BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Casperson for Congress and Judi Skradski in her official capacity as treasurer
Tom Casperson
Tom Casperson for State Senate

STATEMENT OF REASONS OF
VICE CHAIR CAROLINE C. HUNTER AND
COMMISSIONERS LEE E. GOODMAN AND MATTHEW S. PETERSEN

The Complaint alleges that Tom Casperson for State Senate ("State Committee") transferred funds to Casperson for Congress ("Federal Committee") by paying for travel related to Casperson's congressional campaign, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Complaint also alleges that after Tom Casperson became a federal candidate, the State Committee raised and spent non-federal funds, in violation of the Act. The Commission voted unanimously to dismiss all allegations in this case under Heckler v. Chaney but was unable to agree on a Factual and Legal Analysis. Our reasons for voting to dismiss the Complaint are set forth below.

I. FACTUAL BACKGROUND


announced his candidacy for Michigan's First Congressional District on November 9, 2015, and registered the Federal Committee on November 20, 2015. Casperson continued to serve as a state senator and apparently maintained the State Committee while he was a federal candidate. He lost the primary for the congressional seat on August 2, 2016.

The Complaint alleges that after Casperson declared his federal candidacy, he used non-federal funds from the State Committee to "finance his federal campaign's announcement tour." The Complaint argues that Casperson "raised over $10,000 from state PACs" while he was a federal candidate, including contributions that do not comply with the source and amount prohibitions of the Act, and he used those funds for his federal campaign travel. According to the Michigan Secretary of State's records, the State Committee raised $16,500 between the date Casperson declared his federal candidacy and his congressional primary.

Respondents deny the allegations. While they admit that the State Committee paid for the trips detailed in the Complaint, they assert that each trip was related to Casperson's official duties as a state senator. In support, Respondents provide the invoices for each stay, which show that all four trips occurred before Casperson became a federal candidate, and they explain how each trip was related to Casperson's official state senate duties. In regard to the allegation that the State Committee raised $10,000 from state PACs after Casperson became a federal candidate, the State Committee argues that it did not solicit those contributions, so it did not violate the Act. It further argues that it could not have accepted any prohibited contributions because Michigan prohibits PACs from accepting corporate contributions.

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5 Compl. at 2 (July 28, 2016); Fed. Comm. Resp. at 1; see FEC Form 2, Tom Casperson (Nov. 20, 2015); FEC Form 1, Statement of Organization, Casperson for Congress (Mar. 16, 2011).

6 Resp. at 1.


8 Compl. at 4.

9 Id. at 2, 4 n.20.


11 Fed. Comm. Resp. at 5-9. Respondents explain that the dates used in the Complaint were the dates of the credit card statements, not the dates that Casperson actually incurred the travel expenses.

12 State Comm. Resp. at 2.

13 Id.
II. LEGAL ANALYSIS

The Act's soft money provisions prohibit federal candidates, their agents, and entities established, financed, maintained, or controlled ("EFMC'd") by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with any federal or non-federal election unless the funds are in amounts and from sources permitted by the Act. In order to justify a reason to believe finding, four or more commissioners must conclude that a federal candidate or office holder either (i) established, (ii) financed, (iii) maintained, or (iv) controlled the State Committee.

A federal candidate who concurrently runs for state or local office, however, may solicit, receive, and spend funds outside of the Act's amount and source limitations if the solicitations, receipts, and disbursements are solely in connection with the candidate's own state or local race and those disbursements are allowable under state law. Regardless of whether the exemption applies, a non-federal committee established, financed, maintained, or controlled by a federal candidate is prohibited from transferring funds or assets to the candidate's federal committee. This prohibition on transferring funds includes payment for services to the federal committee.

The State Committee was neither established nor financed by a federal candidate or officeholder. The plain language of the statute requires that the State Committee be established or financed by a federal candidate or officeholder at the time that individual is a candidate or federal officeholder. Casperson established the State Committee in 2009, years before he...
announced his candidacy for Michigan’s First Congressional District in 2015. Additionally, no evidence was provided to show that Casperson substantially funded or provided any funds to the State Committee during his federal candidacy.20

However, Casperson appears to have maintained or controlled the State Committee, which raised and spent funds while he was a federal candidate.21 The Act allows a simultaneous federal and state candidate to raise and spend non-federal funds “solely in connection with [their] election for State or local office.”22 Casperson, however, was not a simultaneous federal and state candidate. Casperson, as a second-term state senator, was term-limited, and there is no information in the record to suggest that he was running for a different state office.23 Term-limited officeholders are not considered candidates for that office under Michigan law.24 Because Casperson was not a state candidate, the State Committee (presumably) did not pay for expenses in connection with an election to state office pursuant to the state candidate exemption.25

Under the particular facts of this case, however, we voted to dismiss the allegations that the State Committee solicited and received funds outside the Act’s amount limitations and source prohibitions.26 The record of the State Committee’s receipts and disbursements does not


21 See Advisory Op. 2007-26 (Schock) at 4; see also Advisory Op. 2006-38 (Casey State Committee) at 4. Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-01 (McCaskill) at 3; Factual & Legal Analysis at 9, MUR 6601 (Oelrich).


24 See Mich. Comp. Laws Ann. §169.203(1) (“‘Candidate’ means an individual who ... [h]olds an elective office, unless the officeholder is constitutionally or legally barred from seeking reelection ....”); see also Candidate Manual, MICH. BUREAU OF ELECTIONS, http://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.TheStatementOfOrganizationFormingAndRegisteringACandidateCommittee#cantrmlmt (“An officeholder who is term-limited is no longer a candidate for that office...”).

25 Because the Commission voted to dismiss this matter, the Commission did not need to address whether the exemption for simultaneous candidacies would apply to payment for official state officeholder duties, which is a permissible use of state campaign funds in Michigan.

establish receipt of clearly prohibited or excessive contributions under the Act or persuade us that an investigation is warranted. Moreover, given the somewhat modest amounts at issue, and the use of funds to offset official state officeholder duties, we voted to exercise our prosecutorial discretion and dismiss this allegation.

Regarding the State Committee’s alleged use of soft money to pay for Casperson's federal campaign activities, the Act and Commission regulations prohibit the transfer of funds or assets from a candidate’s non-federal campaign committee to his or her federal campaign committee. Thus, if the State Committee made disbursements for campaign travel on behalf of the Federal Committee, those payments would constitute improper transfers to the Federal Committee.

It appears that the four specific overnight stays discussed in the Complaint were related to Casperson’s state office duties, and under Michigan law, elected officials may use their candidate committee funds to pay for “incidental expenses,” defined as expenditures that are “ordinary and necessary expense[s] paid or incurred in carrying out the business of an elective office.” While it appears that the State Committee also reported travel-related expenses beyond the four specific overnight stays listed in the Complaint, those additional travel-related expenses could relate to Casperson’s official state officeholder duties, and the travel expenses the State Committee reported were relatively small. Under these circumstances, we voted to exercise our prosecutorial discretion and dismiss the allegations that Respondents violated the Act by transferring non-federal funds.

Moreover, despite alleging that the State Committee received over $10,000 from state PACs, the Complaint fails to identify any contribution in excess of the Act’s amount limitations or from a prohibited source that was, in fact, received by a state PAC and in turn, forwarded to the State Committee during Casperson’s candidacy.


Date: November 10, 2017

Matthew S. Petersen
Commissioner