



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL -3 2014

Soren Simonsen
Brandy Brock, Treasurer
Citizens to Elect Soren Simonsen
P.O. Box 526082
Salt Lake City, UT 84152

RE: MUR 6650

Dear Mr. Simonsen and Ms. Brock:

On September 26, 2012, the Federal Election Commission (the "Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 2, 2014, based upon the information contained in the complaint, and information provided by you in your joint response, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on July 2, 2014.

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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Donald E. Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

1404446-10816

FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

II. FACTUAL AND LEGAL ANALYSIS

In this matter, Complainant Lowell Nelson, on behalf of the Utah Republican Party, asserts that Soren Simonsen and Citizens to Elect Soren Simonsen and Brandy Brock in her official capacity as treasurer (the "Committee")¹ failed to timely file a statement of the Committee's organization, and failed to timely file its initial disclosure report, as required by the Act and underlying Commission regulations. Compl. at 1. The Complaint alleges that Simonsen submitted a Statement of Candidacy (FEC Form 2), which was received by the Commission on June 20, 2012, but nevertheless postponed the filing of the Committee's Statement of

1 Simonsen was an unsuccessful candidate in Utah's third congressional district. The Committee is
 Simonsen's principal campaign committee.

1 Organization (FEC Form 1) until July 6, 2012. The Complainant states that the filing delay
2 “created a false impression that [Simonsen’s] campaign did not exist before the end of July,”
3 which the Complaint asserts “mask[ed]” the fact that the Committee’s first disclosure report was
4 not timely filed. *Id.* The Complainant further asserts that the Committee failed to file its July
5 2012 Quarterly Report as required. *Id.*

6 Respondents state that the Statement of Candidacy was filed “prematurely” because of a
7 “misunderstanding of the filing rules and the advice of inexperienced campaign volunteers” and
8 that Simonsen did not cross the \$5,000 filing threshold until June 22, 2012. Resp. at 1. As such,
9 Respondents state that the Committee’s Statement of Organization was “appropriately submitted
10 on July 6, 2012, within the 15 (sic) day period.” *Id.* In addition, Respondents state that their
11 initial disclosure report was filed within the “30 day period following the Statement of
12 Organization.” Resp. at 1. Respondents assert that the Committee had “no intent to misrepresent
13 the status of candidacy,” or disregard disclosure requirements. *Id.*

14 **B. Legal Analysis**

15 A person becomes a candidate when, *inter alia*, he or she has received contributions or
16 made expenditures aggregating in excess of \$5,000.² 2 U.S.C. § 431(2)(A); 11 CFR §
17 100.3(a)(1) and (2). Once a person crosses the \$5,000 candidacy threshold, he or she must file a
18 Statement of Candidacy form within 15 days of becoming a candidate, and must also designate a
19 political committee to serve as the candidate’s principal campaign committee on that form. 2
20 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). The principal campaign committee must then file a
21 Statement of Organization “no later than 10 days after [the Committee’s] designation,” 2 U.S.C.

² A contribution includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

1 § 433(a), and must also file disclosure reports with the Commission in accordance with 2 U.S.C.
2 § 434(a) and (b).

3 The Committee's disclosure reports indicate that Simonsen received a \$5,000
4 contribution from ARCHIPAC — The American Institute of Architects ("ARCHIPAC") on June
5 22, 2012.³ See October 2012 Quarterly Report (filed October 15, 2012). Therefore, under 2
6 U.S.C. § 431(2), Simonsen crossed the \$5,000 threshold and became a candidate on that date.
7 Simonsen "prematurely" filed his Statement of Candidacy on June 20, 2012. See Statement of
8 Candidacy (filed June 20, 2012); Resp. at 1. However, under Commission regulations, an
9 individual does not become a candidate solely by voluntarily filing a report; the individual is not
10 a candidate until qualifying as such under 11 CFR § 100.3. See 11 C.F.R. § 104.1. Therefore,
11 Simonsen's Statement of Candidacy did not trigger a *candidate's* designation of a principal
12 campaign committee until he became a candidate under the Act on June 22, 2012. Only at that
13 date did Simonsen's designation of Citizens to Elect Soren Simonsen as his principal campaign
14 committee become effective.⁴ The Committee was then required to file a Statement of
15 Organization within 10 days after its designation became effective on June 22, 2012. However,
16 the Committee did not file a Statement of Organization until July 6, 2012, fourteen days after the
17 effective date of the Statement of Candidacy and four days after the 10-day filing deadline. See
18 Statement of Organization (filed July 6, 2012). Therefore, the Committee failed to timely file its
19 Statement of Organization.

³ Simonsen had previously received two separate \$1,000 contributions from individuals on March 31, 2012, and April 3, 2012. See October 2012 Quarterly Report (filed October 15, 2012).

⁴ Under 11 CFR § 100.5(d), an individual's principal campaign committee becomes a political committee when that individual becomes a candidate pursuant to 11 CFR § 100.3. Therefore, Citizens to Elect Soren Simonsen became a political committee when Soren Simonsen became a candidate on June 22, 2012.

1 During an election year in which a candidate is seeking election, the treasurer must file
2 quarterly reports of receipts and disbursements no later than the 15th day after each calendar
3 quarter. *See* 2 U.S.C. § 434(a)(2)(A)(iii). Also, the first report filed by a political committee
4 shall include all amounts received prior to becoming a political committee under 11 C.F.R. §
5 100.5, even if such amounts were not received during the current reporting period. 11 C.F.R. §
6 104.3(a) and (b). The first disclosure report that the Committee filed with the Commission was
7 its October 2012 Quarterly Report (filed October 15, 2012), in which the Committee reported
8 activity from March 1, 2012, through September 30, 2012. *See* October 2012 Quarterly Report.⁵
9 Subsequently, in January 2013, the Committee noted in a Miscellaneous Report that “it was our
10 misunderstanding about the timing of the July quarterly report, since the Campaign Committee
11 was not formally recognized until mid-July. We believe this matter was previously resolved with
12 the Commission. To properly update the records for both the 2012 Primary and General
13 Elections, we have created a new July quarterly report, which contains all of the information
14 from the original October report....”

⁵ The Committee faxed three Miscellaneous Reports to the Commission on January 2, 2013, all of which appear to be duplicate responses to a Request for Additional Information from the Reports Analysis Division (“RAD”) concerning a possible excessive contribution. *See* Miscellaneous Reports to FEC, dated January 2, 2013. Two of the Miscellaneous Reports consist of a letter stating that the Committee mistakenly attributed a June 22, 2012, contribution from ARCHIPAC to the general election and that it had reattributed the contribution to the primary election. *Id.* The Committee also states that it experienced “some confusion . . . as to the timing” of the July 2012 quarterly report and that it submitted a “new” July Quarterly Report. *Id.* The third Miscellaneous Report dated January 2, 2013, includes the same cover letter, along with the Summary and Detailed Summary Pages of the Committee’s July 2012 Quarterly Report, covering activity from March 1, 2012, through June 30, 2012. *Id.* However, this submission failed to include a supporting Schedule A. Also, on January 2, 2013, the Committee filed a 48 Hour Notice (FEC Form 6) indicating the receipt of a \$5,000 contribution from ARCHIPAC on June 22, 2012. *See* FEC Form 6, dated January 2, 2013. The Committee filed a separate submission, FEC Form 99, on January 3, 2013, which appears to be another duplicate of the letter discussed above. *See* Miscellaneous Report to FEC dated January 3, 2013.

1 It appears that the Committee misunderstood the filing and reporting requirements when
2 it began its campaign, and has subsequently made efforts to comply with them.⁶ Accordingly, in
3 furtherance of its priorities, the Commission determines that further enforcement action is
4 unnecessary, and exercises its prosecutorial discretion and dismisses this matter pursuant to
5 *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁶ The Committee has not reported any receipts since its 2012 30-Day Post-General Report, and has filed a termination request with the Commission. See 2012 30-Day Post-General Report (filed October 15, 2012), 2012 Year-End Report (filed January 31, 2013), 2013 Termination Report (filed January 31, 2013), 2013 April Quarterly Report (filed April 12, 2013), 2013 July Quarterly Report (filed July 15, 2013), 2013 October Quarterly Report (filed October 14, 2013).