

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Paul Aronsohn) MUR 5693
 Paul Aronsohn for Congress f/k/a)
 Aronsohn Congressional Exploratory Campaign and)
 Parisa Sabeti, in her official capacity as treasurer)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Find probable cause to believe that Paul Aronsohn violated 2 U.S.C. § 432(3)(1); find probable cause to believe that Paul Aronsohn for Congress f/k/a Aronsohn Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2)

II. BACKGROUND

Paul Aronsohn ran for the 2006 Congressional seat in New Jersey's Fifth Congressional District. On April 11, 2005, he announced a "Congressional Exploratory Campaign." The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that an individual becomes a "candidate" when he or she has received or made in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). Although Aronsohn exceeded this threshold approximately one week after his exploratory campaign announcement, the Commission's "testing the waters" regulations provide an exemption to the automatic thresholds "solely" to permit an individual to test the feasibility of a campaign. Permissible activities under the exemption include conducting polls, telephone calls, and travel, if they are for the purpose of determining whether an individual should become a candidate. 11 C.F.R. §§ 100.72(a) and 100.131(a). The regulations "seek to

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1 draw a distinction between activities directed to an evaluation of the feasibility of one's
2 candidacy, as distinguished from conduct signifying that a private decision to become a candidate
3 has been made," Advisory Opinion 1981-32, and explicitly provide that the exemption ends once
4 activities indicate that the individual has decided to run for a particular office or the activities are
5 relevant to conducting a campaign. 11 C.F.R. §§ 100.72(b) and 100.131(b). Such activities
6 include, but are not limited to, raising funds in excess of what could reasonably be expected to be
7 used for exploratory activities or activities designed to amass funds to be spent after becoming a
8 candidate; making or authorizing written or oral statements that refer to the individual as a
9 candidate for a particular office; or conducting activities over a protracted period of time. *Id.*

10 On October 27, 2005, approximately six and a half months after announcing his
11 exploratory committee, Aronsohn drafted a solicitation letter that he asserts was sent to
12 individuals in his personal Rolodex and to a limited number of potential supporters whose names
13 were provided to him by friends.¹ The letter includes the following relevant statements:

- 14 • Granted, this will be a tough fight. Defeating an incumbent is
15 never easy. But I have the energy, the experience, and the
16 determination to win this race. And as evidenced by the attached
17 news article, I am ready to begin fighting for our future ... now.
18 (Ellipsis in original).²
19
20

¹ The letter was written on "Paul Aronsohn Congressional Exploratory Campaign" letterhead, states that Aronsohn has "launched a Congressional Exploratory Campaign," and at the bottom of the first page, the words "The Aronsohn Congressional Exploratory Campaign" appear.

² The "attached news article" is from the September 11, 2005 edition of *The Star Ledger*. It focuses on Representative Garrett's vote against a bill providing money for Hurricane Katrina relief, and his explanation of that vote. It identifies Aronsohn as a "Democratic challenger" to Garrett, and quotes Aronsohn as saying of the vote, "It's outrageous ... It would have been the right thing to send a message to the people in the Gulf Coast that the nation stands behind them in unison. But he lacks the compassion and decency to do that."

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- 1 • As a member of the Clinton Administration, I spent several years
2 working on national security and international affairs—having served
3 three U.S. Ambassadors to the United Nations: Madeleine Albright,
4 Bill Richardson, and Richard Holbrooke.
5

6 Currently, I work for one of the most respected healthcare companies
7 in the world, Pfizer Inc., where I promote greater access to life enhancing,
8 life saving medicines.
9

10 Now, I want to take this experience and my passion for public service
11 and put them to work for the people of New Jersey's 5th Congressional
12 District.
13

- 14 • This is a critical moment in our campaign. Every dollar we receive in
15 the next few weeks can help us prepare for this fight against Scott Garrett
16 and will demonstrate to everyone that Democrats are serious about this race
17 —that with an energetic, experienced, moderate Democrat on the ticket, we have
18 what it takes to win! (Emphasis in original).
19
- 20 • We have come a long way in just a few short weeks. And with your
21 support, we can go the distance.

22 Additionally, on November 1, 2005, the Aronsohn "Congressional Exploratory
23 Campaign" issued a press release that was paid for by the "Exploratory Campaign." That press
24 release stated, in relevant part:

25 Well, we've crossed our first major threshold: With more than a year
26 until the election, the campaign has already received about 225
27 individual contributions and has raised about \$100,000!!!
28

29 To put this in perspective, remember ...
30

- 31 ✓ the last 5th District nominee had only about 150 individual contributions
32 throughout the entire election cycle; and
33 ✓ the last 5th District Democratic nominee had \$0 by this time in the last
34 election cycle. (Emphasis in original).
35

36 In other words, we are ahead of the curve and moving forward ... fast.
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1 **Approximately three months later, on January 23, 2006, Aronsohn filed his initial**
2 **Statement of Candidacy with the Commission. His principal campaign committee, Paul**
3 **Aronsohn for Congress f/k/a Aronsohn Congressional Exploratory Campaign ("the Committee"),**
4 **filed its initial Statement of Organization on February 16, 2006. The Committee's first filed**
5 **report was the 2006 April Quarterly Report, filed April 14, 2006.**

6 **The Commission found reason to believe that Aronsohn violated 2 U.S.C. § 432(e)(1) by**
7 **failing to file a Statement of Candidacy designating his principal campaign committee within**
8 **fifteen days of becoming a candidate, starting with the date of the October 27, 2005 letter. The**
9 **Commission also found reason to believe that the Committee violated 2 U.S.C. § 433(a) by**
10 **failing to file a timely Statement of Organization, and violated 2 U.S.C. § 434(a)(2) by failing to**
11 **file a 2005 Year-End Report.**

12 _____
13 _____
14 _____ we sent Respondents a General
15 Counsel's Brief, which is incorporated herein by reference. The Respondents submitted a
16 Response Brief. They did not request an oral hearing.

17 **In their Response Brief, Respondents argue that the Commission must consider the**
18 **challenged communications in their entirety, and point out that Aronsohn's October 27, 2005**
19 **solicitation letter uses the word "exploratory" three times and the November 1, 2005 press**
20 **release uses it twice, and neither explicitly state that he has decided to run for office. Moreover,**
21 **Respondents assert that Aronsohn did not subjectively believe he was a candidate at the time he**

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1 sent the letter. Respondents also contend that the Commission's precedent in "testing the
2 waters" matters is inconsistent with the recommended probable cause findings in this matter.

3 As discussed below, Respondents' arguments are unavailing because the mere use of the
4 word "exploratory" cannot preserve the applicability of the "testing the waters" exemption in the
5 face of conduct, as was present here, objectively signifying that the decision to become a
6 candidate had been made. Moreover, the recommended probable cause findings are consistent
7 with the Commission's precedent.

8 Accordingly, for the reasons set forth in the General Counsel's Brief and discussed
9 below, we recommend that the Commission find probable cause to believe that Paul Aronsohn
10 violated 2 U.S.C. § 432(3)(1), and that Paul Aronsohn for Congress f/k/a Aronsohn
11 Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as treasurer,
12 violated 2 U.S.C. §§ 433(a) and 434(a)(2).

13 **III. ANALYSIS**

14 Respondents state that "[w]hen objectively reviewing the challenged communications in
15 their entirety, it is apparent that Mr. Aronsohn properly disclosed the exploratory status of his
16 campaign at all times." Aronsohn Brief at 6. Because the October 27, 2005 letter and the
17 November 1, 2005 press release each repeat the word "exploratory" multiple times, Respondents
18 assert that this matter is materially distinguishable from MURs 2262 and 5521, cited in our Brief,
19 because the letters in those MURs use that word one time and not at all, respectively. *Id.* at 7 and
20 9. By this, Respondents appear to suggest that an individual's use of a word such as
21 "exploratory" is determinative of whether an individual has crossed the line from "testing the
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1 waters" activity to candidacy. If the mere repetition of such language, however, is a safe harbor
2 from candidacy, individuals could keep asserting that they were running an "exploratory
3 campaign," and refrain from filing, registering their authorized committees and filing disclosure
4 reports, while engaging in blatant and protracted activities indicating that they had decided to run
5 for a particular office. That is contrary to both the letter and spirit of the regulations.

6 Indeed, the Commission has already rejected the notion in MUR 5363 (Alfred Sharpton)
7 that once an individual's activities indicate that he or she has become a candidate, other
8 expressions of indecision or characterization of efforts as exploratory negate or delay the
9 registration and reporting requirements that have been triggered. In that case, the Commission
10 concluded that Sharpton became a candidate no later than October 2002, when he made
11 statements included in his book referring to himself as a candidate for President, even though, as
12 set forth in the First General Counsel's Report at 7 and note 6, after the book's publication,
13 Sharpton registered an "exploratory committee" and made statements indicating he had not
14 irrevocably decided to enter the race. For example, when interviewed about his book, Sharpton
15 reportedly stated, "I am not officially declared as a candidate;" stated in a television appearance
16 that he had "not decided finally" whether to run; and as late as mid-April 2003, reportedly stated
17 "we are in the late stages of the exploratory phase. We will do whatever is required when we
18 make an official announcement" (Citations omitted). Thus, as in MUR 5363, Aronsohn's
19 use of the word "exploratory" three times in his solicitation letter and his reported equivocal
20 statements about his intentions after the letter, *see* Aronsohn Brief at 5, are not dispositive.

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1 Respondents also attempt to distinguish MUR 2262 (M.G. (Pat) Robertson) from the
2 instant matter because, in addition to making statements indicating candidacy in a solicitation
3 letter, Robertson had a televised rally, complete with bands playing and choirs singing, and he
4 engaged in large-scale mailings. Aronsohn Brief at 9. However, "the determination of whether
5 an individual has crossed the line from 'testing the waters' to campaigning must be made on a
6 case-by-case basis." Explanation and Justification for Regulations on Payments Received for
7 Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985) ("E&J"). The fact that Aronsohn
8 did not engage in activities that were on the same scale as Robertson's does not mean that
9 Aronsohn had not decided to run for office, as his solicitation letter indicates.³ The testing the
10 waters provisions were intended "to be limited exemptions from the reporting requirements of
11 the Act..." *see* E & J at 9993; the line between "testing the waters" and candidacy need only be
12 crossed, not catapulted, for the exemptions to be unavailable.⁴

13 Finally, Respondents contend that "[i]t is hard to discern any significant distinction
14 between" MUR 5661 (Keith Butler), where the Commission found no reason to believe Butler

³ For example, in Advisory Opinion 1981-32, the Commission advised that a prospective candidate's targeting of correspondence to a person who had indicated an interest in his campaign tended in the direction of candidacy, because it appeared to represent "reinforcement of his or her initial indication of political support[,] ... the activity appears less oriented to ascertaining whether there is an initial base of political support adequate to launch a campaign effort, and more oriented to shoring up a base already identified that will sustain an actual campaign effort." In this matter, Aronsohn purportedly sent his letter to persons in his personal Rolodex and potential supporters, which would have been consistent with shoring up an already identified base, rather than ascertaining whether such a base existed.

⁴ In footnote 5 of their Brief, Respondents note that in MUR 5251 (Friends of Joe Rogers), the General Counsel recommended that the Commission find reason to believe Rogers and his authorized committee violated the Act, admonish them, and take no further action. However, the Rogers Committee's reporting activities are distinguishable from those in the present matter. Specifically, the Rogers Committee filed the 2001 Year-End Report, its first required disclosure report, on time on January 31, 2002. By contrast, the Aronsohn Committee never filed the 2005 Year-End Report that was required given that Aronsohn became a candidate by the time of the October 27, 2005 letter.

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1 and his authorized committee violated the Act, and the instant matter. See Aronsohn Brief at 10.
2 However, the facts in these two matters differ in important ways.⁵ In MUR 5661, Keith Butler
3 distributed literature that included the slogan "Fresh New Leadership" and photographs of the
4 prospective candidate with Presidents Reagan, George H.W. Bush, and George W. Bush. The
5 literature also attached an excerpted news article in which someone speculated that Butler was in
6 the race, and quoted Butler criticizing his potential opponent. The article was entitled "Pastor
7 considers Senate run," noted that "Butler ... is considering running against first-term U.S. Sen.
8 Debbie Stabenow in 2006," and stated that "Butler ... is forming an exploratory committee for a
9 possible challenge of Stabenow." Moreover, Butler made no allusion to the article in his
10 literature. In contrast, in his solicitation letter, Aronsohn affirmatively incorporates the attached
11 news article describing him as "a Democratic challenger" and criticizing his potential opponent
12 as explicit evidence that he is "ready to begin fighting for our future . . . now." See note 2 and
13 accompanying text, *supra*. As such, and unlike Butler, Aronsohn uses the article as proof of his
14 present readiness to enter the election contest, and the article does not otherwise describe him as
15 exploring his options.

16 Additionally, Aronsohn's affirmative adoption of the article is just one of several
17 indications in his solicitation letter that he has decided to run. Aronsohn states therein that
18 although "defeating an incumbent is never easy," he has what it takes to "win the race," and is
19 "ready to begin fighting for our future...now." See MUR 2262 (M.G. (Pat) Robertson)

⁵ The Commission considered both matters, which were addressed in a single First General Counsel's Report, at the same time, and approved our recommendations as to both.

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1 (Robertson's activities, including a solicitation letter stating that "I AM READY TO GO FOR
2 IT," indicated that he had become a candidate). Aronsohn also states in his letter that he "[n]ow"
3 wants to take his political and business experience and his passion for public service and "put
4 them to work for the people of New Jersey's 5th Congressional District." See MUR 5251 (Friends
5 of Joe Rogers) (Rogers' solicitation letter stating that due to his close working relationship with
6 the President and the Congressional leadership, "[he] will immediately work for the benefit of
7 Colorado" and "[he] look[s] forward to serving you in the next United States Congress,"
8 indicated that he had become a candidate). As with the statements in MURs 2262 and 5251,
9 Aronsohn's statements indicate that he is no longer exploring his viability as a candidate, but has
10 decided to run. Indeed, his statements that he has what it takes to "win this race," and with
11 support, "can go the distance," indicate that Aronsohn's focus has advanced beyond just deciding
12 whether to run to winning the race.

13 This conclusion is reinforced by Aronsohn's statement that "[e]very dollar we receive in
14 the next few weeks can help us prepare for this fight against Scott Garrett," the incumbent
15 from an opposing party. (Emphasis in the original). By indicating that funds raised will be used
16 to campaign against a specifically named opponent, Aronsohn conveys that he is engaged in
17 activities relevant to conducting a campaign, not just evaluating the feasibility of running for
18 office. See 11 C.F.R. §§ 100.72(b) and 100.131(b). The determining factor is whether the
19 individual's activities "take on a partisan political quality [that] would indicate that a decision
20 has been made to seek nomination for election, or election, to a Federal office." See Advisory
21 Opinion 1981-32. Aronsohn's statement reflects just that quality. Moreover, his statement

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1 indicates his fundraising is designed to amass campaign funds to be spent after he becomes a
2 candidate, an example that the regulations specifically cite as indicative that an individual has
3 decided to become a candidate. *See* 11 C.F.R. § 100.72(b)(2); *see also* MUR 5251 (in
4 solicitation letter indicating candidacy, Rogers requested funds to “jump-start [his] campaign
5 treasury”). The Committee’s November 1, 2005 press release, stating that it had already received
6 more money to date and more individual contributions than the last democratic nominee had
7 received to date and during the entire election cycle, and that “we are ahead of the curve and
8 moving forward...fast,” further indicates that Aronsohn is raising funds for the election, not
9 simply assessing the potential strength of his financial base.

10 Thus, by October 27, 2005 at the latest, Aronsohn became a candidate. Accordingly,
11 Aronsohn was required to file his Statement of Candidacy within 15 days of October 27, 2005, or
12 by November 11, 2005, designating his principal campaign committee. 2 U.S.C. § 432(e)(1); *see*
13 *also* 11 C.F.R. § 101.1(a). Thereafter, within ten days, or by November 21, 2005, the Committee
14 should have filed its Statement of Organization. 2 U.S.C. § 433(a). Had these filings been
15 timely, the Committee’s first required report would have been the 2005 Year End Report, due on
16 January 31, 2006, rather than the 2006 April Quarterly Report, which disclosed receipts and
17 disbursements for the period from April 1, 2005 through March 31, 2006.

18 Based on the above, we recommend that the Commission find probable cause to believe
19 that Paul Aronsohn violated 2 U.S.C. § 432(3)(1), and that Paul Aronsohn for Congress f/k/a
20 Aronsohn Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as
21 treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2).

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14 **V. RECOMMENDATIONS**

- 15 1. Find probable cause to believe that Paul Aronsohn violated 2 U.S.C. § 432(3)(1);
16
17 2. Find probable cause to believe that Paul Aronsohn for Congress f/k/a Aronsohn
18 Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as
19 treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2);

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21 3. [redacted]
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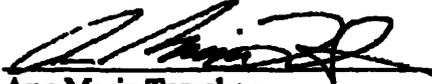
4. Approve the appropriate letter.

11/7/2007

Date



Thomasenia P. Duncan
General Counsel



Ann Marie Terzaken
Associate General Counsel
for Enforcement



Susan L. Lebeaux
Assistant General Counsel



Roy Q. Lockett
Attorney

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