

COMPLAINT

August 31, 2016

Election Law Enforcement Commission
Attn: Review and Investigation Section
P.O. Box 185
Trenton, N.J. 08625

Re: Request for Investigation of Campaign Finance Violations

To Whom It May Concern:

Jersey City Mayor Steven Fulop is a candidate for governor. He has appeared at an event that expressly advocated his election for governor. He publicly rolled out endorsements for governor from two mayors, in an effort to counteract growing opposition to his candidacy. He communicated over email with supporters about his gubernatorial intentions. He publicly announced the formation of his consulting team for the governor's race. His supporters are organizing events explicitly for his gubernatorial candidacy. And he has participated in a Super PAC that was established to back him in his gubernatorial race.

Yet in clear defiance of New Jersey law, Mayor Fulop has failed to register a gubernatorial campaign committee with the Election Law Enforcement Commission ("ELEC") or establish a bank depository from which to fund his candidacy. Instead, he appears to be financing his candidacy from his mayoral account, a practice that plainly violates state law and was sanctioned by ELEC following the most recent gubernatorial election. Mayor Fulop's actions undermine ELEC's disclosure rules, state contribution limits, and spending caps imposed by the state's public financing system (if, as he previously indicated, Mayor Fulop accepts public financing for the gubernatorial primary).

We believe ELEC should act immediately to halt these violations. Specifically, it should:

- Compel Mayor Fulop to register a gubernatorial committee with ELEC and establish a separate bank account to finance his gubernatorial campaign;
- Audit Mayor Fulop's mayoral account, and the accounts of other committees acting in coordination with Mayor Fulop – such as Mayor Baraka's mayoral committee – to determine which expenditures were made to advance his gubernatorial candidacy. These expenditures would count toward the spending cap if Mayor Fulop accepts public financing; *and*

- Penalize Mayor Fulop if it determined that there were violations of the law.

The integrity of New Jersey’s campaign finance laws are at stake. . We formally request that ELEC undertake a prompt and thorough investigation of these allegations.

I. As a candidate for governor, Mayor Fulop must register a gubernatorial committee with ELEC and establish a separate depository to finance his candidacy.

New Jersey law defines “candidate” broadly. A “candidate” includes “[a]n individual seeking election to a public office of this State or of a county, municipality or school or fire district at any election.”¹ Unlike federal law, New Jersey does not allow individuals to spend money “testing the waters” for candidacy. The term “candidate” includes an individual “who has received funds or other benefits or has made payments solely for the purpose of determining whether the individual should become a candidate.”² It is ELEC’s position that “[i]ndividuals who engage in ‘pre-candidacy’ activity, commonly known as ‘testing the waters,’ are defined by law as candidates.”³

A candidate is required to “establish a candidate committee by appointing a treasurer and opening a depository for the purpose of receiving contributions and making expenditures *no later than the date on which that candidate first receives any contribution or makes or incurs any expenditure in connection with an election.*”⁴ For this purpose, a contribution or expenditure includes funds received or payments made “solely for the purpose of determining whether an individual should become a candidate.”⁵ And “[n]o later than 10 days after establishing a candidate committee a candidate shall file a certificate of organization and designation of campaign depository” with ELEC.⁶

Although Mayor Fulop concedes that he is actively exploring a gubernatorial candidacy – telling the media that “we’re organizing now” for 2017 and “[w]e’re kind of feeling it out” – he contends that he can forego state legal requirements simply by avoiding a formal announcement of candidacy.⁷ In a town hall meeting in February, Mayor Fulop told attendees, “I am not a declared candidate, I am not today actively running for governor.”⁸ In an email to supporters dated August 19, 2016, Mayor Fulop again repeated that he was not a “declared candidate” for governor.⁹ And in an interview discussing his ongoing efforts to secure county lines in the 2017 governor’s race, Mayor Fulop again leaned on the “declared candidate” crutch line:

1 N.J. Stat. Ann. § 19:44A-3(c).

2 N.J.A.C. § 19:25-1.7.

3 N.J. Elec. Law Enforcement Comm’n, Compliance Manual for Candidates (March 2015) at 5.

4 N.J.A.C. § 19:25-4.1A(a) (emphasis added).

5 *Id.* § 19:25-1.7.

6 *Id.* § 19:25-4.1A(b).

7 Ryan Hutchins, *Fulop: I’ll use matching funds if I run for governor*, Politico (July 26, 2016).

8 Jeannette Josue, *Fulop on 2017 elections: ‘I am not today actively running for governor’*, Hudson County View (Feb. 2, 2016), <http://hudsoncountyview.com/fulop-on-2017-elections-i-am-not-today-actively-running-for-governor/>

9 See Ex. A

In a brief interview, Fulop sounded optimistic about a unified Essex County party behind him.

“I’m not a declared candidate, so let me preface it with that,” Fulop said. “The hope in every county is that there’s one unified, Democratic line. I’ve got a good relationship with a lot of the different people who are outwardly supporting me and not outwardly supporting me, and I’m going to continue to build that. So that’s where the hope is.”¹⁰

But the test in New Jersey is *not* whether someone has made a formal declaration of candidacy. It is whether the individual has received contributions or made expenditures to advance such a candidacy, including contributions or expenditures solely for the purpose of determining whether an individual should become a candidate. As we explain below, Mayor Fulop is a candidate for governor under that test. And yet, in clear violation of state law, he has failed to register with ELEC or open a new bank account to fund his candidacy.

A. Mayor Fulop has authorized “political communications” advocating his election for governor

Under New Jersey law, a “political communication” is any communication “containing an explicit appeal for the election or defeat of a candidate which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. Words such as ‘Vote for (name of candidate),’ ‘Vote against (name of opposing candidate),’ ‘Elect (name of candidate),’ ‘Support (name of candidate),’ ‘Defeat (name of opposing candidate),’ ‘Reject (name of opposing candidate),’ and other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate.”¹¹ Under ELEC’s precedents, phrases such as “[name of individual] for Governor” constitute “express advocacy” and are treated as electoral communications subject to ELEC regulations.¹²

Political communications can be campaign expenditures or in-kind contributions, depending on who paid for them. If a candidate committee incurs or pays for any political communication, that communication is a reportable expenditure by the committee.¹³ If a third-party incurs or pays for a political communication that is prepared, made, or circulated with the consent or cooperation of the candidate, it must be reported by the candidate as an in-kind contribution.¹⁴ Candidacy is triggered either by the receipt of an in-kind contribution or the making of an expenditure.

Mayor Fulop has authorized several “political communications” advocating his election for governor:

10 Matt Friedman, *As 2017 approaches, Democratic eyes turn toward Essex County*, Politico (Aug. 25, 2016), <http://www.politico.com/states/new-jersey/story/2016/08/as-2017-approaches-all-eyes-on-essex-county-104937#ixzz4ILWq9dmK>

11 *Id.* § 19:25-10.10(a).

12 N.J. Election Law Enf’t Comm’n, Adv. Op. 10-2001 at 2 (Oct. 4, 2001) (“This construction restricts application of reporting requirements to communications containing express words of advocacy of election or defeat, such as ... ‘Smith for Congress.’”).

13 *Id.* § 19:25-10.11(a).

14 *Id.* § 19:25-10.11(b).

Newark event: On May 5, Mayor Fulop attended an event with Mayor Ras Baraka of Newark, where he delivered a speech underneath a banner that said, “City of Newark Welcomes Our Next Governor Mayor Steven Fulop.”¹⁵ The banner in question qualified as a “political communication” in support of Mayor Fulop’s gubernatorial candidacy. It clearly identified Mayor Fulop and advocated his election for governor. The phrase “Our next Governor Mayor Steven Fulop,” which adorned the banner, is materially indistinguishable from “Fulop for Governor,” and both phrases are “political communications” under New Jersey law.¹⁶ By appearing at the event under a banner advocating for his gubernatorial candidacy, Mayor Fulop either received a contribution or made an expenditure for his gubernatorial campaign, and triggered candidacy on May 5.

Public endorsements: Recently, in response to mounting opposition to his candidacy, Mayor Fulop rolled out public endorsements of his gubernatorial candidacy from two mayors.

- On August 8, 2016, Newark Mayor Ras Baraka announced, “‘I will do everything’ to get [Mayor] Fulop elected governor.”¹⁷
- Ten days later, on August 18, 2016, the media reported that “[e]arlier today, Plainfield Mayor Adrian Mapp formally came out for Jersey City Mayor Steve Fulop for governor.”¹⁸

These statements clearly and unambiguously advocate for Mayor Fulop’s candidacy for governor and therefore are “political communications.” Any costs associated with these communications are expenditures or in-kind contributions for his gubernatorial campaign.

Emails and social media: Mayor Fulop’s emails and social media, and those of his closest allies, also confirm that he is a candidate for governor.

- In response to a report that a group of New Jersey Democrats met to discuss their concerns about his candidacy, Mayor Fulop posted a Facebook message railing against “the broken system that is NJ politics” and describing himself as holding the “underdog

15 See Ex. B. See also Max Pizarro, *Essex County Crusade: Dem Candidates Step Up Maneuvers*, New York Observer (May 12, 2016), <http://observer.com/2016/05/essex-county-crusade-dem-candidates-step-up-maneuvers/>

16 See N.J.A.C. § 19:25-10.10(a) (defining a “political communication” as communication containing “other similar explicit political directives [which] constitute ... appeals for the election or defeat of a candidate”).

17 Terrence McDonald, *Baraka: ‘I will do everything’ to get Fulop elected governor*, Jersey Journal (Aug. 8, 2016), http://www.nj.com/hudson/index.ssf/2016/08/baraka_im_with_fulop.html

18 Max Pizarro, *Union County Confidential: Gubernatorial Backroom Moves Going Down Right Now*, New York Observer (Aug. 18, 2016), <http://observer.com/2016/08/union-county-confidential-gubernatorial-backroom-moves-going-down-right-now/>

position” in the gubernatorial race.¹⁹

- One day later, Mayor Fulop sent an email to his mayoral email list titled “**2017 Governor's Race.**”²⁰ Not the “2017 Mayor’s Race” (for which he is a declared candidate), but the “2017 Governor’s Race” (for which he claims he is not). In it, he urged recipients “to help change this culture in *New Jersey*” – not Jersey City, but New Jersey – by signing up to volunteer with his campaign. To underscore that this email was about a gubernatorial candidacy, rather than his mayoral re-election, Mayor Fulop attached an article about the gubernatorial race.
- Finally, on August 25, key Fulop backer Mayor Baraka sent an email to his supporters announcing that “Team Baraka will be getting back to work supporting Jersey City Mayor Stephen [sic] Fulop for Governor” and calling for an organizing meeting on September 8.²¹

This is gubernatorial campaign activity, plain and simple. Any costs associated with these communications are expenditures or in-kind contributions for his gubernatorial campaign.

Consulting team: In an unusual move, Mayor Fulop announced on August 24 that he had brought on a new team of political consultants without specifying that they would be working on his mayoral re-election.²²

A. Mayor Fulop has solicited funds for a Super PAC organized to support his gubernatorial candidacy

Coalition for Progress is a “Super PAC” registered with the Federal Election Commission (“FEC”). Nonpartisan watchdog groups have alleged that the PAC engaged in illegal fundraising practices and filed complaints with the FEC.²³ The *Washington Post* ran a front page story detailing how PACs like Coalition for Progress were allowing “‘ghost corporations’ [to] fund[]

¹⁹ See Ex. C.

²⁰ See Ex. A.

²¹ See Ex. D. See also Matt Friedman, *Baraka allies call meeting to boost Fulop for governor*, Politico (Aug. 29, 2016), <http://www.politico.com/states/new-jersey/story/2016/08/newark-mayor-allies-call-meeting-to-boost-fulop-for-governor-105022#ixzz4lony35BD>

²² Alyana Alfaro, *Fulop Announces New Political Strategy Team, Hinting at Gubernatorial Ambitions*, New York Observer (Aug. 24, 2016), <http://observer.com/2016/08/fulop-announces-new-political-strategy-team-hinting-at-gubernatorial-ambitions/>

²³ Matt Friedman, *Second federal complaint against anonymous \$1M donor to pro-Fulop super PAC*, Politico (Feb. 24, 2016), <http://www.politico.com/states/new-jersey/story/2016/02/second-federal-complaint-against-anonymous-1m-donor-to-pro-fulop-super-pac-098796>

the 2016 election.”²⁴ Under pressure, the PAC eventually disclosed the true source of the \$1 million contribution and refunded a \$400,000 dark money donation from a mysterious nonprofit group.²⁵

Coalition for Progress was organized to support Mayor Fulop’s candidacy. When the group released its 2015 fundraising totals, Fulop insider Donald Scarinci proclaimed that the PAC’s \$3.2 million haul meant that “[n]ow no one can say that Steve Fulop will not have the money to win! The Democratic primary for Governor is over before it begins!”²⁶ Mayor Fulop has participated in the organization’s fundraising activities. A press account reported that “Fulop hosted at least one fundraiser for the PAC, a Nov. 11 event at Liberty Prime Steakhouse where the entry price was reportedly \$25,000.”²⁷ A month earlier, Mayor Fulop’s taxpayer-paid lawyer penned a memo contending that entities subject to Jersey City’s pay-to-play law could legally make donations to groups like Coalition for Progress.²⁸

By soliciting funds to support his candidacy, Mayor Fulop further established that he is a “candidate” for governor.

II. Mayor Fulop’s gubernatorial expenditures from his mayoral account count toward the spending caps he would face if he accepts public financing.

State law requires that “[a]n individual who is a candidate for two or more offices in an election establish separate candidate committees, or separate joint candidate committees, or both, for each office sought.”²⁹ In addition, such an individual must “establish separate campaign depositories so that funds cannot be commingled for the separate offices.”³⁰ An individual seeking multiple offices may not use a single committee to campaign for both offices. This rule “protect[s] the viability of the system of contribution limits.”³¹

24 Matea Gold and Anu Narayanswamy, *How ‘ghost corporations’ are funding the 2016 election*, Washington Post (March 18, 2016), https://www.washingtonpost.com/politics/how-ghost-corporations-are-funding-the-2016-election/2016/03/18/2446e526-ed14-11e5-a6f3-21ccdbc5f74e_story.html

25 Paul Blumenthal, *Donor Behind \$1 Million Dark Money Super PAC Contribution Revealed*, Huffington Post (July 15, 2016), http://www.huffingtonpost.com/entry/super-pac-llc-contribution_us_57896d7ae4b03fc3ee51058b

26 John Heinis, *Scarinci: Fulop will have the money and political support to be the next governor*, Hudson County View (Jan. 25, 2016), <http://hudsoncountyview.com/scarinci-fulop-will-have-the-money-and-political-support-to-be-the-next-governor/>

27 Terrence McDonald, *Donors to PAC with ties to Fulop are a ‘who’s who’ of Jersey City*, Jersey Journal (Feb. 1, 2016), http://www.nj.com/hudson/index.ssf/2016/02/pac_with_ties_to_fulop_rakes_in_32m_donors_a_whos.html#comments

28 Matt Friedman, *Fulop legal memo preceded mysteriously funded super PAC*, Politico (Feb. 16, 2016), <http://www.politico.com/states/new-jersey/story/2016/02/fulop-legal-memo-preceded-mysteriously-funded-super-pac-098504>

29 N.J.A.C. §§ 19:25-4.3, -4.1(b).

30 Compliance Manual for Candidates (March 2015) at 5.

31 ELEC Adv. Op. 06-1995 (April 19, 1995).

Following the state's most recent gubernatorial election, ELEC fined Democratic nominee Senator Barbara Buono for "failing to establish separate candidate committees for the multiple offices sought during the 2013 primary election, and by making an expenditure on behalf of her gubernatorial candidacy through her senatorial account."³² According to ELEC's findings, Senator Buono in late 2012 was "exploring a run for governor" and her pollster "Myers Research that month conducted a poll asking more than 80 questions, including one asking respondents their preferences in a Democratic gubernatorial primary and one asking if they would vote for Buono or Gov. Republican Chris Christie in a general election."³³ Asking that one "horse race" question alone triggered the requirement in state law requiring Senator Buono to establish a separate gubernatorial committee and depository.

A review of Mayor Fulop's ELEC reports suggests that he may be impermissibly funding his gubernatorial exploratory activities through his mayoral account, as several large expenditures made since late 2014 exceed the levels normally associated with a mayoral campaign.

- Mayor Fulop's campaign reported spending \$30,200 on November 14, 2015 on "surveys" conducted by The Mellman Group of Washington, DC.³⁴ In addition, Mayor Fulop's campaign disbursed \$987.01 on February 3, 2016 for expenses related to the 2015 survey.³⁵ Under the Buono precedent, these surveys would count as gubernatorial expenditures if they polled respondents outside of Mayor Fulop's current jurisdiction (Jersey City). Mayor Fulop should immediately answer whether they did.
- Fulop's campaign also paid \$40,000 to Revolution Messaging, LLC of Washington DC on June 2, 2016, for "social media messaging" and another \$22,000 to Revolution Messaging on June 6, 2016 for "social media messaging."³⁶ If the social media advertising was aimed at an audience beyond Mayor Fulop's Jersey City constituents, then some or all of these expenditures are gubernatorial expenditures.
- The Fulop's campaign's payment of consulting fees and expense reimbursements to his Chief of Staff, Mark Albiez, and Mr. Albiez's consulting firm, MMA Consultants LLC, also raises serious questions. The campaign has paid \$25,500 to MMA Consultants in consulting fees since the beginning of 2016. This is in addition to the \$9,500 in

32 Matt Friedman, *Former gov candidate Buono violated state campaign finance law, N.J. agency charges* (June 3, 2015),

http://www.nj.com/politics/index.ssf/2015/06/_former_gubernatorial_candidate_buono_violated_sta.html

33 *Id.*

34 Report of Contributions and Expenditures filed by Steven Fulop for Mayor 2017, January 20, 2016.

35 Report of Contributions and Expenditures filed by Steven Fulop for Mayor 2017, April 18, 2016.

36 Report of Contributions and Expenditures filed by Steven Fulop for Mayor 2017, July 18, 2016.

consulting fees paid to MMA Consultants from September 2015 to December 2015, and \$11,264.92 paid to reimburse Mr. Albiez for meals and personal expenses since February 2015.³⁷ If Mr. Albiez performed services aimed at a statewide campaign (such as meeting with political leaders from outside Jersey City), then some or all of these expenditures are gubernatorial expenditures.

We request that ELEC immediately investigate whether these expenditures were aimed, even in part, toward a gubernatorial run. If they were, then ELEC must follow the precedent it set in the Buono matter and penalize Mayor Fulop.

Finally, any spending that Mayor Fulop has undertaken from his mayoral account in support of exploring or pursuing his gubernatorial candidacy must be accounted for and counted toward the spending cap he will face if he accepts public financing, as he indicated he would do.³⁸ So, too, would any expenditures made by committees supporting Mayor Fulop, such as Mayor Baraka's mayoral committee. A candidate for governor who accepts public financing for the primary election is strictly limited in how much he may spend to aid his candidacy. ELEC regulations provide that "[t]he amount which any qualified candidate may spend in aid of his or her candidacy shall not exceed \$5.6 million, *which amount shall include payments made solely for the purpose of determining whether to become a candidate.*"³⁹ ELEC regulations also require that an applicant for public financing certify that the receipt of the 2-to-1 public funds match "will not result in the candidate's exceeding the expenditure limitations of section 7 of the Act."⁴⁰

If Mayor Fulop has spent funds from his mayoral account to advance his gubernatorial candidacy or if he has accepted in-kind contributions from other committees (such as Mayor Baraka's) to advance his gubernatorial candidacy, the credibility of that certification will be called into question. To protect the integrity of the public financing system, ELEC must audit Mayor Fulop's spending from his mayoral account prior to awarding any public funds to his gubernatorial committee.

For the above stated reasons, we respectfully request that ELEC commence an immediate investigation into the political spending activities of Mayor Fulop, as well the related entities which may be expending resources on behalf of his candidacy for governor.

37 Reports of Contributions and Expenditures filed by Steven Fulop for Mayor 2017, April 16, 2015 to July 18, 2016.

38 Ryan Hutchins, *Fulop: I'll use matching funds if I run for governor*, Politico (July 26, 2016).

39 N.J.A.C. § 19:25-16.9(a)(3) (emphasis added).

40 *Id.* § 19:25-16.18(e)(2).