FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

MAR 22 2016

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RE: MUR 6815
New Hampshire for Scott Brown
and Paul Kilgore, Treasurer
Scott Brown

Dear Mr. Buckley:

This is in reference to the complaint you filed with the Federal Election Commission on May 2, 2014, concerning New Hampshire for Scott Brown and Paul Kilgore in his official capacity as treasurer and Scott Brown ("Respondents"). Based on that complaint and the Respondents' responses, on March 15, 2016, the Commission dismissed the allegations that Respondents violated 52 U.S.C. §§ 30102(e), 30103(a), and 30104(b), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 100.131(a) of the Commission's regulations. The Commission closed the file on the same day. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

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. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,
Daniel Petalas
Acting General Counsel

BY: Peter Blumberg
Assistant General Counsel

Enclosure: Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: New Hampshire for Scott Brown and Paul Kilgore in his official capacity as treasurer
Scott Brown

MUR 6815

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Raymond Buckley and the New Hampshire Democratic Party, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by New Hampshire for Scott Brown and Paul Kilgore in his official capacity as treasurer and Scott Brown.

On March 14, 2014, former Senator Scott Brown announced the formation of an exploratory committee in connection with the election for the United States Senate seat in New Hampshire and commenced a "listening tour" of the state.[1] On March 21, 2014, Brown filed a Statement of Candidacy with the Commission and a Statement of Organization for the "New Hampshire for Scott Brown Exploratory Committee."[2] The exploratory committee amended its Statement of Organization on April 9, 2014 to remove the "exploratory" designation,[3] and the Complaint alleges that Brown ran his first campaign ad on April 10, 2014.[4] The Committee filed its first disclosure report, the April 2014 Quarterly Report, disclosing no disbursements and almost $275,000 in contributions for the January 1 through March 31, 2014 reporting period.

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[1] Compl. at 3.

[2] *See* FEC Form 2, Statement of Candidacy, (Mar. 21, 2014), FEC Form 1, Statement of Organization (Mar. 21, 2014). Both the Complaint and Response mistakenly refer to March 14, 2014, as the filing date.

[3] *See* FEC Form 1, Statement of Organization (Amended Apr. 9, 2014).

[4] Compl. at 4.

The Complaint alleges that Brown failed to report on the April 2014 Quarterly Report any testing-the-waters expenses he incurred while traveling around New Hampshire for "almost a year" exploring a possible candidacy, including the "listening tour" he commenced on March 14, 2014.[5] The Complaint cites to several news articles chronicling Brown's travels around the state where he appeared and spoke at local events and raised funds for local candidates.[6] In addition, the Complaint alleges that Brown must have incurred routine administrative campaign expenses during his testing-the-waters period for renting a post office box, opening a bank account, and hiring campaign staff.[7]

The Complaint also alleges that Respondents failed to report expenses related to their internet activities and a television ad. Specifically, the Committee did not report expenses for: (1) Brown's "coming soon" website launched in January 2014, (2) Brown's official campaign website, which became fully operational on March 14, 2014, and (3) a web video, also available March 14, 2014, promoting Brown's candidacy, which included footage of interviews with New Hampshire residents and New Hampshire scenery.[8] In addition, an April 10, 2014, television advertisement reportedly included footage of Brown that was taken on March 22, 2014 and March 24, 2014[9] According to the complainant, these web and television communications contained the disclaimer, "Paid for by New Hampshire for Scott Brown Exploratory

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[5] See *id.* at 1, 3.

[6] *See id.* at 2-3.

[7] *See id.* at 1, 5-6.

[8] *Id.* at 3, n.3. The Complaint references two more videos that appeared on Brown's website later in March 2014, both of which featured footage of Brown giving speeches, traveling around New Hampshire, and interacting with residents. *See id.* at 4, n.11, 14.

[9] See *id.* at 4, n.16.

Committee," and must have generated reportable costs during the April 2014 Quarterly time period.[10]

Lastly, the Complaint alleges that Brown acknowledged in an interview that he and his spouse decided on Valentine's Day (February 14, 2014) in a private conversation that he would become a candidate, and because it is likely he spent over $5,000 by that date, he should have filed his Statement of Candidacy by March 1, 2014 instead of March 21, 2014 and a Statement of Organization 10 days thereafter.[11]

While not acknowledging that it violated the Act, the Committee states that it "arguably incurred minor expenses in the final days of the reporting period."[12] The Committee states that, "in mid-March, the Respondents began the campaign activity listed in the complaint, including the production of the web videos, the 'listening tour,' the production of the television ad, and the updates to Mr. Brown's website."[13] The Committee states that it did not enter into a written contract with "these vendors" or receive an invoice until after the close of the April Quarterly reporting period.[14]

Respondents also asserted that Brown used personal funds totaling "well under $1,000" or "less than $1,000" for travel expenses in the reporting period, including transportation, meals and lodging.[15] The Committee maintains, however, that these "minor personal travel costs" are "not reportable as a contribution or campaign committee expenditure."[16]

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10 *Id.* at 7-8.

11 *Id.* at 3, 7.

12 Resp. at 2.

13 *Id.* at 2-3.

14 *Id.* at 3-4.

15 *Id.* at 3, n.1; 4-5.

16 *Id.* at 3, n.1.

In conjunction with filing the Response, the Committee amended its April 2014 Quarterly Report to disclose the web and video expense of $21,060 as a debt. The Committee paid the debt on April 30, 2014 according to its July 2014 Quarterly Report. It did not report the $1,000 in travel expenses.[17]

Regarding Brown's Statement of Candidacy, the Response states that it was timely because, "as of March 14, 2014, Mr. Brown had not accepted any contributions and had not made any expenditures," and that, "when Mr. Brown decided in his mind to run for the election is irrelevant to when he became a 'candidate'" under the Act.[18]

II. LEGAL ANALYSIS

Under the Act, "an individual who seeks nomination for election, or election, to Federal office" is a candidate and "shall be deemed to seek nomination for election, or election" when he receives contributions or makes expenditures in excess of $5,000.[19] Commission regulations provide that when 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, and the candidate must register with the Commission.[20] After an individual reaches candidate status, all reportable amounts from the beginning of the testing-the-waters period must be disclosed on the first

[17] The Committee filed a Form 99 Miscellaneous Report with its amended April 2014 Quarterly Report, making the same arguments as in the Response. *See supra* p. 4-5. The Reports Analysis Division ("RAD") sent a follow-up Request For Additional Information to the Committee to further explain the $21,060 in increased activity, but the Committee merely referred back to the Form 99. The increased activity does not meet RAD's threshold for referral to the Office of General Counsel or the Office of Alternative Dispute Resolution.

[18] Resp. at 4.

[19] 52 U.S.C. § 30101(2).

[20] *See* 11 C.F.R. §§ 100.72(a), 100.131(a); *see* Factual and Legal Analysis at 3, MUR 6533 (Perry Haney); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning).

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financial disclosure report filed by the candidate's committee, even if the funds were received or expended prior to the current reporting period.[21]

A candidate for federal office must designate a principal campaign committee no later than 15 days after becoming a candidate.[22] The designated principal campaign committee is required to file a Statement of Organization within ten days of designation or report any change in information previously submitted on its Statement of Organization within ten days of the change.[23]

The Act requires treasurers of political committees to file reports disclosing the total amount of receipts, disbursements, and outstanding debts and obligations for the reporting period.[24] An outstanding debt exceeding $500 must be reported on Schedule D in the report covering the date on which the debt was incurred.[25] A payment by a candidate from personal funds for campaign expenses is an expenditure or contribution unless an exemption applies.[26] One exemption provides that campaign-related transportation or subsistence expenses up to $1,000 in aggregate for a single election paid for by any individual, including a candidate, and not reimbursed, are not contributions or expenditures.[27]

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[21] *See* 11 C.F.R. §§ 101.3, 104.3(a), 104.3(b). Moreover, an individual does not become a candidate solely by voluntarily registering and reporting with the Commission, nor is such individual or the individual's committee required to file all disclosure reports under the Act and Commission regulations, unless the individual becomes a candidate under the Act and Commission regulations. 11 C.F.R. § 104.1(b).

[22] 52 U.S.C. § 30102(c)(1).

[23] 52 U.S.C. § 30103(a), (c).

[24] 52 U.S.C. §§ 30104(b)(2), (4), (8).

[25] 11 C.F.R. §§ 104.3(d), 104.11.

[26] *See* 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i).

[27] 52 U.S.C. § 30101(8)(B)(iv); 11 C.F.R. §§ 100.79(a)(1), 139(a)(1).

1 **A. Reporting of Debts and Testing-the-Waters Expenses**

2 The Committee's original April 2014 Quarterly Report, its first-filed report, disclosed no
3 expenditures and no debts. The Complaint alleges that Respondents failed to report
4 disbursements made during the testing-the-waters period, including costs for web and video
5 production, travel, campaign staff, a post office box, and opening a bank account.[28]

6 In response, Respondents assert that they did not "make any expenditures with regard to
7 Mr. Brown's potential run for the New Hampshire Senate seat"[29] except for "minor personal
8 travel costs totalling less than $1,000."[30] If the travel expenses incurred by Brown were indeed
9 less than $1,000 — and we have no information to the contrary — these expenses appear to be
10 exempt from the Act's definitions of contributions and expenditures, and did not need to be
11 reported.[31] Further, the expenses for a post office box and bank account were likely *de minimis,*
12 and we have no specific information to support the complaint's allegation that Brown had made
13 any payments for staffing expenses prior to the end of the reporting period.[32]

14 Respondents state that the Committee received web and video production services after
15 Brown filed his Statement of Candidacy and during the reporting period, but the Committee was
16 not invoiced for these services until after the reporting period ended.[33] Respondents amended

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[28] Compl. at 6.

[29] Resp. at 3.

[30] *Id.* at 4-5.

[31] *See* 52 U.S.C. § 10101(8)(B)(iv).

[32] The Response does not specifically address these expenses. The available information appears to show that Brown only began fundraising after March 14, 2014 and we can reasonably infer that the campaign set up a bank account and post office box around that time and that any related expenses were likely *de minimis.*

[33] Respondents state, "[a]rguably, in the last weeks of the reporting period, the Committee did incur an expense of producing a website and web video. These materials were used by the Committee in the First Quarter, although it did not receive an invoice until the Second Quarter." Resp. at 4.

the April 2014 Quarterly Report to reflect a debt of $21,060 approximately 60 days after the filing date of the original report.

B. Statement of Candidacy and Statement of Organization

The Complaint alleges that Brown became a candidate on February 14, 2014. The Complaint cites to an April 2014 interview during which Brown stated that he and his wife decided on Valentine's Day (February 14) that he would run for office.[34] The complaint alleges that because Brown likely spent the requisite $5,000 by February 14, 2014, he should have filed his Form 2 (Statement of Candidacy) no later than March 1, 2014 (15 days after February 14) and the Committee should have filed its Form 1 (Statement of Organization) by March 11 (10 days later). Respondents filed their Statements of Candidacy and Organization on March 21, 2014. Even assuming *arguendo* that Brown became a candidate on February 14, 2014, the Statements of Candidacy and Organization would have been less than 30 days late and the Committee's first required disclosure report would have been the same 2014 April Quarterly report that it timely filed.[35]

Therefore, the Commission exercises its prosecutorial discretion and dismisses the allegations that Scott Brown and New Hampshire for Scott Brown and Paul Kilgore in his official capacity as treasurer failed to report disbursements and debt in their first-filed report and filed their Statements of Candidacy and Organization late.

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[34] Compl. at 3.

[35] Further, the available record does not provide enough information to establish when Brown reached the $5,000 contribution or expenditure threshold. Since the website, which published video footage of Brown, became available for viewing on March 14, 2014, it is likely that the production of the website and videos must have occurred earlier than March 14. Neither the Complaint nor Respondents' disclosure reports reveal exactly when the web and video production services were performed. The Respondents assert only that the website and video production occurred in "mid-March."