



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

September 13, 2021

**VIA ELECTRONIC MAIL**

E. Stewart Crosland, Esq.  
Jones Day  
51 Louisiana Avenue, NW  
Washington, DC 20001-2113

RE: MUR 7390

Dear Mr. Crosland:

On May 29, 2018, the Federal Election Commission (“Commission”) notified your clients, Donald J. Trump and Make America Great Again PAC f/k/a Donald J. Trump for President and Bradley T. Crate in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On September 2, 2021, based upon the information contained in the complaint and information provided by your clients, the Commission voted to find no reason to believe that that Make America Great Again PAC f/k/a Donald J. Trump for President and Bradley T. Crate in his official capacity as treasurer and Donald J. Trump violated provisions of the Act. The Commission then closed its file in this matter. A copy of the Factual and Legal Analysis, which more fully explains the basis for the Commission’s decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and *Statement of Policy Regarding Placing First General Counsel’s Reports on the Public Record*, 74 Fed. Reg. 66,132 (Dec. 14, 2009). If you have any questions, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

A handwritten signature in cursive script that reads "Jin Lee".

BY: Jin Lee  
Acting Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

1  
2  
3  
4  
5  
6 RESPONDENTS: Donald J. Trump MUR 7390  
7 Make America Great Again  
8 PAC f/k/a Donald J. Trump  
9 for President and Bradley T. Crate  
10 in his official capacity as treasurer  
11  
12

**I. INTRODUCTION**

14 This matter was generated by a complaint filed with the Federal Election Commission  
15 (the “Commission”), which makes allegations relating to payments by Make America Great  
16 Again PAC f/k/a Donald J. Trump for President and Bradley T. Crate in his official capacity as  
17 treasurer (the “Trump Committee”) for the legal expenses of Donald J. Trump and his son,  
18 Donald Trump, Jr. in connection with the Department of Justice (“DOJ”) investigation into  
19 Russian interference with the 2016 election. The Complaint cites to Maryland state law,  
20 asserting that “campaign funds cannot be used for expenses arising from criminal investigations,  
21 or for any expenses that arise after the campaign is over.”<sup>1</sup> Though the Complaint does not  
22 directly cite to the Federal Election Campaign Act of 1971, as amended (the “Act”), its factual  
23 substance raises allegations concerning the conversion of campaign funds to personal use. The  
24 Trump Committee argues in its response that the complaint fails to state facts that raise a  
25 violation of the Act or Commission regulations.<sup>2</sup>

26 As discussed below, it appears that the Trump Committee was permitted to make the  
27 payments for legal expenses relating to DOJ and Congressional investigations of Russian

---

<sup>1</sup> Compl. ¶ 7 (May 21, 2018); *see id.* at 2-3 (arguing that charges involving misconduct “are not campaign-related” and therefore any related payments should be “disallowed”).

<sup>2</sup> Trump Comm. Resp. (July 5, 2018).

1 election interference raised by the Complaint because these payments were for expenses that  
2 would not exist irrespective of campaign activities and thus did not result in the conversion of  
3 campaign funds to personal use. Therefore, the Commission finds no reason to believe that the  
4 Trump Committee and Trump violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2(e) by  
5 converting campaign funds to personal use.

## 6 **II. FACTUAL BACKGROUND**

7 The payments at issue in this matter were reportedly for legal expenses incurred by the  
8 Trump Committee, Trump, and Trump Jr. in connection with DOJ's investigation into Russian  
9 interference with the 2016 presidential election and related congressional investigations. The  
10 order that outlines the scope of DOJ's investigation provides that "to ensure a full and thorough  
11 investigation of the Russian government's efforts to interfere in the 2016 presidential election,"  
12 the Special Counsel shall be appointed to investigate "any links and/or coordination between the  
13 Russian government and individuals associated with the campaign of President Donald Trump"  
14 as well as "any matters that arose or may arise directly from the investigation."<sup>3</sup> The Complaint  
15 attaches a *Reuters* article, dated September 19, 2017 ("Reuters article"), which states that the  
16 Special Counsel extended the investigation beyond the 2016 campaign and into the issue of  
17 whether Trump, as President, obstructed justice by firing former FBI Director James Comey,  
18 among other things.<sup>4</sup> In addition, several committees of the U.S. House of Representatives and

---

<sup>3</sup> Office of the Deputy Att'y Gen., Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters ¶¶ (a), (b)(i)-(ii) (May 17, 2017), <https://www.justice.gov/archives/opa/press-release/file/967231/download> ("Special Counsel Order").

<sup>4</sup> Karen Freifeld and Ginger Gibson, *Trump Using Campaign, RNC Funds to Pay Legal Bills From Russia Probe: Sources*, REUTERS (Sept. 19, 2017), <https://www.reuters.com/article/us-usa-trump-lawyers-exclusive/trump-using-campaign-rnc-funds-to-pay-legal-bills-from-russia-probe-sources-idUSKCN1BU2OS> ("Reuters Article"), Compl., Attach. On April 18, 2019, DOJ publicly released a redacted version of the Special Counsel's final report.

1 U.S. Senate examined similar activity to that examined by DOJ and sought interviews with or  
2 documents from Trump and Trump Jr.<sup>5</sup> The congressional and DOJ investigations explored,  
3 among other activity, Trump and Trump Jr.’s involvement in a meeting with Russians on June 9,  
4 2016, at Trump Tower in order to obtain negative information on Trump’s election opponent  
5 Hillary Clinton.<sup>6</sup> As discussed below, costs paid for by the Trump Committee in connection  
6 with representing Trump and Trump Jr. in these congressional investigations are also raised by  
7 the Complaint in this matter.

#### 8 **A. Trump Campaign Payments**

9 According to the Reuters article, as of September 2017, the Trump Committee had paid  
10 \$4 million to the Jones Day law firm, “mostly for routine campaign legal expenses,” but also for  
11 responding to “Russia-related inquiries on behalf of the campaign by, for example, providing  
12 documents to Congress,” according to “people familiar with the matter.”<sup>7</sup> The Complaint also

---

Robert S. Mueller, III, Special Counsel, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (“Special Counsel Report”) (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

<sup>5</sup> See, e.g., U.S. SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOL 5: COUNTERINTELLIGENCE THREATS AND VULNERABILITIES at 4 (Aug. 18, 2020) (“Senate Intelligence Comm. Report”), [https://www.intelligence.senate.gov/sites/default/files/documents/report\\_volume5.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf) (explaining that the committee approached the activity with a counterintelligence, rather than criminal, focus); U.S. HOUSE PERMANENT SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES (Mar. 22, 2018) (“House Intelligence Comm. Report”), [https://docs.house.gov/meetings/IG/IG00/20180322/108023/HRPT-115-1\\_1-p1-U3.pdf](https://docs.house.gov/meetings/IG/IG00/20180322/108023/HRPT-115-1_1-p1-U3.pdf); Minority Members of the House Permanent Select Comm. on Intelligence, MINORITY VIEWS TO THE MAJORITY-PRODUCED “REPORT ON RUSSIAN ACTIVE MEASURES” (Mar. 26, 2018), <https://intelligence.house.gov/uploadedfiles/minorityviews.pdf>; Letter from Elijah Cummings, Ranking Member, U.S. House Comm. on Oversight and Gov’t Reform, to Donald J. Trump, Jr., *et al.* (July 11, 2017), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-07-11.EEC%20to%20Donald%20Jr%20et%20al\\_0.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-07-11.EEC%20to%20Donald%20Jr%20et%20al_0.pdf).

<sup>6</sup> Senate Intelligence Comm. Report at 322-371; House Intelligence Comm. Report Volume I at 79-83; Special Counsel Report Volume I at 110-123.

<sup>7</sup> Compl. ¶ 5; Reuters Article. The Trump Committee reported that between the Special Counsel’s appointment and the end of 2018, it paid Jones Day approximately \$4 million for “Legal Consulting.” Trump

1 points to a \$50,000 payment the Trump Committee reported making on June 27, 2017, to the  
2 Law Offices of Alan S. Futerfas, an attorney reportedly representing Trump Jr. in connection  
3 with the Russia-related investigations.<sup>8</sup> The Trump Committee reported additional payments to  
4 Futerfas on July 14, 2017 (\$89,259), and August 2, 2017 (\$148,665), that are not specifically  
5 referenced by the Complaint or the Reuters article.<sup>9</sup> Publicly available transcripts show that  
6 Futerfas appeared as counsel for Trump Jr. at his interviews with the Senate Judiciary Committee  
7 and the House Intelligence Committee in those committees' 2017 investigations of Russian  
8 interference with the 2016 election.<sup>10</sup>

## 9 **B. The Complaint and Responses**

10 Based on the reporting in the Reuters news article it attaches, the Complaint alleges that  
11 the foregoing use of campaign funds for legal fees was improper. The Complaint contends that,  
12 under Maryland law, “investigations or charges involving misconduct are NOT campaign-  
13 related, even if the charges first come to light as a result of the individual’s decision to run for  
14 elected office,” and argues that “[t]hese campaign expenditures should be disallowed and a

---

Comm. Disbursements, [https://www.fec.gov/data/disbursements/?committee\\_id=C00580100&data\\_type=processed&recipient\\_name=jones+day&min\\_date=05%2F17%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?committee_id=C00580100&data_type=processed&recipient_name=jones+day&min_date=05%2F17%2F2017&max_date=12%2F31%2F2018).

<sup>8</sup> Compl. ¶ 8; Reuters Article; Trump Comm. Amend. 2017 July Quarterly Rpt. at 4,341 (July 15, 2018) (for “Legal Consulting”).

<sup>9</sup> Trump Comm. Amend. 2017 Oct. Quarterly Rpt. at 10,817 (Dec. 11, 2017) (for “Legal Consulting”).

<sup>10</sup> Trans. of Interview with Trump Jr. by H. Intelligence Comm. at 3 (Dec. 6, 2017), <https://intelligence.house.gov/uploadedfiles/dt55.pdf>; Trans. of Interview with Trump Jr. by S. Judiciary Comm. at 3:9 (Sept. 7, 2017), [https://www.judiciary.senate.gov/imo/media/doc/Trump%20Jr%20Transcript\\_redacted.pdf](https://www.judiciary.senate.gov/imo/media/doc/Trump%20Jr%20Transcript_redacted.pdf).

1 notice given to these political campaigns that if the monies are not reimbursed, the cases will be  
2 referred to state prosecutors and federal prosecutors.”<sup>11</sup>

3 The Trump Committee’s one-paragraph Response argues that the Complaint should be  
4 dismissed because its reliance on Maryland state law is misguided and “fails to recognize that the  
5 Committee operates under federal law and that the Doctrine of Preemption applies.”<sup>12</sup>

### 6 **III. LEGAL ANALYSIS**

7 Candidates and their authorized committees are permitted to use campaign funds for a  
8 variety of specific purposes, including otherwise-authorized expenditures in connection with the  
9 candidate’s campaign for federal office, ordinary and necessary expenses incurred in connection  
10 with the duties of a federal officeholder, and “any other lawful purpose,” but the Act prohibits  
11 any person from converting campaign funds to “personal use.”<sup>13</sup> Conversion to personal use  
12 occurs when campaign funds are used to fulfill any commitment, obligation, or expense of any  
13 person “that would exist irrespective of the candidate’s election campaign or individual’s duties  
14 as a holder of Federal office.”<sup>14</sup> The Act and Commission regulations provide a non-exhaustive  
15 list of uses of campaign funds that are *per se* personal use, including rent, home mortgage,  
16 household food items, and tuition.<sup>15</sup> For other uses of campaign funds, including payments for

---

<sup>11</sup> Compl. at 2-3.

<sup>12</sup> Trump Comm. Resp. at 1.

<sup>13</sup> 52 U.S.C. § 30114(a)-(b); 11 C.F.R. §§ 113.1(g), 113.2; *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995) (explaining that “candidates have wide discretion over the use of campaign funds”).

<sup>14</sup> 52 U.S.C. § 30114(b)(2); *see* 11 C.F.R. § 113.1(g).

<sup>15</sup> 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

1 legal expenses, the Commission determines on a “case-by-case basis” whether the use is a  
2 prohibited personal use, that is, whether the expenses would exist irrespective of the candidate’s  
3 campaign or federal officeholder duties.<sup>16</sup>

4 The Commission has explained that ““campaign funds may be used to pay for legal  
5 expenses incurred in proceedings that directly relate to the candidate’s campaign activities or  
6 officeholder duties.””<sup>17</sup> Legal fees and expenses, however, “will not be treated as though they  
7 are campaign or officeholder related merely because the underlying proceedings have some  
8 impact on the campaign or the officeholder’s status.”<sup>18</sup> In a number of advisory opinions, the  
9 Commission has addressed legal fees incurred in criminal and congressional investigations and  
10 concluded that the use of campaign funds for such legal fees and expenses does not constitute  
11 personal use when the legal proceedings involve allegations directly relating to the candidate’s  
12 campaign activities or duties as a Federal officeholder.<sup>19</sup>

13 The Commission has recognized that legal proceedings involving political campaigns  
14 “are often litigated after the election, and . . . has never barred the use of campaign funds . . . on  
15 this temporal ground.”<sup>20</sup> The Commission has applied the same rule to the use of campaign

---

<sup>16</sup> 11 C.F.R. § 113.1(g)(1)(ii)(A); Advisory Op. 2018-09 (Clements) at 2-3 (“AO 2018-09”).

<sup>17</sup> AO 2018-09 at 3 (quoting Advisory Op. 2013-11 (Citizens for Joe Miller) at 3 (“AO 2013-11”).

<sup>18</sup> Personal Use E&J, 60 Fed. Reg. at 7,868; *see also FEC v. Craig for US Senate*, 933 F. Supp. 2d 111, 119 (D.D.C. 2013) (finding that the Commission plausibly alleged that legal expenses related to “actions undertaken in the privacy and anonymity of a restroom stall” while traveling from home state to Washington, D.C., did not implicate defendant’s officeholder duties).

<sup>19</sup> *See, e.g.*, Advisory Op. 2009-20 (Visclosky for Congress) (“AO 2009-20”); Advisory Op. 2009-12 (Coleman); Advisory Op. 2009-10 (Visclosky I); Advisory Op. 2008-07 (Vitter); Advisory Op. 2006-35 (Kolbe); Advisory Op. 2005-11 (Cunningham); Advisory Op. 2003-17 (Treffinger); Advisory Op. 1997-12 (Costello); *cf.* Advisory Op. 2000-40 (McDermott) at 4 (“AO 2000-40”).

<sup>20</sup> AO 2013-11 at 4.

1 funds to pay for the legal expenses of campaign staff and consultants. For example, it has  
2 approved using campaign funds to pay legal expenses of a campaign consultant defending a  
3 lawsuit alleging that the consultant defamed a member of the opposing candidate's staff<sup>21</sup> as well  
4 as the legal expenses of former congressional staffers in connection with a federal investigation  
5 regarding campaign contributions.<sup>22</sup>

6 To the extent that a portion of the Trump Committee's payments to Jones Day — the  
7 committee's primary compliance law firm — and its \$50,000 payment to The Law Offices of  
8 Alan S. Futerfas — the law firm representing Trump Jr. — were for representation of Trump or  
9 Trump Jr. in connection with congressional and DOJ investigations as alleged in the Complaint,  
10 it appears that such payments would not exist irrespective of Trump's 2016 presidential  
11 campaign activity and Trump's duties as a federal officeholder.<sup>23</sup> Although the available  
12 information does not make clear the exact scope of Jones Day's and Futerfas's representation of  
13 Trump and Trump Jr., respectively, in the DOJ investigation, the main focus of the DOJ  
14 investigation, by its stated terms, concerned alleged coordination between the Russian  
15 government and "individuals associated with the *campaign* of President Donald Trump."<sup>24</sup>

---

<sup>21</sup> Advisory Op. 2011-07 (Fleischmann for Congress) at 2 ("AO 2011-07").

<sup>22</sup> AO 2009-20 at 4.

<sup>23</sup> To the extent the Complaint alleges that all of the Trump Committee's payments to Jones Day, including those for compliance with the Act, represent a conversion of campaign funds to personal use, such an allegation is speculative and unsupported. *See* Reuters Article (reporting that the \$4 million paid to Jones Day was "mostly" for campaign-related expenses such as ballot access disputes, vendor contracts, human resources, and compliance, but also for "Russia-related inquiries," though not specifying the amount of the Russia-related payments); Advisory Op. 1995-23 (Shays) (concluding that the payment of legal fees for compliance with the Act does not constitute personal use).

<sup>24</sup> Special Counsel Order (emphasis added). The Complaint does not allege with any specificity that the Trump Committee's payments to Jones Day concerned representation of Trump in connection with his officeholder duties, such as, for example, by representing Trump in DOJ's investigation of the firing of FBI Director James Comey. *See* Reuters Article (noting that Jones Day provided documents to Congress, not to DOJ); Special Counsel



1 Congressional transcripts show that Futerfas represented Trump Jr. in investigations concerning  
2 the meeting with Russians on June 9, 2016, at Trump Tower in order to obtain negative  
3 information on Hillary Clinton.<sup>25</sup> The investigation of this activity by both Congress and DOJ is  
4 similar to activity the Commission has considered in Advisory Opinion 2000-40 (McDermott), in  
5 which the Commission concluded that use of campaign funds for legal fees to defend a House  
6 member in a civil suit alleging illegal conduct related to his role in the House Ethics Committee  
7 would not constitute personal use.<sup>26</sup>

8         Accordingly, to the extent the legal fee payments were made to the attorneys representing  
9 Trump and Trump Jr. in connection with congressional and DOJ investigations as alleged in the  
10 Complaint, it appears that such payments directly related to investigations of campaign activity  
11 and thus would not exist irrespective of the campaign.<sup>27</sup> The Commission therefore finds no  
12 reason to believe that Trump or the Trump Committee violated 52 U.S.C. § 30114(b) and  
13 11 C.F.R. § 113.2(e) by converting campaign funds to personal use.

---

Report Volume II at 62-77. To the extent that the Trump Committee paid Jones Day for representing Trump in DOJ or congressional investigations into alleged abuse of his duties as a federal officeholder, such a payment would not constitute personal use. *See* AO 2000-40 (concluding that use of campaign funds for legal fees concerning alleged wrongdoing in the conducting of officeholder duties would be permissible because it would entail the use of campaign funds for an expense that would not exist irrespective of duties as a federal officeholder).

<sup>25</sup> *Supra* n.10; *see also* Trans. of Interview of Trump Jr. by S. Judiciary Comm. at 14, 21 (generally explaining Trump Jr.'s work for Trump's campaign).

<sup>26</sup> AO 2000-40 at 4-5 (concluding that donation of campaign funds to legal defense fund to defend civil suit concerning officeholder's alleged disclosure of phone call involving another congressman was permissible because such conduct "resulted directly" from activities relating to his position on the House Ethics Committee).

<sup>27</sup> *See, e.g.*, Interview of Trump Jr. by S. Judiciary Comm. at 14, 21 (Sept. 7, 2017) (generally explaining Trump Jr.'s work for Trump's campaign). The Commission has approved the use of campaign funds to pay for legal expenses on behalf of individuals other than the candidate or officeholder relating to their work for the candidate or officeholder. *E.g.*, AO 2011-07 at 4 (campaign consultant); AO 2009-20 at 4 (current and former congressional staffers).