

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

AB PAC  
American Bridge 21st Century  
800 Maine Ave SW, Ste 400  
Washington, DC, 20024

Complainant,

v.

Donald J. Trump  
1100 S. Ocean Blvd  
Palm Beach, FL 33480

Respondent.

**COMPLAINT**

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against Donald J. Trump (“Respondent”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (“Commission”) regulations by making expenditures for the purpose of advancing his own presidential campaign without filing a statement of candidacy with the Federal Election Commission or disclosing those expenditures to the Commission and the public. Specifically, it alleges that Mr. Trump has been illegally using his multicandidate leadership PAC to raise and spend funds in excess of Commission limits for the purpose of advancing a 2024 presidential campaign. These expenditures include payments for events at Trump properties, rallies featuring Mr. Trump, consulting payments to former Trump campaign staff, and digital advertising about Mr. Trump’s events and his presumptive 2024 opponent.

## FACTUAL BACKGROUND

In July 2021, former President Donald Trump was asked whether he had made up his mind regarding his decision to run for President in 2024. He answered that he had.<sup>1</sup> In the ensuing months, Trump has repeatedly claimed to have made a decision concerning a 2024 run for President.

In August 2021, when asked whether he would be running in 2024, Trump answered, “I’m actually not allowed to answer that question, can you believe that? I’d love to answer it. But let me put it this way; I think you’ll be happy and I think that a lot of our friends will be happy but I’m not actually allowed to answer it. Makes it very difficult if I do.”<sup>2</sup>

In September 2021, when asked “Are you going to run again, Mr. President?” Trump replied, “Oh, that’s a tough question. Actually for me it’s an easy question. I mean, I know what I’m going to do, but we’re not supposed to be talking about it yet from the standpoint of campaign finance laws.”<sup>3</sup>

More recently, Trump has made additional public statements indicating that he has made a decision to run for President again. Introduced at his golf course as the “45th President of the United States,” Trump responded, “the 45th and 47th.”<sup>4</sup> And speaking at the Conservative Political Action Conference in February 2022, Trump talked explicitly about a third presidential

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<sup>1</sup> Lexi Lonas, *Trump Says He’s Made Decision on 2024*, THE HILL (Jul. 1, 2021, 11:36 AM), <https://thehill.com/homenews/campaign/561117-trump-says-hes-made-decision-on-2024> (“You are not going to answer, but I have to ask, where are you in the process,’ Hannity said to Trump on Wednesday, regarding his decision on whether to mount another White House bid. ‘Let me ask you this, without giving the answer, what the answer is, have you made up your mind?’ ‘Yes,’ Trump responded.”).

<sup>2</sup> Greg Evans, *Trump Claims He Is “Not Allowed to Say” if He Will Be Running for President in 2024*, INDY100 (Aug. 18, 2021), <https://www.indy100.com/news/trump-president-2024-interview-hannity-b1904465>.

<sup>3</sup> C-SPAN, *Former President Trump Visits New York City on September 11* (Sep. 11, 2021), <https://www.c-span.org/video/?c4976508/president-trump-visits-york-city-september-11>.

<sup>4</sup> Cheryl Teh, *Trump Drops the Biggest Hint Yet That He’ll Be Running in 2024, Calling Himself the ‘45th And 47th President’ in a Video*, BUSINESS INSIDER (Jan. 26, 2022, 10:00 PM), <https://www.businessinsider.com/trump-drops-hint-about-2024-run-calling-himself-47th-president-2022-1>.

campaign, stating “[w]e did it twice and we’ll do it again . . . we’re going to be doing it again a third time.”<sup>5</sup> He also referred to his wife as “the future first lady.”<sup>6</sup> Despite Mr. Trump’s numerous public statements that strongly suggest he has privately decided to become a federal candidate, as of March 7, 2022, Mr. Trump has not filed a Statement of Candidacy with the Commission.

Mr. Trump is affiliated with Save America, which is registered with the Commission as a multicandidate leadership PAC.<sup>7</sup> Founded shortly after the 2020 election — and run by Mr. Trump’s former campaign manager — Save America has raised more than \$100 million, much of which was ostensibly earmarked for an “election defense fund.”<sup>8</sup> But since Mr. Trump’s statements indicating he had made a decision to run in 2024, much of Save America’s expenditures have been dedicated to influencing Trump’s election. Since July 2021, Save America has spent well over \$5,000 on travel, events at Trump properties, rallies featuring Mr. Trump, consulting payments to former Trump campaign staff, and digital advertising about Mr. Trump’s events and his presumptive 2024 opponent.<sup>9</sup> For example, since July 2021, Save

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<sup>5</sup> Kadia Goba, *CPAC Republicans Are All In For Trump After He Hinted at Running in 2024*, BUZZFEED NEWS (Feb. 27, 2022, 5:53 PM), <https://www.buzzfeednews.com/article/kadiagoba/cpac-trump-2024-desantis-presidential-election>.

<sup>6</sup> Warren Rojas & Sarah Al-Arshani, *Trump Again Signals Another Presidential Bid in CPAC Speech: ‘We Did It Twice. And We’ll Do it Again,’* BUSINESS INSIDER (Feb 27, 2022, 1:31 AM), <https://www.businessinsider.com/trump-signals-another-presidential-bid-during-cpac-speech-2022-2>.

<sup>7</sup> Save America Committee, FEC Form 1 Statement of Organization, (Jan. 31, 2022), available at <https://docquery.fec.gov/pdf/291/202201319485488291/202201319485488291.pdf>.

<sup>8</sup> See Peter Stone, ‘*A One-Man Scam Pac*’: Trump’s Money Hustling Tricks Prompt Fresh Scrutiny, THE GUARDIAN (Aug. 2, 2021, 03:00 PM), <https://www.theguardian.com/us-news/2021/aug/02/donald-trump-fundraising-schemes-campaign-finance-scrutiny-criticism>; see also FEC, Save America, <https://www.fec.gov/data/committee/C00762591/?tab=raising>.

<sup>9</sup> See id.; see also Meredith McGraw, Alex Isenstadt & Scott Bland, *How Trump’s Political Groups Are Spending Their Huge Cash Haul*, POLITICO (Feb. 1, 2022, 10:39 AM) <https://www.politico.com/news/2022/02/01/Trump-political-groups-spending-00004057>; Shane Goldmacher, *Trump Entered 2022 With \$122 Million in the Bank*, N.Y. TIMES (Jan. 31, 2022), <https://www.nytimes.com/2022/01/31/us/politics/trump-campaign-filing.html>; Google Transparency Report, Save America Joint Fundraising Committee, (Feb. 25, 2022, 2:15 PM), <https://transparencyreport.google.com/political-ads/advertiser/AR386358112438714368/creative/CR164853454844461056>.

America has spent more than \$100,000 at Trump Tower.<sup>10</sup> In light of Mr. Trump’s public statements, these expenditures can only reasonably be interpreted as being made for the purpose of influencing his campaign.

## **LEGAL STANDARDS**

### **A. Federal Candidacy Trigger**

An individual becomes a “candidate” for purposes of the Federal Election Campaign Act of 1971, as amended (the “Act”) upon receiving contributions or making expenditures in excess of \$5,000 to influence their election for federal office, either directly or through third parties.<sup>11</sup> Such individuals must file a Statement of Candidacy within fifteen days of meeting the threshold for becoming a candidate.<sup>12</sup>

Commission regulations allow potential candidates to collect contributions and make expenditures outside of the \$5,000 candidacy threshold solely for the purpose of “testing the waters.”<sup>13</sup> Under the so-called “testing-the-waters” exemption, an individual may raise money for and/or spend money on activities to evaluate a potential candidacy — rather than build support for an actual candidacy — without having to register as a candidate. Such activities are not considered “contributions” or “expenditures” and do not count toward the \$5,000 registration threshold, provided that they are not made to influence an election for federal office. But if an individual makes a private decision to become a candidate, he is no longer eligible to raise or spend funds under the testing-the-waters allowance.<sup>14</sup>

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<sup>10</sup> See 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3.

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

<sup>12</sup> 52 U.S.C. 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>13</sup> 11 C.F.R. §§ 100.72, 100.131.

<sup>14</sup> FEC Advisory Opinion 2015-09 (HMP/SMP) at 5 (“Assuming that an individual has raised or spent more than \$5000 on “testing-the-waters” activities, does an individual become a candidate when he or she makes a private determination that he or she will run for federal office? Yes, an individual who has raised or spent more than \$5000

The Commission has previously determined that once an individual “has moved beyond the deliberative process of deciding to become a candidate, and into the process of planning and scheduling public activities designed to heighten his political appeal to the electorate, then . . . the activity would cease to be within the exemption, and candidacy would arise.”<sup>15</sup> Thus, even a candidate who is careful to craft his public comments to avoid publicly referring to himself as a candidate can trigger candidacy by making expenditures to further his candidacy once a private decision has been made.

## **B. Federal Contributions and Expenditures**

While testing-the-waters activities do not trigger candidacy, the cost of such activities must be treated as campaign expenditures in the event the individual decides to run for office.<sup>16</sup> And because testing-the-waters expenses qualify as campaign expenditures in the event of a candidacy, they must be paid with funds that comply with federal source restrictions and amount limits.<sup>17</sup> A multicandidate political committee is only permitted to contribute up to \$5,000 per election to any candidate. Accordingly, if a multicandidate PAC pays more than \$5,000 per election in testing-the-waters expenses for a candidate’s future campaign, and these costs are not reimbursed by that campaign, an excessive contribution would result.<sup>18</sup> An excessive contribution would also result from a multicandidate PAC contributing more than \$5,000, and/or

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on “testing-the-waters” activities would become a candidate when he or she makes a private determination that he or she will run for federal office.”); FEC Matter Under Review 7689, 7794 (Adkins) Factual and Legal Analysis (“[A]n individual who has crossed the \$5,000 threshold becomes a candidate ‘when he or she makes a private determination that he or she will run for federal office.’”); FEC Matter Under Review 6999 (Larsen) Factual and Legal Analysis at 10 (finding that public statements of “it’s time to do it again,” and “we’ll win this time” were indicative of a private decision to run); FEC Matter Under Review 7590 (Strabone) Factual and Legal Analysis at 7 (citing the absence of written or oral statements referring to himself as a candidate as a reason Strabone did not violate the Act).

<sup>15</sup> FEC Advisory Opinion 1981-32 (Askew).

<sup>16</sup> 11 C.F.R. § 100.131(a).

<sup>17</sup> *Id.* § 100.72(a); FEC Advisory Opinion 2015-09 (SMP/HMP) at 5.

<sup>18</sup> 11 C.F.R. § 110.2(b)(1), (l)(1); *see also* 11 C.F.R. §§ 101.3, 100.131(a).

making expenditures in excess of this amount, to influence a person's election once that individual has triggered federal candidacy.<sup>19</sup>

Testing-the-waters expenses, direct contributions, and in-kind contributions are all aggregated towards the \$5,000 limit — no matter how the expenditures are categorized, Save America may only contribute \$5,000 total to Mr. Trump per election.<sup>20</sup> Save America has not abided by this limit. For example, in the fall of 2021 alone, Save America Joint Fundraising Committee (a joint venture between Make America Great Again PAC and Save America leadership PAC) spent more than \$93,000 on Facebook advertisements, many of which were promoting Mr. Trump's rallies.<sup>21</sup> And last year Save America spent more than \$1 million with the company that stages his rallies.<sup>22</sup>

## LEGAL ANALYSIS

### A. Mr. Trump Failed to File a Timely Statement of Candidacy

Donald Trump's public statements make clear that he has decided to run for President again. When Mr. Trump said "we did it twice and we'll do it again" and "we're going to be doing it again a third time," in reference to his presidential campaign, his statements were virtually identical to those in *Larsen*, where the Commission found that federal candidacy had been triggered by statements like "it's time to do it again," and "we'll win this time."<sup>23</sup>

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<sup>19</sup> 11 C.F.R. § 110.2(b)(1), (l)(1); *see also* FEC Advisory Opinion 1985-40 (RMF) at 2 ("The Act does permit a multicandidate political committee to make contributions to a candidate or his or her authorized committees that in the aggregate do not exceed \$5,000 with respect to any election for Federal office.").

<sup>20</sup> 11 C.F.R. § 110.2(b)(1), (l)(1); *Id.* § 100.131(a).

<sup>21</sup> Kayla Gogarty, *Facebook Is Letting Trump's PAC Run Ads Implying He Is The "True President"*, MEDIA MATTERS (Oct. 4, 2021, 3:10 PM), <https://www.mediamatters.org/facebook/facebook-letting-trumps-pac-run-ads-implying-he-true-president>.

<sup>22</sup> Shane Goldmacher, *Trump Entered 2022 With \$122 Million in the Bank*, N.Y. TIMES (Jan. 31, 2022), <https://www.nytimes.com/2022/01/31/us/politics/trump-campaign-filing.html>.

<sup>23</sup> FEC Matter Under Review 6999 (Larsen) Factual and Legal Analysis at 10.

Mr. Trump's statements and actions are similarly comparable to those in *Bruning*, where the Commission found that the combination of public statements suggestive of a run for federal office such as "I want to run," and "I'm ready to run," as well as fundraising efforts against a presumptive opponent, indicated that Bruning had become a federal candidate.<sup>24</sup> Mr. Trump's public statements about a 2024 run have been even more definitive than Bruning's, and his digital advertising against President Biden is akin to the kind the Commission found indicative of intent in *Bruning*.<sup>25</sup>

Once he made the private decision to become a candidate, Mr. Trump was obligated to file a Statement of Candidacy with the Commission within 15 days of receiving contributions or making expenditures of more than \$5,000 to influence his election, *either directly or through third parties*.<sup>26</sup> This Statement of Candidacy has not yet been filed. Yet, subsequent to several of his public remarks about a 2024 candidacy, Mr. Trump's leadership committee, Save America, has spent more than \$100,000 per week on Facebook ads and has consistently raised more than \$1 million per week.<sup>27</sup> Save America's ads are clearly an attempt to influence Mr. Trump's election to federal office in 2024.<sup>28</sup> Commission regulations specify that an individual becomes a

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<sup>24</sup> FEC Matter Under Review 6449 (Bruning) Factual and Legal Analysis at 8.

<sup>25</sup> See, e.g., Google Transparency Report, *Save America Joint Fundraising Committee* (Feb. 25, 2022, 2:15 PM), <https://transparencyreport.google.com/political-ads/advertiser/AR386358112438714368/creative/CR164853454844461056> ("Joe Biden must resign."); Google Transparency Report, *Save America Joint Fundraising Committee* (Feb. 9, 2022, 3:30 P.M.), <https://transparencyreport.google.com/political-ads/advertiser/AR386358112438714368/creative/CR536153033986277376> ("Biden has turned his back on America, and completely failed the American people. Biden is Weak. We all know it.").

<sup>26</sup> 52 U.S.C. § 30101(2)(B); 11 C.F.R. § 100.3(a).

<sup>27</sup> Michael Scherer & Josh Dawsey, *Trump Looks To 2024, Commanding a Fundraising Juggernaut, as He Skirts Social Media Bans*, WASH. POST (Oct. 30, 2021, 6:00 AM), [https://www.washingtonpost.com/politics/trump-fundraising/2021/10/29/5b5a2e64-31b1-11ec-a1e5-07223c50280a\\_story.html](https://www.washingtonpost.com/politics/trump-fundraising/2021/10/29/5b5a2e64-31b1-11ec-a1e5-07223c50280a_story.html).

<sup>28</sup> Kayla Gogarty, *Facebook Is Letting Trump's PAC Run Ads Implying He Is The "True President"*, MEDIA MATTERS (Oct. 4, 2021, 3:10 PM), <https://www.mediamatters.org/facebook/facebook-letting-trumps-pac-run-ads-implying-he-true-president> ("Our latest study has found that Trump's PAC has created over 1,600 ads since we last reported in August. Among these new ads, 186 pushed election misinformation, 322 were about Trump's September rally in Georgia, and 139 were about Trump's October rally in Iowa.").

federal candidate when he has 1) consented to expenditures beyond \$5,000 on his behalf, and 2) those expenditures have been made.<sup>29</sup> Because he sponsors Save America, Donald Trump has consented to Save America’s expenditures on his behalf, which greatly exceed \$5,000, and thus he has become a federal candidate.<sup>30</sup>

These facts strongly suggest that Mr. Trump has made the decision to become a federal candidate and has authorized Save America to make expenditures in excess of \$5,000 to influence his election. His failure to timely file a Statement of Candidacy with the Commission is a clear violation of the Act. Having twice previously run for President, Mr. Trump is no stranger to campaign finance laws. His failure to register with the Commission as a candidate despite triggering the candidacy threshold suggests that Mr. Trump is deliberately trying to flout the law.

## **B. Mr. Trump is Raising and Spending Soft Dollars**

As explained above, Mr. Trump appears to have triggered the requirement to file a Statement of Candidacy with the Commission. Yet instead of doing so, he is apparently using his leadership PAC, instead of a principal campaign committee, to raise and spend exorbitant amounts to influence his own election — in violation of the Act’s contribution limits. Save America’s expenditures for Mr. Trump’s travel, events at Trump properties, rallies where Mr. Trump is a featured speaker, and consulting payments to former Trump campaign staff are best understood as expenditures to further Mr. Trump’s 2024 campaign because they are made for the purpose of influencing that federal election. Save America may only permissibly contribute \$5,000 per election to Mr. Trump’s campaign — the amount exceeding \$5,000, whether in the

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<sup>29</sup> 11 C.F.R. 100.3(a)(2).

<sup>30</sup> See, e.g., Jason Lange & Alexandra Ulmer, *Trump Fundraising Slows but Still Yields Over \$100 Million in Cash*, REUTERS (Feb. 1, 2022, 1:55 AM), <https://www.reuters.com/world/us/trumps-fundraising-groups-have-over-122-mln-cash-2022-01-31/> (“Trump is spending large sums to hold political rallies that ostensibly support Republican candidates but which feature his own speeches as the main event.”).

form of testing-the-waters expenses, direct contributions, or in-kind contributions, is in violation of the Act.

### **REQUESTED ACTION**

In light of the foregoing, the Commission should immediately investigate whether Mr. Trump failed to file a Statement of Candidacy and report his campaign expenditures as required by the Act and Commission regulations. The Commission should further investigate whether Mr. Trump has used his leadership committee to spend excessive funds to influence his own election. If a violation is found, we request the Commission compel disclosure of any expenditures made to further Mr. Trump's candidacy, enjoin Mr. Trump from further violations, and fine Mr. Trump the maximum amount permitted by law.

Sincerely,

AB PAC  
American Bridge 21st Century  
800 Maine Ave SW, Ste 400  
Washington, DC, 20024

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of March, 2022.

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Notary Public

My Commission Expires:

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