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AGENDA ITEM

For meeting of June 27, 2024

**SUBMITTED LATE**

**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Commissioner James E. "Trey" Trainor III

A handwritten signature in cursive script, reading "J.E. Trainor, III".

**DATE:** June 24, 2024

**RE:** Mike Pence and Mike Pence for President – Final Determination of DOI (LRA 1194)

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Commissioner Trainor recommends that the Commission approve OGC's recommendations in this matter, subject to substituting the attached draft Notice of Final Determination of Date of Ineligibility in Recommendation Number 2.

**Attachments:**

1. Draft Notice of Final Determination of Date of Ineligibility
2. Attachments 1 & 2 to Draft Notice of Final Determination of Date of Ineligibility

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
4 Mike Pence and ) LRA 1194  
5 Mike Pence for President )  
6

7 **NOTICE**  
8 **FINAL DETERMINATION OF DATE OF INELIGIBILITY**

9  
10 **I. SUMMARY OF FINAL DETERMINATION**

11 The Federal Election Commission (“Commission”) made a final determination on  
12 [DATE] that Mike Pence’s and Mike Pence for President’s (“MPFP”) date of ineligibility  
13 (“DOI”) under 26 U.S.C. § 9033(c) and 11 C.F.R. §§ 9033.5(a)(3), 9033.6, and  
14 9033.10(c) is October 28, 2023. The Commission reaches this conclusion for the reasons  
15 set forth below.  
16

17 **II. FACTUAL AND LEGAL BASIS FOR FINAL DETERMINATION**

18 **A. Procedural History**

19 On May 16, 2024, the Commission determined that Mr. Pence and MPFP had  
20 established eligibility to receive primary matching fund payments.<sup>1</sup> On the same day, the  
21 Commission made an initial determination that “for the reasons set forth in the Office of  
22 General Counsel’s memorandum, that Mike Pence and Mike Pence for President’s date  
23 of ineligibility under 26 U.S.C. § 9033(c) and 11 C.F.R. § 9033.5(a)(3) is October 28,  
24 2023.”<sup>2</sup>  
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<sup>1</sup> Vote Certification ¶ 1, Eligibility Report - MPFP (May 17, 2024).

<sup>2</sup> Vote Certification ¶ 2, Mike Pence and MPFP - Date of Ineligibility (May 17, 2024); *see also* Memorandum from Neven F. Stipanovic *et al.* to The Commission, Mike Pence and MPFP – Date of Ineligibility (LRA 1194) (May 14, 2024) (“OGC DOI Memo”) (attached to Attachment 1).

1           The Office of General Counsel (“OGC”) notified Mr. Pence and MPFP of the  
2 initial determination, providing OGC’s DOI Memo as the legal and factual basis of the  
3 Commission’s determination, on May 20, 2024.<sup>3</sup> On June 10, 2024, Mr. Pence and  
4 MPFP submitted their response, stating in relevant part: “for the sake of administrative  
5 efficiency and to limit further expense, Mr. Pence and his Committee are willing to  
6 stipulate that October 28, 2023 is the date of ineligibility.”<sup>4</sup> Accordingly, the  
7 Commission now makes a final determination that on October 28, 2023, Mr. Pence  
8 ceased to be a candidate within the meaning of the Presidential Primary Matching  
9 Payment Account Act, 26 U.S.C. §§ 9031-42

10           **B. Final Determination of Date of Ineligibility**

11  
12           Commission regulations provide that “[t]he ineligibility date shall be the day on  
13 which an individual ceases to be a candidate because he or she is not actively conducting  
14 campaigns in more than one State in connection with seeking the Presidential  
15 nomination.”<sup>5</sup> Because Mr. Pence and his Committee have stipulated to October 28, 2023  
16 as the date that Mr. Pence ceased to be a candidate,<sup>6</sup> the Commission now makes a final  
17 determination that on October 28, 2023, Mr. Pence ceased to be a candidate within the

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<sup>3</sup> See Attachment 1 (Initial Notification of DOI); see also Vote Certification ¶ 3, Mike Pence and MPFP - Date of Ineligibility (instructing provision of OGC DOI Memo with letter “explaining the Commission’s decision to treat the memo as an initial determination”).

<sup>4</sup> Attachment 2 (Pence DOI Response).

<sup>5</sup> 11 C.F.R. § 9033.5.

<sup>6</sup> See 11 C.F.R. § 9033.(a)(2) (“The date the candidate notifies the Commission in writing that he or she is not actively conducting campaigns in more than one State”).

1 meaning of the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-  
2 42.; October 28, 2023, is thus Mr. Pence’s and MPFP’s DOI.<sup>7</sup>

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### 4 **III. CONCLUSION**

5 Based on the foregoing, the Commission makes a final determination pursuant to  
6 26 U.S.C. § 9033(c) and 11 C.F.R. §§ 9033.5(a)(3), 9033.6, and 9033.10(c) that Mr.  
7 Pence’s and MPFP’s date of ineligibility is October 28, 2023. The Commission instructs  
8 Mr. Pence and MPFP to submit a statement of net outstanding campaign obligations  
9 (“NOCO”) within 15 calendar days.<sup>8</sup>

10

### 11 **Attachments**

- 12 1. Notification of Initial Determination of Date of Ineligibility (May 20, 2024).
- 13
- 14 2. Letter from Matthew Morgan, Counsel for Mike Pence and MPFP to Neven
- 15 Stipanovic (June 10, 2024).

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<sup>7</sup> See 26 U.S.C. § 9033(c) (setting forth general rule for termination of payments and limitations on payments after ineligibility); 11 C.F.R. §§ 9033.5(a), 9033.6 (determination of DOI).

<sup>8</sup> See 11 C.F.R. § 9034.5(a) (requiring and setting time for submission of NOCO statement showing financial status as of the DOI).



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

May 20, 2024

**VIA E-MAIL AND CERTIFIED MAIL**

The Honorable Mike Pence  
Mike Pence for President  
c/o Matthew Morgan, Esq.  
Barnes & Thornburg LLP  
11 S Meridian Street  
Indianapolis, IN 46204  
[MMorgan@btlaw.com](mailto:MMorgan@btlaw.com)

Re: Notification of Initial Determination of Date of Ineligibility for Public Funds

Dear Mr. Pence:

On May 16, 2024, the Commission made a determination that you are eligible to receive payments from the Presidential Primary Matching Payment Account under the provisions of 26 U.S.C. § 9037 and 11 C.F.R. § 9037.1 and issued a letter notifying you of this determination. I am writing to notify you that, following this determination of your eligibility, the Commission also made an initial determination, on May 16, 2024, pursuant to 26 U.S.C. § 9033(c) and 11 C.F.R. §§ 9033.5(a)(3) and 9033.6, that your date of ineligibility (“DOI”) for the purpose of using public funds to seek the Republican presidential nomination is October 28, 2023 – the date upon which you announced that you had suspended your campaign. The Commission initially determined that on this date you publicly announced that you will not be actively conducting campaigns in more than one State. *See* 11 C.F.R. § 9033.5(a)(3). Thus, this is the date upon which your active campaigning in more than one State is presently considered to have ceased. 11 C.F.R. § 9033.6(c).

Enclosed is the Office of General Counsel’s memorandum, dated May 14, 2024, which contains the legal and factual reasons for the Commission’s initial determination. 11 C.F.R. § 9033.10(b). You may submit, within 15 business days after service of the Commission’s initial determination, written legal or factual materials to demonstrate that you are actively campaigning in more than one State, or that you continued to actively campaign in more than one State after October 28, 2023. 11 C.F.R. § 9033.6(c).

The Commission will consider any written legal or factual materials timely submitted in making its final determination. If the final determination is adverse to you, it will be

Memorandum to the Commission  
Notification of Date of Ineligibility  
Mike Pence/Mike Pence for Congress (LRA 1194)  
Page 2 of 2

accompanied by a statement of reasons explaining the legal and factual basis of the Commission's decision. 11 C.F.R. § 9033.10(c).

If you have any questions concerning this matter you may contact Jessica Selinkoff, Assistant General Counsel, Policy Division – Compliance Advice, at (202) 694-1527, or Zuzana Pacious, Acting Assistant Staff Director, Audit Division, at (202) 694-1200 or (800) 424-9530.

Sincerely,

*N. Stipanovic*

Neven F. Stipanovic  
Associate General Counsel

Enclosure



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

May 14, 2024

**MEMORANDUM**

**TO:** The Commission

**FROM:** Neven F. Stipanovic *NFS*  
Associate General Counsel, Policy Division

Jessica Selinkoff *JS*  
Assistant General Counsel, Compliance Advice

Margaret J. Forman *MJF*  
Attorney

Joshua Blume *JB*  
Attorney

**SUBJECT:** Mike Pence and Mike Pence for President – Date of Ineligibility (LRA 1194)

The Audit Division has separately circulated for Commission consideration a memorandum recommending that the Commission determine that Mike Pence and Mike Pence for President (“MPFP”) are eligible to receive matching fund payments under the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-42 (“Matching Payment Act”). The Office of the General Counsel (“OGC”) recommends that, if the Commission determines that Mr. Pence and MPFP are eligible to receive matching funds and certifies to the Secretary of Treasury the initial \$100,000 matching payment,<sup>1</sup> the Commission, at the same time, take two additional actions outlined in this memorandum.

First, OGC recommends the Commission determine that Mr. Pence’s date of ineligibility (“DOI”) is October 28, 2023, the date he publicly announced that he was suspending his campaign.<sup>2</sup> Second, OGC recommends that the Commission approve notification to Mr. Pence

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<sup>1</sup> See 11 C.F.R. § 9036.1(c)(2).

<sup>2</sup> See 26 U.S.C. § 9033(c) (setting forth general rule for termination of payments and limitations on payments after ineligibility); 11 C.F.R. §§ 9033.5, 9033.6 (determination of DOI).

and MPFP of the DOI determination with (1) an instruction to submit a statement of net outstanding campaign obligations (“NOCO”) within 15 calendar days of the DOI determination<sup>3</sup> and (2) a notification that the portion of the \$100,000 payment attributable to matched contributions that were received after the DOI may be used for only the limited purpose of defraying NOCO, plus estimated necessary winding down costs.<sup>4</sup>

## I. Determination of Date of Ineligibility

As relevant here, Mr. Pence reached his DOI on the date he “publicly announce[d] that he . . . will not be actively conducting campaigns in more than one State.”<sup>5</sup> Accordingly, OGC recommends the Commission determine Mr. Pence’s DOI to be October 28, 2023, the date of the candidate’s public announcement.<sup>6</sup>

On October 28, 2023, Mr. Pence publicly announced, “I have decided to suspend my campaign for president effective today.”<sup>7</sup> In the same speech, Mr. Pence made several statements that indicated that he was no longer actively campaigning: “this is not my time,” “I’m leaving this campaign,” and “as we leave this campaign we do so with grateful hearts.”<sup>8</sup>

As late as December 28, 2023, while OGC was assessing the legal sufficiency of Mr. Pence’s candidate and committee agreements and certifications, including the certification that Mr. Pence was, at the time of certification, a “candidate” who “is seeking” nomination by a political party for election to the office of president,<sup>9</sup> Mr. Pence and MPFP contended in their December 28 response that Mr. Pence still remained a candidate, and they have not indicated any

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<sup>3</sup> See 11 C.F.R. § 9034.5(a) (requiring and setting time for submission of NOCO statement).

<sup>4</sup> See 26 U.S.C. § 9033(c)(2) (specifying use of post-eligibility (or DOI) payments); 11 C.F.R. §§ 9034.1(b), 9034.5(a) (providing more detailed determination of NOCO and post-DOI entitlement).

<sup>5</sup> *Id.* § 9033.5(a)(1). In addition to the public announcement date, paragraph 9033.5(a) provides for two alternative DOIs based on inactive candidacy. See *id.* § 9033.5(a)(2)-(3) (date of written notice that not actively campaigning in more than one state, or date no longer actively seeking election in more than one state under § 9033.6); see also *id.* § 9033.5(b)-(c) (providing that the Commission also may determine DOI when a candidate has received insufficient primary election votes or when the matching payment period ends). However, it is the date of public announcement that applies here because § 9033.5(a) requires the Commission to use the earliest of the three possible dates in paragraph 9033.5(a) when determining a candidate is no longer actively seeking the nomination.

<sup>6</sup> 11 C.F.R. § 9033.5(a)(1).

<sup>7</sup> Mike Pence (@Mike\_Pence), X (Oct. 28, 2023, 6:14 PM) at 0:48, [https://twitter.com/Mike\\_Pence/status/1718390807949189137](https://twitter.com/Mike_Pence/status/1718390807949189137) (“Pence Announcement Tweet”) (including video of speech) (last visited May 2, 2024); Mike Pence, *Thank You, God Bless You, and God Bless America!*, Mike Pence for President, <https://mikepence2024.com/thank-you-and-god-bless-you-and-god-bless-america/> (last visited May 2, 2024) (same).

<sup>8</sup> Pence Announcement Tweet at 0:40, 2:47, 0:56, and 4:35, [https://twitter.com/Mike\\_Pence/status/1718390807949189137](https://twitter.com/Mike_Pence/status/1718390807949189137).

<sup>9</sup> See 26 U.S.C. § 9033(b)(2); 11 C.F.R. § 9033.2(b)(1).



change in that position.<sup>10</sup> After reviewing publicly available information, however, OGC has found little evidence that would indicate Mr. Pence is actively conducting his campaign. OGC is not aware of a public appearance in which Mr. Pence indicated his candidacy was active or ongoing in the two months after publicly announcing the suspension of his campaign. To the contrary, approximately two weeks after Mr. Pence publicly announced the suspension of his campaign, he again publicly stated that he was “departing from the campaign trail and from active politics.”<sup>11</sup> In a later public appearance, Mr. Pence referred to his campaign seeking the presidential nomination in the past tense.<sup>12</sup> In two other instances when an interviewer turned to Mr. Pence’s suspended campaign or the election, Mr. Pence expressed the need for “new” or “different” leadership, without naming himself as that potential leadership.<sup>13</sup> In fact, OGC is aware of no information suggesting that Mr. Pence has made public statements indicating his active candidacy since his October 28, 2023, announcement.<sup>14</sup>

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<sup>10</sup> See Letter from Michelle Reisner, Treasurer, Mike Pence for President to Commissioners, FEC, Supplemental Letter in Support of Candidate’s 9033 Letter (Dec. 28, 2023) (“Dec. 28, 2023, Letter”). Mr. Pence and MPFP were responding to an inquiry Commission staff made in early November about whether he could still maintain his certification that he was an active candidate in the context of establishing eligibility, and Mr. Pence and MPFP were contending as late as December 28 that he was *at that time* actively seeking the nomination. Mr. Pence and MPFP have not withdrawn that contention but elected “to stand on its prior submissions” on January 11 when responding to Commission staff’s follow up on December 29. See Letter from Michelle Reisner, Treasurer, Mike Pence for President to Commissioners, FEC, Supplemental Letter in Support of Candidate’s 9033 Letter (Jan. 11, 2024). These contentions were made prior to the Commission’s treatment of October 12, 2023, as the operative date due to the technical errors in the October 12, 2023, certifications that matched the same errors in an outdated template available on the Commission’s website. See *infra*, n. 27. However, because MPFP never explicitly withdrew its contention that Mr. Pence remained an active candidate, we address it here.

<sup>11</sup> Mike Pence (@Mike\_Pence), X (Nov. 14, 2023, 11:56 AM), [https://twitter.com/Mike\\_Pence/status/1724471327946391746](https://twitter.com/Mike_Pence/status/1724471327946391746) (embedding video of Mr. Pence’s appearance on the Brian Kilmeade show, at 4:11).

<sup>12</sup> See *Pence: January 6 was ‘a riot that should never have happened,’* CNN, <https://www.cnn.com/videos/politics/2024/01/07/sotu-pence-full-interview.cnn> (last visited May 2, 2024) (“CNN Pence Interview”) (answering question at 9:00 about endorsement of a remaining candidate in Iowa, Mr. Pence stated that he has “been speaking with several of my old competitors” before explaining why “I ran for president” (emphasis added)).

<sup>13</sup> See, e.g., Mike Pence (@Mike\_Pence), X (Dec. 1, 2023, 10:39 AM), [https://twitter.com/Mike\\_Pence/status/1730612622582514151](https://twitter.com/Mike_Pence/status/1730612622582514151) (linking to Tudor Dixon Podcast at <https://podcasts.apple.com/us/podcast/the-tudor-dixon-podcast-family-values-with-mike/id1678556326?i=1000636629102> where, approximately at 39:05 in response to being asked if he will “run again for president,” Mr. Pence did not indicate that he was still running and stated “we like to say at our house” that “we don’t know what the future holds”), CNN Pence Interview (showing, at 9:42, Mr. Pence answered question about who he will endorse for president by saying “we certainly need new leadership in the White House”); Sky News, *Mike Pence: ‘American people open to new leadership,’* YOUTUBE (Jan. 7, 2024), <https://www.youtube.com/watch?v=ZrC-MAGWjLg> (stating at 0:47, “the American people are open to new leadership”).

<sup>14</sup> MPFP’s website also lists no campaign events after October 17, 2023, and no upcoming events. See *Events*, Mike Pence for President, <https://mikepence2024.com/events/> (last visited May 14, 2024); see also *The Latest*, Mike Pence for President, <https://mikepence2024.com/the-latest/> (showing the most recent update on “The Latest” page to be a Fox News appearance on October 11, 2023).

In the December 28 letter, Mr. Pence and MPFP stated that the “continuation of solicitations for campaign contributions, the existence of campaign expenditures, and the retention of the candidate’s supporters” indicated that Mr. Pence remained a candidate as of that date. Mr. Pence, however, did not provide any specific information as to his and MPFP’s solicitations for campaign contributions, campaign expenditures, or retention of staff and volunteers.<sup>15</sup> In terms of solicitations for contributions, other than the continuing presence of a “contribute” link in the header of the existing MPFP campaign website, since October 28, 2023, OGC is not aware of Mr. Pence or MPFP actively seeking contributions in his campaign for presidential nomination.<sup>16</sup> In the December letter, Mr. Pence and MPFP acknowledge that Mr. Pence “reduce[d] the size of his campaign staff” after suspending his campaign, but provide no information as to whether MPFP continues to employ campaign staff beyond its treasurer.<sup>17</sup>

Moreover, the fact that Mr. Pence publicly announced his decision to “suspend” and “leave” his campaign, rather than use the exact language (“not be actively conducting campaigns in more than one state”) used in 11 C.F.R. § 9033.5(a)(1) is not legally relevant. In a previous public financing matter, the Commission determined Senator Paul Simon’s DOI on the basis of Sen. Simon publicly announcing, “I am today suspending my campaign for the presidency,” and “I leave the field of active campaigning with no regrets...”<sup>18</sup>

Mr. Pence and Sen. Simon’s public announcements communicate fundamentally the same message in almost identical words. Both candidates’ announcements use the words “suspend” — with Mr. Pence saying “suspend ... today” while Sen. Simon says “today suspending” — and “leave,” with Mr. Pence saying “leaving this campaign” and “leave this campaign” while Sen. Simon says “leave the field of active campaigning.” Mr. Pence’s

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<sup>15</sup> See Dec. 28, 2023, Letter; 11 C.F.R. § 9033.6(b)(2), (3), (6) (noting the factors for determining, under paragraph 9033.5(a)(3), when a candidate was no longer actively seeking nomination, including solicitations and expenditures; staff and volunteers; and urging supporters to support another candidate, respectively).

<sup>16</sup> See Mike Pence for President, <https://mikepence2024.com/> (last visited May 14, 2024). A search of MPFP’s disclosure reports reveals no definitive activity of solicitations. Though MPFP has disclosed contributions, nothing on the reports reveals that such contributions were made in response to any associated solicitations. MPFP disclosed direct mail activity, including for the purpose of “postage,” and “printing,” but this does not necessarily indicate that this mail activity was soliciting contributions. See e.g., MPFP Feb. 2024 Monthly Report at 197, 198 (February 20, 2024), <https://docquery.fec.gov/pdf/876/202402209619880876/202402209619880876.pdf> (disclosing disbursements for printing, “direct mail consulting/list rental/database services/printing/postage,” postage); MPFP March 2024 Monthly Report at 234, 240-244 (Mar. 20, 2024), <https://docquery.fec.gov/pdf/089/202403209624802089/202403209624802089.pdf> (disclosing disbursements for postage, direct mail consulting, “direct mail consulting/printing/post, printing/post,” “direct mail consulting/printing/data”); MPFP Apr. 2024 Monthly Report at 287-289, 296-301 (Apr. 20, 2024), <https://docquery.fec.gov/pdf/572/202404209633643572/202404209633643572.pdf> (disclosing disbursements for “direct mail consulting/database services/list rental,” postage, direct mail consulting, “direct mail consulting/printing/post, printing/post,” “direct mail consulting/printing/data”).

<sup>17</sup> See Dec. 28, 2023, Letter.

<sup>18</sup> See Vote Certification, Re: Notification of Date of Ineligibility – Sen. Paul Simon (Apr. 15, 1988); Letter from Thomas J. Josefiak, Chairman, FEC, to Hon. Paul Simon, Notification of Date of Ineligibility (Apr. 15, 1988); *Simon Withdrawal*, C-SPAN at 01:18 (Mar. 7, 1988), <https://www.c-span.org/video/?2121-1/simon-withdrawal>.

statement two weeks later that he was “departing from the campaign trail and from active politics” further clarifies that he was no longer actively campaigning in any state.

OGC concludes that Mr. Pence ceased to be a candidate when he publicly announced he was suspending his campaign and, therefore, that Mr. Pence was no longer actively conducting campaigns in more than one state in connection with seeking the presidential nomination as of the date of that announcement on October 28, 2023. Accordingly, OGC recommends the Commission determine that October 28, 2023, is Mr. Pence’s DOI under 26 U.S.C. § 9033(c) and 11 C.F.R. § 9033.5(a)(1).<sup>19</sup>

## II. Notification to Mr. Pence and MPFP

The Matching Payment Act and Commission regulations allow a candidate to receive post-DOI payments for a limited purpose; after DOI, a candidate “may only receive matching payments to the extent that he or she has net outstanding campaign obligations.”<sup>20</sup> The NOCO is “a formula for computing a candidate’s financial status at the date of ineligibility. Under this formula, the campaign’s obligations for qualified campaign expenses including winding down costs are balanced against total of the campaign’s cash on hand, the value of capital assets, and amounts owed to the campaign.”<sup>21</sup> All expenditures included in the NOCO must be “for qualified campaign expenses as of the candidate’s date of ineligibility.”<sup>22</sup>

A candidate must submit a NOCO statement to the Commission within 15 calendar days after the candidate’s DOI, as determined under 11 C.F.R. § 9033.5.<sup>23</sup> “Candidates will be notified of their DOI by the Commission.”<sup>24</sup> We therefore recommend that the Commission approve the appropriate letter notifying Mr. Pence and MPFP of the DOI determination and the obligation to submit a NOCO statement within 15 days.

The present circumstances are unusual. The Commission’s determination of DOI usually occurs some amount of time after its determination of eligibility and initial certification for matching funds.<sup>25</sup> Thus, at the time the Commission usually certifies post-DOI matching

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<sup>19</sup> Mr. Pence may reestablish his eligibility to receive matching funds if he submits evidence of active campaigning in more than one State. 11 C.F.R. §§ 9033.8(a), 9033.6(b).

<sup>20</sup> 11 C.F.R. § 9033.5.

<sup>21</sup> Presidential Election Campaign Fund and Presidential Primary Matching Fund, 44 Fed. Reg. 20336, 20340 (Apr. 4, 1979).

<sup>22</sup> 11 C.F.R. § 9034.5(a)(1).

<sup>23</sup> *Id.* § 9034.5(a).

<sup>24</sup> 2024 Presidential Candidate Matching Fund Submission Dates and Post Date of Ineligibility Dates to Submit Statements of Net Outstanding Campaign Obligations, 88 Fed. Reg. 31265, 31265 (May 16, 2023) (also establishing submission dates for revised NOCO statements).

<sup>25</sup> Indeed, the statute and regulations generally presume that a candidate has already received an initial certification payment before receiving post-DOI matching payments. A candidate who becomes ineligible for matching fund payments “shall be eligible *to continue to receive payments* under section 9037 to defray qualified

payments, the committee's NOCO is well established. Here, not only would the October 28, 2023, DOI pre-date the initial determination of eligibility, but the certification made to the Secretary of Treasury regarding Mr. Pence and MPFP's entitlement to payment of \$100,000 in matching funds would include certified payment to match six contributions totaling \$630 that have been received after the October 28, 2023, DOI.<sup>26</sup> Moreover, at the time the Commission would make this certification to Treasury, Mr. Pence and MPFP will not yet have submitted a NOCO statement certifying its post-DOI financial status.

OGC is not aware of any other threshold submission in the history of the public finance program that includes post-DOI contributions. Nonetheless, we conclude that under the present circumstances, post-DOI contributions are "matchable contributions" under 11 C.F.R. § 9034.2.<sup>27</sup> All "matchable contributions," regardless of whether they were received before or after the DOI, must meet the same rigorous requirements, including with regard to written instruments, receipt and deposit, contributor identity, and documentation.<sup>28</sup> The difference between pre- and post-DOI matchable contributions is how they may be used. The Matching Payment Act states that a candidate who is ineligible to receive any payments because he or she is not actively conducting campaigns in more than one state "shall be eligible to continue to receive payments . . . to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible."<sup>29</sup>

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campaign expenses incurred before the date upon which such candidate becomes ineligible." 26 U.S.C. § 9033(c)(2) (emphasis added). Likewise, a candidate who has NOCO on the DOI "may continue to receive matching fund payments for matchable contributions received and deposited on or before December 31 of the Presidential election year" provided the candidate has sufficient NOCO on the date of payment. 11 C.F.R. § 9034.1(b).

<sup>26</sup> The Audit Division's Eligibility Report is based on its review of documents from which it concluded MPFP received \$5,000 in matchable contributions in each of 20 states, totaling \$100,000 of matchable contributions. See 11 C.F.R. § 9033.2(b)(3), (c). At this time, Audit staff do not definitively know the date of receipt of MPFP's contributions, only the date those contributions were deposited in MPFP's account.

<sup>27</sup> While nothing in the statute or regulations appears to prohibit the inclusion and consideration of post-DOI contributions in the committee's threshold submission for matching fund payment eligibility, we note that the circumstances in this case are highly unusual and unlikely to be repeated. MPFP submitted its certifications and agreements on October 12, 2023, and it submitted revised certifications and agreements correcting certain technical errors on October 31, 2023. The technical errors arose because MPFP apparently used a template from the Commission's website containing those errors. Thus, the Commission ultimately treated October 12, 2023, as the date the certifications and agreements were timely submitted. The resolution of this issue prolonged the threshold submission process. Ultimately the certification was deemed complete upon MPFP's submission of supplemental material on December 28, 2023. See Memorandum from Neven F. Stipanovic, Associate General Counsel, to Patricia C. Orrock, Chief Compliance Officer, Mike Pence and Mike Pence for President – Candidate and Committee Certifications and Agreements (LRA 1194) (May 9, 2024). The Audit Division accepted Mr. Pence's and MPFP's threshold submission as in good order on April 25, 2024. See Eligibility Report of the Audit Division for Mike Pence and Mike Pence for President (May 13, 2024).

<sup>28</sup> See 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.2; FEC, Guideline for Presentation in Good Order (July 2007), see also 11 C.F.R. § 9034.3 (defining "non-matchable contributions," including, *inter alia*, in-kind contributions, loans and advances, contributions from other committees, and contributions of currency).

<sup>29</sup> 26 U.S.C. § 9033(c)(2) (referencing general rule of ineligibility at 26 U.S.C. § 9033(c)(1), which incorporates the "actively conducting campaigns" language at 26 U.S.C. § 9032(2)); see also 11 C.F.R. § 9033.5

Because the Commission cannot require a NOCO statement prior to determining the DOI, which must occur after certifying initial eligibility and entitlement based on the threshold submission, OGC recommends that the DOI and NOCO obligation notification also notify Mr. Pence and MPFP that the portion of the \$100,000 payment attributable to matched contributions that were received after the DOI may be used for only the limited purpose of defraying NOCO, plus estimated necessary winding down costs.<sup>30</sup> Accordingly, OGC recommends the Commission approve the sending of the proposed notification to Mr. Pence and MPFP attached to this memorandum.

### III. RECOMMENDATIONS

OGC recommends that, if the Commission determines that Mr. Pence and MPFP are eligible to receive matching funds and certifies to the Secretary of Treasury the initial \$100,000 matching payment, the Commission:

1. Determine that Mike Pence and Mike Pence for President's date of ineligibility, under 26 U.S.C. § 9033(c) and 11 C.F.R. § 9033.5(a)(1), is October 28, 2023; and
2. Approve the appropriate letter notifying Mr. Pence and MPFP of the DOI determination, instructing Mr. Pence and MPFP to submit a statement of net outstanding campaign obligations within 15 calendar days, and notifying Mr. Pence and MPFP that the portion of the \$100,000 payment attributable to matched contributions that were received after the DOI may be used for only the limited purpose of defraying NOCO, plus estimated necessary winding down costs.

Attachment: Proposed Notification to Mike Pence and Mike Pence for President

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(after DOI is determined, matching payments are made only to the extent the candidate has NOCO); *id.* § 9034.5 (determining NOCO).

<sup>30</sup> Should Audit Division staff discover, and the Commission make a finding, in the audit of MPFP that MPFP spent some or all of the portion of the \$100,000 payment attributable to post-DOI matchable contributions in excess of NOCO, the Commission may seek a repayment. *See* 26 U.S.C. § 9038(b); 11 C.F.R. § 9038.2.

Matthew Morgan, Partner  
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Admitted to Practice Only In: Indiana & Washington, D.C.

June 10, 2024

**DELIVERED VIA ELECTRONIC MAIL ONLY**

Federal Election Commission  
Attn: Mr. Neven Stipanovic, Associate General Counsel  
1050 First Street, NE  
Washington, DC 20463

RE: Notification of Initial Determination of Date of Ineligibility for Public Funds

Dear Mr. Stipanovic:

I write as counsel for Michael R. Pence and his presidential campaign committee, Mike Pence for President (“Committee”). On May 16, 2024, the Commission determined that Mr. Pence is eligible to receive payments to his Committee from the Presidential Primary Matching Payment Account. Additionally, the Commission preliminarily determined that the period of eligibility concluded on October 28, 2023. The Commission, however, offered Mr. Pence an opportunity to submit additional materials in support of his Committee’s previous position that the date of ineligibility should be set sometime after October 28, 2023.

We sincerely appreciate the Commission’s fairmindedness in allowing for further response on the date of ineligibility. Nonetheless, for the sake of administrative efficiency and to limit further expense, Mr. Pence and his Committee are willing to stipulate that October 28, 2023 is the date of ineligibility. The Committee intends to submit a statement of net outstanding campaign obligations to the Commission, on or before June 21, 2024, to further proceed with receiving eligible matching funds.

We appreciate the Commission’s earnest work on this matter. If any additional responses or filings are needed, please direct such inquiries to the Committee’s Treasurer, Michele Reisner, at [michele@crosbyott.com](mailto:michele@crosbyott.com).

Sincerely,



Matthew E. Morgan