords/plsql\\_browser/EXPENSESA\\_county?ID\\_in=A22609&date\\_From=&date\\_to=&OFFICE\\_in=ALL&AMOUNT\\_From=&AMOUNT\\_to=&ZIP1=&ZIP2=&ORDERBY\\_IN=N](https://cfapp.elections.ny.gov/ords/plsql_browser/EXPENSESA_county?ID_in=A22609&date_From=&date_to=&OFFICE_in=ALL&AMOUNT_From=&AMOUNT_to=&ZIP1=&ZIP2=&ORDERBY_IN=N) (hereafter "NY Fairness PAC NYSBOE Disclosures"). The campaign disclosed expenditures related to a press list and consulting services that it described as "exploratory" on March 7 and March 8, respectively. The campaign disclosed additional disbursements for travel and described as "exploratory" taking place in March, April, and May. De Blasio 2020, Amended July 2019 Quarterly Report. They included exploratory expenditures for travel, food, and lodging in Illinois, Massachusetts, Nevada, New Hampshire, South Carolina, and Virginia. *Id.*

<sup>10</sup> Resp. at 2, MUR 7631.

<sup>11</sup> De Blasio 2020, Amended 2019 July Quarterly Report; NY Fairness PAC NYSBOE Disclosures.

Fairness PAC,<sup>12</sup> which NY Fairness PAC states includes approximately \$8,600 for travel expenses.<sup>13</sup>

As alleged in the Complaint in MUR 7634, De Blasio 2020's Amended July 2019 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as "Exploratory" in memo entries.<sup>14</sup> A number of those expenditures are identical to expenditures that appear in NY Fairness PAC's reports, reflecting the same amounts and dates of disbursement.<sup>15</sup> These include: approximately \$13,000 in consulting services to various individuals and entities; an \$8,600 payment for rent to The Yard; a payment of \$1,769.22 to Cision, Inc., for a press list; and various payments for travel, food, and lodging.<sup>16</sup>

The 78 exploratory expenditures further include a payment to Freedomland Media for \$19,964 on May 12, 2019.<sup>17</sup> This corresponds to a payment by NY Fairness PAC in the same amount and on the same day to Freedomland Media for "Video Production Services."<sup>18</sup> NY Fairness PAC acknowledges that it thereby paid for a portion of the cost of what became de Blasio's presidential campaign announcement video, which De Blasio 2020 released four days

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<sup>12</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>13</sup> Resp. at 3-4, MUR 7631.

<sup>14</sup> See Compl. ¶ 11, MUR 7634; De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>15</sup> Compare De Blasio 2020, Amended 2019 July Quarterly Report, with Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020); NY Fairness PAC NYSBOE Disclosures.

<sup>16</sup> See De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>17</sup> *Id.* at 378.

<sup>18</sup> NY Fairness PAC NYSBOE Disclosures.



1 later.<sup>19</sup> De Blasio 2020 does not appear to have reimbursed NY Fairness PAC for this payment.

2 De Blasio 2020 later made additional payments to Freedomland Media in the amounts of

3 \$19,694 on June 13,<sup>20</sup> \$24,694 on July 9,<sup>21</sup> and \$8,000 on August 7.<sup>22</sup>

4 The Complaints also identify two groups of expenditures by NY Fairness PAC that De  
5 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, on April  
6 12, 2019, NY Fairness PAC made a disbursement of \$46,000 to “Trilogy Interactive” for a  
7 “digital media buy.”<sup>23</sup> Within days of the April disbursements, de Blasio’s Facebook page began  
8 running dozens of ads that criticized President Trump or promoted de Blasio’s policy agenda,  
9 and asked recipients to share their names and email addresses.<sup>24</sup> The Complaints allege that  
10 those payments to Trilogy Interactive were made for de Blasio’s exploratory activities because  
11 after de Blasio announced his candidacy, the same Facebook page continued running ads “with  
12 similar messages,” but now with disclaimers stating that the ads were paid for by De Blasio  
13 2020.<sup>25</sup> NY Fairness PAC denies that those payments were related to de Blasio’s testing-the-

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<sup>19</sup> Resp. at 2, MUR 7631.

<sup>20</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 379.

<sup>21</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 273 (June 22, 2020).

<sup>22</sup> *Id.* at 273.

<sup>23</sup> Compl. ¶ 15, MUR 7634; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 9 (July 15, 2019), [https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs\\_sch\\_report+p\\_filer\\_id=A22609+p\\_e\\_year=2019+p\\_freort\\_id=K+p\\_transaction\\_code=F](https://cfapp.elections.ny.gov/reports/rwservlet?cmdkey=efs_sch_report+p_filer_id=A22609+p_e_year=2019+p_freort_id=K+p_transaction_code=F). NY Fairness PAC reported another payment to Trilogy Interactive of \$9,130 on July 1, 2019; NY Fairness PAC, 2019 July Periodic Report, Expenditures, NY Board of Elections at 15.

<sup>24</sup> Compl. ¶ 15, MUR 7634; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook, <https://www.facebook.com/ads/library/?id=1303967669741097>.

<sup>25</sup> Compl. ¶ 15, MUR 7634.

waters activities on the basis that the advertisements in question were issue-oriented and made no reference to any election or potential candidacy.<sup>26</sup>

*Second*, the Complaint in MUR 7634 alleges that \$5,069 in expenditures by NY Fairness PAC for “digital services” and “digital consulting” to various vendors that took place from January 4 to April 23, 2019, were in fact contributions to the campaign because NY Fairness PAC does not have an online presence or purchase ads.<sup>27</sup> NY Fairness PAC contends that these payments were for “fundraising emails and emails concerning the 2018 elections.”<sup>28</sup>

De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>29</sup> De Blasio 2020’s first report disclosed \$1,087,564.24 in contributions from individuals but no contributions from NY Fairness PAC.<sup>30</sup> However, it listed a \$52,851.89 debt owed to NY Fairness PAC for “Travel Expenses, Digital Advertising, [and] Rent,” which NY Fairness PAC represents comprised a \$40,000 payment to Clarify Agency for work done for De Blasio 2020, \$4,200 in rent for office space that the campaign used, and other campaign-related travel costs.<sup>31</sup>

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<sup>26</sup> Resp. at 3, MUR 7634.

<sup>27</sup> Compl. ¶ 15, MUR 7634.

<sup>28</sup> Resp. at 5, MUR 7634.

<sup>29</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>30</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

<sup>31</sup> *Id.* at 417; Resp. at 3, MUR 7631; De Blasio 2020, Amended 2019 October Quarterly Report at 352 (Oct. 15, 2019).

**C. Reimbursement of Testing-the-Waters and Campaign Expenses**

Although NY Fairness PAC disputes that many of the disbursements supported de Blasio's future or actual candidacy, the campaign committee has reimbursed NY Fairness PAC for some of the payments in question. On September 11, 2019, De Blasio 2020 paid NY Fairness PAC the \$52,851.89 listed as a debt on the campaign's July report.<sup>32</sup> De Blasio 2020 reported two other disbursements to NY Fairness PAC on September 30, 2019: \$1,047.50 for a "website" and \$19,397.78 for "digital assets."<sup>33</sup> The campaign has reported no other disbursements to either Committee.

The following chart summarizes the payments by NY Fairness PAC specifically identified by the Complaints that were allegedly either testing-the-waters or campaign expenses, when if ever De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed NY Fairness PAC:

**Alleged Payments Made by NY Fairness PAC to Support de Blasio<sup>34</sup>**

| PAYOR           | Amount   | Recipient           | Date of Payment | Date of Reporting by De Blasio 2020 | Description       | Date of Reimbursement |
|-----------------|----------|---------------------|-----------------|-------------------------------------|-------------------|-----------------------|
| NY Fairness PAC | \$46,000 | Trilogy Interactive | April 12, 2019  | Not Disclosed                       | Digital Media Buy | None                  |

<sup>32</sup> De Blasio 2020, Amended October 2019 Quarterly Report.

<sup>33</sup> De Blasio 2020, Amended 2019 October Quarterly Report at 316.

<sup>34</sup> As stated above, De Blasio 2020 also made payments to NY Fairness PAC on September 30 of \$1,047.50 for a "website" and \$19,397.78 for "digital assets. It is not clear whether De Blasio 2020 reimbursed NY Fairness PAC for any of the expenditures listed.

| <b>PAYOR</b>                     | <b>Amount</b>     | <b>Recipient</b>                                 | <b>Date of Payment</b> | <b>Date of Reporting by De Blasio 2020</b> | <b>Description</b>                         | <b>Date of Reimbursement</b> |
|----------------------------------|-------------------|--------------------------------------------------|------------------------|--------------------------------------------|--------------------------------------------|------------------------------|
| NY Fairness PAC                  | \$4,200           | The Yard                                         | May 2, 2019            | July 19, 2019                              | Office Space                               | September 11, 2019           |
| NY Fairness PAC                  | \$19,964          | Freedomland Media                                | May 12, 2019           | July 19, 2019                              | Campaign Announcement Video                | None                         |
| NY Fairness PAC                  | \$40,000          | Clarify Agency                                   | May 15, 2019           | July 19, 2019                              | Digital Services                           | September 11, 2019           |
| NY Fairness PAC                  | \$9,130           | Trilogy Interactive                              | July 1, 2019           | Not Disclosed                              | Digital Media Buy                          | None                         |
| NY Fairness PAC                  | \$8,651.89        | Various Recipients                               | Various                | July 19, 2019                              | Travel                                     | September 11, 2019           |
| NY Fairness PAC and Fairness PAC | \$60,695.16       | Various Recipients                               | Various                | July 19, 2019                              | Various travel and administrative expenses | None                         |
| NY Fairness PAC                  | \$5,069           | Blue State Digital and Aisle 518 Strategies, LLC | Various <sup>35</sup>  | Not Disclosed                              | Digital Services                           | None                         |
| <b>TOTAL</b>                     | <b>\$ 193,710</b> |                                                  |                        |                                            |                                            |                              |

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<sup>35</sup> The Complaint in MUR 7634 appears to be referring to four payments to Blue State Digital and two payments to Aisle 518 Strategies, LLC taking place between January 4 and April 23, 2019. See NY Fairness PAC NYSBOE Disclosures.

**III. LEGAL ANALYSIS**

**A. The Commission Finds Reason to Believe that NY Fairness PAC Made Excessive In-Kind Contributions**

An individual becomes a candidate under the Act if he or she receives contributions or makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>36</sup> The Commission’s regulations create exemptions to the definitions of contribution and expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy, *i.e.*, to “test the waters.”<sup>37</sup> These exemptions exclude from the definitions of “contribution” and “expenditure” those funds received and payments made solely to determine whether an individual should become a candidate.<sup>38</sup> Testing-the-waters activities include, but are not limited to, payments for polling, telephone calls, and travel, and only funds permissible under the Act may be used for such activities.<sup>39</sup> If the individual subsequently becomes a candidate, the funds previously received for testing-the-waters activities are thereafter considered contributions subject to the reporting requirements of the Act.<sup>40</sup> Commission regulations further require that “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”<sup>41</sup> The Act prohibits any person from making contributions to any candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceed \$2,800

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<sup>36</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>37</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>38</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>39</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>40</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>41</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

1 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>42</sup>  
2 Consequently, in order to comply with these requirements, de Blasio was limited to accepting  
3 contributions that complied with the Act’s source and amount restrictions while testing the  
4 waters.

5 NY Fairness PAC contends that the Commission has never restricted the type of  
6 organizational vehicle an individual may use to test the waters. But 11 C.F.R. § 100.72 provides  
7 that funds received for testing the waters become contributions once an individual becomes a  
8 candidate and that those contributions “must be reported with the first report filed by the  
9 principal campaign committee of the candidate, regardless of the date the funds were received.”<sup>43</sup>

10 Therefore, in past matters, the Commission has determined that a payment made by a multi-  
11 candidate committee for an individual’s testing-the-waters activities constitutes an in-kind  
12 contribution and must be reported as such by the candidate’s authorized committee after that  
13 individual becomes a candidate.<sup>44</sup> The Commission has found that payments for testing-the-

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<sup>42</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>43</sup> 11 C.F.R. § 100.72(a).

<sup>44</sup> Factual & Legal Analysis (“F&LA”) at 5, MUR 5908 (Peace Through Strength PAC) (Feb. 19, 2009) (finding reason to believe that presidential candidate Duncan Hunter’s leadership PAC paid for travel expenses properly attributable to Hunter’s presidential campaign); *see also* AO 1985-40 (Republican Majority Fund) (addressing specifically multicandidate committees); AO 1981-32 at 5 (explaining that “in kind gifts or loans of goods or services provided in connection with . . . testing the waters activities” are contributions under the Act).

1 waters activities by non-federal organizations constitute in-kind contributions to a candidate.<sup>45</sup>

2 Non-federal organizations are limited to the individual \$2,800 contribution threshold.<sup>46</sup>

3 NY Fairness PAC admits to paying for \$52,851.89 for consulting, rent, and travel  
4 expenses in early-to-mid May that were for testing the waters or benefited de Blasio's  
5 candidacy.<sup>59</sup> De Blasio 2020 disclosed these payments as a debt in its 2019 July Quarterly  
6 Report.<sup>60</sup> NY Fairness PAC explains that the payments were specifically for: (1) a \$40,000 fee  
7 paid by NY Fairness PAC to Clarify Agency for digital services that were ultimately performed  
8 for the campaign; (2) a \$4,200 payment for "rent for office space that by then was used solely by  
9 De Blasio 2020"; and (3) "travel that was previously arranged for that time irrespective of  
10 whether or not the Mayor then would be a candidate."<sup>61</sup> The campaign reimbursed NY Fairness  
11 PAC for these expenses on September 11, 2019, long after the 60-day deadline to do so under  
12 Commission regulations.<sup>62</sup>

13 Based on the foregoing discussion, the available information indicates that NY Fairness  
14 PAC exceeded its contribution limits to the campaign of \$2,800. NY Fairness PAC concedes

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<sup>45</sup> F&LA at 16, MURs 6955, 6983 (John R. Kasich, *et al.*) (finding reason to believe that non-federal entity made contributions to campaign by paying for candidate's testing-the-waters expenses) F&LA at 11, MURs 6917, 6929 (Scott Walker, *et al.*) (same); *see also* F&LA at 15, MUR 4323 (Huckabee Election Committee) (concluding that a state committee "could not . . . use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential . . . federal campaign"); AO 2015-09 (Senate Majority PAC and House Majority PAC) at 5 (concluding that 527 organizations' payments for testing-the-waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.13(a)).

<sup>46</sup> *See* 52 U.S.C. § 30116(a)(1)(A).

<sup>59</sup> Resp. at 9, MUR 7634.

<sup>60</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 417.

<sup>61</sup> Resp. at 9, MUR 7634.

<sup>62</sup> *See* 11 C.F.R. § 103.3(b)(3).

- 1 that it made \$52,851.89 in contributions to the campaign in the form of payments for travel, rent,
- 2 and consulting services. The Commission therefore finds reason to believe that NY Fairness
- 3 PAC made excessive contributions in violation of 52 U.S.C. § 30116(a).



1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5  
6 RESPONDENT: Fairness PAC and Herbert Block MUR 7634  
7 in his official capacity as treasurer  
8

9 **I. INTRODUCTION**

10 In July 2018, before becoming a federal candidate, New York City mayor Bill de Blasio,  
11 established Fairness PAC, a federal multi-candidate committee. The Complaint alleges that  
12 Fairness PAC, along with NY Fairness PAC, a non-federal committee registered with the state of  
13 New York, funded exploratory activity and made other contributions to de Blasio's campaign in  
14 excess of federal contribution limits as set forth in the Federal Election Campaign Act of 1971,  
15 as amended (the "Act"), and Commission regulations.

16 Fairness PAC admits that it paid for \$123,000 in polling expenses that it contends were  
17 for testing-the-waters purposes and that the campaign reimbursed late. It otherwise denies the  
18 allegations and requests that the Commission enter into pre-probable cause conciliation with  
19 respect to the \$123,000 in contributions and otherwise dismiss the allegations.

20 Based on the available information, Fairness PAC appears to have made excessive in-  
21 kind contributions by paying for \$68,000 in polling expenses that were for testing-the-waters  
22 purposes and also qualified as pre-candidacy expenditures under 11 C.F.R. § 110.2(l).

23 Accordingly, the Commission finds reason to believe that Fairness PAC and Herbert  
24 Block in his official capacity as treasurer made excessive in-kind contributions in violation of  
25 52 U.S.C. § 30116(a).

**II. FACTUAL BACKGROUND**

**A. Establishment of Fairness PAC**

Bill de Blasio served as mayor of New York from January 1, 2014 to December 31, 2021.<sup>1</sup> According to the available information, de Blasio decided to become a candidate for President of the United States on May 15, 2019, and publicly announced his decision the following day, on May 16, 2019. That same day, de Blasio filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.<sup>2</sup> De Blasio's campaign ran until September 20, 2019, when he announced its suspension.<sup>3</sup>

Before announcing his candidacy, de Blasio "and others" established Fairness PAC in July 2018 as an unincorporated political organization under section 527 of the Internal Revenue Code.<sup>4</sup> On July 25, 2018, Fairness PAC filed its Statement of Organization with the Commission<sup>5</sup> and became a multicandidate committee in January 2019.<sup>6</sup> Fairness PAC states

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<sup>1</sup> See, e.g., Michelle L. Price, *A Look at de Blasio's NYC Mayoral Tenure, What's Next and What's Not*, NBC (Dec. 29, 2021), <https://www.nbcnewyork.com/news/politics/a-look-at-de-blasios-nyc-mayoral-tenure-whats-next-and-whats-not/3471237/>.

<sup>2</sup> Bill de Blasio, Statement of Candidacy (May 16, 2019).

<sup>3</sup> Devan Cole & Dan Merica, *De Blasio drops out of 2020 presidential race*, CNN (September 20, 2019), <https://www.cnn.com/2019/09/20/politics/bill-de-blasio-ends-presidential-campaign/index.html>.

<sup>4</sup> Resp. at 1 (Oct. 15, 2019).

<sup>5</sup> Fairness PAC, Statement of Organization (July 25, 2018); see also Fairness PAC, Amended Statement of Organization (July 25, 2019) (same).

<sup>6</sup> The Committee informed the Commission that it had reached multicandidate status on January 31, 2019. Fairness PAC, Notification of Multicandidate Status (Jan. 31, 2019).

1 that its purpose was “to support federal Democratic candidates and progressive causes in New  
2 York State and elsewhere.”<sup>7</sup>

3 At the time it filed its initial statement of organization, Fairness PAC represented its  
4 website to be billdeblasio.com<sup>8</sup> — which, according to the Complaint in MUR 7634, previously  
5 had been associated with de Blasio’s mayoral campaign.<sup>9</sup> However, Fairness PAC did not  
6 mention the website in an amended statement of organization it filed on July 25, 2019, or  
7 thereafter.<sup>10</sup> Archived versions of the website show that as of July, 2018, billdeblasio.com  
8 provided information regarding Fairness PAC and stated that it was paid for by Fairness PAC,  
9 while as of May, 2019, billdeblasio.com solicited contributions for, and stated that it was paid for  
10 by, De Blasio 2020.<sup>11</sup>

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<sup>7</sup> Resp. at 2; *see also* Laura Nahmias and Gloria Pazmino, *De Blasio Launches Federal PAC and Considers Post-Mayoral Run*, POLITICO (July 26, 2018), <https://www.politico.com/states/new-york/albany/story/2018/07/25/de-blasio-launches-federal-pac-and-considers-post-mayoral-run-529622> (stating that de Blasio had stated he formed Fairness PAC in order “to support national Democratic candidates in their efforts to retake the House, Senate and New York state Senate”).

<sup>8</sup> Fairness PAC, Statement of Organization (July 25, 2018).

<sup>9</sup> Compl. at 3 (Aug. 7, 2019). According to the Complaint, after the formation of Fairness PAC, the disclaimer on billdeblasio.com was changed from “Paid for by de Blasio 2017,” the name of de Blasio’s mayoral committee, to “Paid for by Fairness PAC.” *Id.*

<sup>10</sup> Fairness PAC, Amended Statement of Organization (July 25, 2019).

<sup>11</sup> Compare deblasio.com [<https://web.archive.org/web/20180727015840/https://billdeblasio.com/>] (July 27, 2018, archived snapshot of website), with deblasio.com [[https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de\\_blasio\\_donate\\_is/](https://web.archive.org/web/20190620144144/https://secure.actblue.com/donate/de_blasio_donate_is/)] (May 17, 2019, archived snapshot of website).

**B. Payments Made by Fairness PAC Allegedly for Financing de Blasio's Testing-the-Waters and Campaign Activities**

Available information indicates that de Blasio began to test the waters for a potential 2020 presidential run in early March 2019. De Blasio 2020's July 2019 Quarterly Report, which was the first report the Committee filed with the Commission after de Blasio announced his candidacy, reported that de Blasio made \$148,389.16 in exploratory expenses from March 7 through May 14, 2019.<sup>12</sup> Despite this level of spending, that report does not indicate how any of those expenses were funded because it discloses no contributions received during the testing-the-waters period. It was not until May 16, 2019, after de Blasio announced his candidacy, that the Committee reported accepting its first contribution.<sup>13</sup>

Although Fairness PAC has not been disclosed as a contributor to de Blasio's campaign, it admits to paying for at least some of de Blasio's exploratory activities. As alleged in the Complaint in MUR 7634, De Blasio 2020's Amended July 2019 Quarterly Report disclosed 78 discrete expenditures that totaled \$148,389 by denoting them as "Exploratory" in memo entries.<sup>14</sup> A number of those expenditures are identical to expenditures that appear in Fairness PAC's reports, reflecting the same amounts and dates of disbursement.<sup>15</sup> The 78 expenditures

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<sup>12</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> *See* Compl. ¶ 11; De Blasio 2020, Amended 2019 July Quarterly Report; Attachment 1.

<sup>15</sup> *Compare* De Blasio 2020, Amended 2019 July Quarterly Report, *with* Fairness PAC, Amended June 31 Mid-Year Report (Jan. 31, 2020).

1 listed in De Blasio 2020’s initial report as “exploratory” also include a payment of \$68,000 to  
2 Brilliant Corners Research and Strategies for “polling.”<sup>16</sup>

3 The Complaint also identifies two groups of expenditures by Fairness PAC that De  
4 Blasio 2020 allegedly failed to report as exploratory expenses but should have. *First*, De Blasio  
5 2020 allegedly failed to disclose as an expenditure a \$55,000 payment by Fairness PAC to  
6 Keating Research on May 13, 2019 that is described as for “exploratory” purposes in Fairness  
7 PAC’s 2019 Mid-Year Report.<sup>17</sup>

8 *Second*, on April 12, 2019, Fairness PAC made a disbursement of \$46,000 to “Trilogy  
9 Interactive” for a “digital media buy.”<sup>18</sup> Within days of the April disbursement, de Blasio’s  
10 Facebook page began running dozens of ads (with disclaimers stating that they were paid for by  
11 Fairness PAC) that criticized President Trump or promoted de Blasio’s policy agenda, and asked  
12 recipients to share their names and email addresses.<sup>19</sup> The Complaint alleges that those  
13 payments to Trilogy Interactive were made for de Blasio’s exploratory activities because after  
14 de Blasio announced his candidacy, the same Facebook page continued running ads “with similar  
15 messages,” but now with disclaimers stating that the ads were paid for by De Blasio 2020.<sup>20</sup>  
16 Fairness PAC denies that those payments were related to de Blasio’s testing-the-waters activities

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<sup>16</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

<sup>17</sup> Compl. ¶ 13; Fairness PAC, Amended July Mid-Year Report at 143, 151 (Jan, 31, 2020).

<sup>18</sup> Compl. ¶ 15; Fairness PAC, Amended 2019 Mid-Year Report at 157.

<sup>19</sup> Compl. ¶ 15; *see also* Facebook Advertisement Library, Bill de Blasio, Facebook,  
<https://www.facebook.com/ads/library/?id=1303967669741097>.

<sup>20</sup> Compl. ¶ 15.

1 on the basis that the advertisements in question were issue-oriented and made no reference to any  
2 election or potential candidacy.<sup>21</sup>

3 De Blasio announced his candidacy on May 16, 2019, and De Blasio 2020 filed its first  
4 report with the Commission in July, 2019, for the period May 16 through June 30, 2019.<sup>22</sup> De  
5 Blasio 2020's first report disclosed \$1,087,564.24 in contributions from individuals but no  
6 contributions from Fairness PAC.<sup>23</sup>

7 **C. Reimbursement of Testing-the-Waters and Campaign Expenses**

8 Although Fairness PAC disputes that many of the disbursements supported de Blasio's  
9 future or actual candidacy, the campaign committee has reimbursed Fairness PAC for some of  
10 the payments in question. De Blasio 2020 reported making a \$123,000 payment to Fairness PAC  
11 on June 30, 2019, for "polling."<sup>24</sup> Fairness PAC admits that this corresponds to the  
12 disbursements of \$55,000 to Keating Research on May 13, 2019, and \$68,000 to Brilliant  
13 Corners Research & Strategies on March 27, 2019.<sup>25</sup> In its initial FEC filing in July 2019, De  
14 Blasio 2020 reported the expenditure to Brilliant Corners<sup>26</sup> but not the expenditure to Keating

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<sup>21</sup> Resp. at 3.

<sup>22</sup> De Blasio 2020, Amended 2019 July Quarterly Report (July 19, 2019).

<sup>23</sup> *Id.* at 3. The date of receipt of all contributions from individuals is May 16 or later. *See generally id.*

<sup>24</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 378.

<sup>25</sup> Resp. at 7; *see also* Fairness PAC, Amended 2019 July Mid-Year Report at 143, 151 (Jan, 31, 2020) (disclosing both payments and describing them as "exploratory").

<sup>26</sup> De Blasio 2020, Amended 2019 July Quarterly Report at 362.

1 Research, and the committee has not amended this report. The campaign has reported no other  
2 disbursements to either Committee.

3 The following chart summarizes the payments by Fairness PAC specifically identified by  
4 the Complaint that were allegedly either testing-the-waters or campaign expenses, when if ever  
5 De Blasio 2020 reported the payment, and when if ever De Blasio 2020 reimbursed the  
6 Committee:

7 **Alleged Payments Made by Fairness PAC and/or NY Fairness PAC to Support de Blasio<sup>27</sup>**

| <b>PAYOR</b>                     | <b>Amount</b>    | <b>Recipient</b>                          | <b>Date of Payment</b> | <b>Date of Reporting by De Blasio 2020</b> | <b>Description</b>                         | <b>Date of Reimbursement</b> |
|----------------------------------|------------------|-------------------------------------------|------------------------|--------------------------------------------|--------------------------------------------|------------------------------|
| Fairness PAC                     | \$68,000         | Brilliant Corners Research and Strategies | March 27, 2019         | July 19, 2019                              | Polling                                    | June 30, 2019                |
| Fairness PAC                     | \$46,000         | Trilogy Interactive                       | April 12, 2019         | Not Disclosed                              | Digital Media Buy                          | None                         |
| Fairness PAC                     | \$55,000         | Keating Research                          | May 13, 2019           | Not Disclosed                              | Polling                                    | June 30, 2019                |
| Fairness PAC and NY Fairness PAC | \$60,695.16      | Various Recipients                        | Various                | July 19, 2019                              | Various travel and administrative expenses | None                         |
| <b>TOTAL</b>                     | <b>\$229,695</b> |                                           |                        |                                            |                                            |                              |

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<sup>27</sup> As stated above, De Blasio paid Fairness PAC \$1,047.50 for a “website” on the same day. It is not clear whether De Blasio 2020 reimbursed Fairness PAC for any of the expenditures listed.

**III. LEGAL ANALYSIS**

**A. The Commission Finds Reason to Believe that Fairness PAC Made Excessive In-Kind Contributions**

An individual becomes a candidate under the Act if he or she receives contributions or makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf.<sup>28</sup> The Commission’s regulations create exemptions to the definitions of contribution and expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy, *i.e.*, to “test the waters.”<sup>29</sup> These exemptions exclude from the definitions of “contribution” and “expenditure” those funds received and payments made solely to determine whether an individual should become a candidate.<sup>30</sup> Testing-the-waters activities include, but are not limited to, payments for polling, telephone calls, and travel, and only funds permissible under the Act may be used for such activities.<sup>31</sup> If the individual subsequently becomes a candidate, the funds previously received for testing-the-waters activities are thereafter considered contributions subject to the reporting requirements of the Act.<sup>32</sup> Commission regulations further require that “[o]nly funds permissible under the Act may be used for [testing-the-waters] activities.”<sup>33</sup> The Act prohibits any person from making contributions to any candidate and his authorized political

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<sup>28</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>29</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>30</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>31</sup> 11 C.F.R. § 100.131(a); *see also* AO 1981-32 (Askew).

<sup>32</sup> 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

<sup>33</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).



1 committee with respect to any election for federal office which, in the aggregate, exceed \$2,800  
2 for the 2020 election cycle, or \$5,000 in the case of federal multicandidate committees.<sup>34</sup>  
3 Consequently, in order to comply with these requirements, de Blasio was limited to accepting  
4 contributions that complied with the Act’s source and amount restrictions while testing the  
5 waters.

6 Commission regulations provide that a pre-candidacy payment by a multicandidate  
7 political committee of a presidential candidate’s expenses will be deemed an in-kind contribution  
8 — regardless of whether the payment is made before the individual becomes a candidate — if  
9 the following conditions are met: (1) “[t]he expenditure is made on or after January 1 of the year  
10 immediately following the last Presidential election year;” (2) “the candidate accepted or  
11 received [the goods or services involved], requested or suggested their provision, was materially  
12 involved in the decision to provide them, or was involved in substantial discussions about their  
13 provision;” and (3) the goods or services involved are — among other categories — “[p]olling  
14 expenses for determining the favorability, name recognition, or relative support level of the  
15 candidate involved.”<sup>35</sup> However, “if the candidate, through an authorized committee, reimburses  
16 the multicandidate political committee within 30 days of becoming a candidate, the payment  
17 shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an  
18 expenditure of the candidate.”<sup>36</sup> In addition, where an in-kind contribution exceeds the

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<sup>34</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>35</sup> 11 C.F.R. § 110.2(l).

<sup>36</sup> 11 C.F.R. § 110.2(l)(2); *accord* F&LA at 6, MUR 7191 (Rand Paul).

1 applicable contribution limit, whether on its face or when aggregated with other contributions,  
2 the treasurer may request redesignation or reattribution or, if neither is requested, must refund the  
3 contribution within 60 days of receipt.<sup>37</sup>

4 Fairness PAC admits that it made payments for polling that qualify as testing the waters  
5 expenditures and pre-candidacy expenditures under 11 C.F.R. § 110.2(l): (1) \$68,000 to Brilliant  
6 Corners Research and Strategies on March 27, 2019; and (2) \$55,000 to Keating Research on  
7 May 13, 2020.<sup>38</sup> Further, because De Blasio 2020 did not reimburse Fairness PAC until June 30  
8 for those expenditures, De Blasio 2020 failed to reimburse those expenses within 30 days after  
9 de Blasio announced his candidacy.<sup>39</sup> The campaign reimbursed Fairness PAC for the polling by  
10 Keating Research within 60 days of Fairness PAC's disbursement, but it did not reimburse the  
11 Committee for the payment to Brilliant Corners Research and Strategies until 95 days after that  
12 disbursement. Consequently, Fairness PAC made excessive in-kind contributions in the form of  
13 polling expenditures.

14 Based on the foregoing discussion, the available information indicates that Fairness PAC  
15 exceeded its contribution limits to the campaign of \$5,000. The Commission therefore finds  
16 reason to believe that Fairness PAC made excessive contributions in violation of 52 U.S.C.  
17 § 30116(a).

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<sup>37</sup> 11 C.F.R. § 103.3(b)(3).

<sup>38</sup> Resp. at 6-7.

<sup>39</sup> *Id.*

## BEFORE THE FEDERAL ELECTION COMMISSION

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| In the Matter of                      | ) |                 |
|                                       | ) |                 |
|                                       | ) |                 |
| De Blasio 2020 and Herbert Block      | ) | MURs 7631, 7634 |
| in his official capacity as treasurer | ) |                 |
| Fairness PAC and Herbert Block        | ) |                 |
| in his official capacity as treasurer | ) |                 |
| NY Fairness PAC                       | ) |                 |
|                                       | ) |                 |

### CONCILIATION AGREEMENT

This consolidated matter was generated by complaints filed with the Federal Election Commission (the “Commission”). The Commission found reason to believe that De Blasio 2020 and Herbert Block in his official capacity as treasurer<sup>1</sup> (“De Blasio 2020”) violated 52 U.S.C. § 30116(f) by accepting excessive contributions from NY Fairness PAC and Fairness PAC and Herbert Block in his official capacity as treasurer (“Fairness PAC”); De Blasio 2020 violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a) by failing to report \$52,581.89 as in-kind contributions and expenditures, \$68,000 as in-kind contributions and \$55,000 as expenditures; Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive contributions to De Blasio 2020 and Bill de Blasio with respect to \$68,000 in polling expenses; and NY Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive contributions to De Blasio 2020 and Bill de Blasio with respect to \$52,581.89 in expenditures for travel, rent and consulting services. (De Blasio 2020, Fairness PAC, and NY Fairness PAC are hereinafter referred to as “Respondents”).

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<sup>1</sup> Herbert Block became treasurer of Respondent Fairness PAC on January 23, 2022 and treasurer of Respondent De Blasio 2020 on April 15, 2022, after the 2019 events at issue in this matter. He is identified in this agreement only in his official, not his personal, capacity. See Federal Election Commission, “Statement of Policy Regarding Treasurers in Enforcement Proceedings,” 70 Fed. Reg. 3 (January 3, 2005).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation prior to a finding of probable cause to believe, agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. In July 2018, Bill de Blasio and others established Fairness PAC and NY Fairness PAC as unincorporated political organizations under section 527 of the Internal Revenue Code. On July 25, 2018, Fairness PAC filed its Statement of Organization with the Commission and in January 2019 became a multicandidate committee. On July 27, 2018, NY Fairness PAC registered with the New York State Board of Elections (“NYSBOE”) as a state political action committee.

2. Mr. de Blasio began to test the waters for a potential 2020 presidential run in early March 2019. Respondents represent that Mr. de Blasio decided to become a candidate for President of the United States on May 15, 2019, and publicly announced his decision the following day, May 16, 2019. That same day, Mr. de Blasio filed his Statement of Candidacy and designated De Blasio 2020 as his authorized committee.

3. NY Fairness PAC made the following payments that supported Mr. de Blasio’s testing the waters or his eventual campaign: \$4,200 to the Yard for office space on

May 2, 2019; a \$40,000 payment to Clarify Agency for work done for De Blasio 2020 on May 15, 2019; and \$8,651.89 for various other campaign-related travel costs during mid-May 2019.

4. Fairness PAC made the following payments that supported Mr. de Blasio's testing the waters or his eventual campaign: \$68,000 to Brilliant Corners Research & Strategies for polling on March 27, 2019, and \$55,000 to Keating Research for polling on May 13, 2019.

5. De Blasio 2020's July 2019 Quarterly Report, which was the first report it filed with the Commission after Mr. de Blasio announced his candidacy, did not report any in-kind contributions from either Fairness PAC or NY Fairness PAC. De Blasio 2020 disclosed in its initial report a \$52,851.89 debt owed to NY Fairness PAC that corresponds to the payments described above, and the expenditure made by Fairness PAC to Brilliant Corners Research & Strategies, but not the expenditures made by Fairness PAC to Keating Research and by NY Fairness PAC to Clarify Agency and the Yard. Fairness PAC's July 2019 Mid-Year Report filed with the Commission disclosed the expenditures to both Brilliant Corners Research & Strategies and Keating Research as "exploratory activity."

6. De Blasio 2020 repaid \$123,000 to Fairness PAC on June 30, 2019, which it reported for the purpose of "polling." This repaid Fairness PAC for the polling expenses paid to Keating Research and Brilliant Corners Research & Strategies described above. On September 11, 2019, De Blasio 2020 repaid NY Fairness PAC the \$52,851.89 listed as a debt on De Blasio 2020's July 2019 Quarterly Report.

7. An individual becomes a candidate under the Act if he or she receives contributions or makes expenditures in excess of \$5,000 or consents to another doing so on his or her behalf. 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). The Commission's regulations

create exemptions to the definitions of contribution and expenditure to allow individuals to conduct certain activities to evaluate a potential candidacy, *i.e.*, to “test the waters.” 11 C.F.R. §§ 100.72(a), 100.131(a). These exemptions exclude from the definitions of “contribution” and “expenditure” those funds received and payments made solely to determine whether an individual should become a candidate. 11 C.F.R. §§ 100.72(a), 100.131(a). If the individual subsequently becomes a candidate, the funds previously received for testing-the-waters activities are thereafter considered contributions subject to the reporting requirements of the Act. 11 C.F.R. §§ 100.72(a), 100.131, 101.3(a).

8. With respect to the 2020 election cycle, the Act prohibited any person from making contributions to any candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceeded \$2,800, or \$5,000 in the case of a federal multicandidate committee. 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A). The Act also prohibits any candidate or political committee from knowingly accepting any excessive contribution. 52 U.S.C. § 30116(f). Where an in-kind contribution exceeds the applicable contribution limit, whether on its face or when aggregated with other contributions, the treasurer may request redesignation or reattribution or, if neither is requested, must refund the contribution within 60 days of receipt. 11 C.F.R. § 103.3(b)(3).

9. Commission regulations provide that a pre-candidacy payment by a multicandidate political committee of a presidential candidate’s expenses will be deemed an in-kind contribution — regardless of whether the payment is made before the individual becomes a candidate — if the following conditions are met: (1) “[t]he expenditure is made on or after January 1 of the year immediately following the last Presidential election year;” (2) “the candidate accepted or received [the goods or services involved], requested or suggested their

provision, was materially involved in the decision to provide them, or was involved in substantial discussions about their provision;” and (3) the goods or services involved are — among other categories — “[p]olling expenses for determining the favorability, name recognition, or relative support level of the candidate involved.” 11 C.F.R. § 110.2(l). However, “if the candidate, through an authorized committee, reimburses the multicandidate political committee within 30 days of becoming a candidate, the payment shall not be deemed an in-kind contribution for either entity, and the reimbursement shall be an expenditure of the candidate.” 11 C.F.R. § 110.2(l)(2).

10. When an individual becomes a candidate under the Act, any funds received or payments made for testing-the-waters activities become contributions or expenditures subject to the reporting requirements of the Act and are to be reported as such on the first disclosure report filed by the candidate’s authorized committee. 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 100.72(a); 100.131(a).

11. De Blasio 2020 accepted \$52,851.89 from NY Fairness PAC for travel, office space, and digital services and \$123,000 from Fairness PAC for polling that was for testing-the-waters purposes or ultimately benefitted the campaign. De Blasio 2020 repaid Fairness PAC for \$55,000 of the polling expenses within 60 days of Fairness PAC’s disbursement. Otherwise, De Blasio 2020 did not reimburse NY Fairness PAC or Fairness PAC within 60 days of the date of their respective disbursements.

V. In their responses to the complaints, Respondents advised the Commission that the violations of the Act described in this agreement had occurred, and the Commission subsequently found reason to believe that they had occurred. Respondents contend that they did not intend to violate the Act, and that several violations arose from the abrupt transition to a presidential

candidacy from the testing-the-waters stage. Respondents disputed other allegations in the complaints that are not the subject of this Agreement.

VI. The Commission did not find reason to believe that any of the violations was knowing and willful.

VII. 1. De Blasio 2020 violated 52 U.S.C. § 30116(f) by accepting excessive in-kind contributions from Fairness PAC and NY Fairness PAC.

2. De Blasio 2020 violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. §§ 100.72(a) and 100.131(a) by failing to report \$52,581.89 as in-kind contributions and expenditures, \$68,000 as in-kind contributions, and \$55,000 as expenditures.

3. Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions to De Blasio 2020.

4. NY Fairness PAC violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions to De Blasio 2020.

VIII. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Commission in the amount of fifty-three thousand one hundred dollars (\$53,100), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from committing further violations of 52 U.S.C. §§ 30104(a), (b), 30116(a), (f) and 11 C.F.R. §§ 100.72(a) and 100.131(a).

3. De Blasio 2020 will amend its disclosure reports to correctly report all information concerning the contributions received from Fairness PAC and NY Fairness PAC and the testing-the-waters expenditures and disbursements described above.



IX. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

X. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

XI. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XII. This Conciliation Agreement constitutes the entire agreement between the Commission and Respondents and constitutes a final settlement as to Respondents and their officers, directors, and agents. No other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson  
Acting General Counsel

BY: **Charles**  
**Kitcher**

Digitally signed by  
Charles Kitcher  
Date: 2023.04.19  
13:43:51 -04'00'

4/19/23

Charles Kitcher  
Associate General Counsel  
for Enforcement

Date

FOR THE RESPONDENTS:

*Laurence E. Gold*

*March 7, 2023*

Laurence E. Gold  
Trister, Ross, Schadler & Gold, PLLC

Date