



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 13, 2021

VIA ELECTRONIC MAIL

Chris Ashby, Esq.
Ashby Law P.C.
602 Cameron Street, Suite 102
Alexandria, VA 22314

RE: MUR 7390

Dear Mr. Ashby:

On May 29, 2018, the Federal Election Commission (“Commission”) notified your client, the Republican National Committee and Ronald C. Kaufman 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 client at that time. On September 2, 2021, based upon the information contained in the complaint and information provided by your client, the Commission voted to dismiss allegations that the Republican National Committee and Ronald C. Kaufman in his official capacity as treasurer 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 RESPONDENT: Republican National Committee MUR 7390
7 and Ronald C. Kaufman in his
8 in his official capacity as treasurer
9

I. INTRODUCTION

10
11
12 This matter was generated by a complaint filed with the Federal Election Commission
13 (the “Commission”), which makes allegations relating to payments by the Republican National
14 Committee and Ronald C. Kaufman in his official capacity as treasurer (“RNC”) for the legal
15 expenses of Donald J. Trump and his son, Donald Trump, Jr. in connection with the Department
16 of Justice (“DOJ”) investigation into Russian interference with the 2016 election. The
17 Complaint cites to Maryland state law, asserting that “campaign funds cannot be used for
18 expenses arising from criminal investigations, or for any expenses that arise after the campaign is
19 over.”¹ Though the Complaint does not directly cite to the Federal Election Campaign Act of
20 1971, as amended (the “Act”), its factual substance raises allegations concerning the use of the
21 RNC’s segregated fund to defray legal expenses for Trump and Trump Jr. The RNC argues that
22 its payments were permissible under 52 U.S.C. § 30116(a)(9)(C), which governs the use of a
23 separate segregated account by national party committees to “defray expenses incurred with
24 respect to the preparation for and the conduct of election recounts and contests and other legal
25 proceedings.”²

¹ 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”).

² RNC Resp. at 2 (July 11, 2018) (quoting 52 U.S.C. § 30116(a)(9)(C)).

1 The RNC’s use of its segregated account implicates novel and complex legal issues
2 regarding relatively-new statutory text for which the Commission has yet to provide guidance.
3 Therefore, the Commission will dismiss as a matter of prosecutorial discretion the allegation that
4 the RNC violated 52 U.S.C. § 30116(f) by making improper expenditures from its segregated
5 account.

6 **II. FACTUAL BACKGROUND**

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

³ 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”).

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

8 **A. RNC Payments**

9 The Complaint also cites to and relies upon the Reuters article regarding a set of
10 payments by the RNC to attorneys reportedly serving as counsel for Trump in connection with
11 the Russia investigations. On August 25, 2017, the RNC reportedly paid \$100,000 to John
12 Dowd and \$131,250 to The Constitutional Litigation & Advocacy Group, P.C., identified by the

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>.

⁵ 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 (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; 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.

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

1 article as the law firm where Jay Sekulow is a partner.⁷ Various news reports indicate that Dowd
2 and Sekulow represented Trump in connection with DOJ's Russia investigation.⁸ Further,
3 according to news reports, the RNC also made payments to attorneys reportedly serving as
4 counsel for Trump Jr. in connection with the Russia investigations. On September 18, 2017, the
5 RNC reported paying \$166,526.50 to Alan S. Futerfas and \$30,102.90 to the law firm Williams
6 & Jensen.⁹ As described above, Futerfas appeared on behalf of Trump Jr. at his interview with
7 the Senate Judiciary and House Intelligence Committees on matters related to Russian
8 interference with the 2016 election. Karina Lynch of Williams & Jensen also appeared on behalf
9 of Trump Jr. before both committees.¹⁰

10 The RNC reported each of the disbursements to Dowd, The Constitutional Litigation &
11 Advocacy Group, Futerfas, and Williams & Jensen, allegedly on behalf of Trump and Trump Jr.,
12 as expenditures for "Legal and Compliance Services" coming from the RNC's "Legal

⁷ Compl. ¶¶ 2-3; Reuters Article (reporting that these RNC payments covered "some of Trump's legal fees related to the probe" of "alleged Russian interference in the U.S. election"); RNC Amend. 2017 Sept. Monthly Rpt. at 6,172 (Dec. 29, 2017).

⁸ E.g., Rosalind S. Helderman, *In Secret Memo, Trump's Lawyers Argued He Has Complete Power over Justice Investigations and Could not Have Committed Obstruction*, WASH. POST (June 2, 2018), https://www.washingtonpost.com/politics/in-secret-memo-trumps-lawyers-argued-he-has-complete-power-over-justice-investigations-and-could-not-have-committed-obstruction/2018/06/02/f609dc4a-6697-11e8-a768-ed043e33f1dc_story.html; Michael S. Schmidt and Maggie Haberman, *Trump's Lawyer Resigns as President Adopts Aggressive Approach in Russia Inquiry*, N.Y. TIMES (Mar. 22, 2018), <https://www.nytimes.com/2018/03/22/us/politics/john-dowd-resigns-trump-lawyer.html>.

⁹ RNC Amend. 2017 Oct. Monthly Rpt. at 12,280 (Nov. 20, 2017); Jeremy Diamond, *RNC Covering More than \$230,000 in Trump Legal Fees*, CNN (Sept. 19, 2017), <https://www.cnn.com/2017/09/19/politics/donald-trump-legal-fees-rnc/index.html> (reporting that these payments were for "Trump Jr.'s legal bills related to the Russia investigation") ("CNN Article"). The CNN article followed up on initial reporting by *Reuters* and is directly referenced by the second *Reuters* article attached to the Complaint. *Reuters* Article.

¹⁰ Trans. of Interview with Trump Jr. by H. Intelligence Comm. at 4; Trans. of Interview with Trump Jr. by S. Judiciary Comm. at 3:10.

1 Proceedings Account.”¹¹ The RNC did not report the disbursements as coordinated party
2 expenditures, nor did Trump’s authorized committee report the transactions on its own FEC
3 reports as in-kind contributions.

4 **B. The Complaint and Responses**

5 Based on the reporting in the Reuters news article it attaches, the Complaint alleges that
6 the foregoing use of campaign funds for legal fees was improper. The Complaint contends that,
7 under Maryland law, “investigations or charges involving misconduct are NOT campaign-
8 related, even if the charges first come to light as a result of the individual’s decision to run for
9 elected office,” and argues that “[t]hese campaign expenditures should be disallowed and a
10 notice given to these political campaigns that if the monies are not reimbursed, the cases will be
11 referred to state prosecutors and federal prosecutors.”¹²

12 The RNC’s Response argues that the Complaint should be dismissed because it is only
13 partially sworn¹³ and argues that the Complaint’s reliance on state law makes it deficient.¹⁴ As
14 to the merits of the RNC’s use of funds from its segregated account, the RNC argues that “the
15 Commission repeatedly has approved the use of campaign funds to pay legal fees incurred in
16 connection with” investigations by law enforcement and grand jury investigations, as well as
17 “legal proceedings arising out of such investigations, where the allegations relate to the

¹¹ RNC Amend. 2017 Sept. Monthly Rpt. at 6,172 (Dec. 29, 2017) (John Dowd and the Constitutional Litigation & Advocacy Group); RNC Amend. 2017 Oct. Monthly Rpt. at 12,280 (Nov. 20, 2017) (Futerfas).

¹² Compl. at 2-3.

¹³ RNC Resp. at 1. With respect to the RNC’s argument that unsworn legal analysis in the Complaint should not be considered, the analysis below considers only the sworn numbered paragraphs setting forth the factual basis for the Complaint, as well as the attached news article, which contain sufficient factual allegations upon which to analyze the potential violations at issue.

¹⁴ *Id.* at 1-2.

1 candidate's campaign or duties as a federal officeholder, and where the legal fees would not have
2 been incurred but for the candidate's campaign or duties as a federal officeholder."¹⁵ Because
3 the legal fees at issue arose out of an investigation, the RNC argues that no violation occurred
4 and the Complaint should be dismissed.¹⁶

5 **III. LEGAL ANALYSIS**

6 The Consolidated and Further Continuing Appropriations Act of 2015 amended the part
7 of the Act codified at 52 U.S.C. § 30116 to allow national party committees to create a
8 segregated account "to defray expenses incurred with respect to the preparation for and the
9 conduct of election recounts and contests and other legal proceedings."¹⁷ Such accounts are in
10 addition to any other federal accounts maintained by a national party committee and are subject
11 to contribution limits equal to 300% of the otherwise-applicable contribution limit to national
12 party committees.¹⁸ In addition, disbursements from such accounts are not subject to
13 coordinated party expenditure limits.¹⁹

14 Since the 1970s, the Commission has recognized that recounts are not themselves
15 elections and thus funds received and spent for them are not "contributions" or "expenditures."²⁰

¹⁵ *Id.* at 2 (citing Commission advisory opinions).

¹⁶ *Id.*

¹⁷ Pub. L. No. 113-235, 101, 128 Stat. 2130, 2772-73 (2014) (codified at 52 U.S.C. § 30116(a)(9)(C)). In addition, disbursements from such accounts are not subject to coordinated party expenditure limits. 52 U.S.C. § 30116(d)(5); *see also* 11 C.F.R. §§ 109.30, 109.32(a)(1).

¹⁸ 52 U.S.C. § 30116(a)(1)(B), (2)(B).

¹⁹ 52 U.S.C. § 30116(d)(5); *see also* 11 C.F.R. §§ 109.30, 109.32(a)(1).

²⁰ *See* 11 C.F.R. § 100.91 ("A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.20 and part 114 apply."); *see also* Advisory

1 In a series of advisory opinions, the Commission further explained that a national party
2 committee “may establish a recount fund, separate from its other accounts and subject to a
3 separate limit on amounts received, and use that fund to pay expenses incurred in connection
4 with recounts and election contests of Federal elections.”²¹ The Commission made clear that
5 funds in such recount accounts cannot “be used for campaign activities” and that “recount
6 activities paid for by the recount fund must have no relation to campaign activities.”²²
7 Subsequent to the 2015 amendment, the Commission reaffirmed that funds raised by a candidate
8 to pay for recounts and “lawsuits directly related to the counting and recounting of ballots” are
9 subject to the Act’s limitations, prohibitions, and reporting requirements but are not aggregated
10 with contributions for the general election and “must have no relation to campaign activities” and
11 “may not be used in any manner that would constitute a contribution or expenditure under the
12 Act or regulations.”²³ As relevant here, the question presented is whether the phrase “other legal
13 proceedings” includes the DOJ and related congressional investigations such that the RNC could
14 permissibly spend funds from its segregated account established to defray costs of “election

Op. 1978-92 (Miller) at 2 (explaining that Commission regulations provide that “gifts, or loans or payments of money or anything of value that are made solely for the purpose of defraying the expenses of a Federal election recount are not contributions or expenditures under the Act and Commission regulations” and are therefore not subject to the contribution limits).

²¹ Advisory Op. 2009-04 (Franken/DSCC) at 2-3 (“AO 2009-04”) (citing Advisory Op. 2006-24 (National Republican Senatorial Committee and Democratic Senatorial Campaign Committee)).

²² Advisory Op. 2010-14 (DSCC) at 3, 5 (citing AO 1978-92 (“[I]n view of the special treatment and exemption accorded funds received and spent for recount purposes, any resulting surplus of funds may not be used in any manner that would constitute a contribution or expenditure under the Act or regulations.”)). Thereafter, in one instance, the Commission further permitted national party committees to use funds in their recount accounts to pay for litigation seeking the disgorgement of primarily soft-money contributions that had been made prior to the enactment of BCRA. Advisory Op. 2011-03 (DSCC, RNC, NRCC, DCCC, and NRSC) at 3-4.

²³ Advisory Op. 2019-02 (Nelson) at 2-3 (“AO 2019-02”).

1 recounts and contests and other legal proceedings” for legal fees incurred by Trump and Trump
2 Jr. as a result of those investigations. .

3 Here, it appears to be undisputed that the RNC used its segregated account for election
4 recounts and contests and other legal proceedings to make the payments at issue. The payments
5 were itemized on the RNC’s FEC reports with “Legal and Compliance Services” listed as the
6 purpose and “Legal Proceedings Account” listed on the memo line.²⁴ Moreover, the Response
7 filed by the RNC acknowledges that the payments were made from the committee’s account for
8 election recounts and contests and other legal proceedings.²⁵

9 The purpose of the payments, according to the available information, however, was
10 related to campaign activities. News reports and other official documents show that the law
11 firms and attorneys in question were paid from the RNC’s segregated account for representation
12 of Trump and Trump Jr. in connection with the DOJ and congressional Russia investigations.²⁶
13 Furthermore, there is nothing to suggest that, with respect to the payments at issue, either Trump
14 or Trump Jr. were involved in an election recount, contest, or other such proceeding with “no

²⁴ The Commission released interim reporting guidance indicating that national party committees “should identify these disbursements by entering ‘Recount Account’ in the Purpose of Disbursement field along with the required purpose of the disbursement (e.g., ‘Recount Account – Legal Services’).” Press Release, FEC, *FEC Issues Interim Reporting Guidance for National Party Committee Account* (Feb. 13, 2015). The RNC’s reporting of the challenged payments does not directly match the phrasing presented in the interim guidance, but “Legal Proceedings Account” clearly refers to the RNC account for “election recounts and contests and other legal proceedings,” as opposed to its separate accounts for conventions or headquarter buildings. *See* 52 U.S.C. § 30116(a)(9)(A)-(B) (detailing the two other segregated accounts).

²⁵ *See* RNC Resp. at 2 (arguing that the payments were legally permitted under 52 U.S.C. § 30116(a)(9)(C)).

²⁶ An RNC spokesperson “confirmed” the payments to Dowd and the Constitutional Litigation and Advocacy Group were to Trump’s attorneys. Reuters Article. Additionally, “two RNC officials” stated that the payments to Futerfas and Williams & Jensen were to Trump Jr.’s attorneys. CNN Article; *see also supra* nn.35-37 and accompanying text.

1 relation to campaign activities.”²⁷ The Responses do not dispute that the payments were for
2 Trump’s and Trump Jr.’s personal attorneys or that the proceedings at issue related to the Russia
3 investigations.²⁸ In fact, the RNC argues that it was permitted to pay the legal expenses under
4 the Commission’s long history of advisory opinions permitting the payment of legal fees that
5 “would not have been incurred but for the candidate’s campaign or duties as a federal
6 officeholder,” appearing to concede that the payments were related to campaign activities.²⁹

7 The Commission has yet to provide guidance to the regulated community on the scope of
8 permissible uses of these accounts under 52 U.S.C. § 30116(a)(9)(C) or the effect of payments
9 from these accounts under 52 U.S.C. § 30101(8)(A)(ii). For these reasons, the Commission will
10 dismiss these allegations as a matter of prosecutorial discretion.³⁰ Accordingly, the Commission
11 will dismiss the allegations that the RNC violated 52 U.S.C. § 30116(f).³¹

²⁷ AO 2019-02; *see also* AO 2006-24.

²⁸ The RNC argues that the payments were permissible under the “other legal proceedings” language of section 30116(a)(9)(C). RNC Resp. at 2.

²⁹ *Id.* (citing several personal use advisory opinions, none of which involve funds from the segregated account established by section 30116(a)(9)(C) or funds otherwise designated for recount purposes). The RNC, as a national party committee rather than a candidate committee, is not subject to the personal use restrictions at 52 U.S.C. § 30114(b) that were analyzed in the advisory opinions it cites.

³⁰ *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

³¹ The RNC’s use of its segregated account to pay the legal fees also raises the question of whether such payments constituted unreported excessive contributions from the RNC to Trump’s authorized committee. While payments properly made from the segregated account are not subject to the limits on coordinated party expenditures, the Commission has not issued guidance as to the effect on payments *improperly* made from such accounts. *See* 52 U.S.C. § 30116(d)(5). Because the Commission will dismiss the allegations that the RNC misused its segregated account in making these payments due to lack of notice, this analysis does not address whether the RNC made excessive or unreported contributions through its payment of Trump and Trump Jr.’s legal expenses.