

BEFORE THE  
FEDERAL ELECTION COMMISSION

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Raymond Buckley  
New Hampshire Democratic Party  
105 North State Street  
Concord, New Hampshire 03301

Complainant,

v.

Scott Brown  
P.O. Box 600  
Rye, New Hampshire 03870

New Hampshire for Scott Brown  
P.O. Box 600  
Rye, New Hampshire 03870

Respondents.

**SENSITIVE**

MUR # 6815

OFFICE OF  
GENERAL  
COUNSEL

2014 MAY 2 AM 10:50

FEDERAL ELECTION  
COMMISSION

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Scott Brown and New Hampshire for Scott Brown (collectively, the "Respondents") for violations of the Federal Election Campaign Act (the "Act"), as described below.

For almost a year, longtime Massachusetts resident and former U.S. Senator from Massachusetts Scott Brown traveled around New Hampshire exploring a possible candidacy for U.S. Senate.<sup>1</sup> During the course of this exploratory activity, and after he decided to become a candidate on February 14, 2014, Mr. Brown and/or his campaign committee incurred expenses or debt obligations for travel, communications, websites, web videos, footage, a bank account and post office box, and possibly for other campaign expenses like staff, consultants, rent, and overhead.

<sup>1</sup> Zeke J. Miller, "GOP Claims High Ground in 2014 Battle for the Senate," Time Magazine (July 17, 2013), available at <http://swampland.time.com/2013/07/17/gop-claims-high-ground-in-2014-battle-for-the-senate/>.

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Yet in its first filing with the Federal Election Commission (the "Commission"), Mr. Brown's campaign committee reported having spent or incurred zero dollars on exploratory or campaign activities since 2013. That's right: zero dollars. This absurd filing by Mr. Brown's committee is belied by the public record, as the complaint details below.

The committee's refusal to provide a full accounting of its exploratory expenses may be hiding another violation: the failure of Mr. Brown or his committee to timely register with the Commission. Mr. Brown recently revealed that he decided to become a candidate on February 14, 2014. Accordingly, if he or the committee had spent more than \$5,000 exploring candidacy by that date, he would have been required to file a Statement of Candidacy no later than March 1, 2014 and his committee would have been required to file a Statement of Organization no later than March 11, 2014. Both documents were not actually filed until March 14, 2014.

The Commission must immediately investigate and levy appropriate sanctions on Mr. Brown and his committee, if it determines (as it should) that they failed to comply with the Act's reporting and registration requirements. The public has already been harmed by having this information withheld and the Commission must act quickly to rectify this damage.

#### **A. FACTS**

Throughout 2013, as he was considering a Senate candidacy, Mr. Brown traveled to New Hampshire to "appear[] at events large and small" where he took "potshots against [Senator] Shaheen."<sup>2</sup> In December, he hosted the state party's holiday fundraiser and "reached out to Republican former Govs. Steve Merrill and Craig Benson, as well as U.S. Sen. Kelly Ayotte, as he weigh[ed] whether to enter the race for the seat occupied by Democratic Sen. Jeanne

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<sup>2</sup> Ben Leubsdorf, "Capital Beat: Scott Brown speculation heats up, but is it fantasy or reality?", Concord Monitor (Nov. 10, 2013), available at <http://www.concordmonitor.com/news/9178359-95/capital-beat-scott-brown-speculation-heats-up-but-is-it-fantasy-or-reality>.

Shaheen.”<sup>3</sup> On January 15, 2014, Mr. Brown launched a new “coming soon” website with a campaign-style tagline. As reported the next day, “the retooled website is a single page with the former senator’s name and photo, the tagline ‘Giving Power Back to the People’ and a ‘Contact Scott’ button. It’s the latest tell by the former senator that he’s gearing up to challenge Sen. Jeanne Shaheen.”<sup>4</sup>

On February 14, 2014, Mr. Brown decided that he would become a candidate for U.S. Senate from New Hampshire. Mr. Brown gave an interview on Sunday, April 27, 2014, where he said that “he and his wife decided he should run for Senate on Valentine’s Day” of 2014.<sup>5</sup> According to Mr. Brown, “[t]he fact Gail and I made that decision was actually on Valentine’s Day.”<sup>6</sup>

One month later, on March 14, 2014, Mr. Brown announced that he was forming an exploratory committee and commencing a “listening tour” of the state.<sup>7</sup> The same day, the website cited above changed into a full campaign-style website featuring video of Mr. Brown and ways for people to sign up for email lists.<sup>8</sup> The video, entitled “Scott Brown: Main Streets & Living Room Tour,” included videos of New Hampshire landscapes and interviews with New Hampshire residents supporting Mr. Brown.<sup>9</sup> The video included the tagline, “Paid for by New Hampshire for Scott Brown Exploratory Committee.”<sup>10</sup>

<sup>3</sup> John DiStaso, “Scott Brown readies move to NH; reaches out to key NH Republicans,” *New Hampshire Union Leader* (Dec. 17, 2013), available at <http://www.unionleader.com/article/20131217/NEWS06/131219283>.

<sup>4</sup> Daniel Strauss, “Scott Brown Re-Launches ‘Coming Soon’ Website,” *Talking Points Memo* (January 15, 2014), available at <http://talkingpointsmemo.com/livewire/scott-brown-s-website-sure-looks-like-a-campaign-website>

<sup>5</sup> Dylan Byers, “Scott Brown: I decided to run on Valentine’s Day,” *Politico.com* (April 27, 2014), available at <http://www.politico.com/blogs/media/2014/04/scott-brown-i-decided-to-run-on-valentines-day-187500.html?hp=15>.

<sup>6</sup> *Id.*

<sup>7</sup> Katharine Q. Seelye, “Scott Brown Moves One Step Closer to a Senate Bid,” *New York Times* (March 14, 2014), available at [http://www.nytimes.com/2014/03/15/us/brown-readies-for-senate-run-in-new-hampshire.html?\\_r=0](http://www.nytimes.com/2014/03/15/us/brown-readies-for-senate-run-in-new-hampshire.html?_r=0).

<sup>8</sup> Rebecca Ballhaus, “Scott Brown Has Scary Following In New Hampshire,” *Wall Street Journal* (March 18, 2014), available at <http://blogs.wsj.com/washwire/2014/03/18/scott-brown-has-scary-following-in-new-hampshire/>

<sup>9</sup> Scott Brown: Main Streets & Living Rooms Tour (March 14, 2014), available at <https://www.youtube.com/watch?v=cFRIVpccRA>.

<sup>10</sup> *Id.*

The same day, Mr. Brown filed a Statement of Candidacy, designating the New Hampshire for Scott Brown Committee (hereinafter, the "Committee") as his principal campaign committee. The principal campaign committee filed a Statement of Organization on the same day.

Six days later, on March 20, 2014, the Committee launched another web video, this one entitled, "Run Scott."<sup>11</sup> The video included excerpts from a speech that Mr. Brown had given in New Hampshire and footage of his travels around New Hampshire and interactions with New Hampshire residents.<sup>12</sup> It, too, included the disclaimer "Paid for by New Hampshire for Scott Brown Exploratory Committee."<sup>13</sup> One week later, on March 27, 2014, the Committee released another web video, entitled "The People's Voice," which was narrated by Mr. Brown and included additional footage of his travels around New Hampshire and interactions with New Hampshire residents.<sup>14</sup> Like the others, the video included the disclaimer "Paid for by New Hampshire for Scott Brown Exploratory Committee."<sup>15</sup>

Sometime between April 7, 2014 and April 14, 2014, the Committee filed an amended Statement of Organization changing its name to New Hampshire for Scott Brown and Mr. Brown amended his Statement of Candidacy accordingly.

On April 10, 2014, the Committee aired its first television ad.<sup>16</sup> The ad included footage from Mr. Brown's travels around New Hampshire, including his trip to the Red Arrow diner,<sup>17</sup> the Tilton diner,<sup>18</sup> and Plain Jane's diner<sup>19</sup> on March 22, 2014 and to Mt. Cube Sugar Farm on

<sup>11</sup> Run Scott (March 20, 2014), available at <https://www.youtube.com/watch?v=FpgAv1aQH9U>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> The People's Voice (March 27, 2014), available at <https://www.youtube.com/watch?v=OAwjfpz8qLM>.

<sup>15</sup> *Id.*

<sup>16</sup> Scott Brown: Listening and Learning (April 10, 2014), available at <https://www.youtube.com/watch?v=s4arc6oCnr0>.

<sup>17</sup> <https://twitter.com/SenScottBrown/status/447375360741875712>.

<sup>18</sup> <https://twitter.com/SenScottBrown/status/447383976458878976>

March 24, 2014.<sup>20</sup>

On April 15, 2014, the Committee filed its first report with the Commission, covering activity through March 31, 2014. The Committee reported receiving \$274,728.63 in contributions. Yet notwithstanding the litany of exploratory and campaign activities described above, the Committee did not report any expenditures on Line 17; did not report any disbursements on Line 21; and did not report any debt on Schedule D. The Committee did not report any exploratory expenses or any campaign expenses. It did not report expenses for travel or staff; for camera crews or other video production costs; for compliance or legal services; for website hosting or development; or for rent or supplies. It did not even report expenses for opening a bank account into which it deposited its contributions or the post office box that it lists on its filings with the Commission. In other words, the Committee represented to the Commission that all of the activities that it undertook for exploratory and campaign expenses cost \$0.

## B. LEGAL ARGUMENT

### 1. The Committee Failed to Properly Report Expenditures and/or Debts on its First Quarter Report

Federal law requires authorized campaign committees, like the Committee, to disclose on each of its filings with the Commission “the total amount of all disbursements, and all disbursements in the following categories: expenditures made to meet candidate or committee operating expenses ....”; “the name and address of each person to whom an expenditure in the aggregate amount or value in excess of \$200 ... is made by the reporting committee to meet a candidate or committee operating expense”; “the name and address of each person who has

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<sup>19</sup> <https://twitter.com/SenScottBrown/status/447470094533136384>

<sup>20</sup> Steve Peoples, “Brown Faces History, Residency Questions in NH Bid,” Associated Press (March 24, 2014), available at <http://bigstory.ap.org/article/brown-faces-history-residency-questions-nh-bid>.

received any disbursement not [otherwise] disclosed in an aggregate amount or value in excess of \$200"; and "the amount and nature of outstanding debts and obligations owed by or to such political committee."<sup>21</sup> In addition, any "[p]ayments made solely for the purpose of determining whether an individual should become a candidate ... must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made."<sup>22</sup>

By filing a report disclosing zero dollars in expenditures, other disbursements, or debt, the Committee appears to have violated federal law. The Committee impermissibly failed to disclose any expenditures or debts in connection with the following activities:

- Mr. Brown's travel to, and across, New Hampshire during his exploratory phase and after he became a candidate – including for his well-publicized "listening tour";
- Mr. Brown's communications with elected officials, activists, and other prominent New Hampshire Republicans during his exploratory phase and after he became a candidate;
- Developing and hosting a campaign website, which first launched on January 15, 2014 and re-launched again on March 14, 2014;
- Creating and producing at least three web videos on or before March 31, 2014, which the Committee indicated that it had "paid for" in the disclaimer;
- Production costs associated with the Committee's first television ad. While the ad aired after March 31, 2014, the Committee incurred expenses and/or debt obligations prior to that date, as evidenced by the fact that the ad used footage from Mr. Brown's trips on March 22 and 24, 2014;
- Opening the Committee's bank account and post office box.

And this partial list includes only the expenditures or debt that, from press accounts, we know the Committee incurred on or before March 31, 2014. It does not include other expenditures or debts that campaigns typically incur, including for staff, consultants, rent, and other overhead.

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<sup>21</sup> 2 U.S.C. §§ 434(b)(4), (5), (6), (8).

<sup>22</sup> 11 C.F.R. § 100.131(a).

The evidence is clear: the Committee failed to disclose expenditures or debts that it incurred on or before March 31, 2014. Accordingly, the Commission should find that the Committee failed to satisfy its reporting obligations under 2 U.S.C. § 434(b).

**2. Mr. Brown May Have Failed to File His Statement of Candidacy, and the Committee May Have Failed to File its Statement of Organization, by the Required Date**

The Act and Commission regulations define a “candidate” as an individual who “has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.”<sup>23</sup> Within 15 days of qualifying as a “candidate,” the candidate must designate, in writing, a principal campaign committee.<sup>24</sup> Within 10 days of designation, the principal campaign committee must file a Statement of Organization.<sup>25</sup> The principal campaign committee must file reports of contributions and expenditures with the FEC.<sup>26</sup>

There is a limited exception for individuals who are “testing the waters” whether to become a candidate. The “regulations seek to draw a distinction between activities directed to an evaluation of the feasibility of one’s candidacy, as distinguished from conduct signifying that a *private decision to become a candidate has been made.*”<sup>27</sup> The “testing the waters” exception, in other words, does “not apply to campaign activities *undertaken once an individual has decided to become a candidate.*”<sup>28</sup>

Mr. Brown has conceded that he decided to become a candidate no later than February 14, 2014. Accordingly, if the amount spent on his prospective candidacy had exceeded \$5,000 as of February 14, 2014 – which seems likely, given the breadth of activities described above –

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<sup>23</sup> *Id.* § 100.3(a)(1).

<sup>24</sup> 2 U.S.C. § 432(e)(1)

<sup>25</sup> *Id.* § 433(a)

<sup>26</sup> *Id.* § 434(a)

<sup>27</sup> FEC Adv. Op. 1982-3 (Cranston) (emphasis added)

<sup>28</sup> Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (March 13, 1985) (emphasis added).

Mr. Brown would have been required to file a Statement of Candidacy no later than March 1, 2014 and the Committee would have been required to file a Statement of Organization no later than March 11, 2014.<sup>29</sup> The respective filings on March 14, 2014 would have been untimely and would have violated the law.

Because the Committee failed to properly disclose the expenditures that it or Mr. Brown incurred while exploring candidacy, the Commission currently lacks the facts to determine whether the registrations were timely. The Commission should demand a full accounting of the expenses that the Committee or Mr. Brown incurred while exploring candidacy and, if the expenses exceeded \$5,000, the Commission should find that both the Committee and Mr. Brown failed to satisfy their registration obligations under 2 U.S.C. § 432(e) and 2 U.S.C. § 433(a).

#### C. REQUESTED ACTION

As we have shown, there is substantial evidence that Respondents have violated the Act. We respectfully request the Commission to investigate these violations, including whether they were knowing and willful. Should the FEC determine that Respondents have violated the Act, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

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<sup>29</sup> See, e.g. Matter Under Review 6449, Factual and Legal Analysis (Jan. 10, 2013), at 5 (“Once an individual ... decides to become a candidate, funds that were raised or spent to ‘test the waters’ apply to the \$5,000 threshold for qualifying as a candidate.”).

