



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 13 2016

Chris Ashby, Esq.
Ashby Law PLLC
919 Prince Street
Alexandria, VA 22314

RE: MUR 6785
Kwasman for Congress and
Bret Summers in his official
capacity as treasurer
Adam C. Kwasman

Dear Mr. Ashby:

On February 26, 2014, the Federal Election Commission notified your clients, Kwasman for Congress and Bret Summers in his official capacity as treasurer and Adam C. Kwasman, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 17, 2015, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

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).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Will A. Powers", with a long horizontal flourish extending to the right.

William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Kwasman for Congress and Bret Summers MUR: 6785
6 in his official capacity as treasurer
7 Adam C. Kwasman
8

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed by Scott Kalota, alleging that Adam C.
11 Kwasman, an Arizona state representative and 2014 candidate for the Republican nomination in
12 Arizona's First Congressional District, violated the Federal Election Campaign Act of 1971, as
13 amended ("the Act"), by filing his Statement of Candidacy late, and that Kwasman's principal
14 campaign committee, Kwasman for Congress (the "Committee"), violated the Act by filing its
15 Statement of Organization and 2013 Year-End Report late, accepting excessive contributions,
16 using assets from Kwasman's state campaign to support his federal campaign, and including
17 improper disclaimers on campaign materials.

18 Respondents argue that the Commission should dismiss the Complaint because it either
19 fails to allege violations of the Act or Commission regulations, alleges only minor violations, or
20 alleges violations that will be addressed by the Commission's Reports Analysis Division
21 ("RAD") and Administrative Fines Program. For the reasons explained below, the Commission
22 dismisses the allegations. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

23 **II. FACTUAL AND LEGAL ANALYSIS**

24 **A. Statement of Candidacy and Statement of Organization**

25 On July 8, 2013, Kwasman announced that he was forming an exploratory committee for
26 a potential Congressional candidacy. Resp. at 1 (Apr. 18, 2014). He publicly declared his
27 candidacy on October 21, 2013, and filed a Statement of Candidacy with the Commission on

1 November 8, 2013, designating the Committee as his principal campaign committee. The
2 Committee filed its Statement of Organization on December 9, 2013. Bret Summers is treasurer
3 of the Committee.¹

4 The Complaint alleges that Kwasman filed his Statement of Candidacy late. Compl. at 1
5 (Feb. 19, 2014). The Complaint argues that: (1) Kwasman conducted campaign activity over a
6 protracted period of time by making statements referring to himself as a candidate and using
7 public political advertising to announce his intention to run for Congress, without filing a
8 Statement of Candidacy; (2) Kwasman failed to file a Statement of Candidacy after raising over
9 \$5,000; and (3) even if Kwasman did not become a candidate until his public announcement on
10 October 21, 2013, he still filed his Statement of Candidacy four days late. *Id.* at 1-3. The
11 Complaint also alleges that the Committee's Statement of Organization was filed late. *Id.* at 2.

12 The Response asserts that the Complaint fails to identify any specific statements,
13 advertisements, or events indicating that Kwasman became a candidate before he publicly
14 declared his candidacy. Resp. at 1. The Response also contends that the four months during
15 which Kwasman tested the waters for a federal candidacy was not a "protracted period of time."
16 *Id.* at 1-2. Further, the Response asserts that Kwasman was not required to file his Statement of
17 Candidacy once he raised \$5,000 because at that time he was continuing to test the waters for a
18 federal campaign. *Id.* at 3. Finally, the Response contends that the late filings do not warrant
19 Commission investigation because they did not cross a reporting period and did not frustrate the
20 public's disclosure interest. Resp. at 2-3.

¹ Adam C. Kwasman was designated as the treasurer of the Committee when it filed its Statement of Organization and he remained treasurer during the events at issue in this matter. On August 14, 2014, the Committee amended its Statement of Organization to designate Bret Summers as treasurer.

1 Under the Act, within fifteen days of deciding to become a federal candidate, an
2 individual must file a Statement of Candidacy and designate a principal campaign committee.
3 52 U.S.C. § 30102(e)(1); *see also* 11 C.F.R. § 101.1(a). The principal campaign committee then
4 must file a Statement of Organization no later than ten days after the candidate's designation.
5 52 U.S.C. § 30103(a).

6 An individual becomes a "candidate" under the Act when he or she receives or makes in
7 excess of \$5,000 in contributions or expenditures. 52 U.S.C. § 30101(2). Commission
8 regulations provide that the terms "contribution" and "expenditure" do not include funds
9 received or payments made solely for the purpose of deciding whether to become a federal
10 candidate. 11 C.F.R. §§ 100.72(a); 100.131(a). "Testing the waters" activities include, but are
11 not limited to, conducting polls, making telephone calls, and traveling. *Id.*

12 However, "the testing-the-waters exemption does not apply 'to individuals who have
13 decided to become candidates.'" *See* Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 5
14 (quoting Advisory Op. 1981-32 (Askew) at 4). "Accordingly, if an individual has raised or spent
15 more than \$5000 on 'testing-the-waters' activities, the individual becomes a candidate when he
16 or she decides to run for federal office." *Id.* Until then, he or she is not required to file a
17 Statement of Candidacy with the Commission. Examples of activities that indicate that an
18 individual has decided to become a candidate include, but are not limited to: (1) the individual
19 uses general public political advertising to publicize his or her intention to campaign for federal
20 office; (2) the individual raises funds in excess of what could reasonably be expected to be used
21 for exploratory activities, or undertakes activities designed to amass campaign funds that would
22 be spent after he or she becomes a candidate; (3) the individual makes or authorizes written or
23 oral statements that refer to him or her as a candidate for a particular office; (4) the individual

1 conducts activities in close proximity to the election or over a protracted period of time; and
2 (5) the individual has taken action to qualify for the ballot under state law. 11 C.F.R.
3 §§ 100.72(b); 100.131(b).

4 Kwasman asserts that he began testing-the-waters activities on July 8, 2013, the date on
5 which he formed his exploratory committee, and ended doing so on to October 21, 2013, the date
6 on which he publicly declared his congressional candidacy. The Complaint generally alleges
7 that Kwasman was conducting campaign activity over a “protracted period of time,” including
8 referring to himself as a candidate and using public political advertising to announce his
9 intention to run for Congress. Compl. at 1. The Complaint specifically points to a
10 communication titled “CD-1 Primary Voter Guide” that was posted both on the *Sonoran*
11 *Alliance*, a political blog, and Kwasman’s own social-media accounts on October 16, 2013.
12 Compl., Appendix A. The voter guide lauded Kwasman’s legislative actions and views and
13 criticized those of Andy Tobin, an opponent of Kwasman’s in the Republican primary election.
14 The voter guide declared that between Kwasman and Tobin, “THE CHOICE IS CLEAR!” and
15 further stated, “Adam Kwasman Congress. Proven Conservative Leadership.” *Id.*

16 This voter guide posted to Kwasman’s social-media accounts may indicate that Kwasman
17 had decided to become a candidate by October 16, 2013. Yet even if he did not become a
18 candidate until his public announcement five days later — on October 21, 2013 — his Statement
19 of Candidacy was filed four days late, and the Committee’s Statement of Organization was filed
20 21 days late. Compl. at 2-3.

21 This issue does not merit further attention from the Commission given the short period of
22 time between the date on which the disclosure statements were due to the Commission and the
23 date on which they were filed, and in light of the fact that the late filing of the Statement of

1 Candidacy and Statement of Organization did not cause the Committee to miss the filing of any
2 scheduled disclosure report. Accordingly, the Commission dismisses this allegation. *See*
3 *Heckler*, 470 U.S. 821.

4 **B. 2013 Year-End Report**

5 The Committee filed its 2013 Year-End Report on February 1, 2013, which the
6 Complaint alleges was one day late. Compl. at 2. Under the Act, each treasurer of a principal
7 campaign committee for a Congressional candidate must file a Year-End Report for the calendar
8 quarter ending December 31 by no later than January 31 of the following calendar year. 52
9 U.S.C. § 30104(a)(2)(B). Thus, when the Committee filed its report on February 1, 2013, it was
10 in fact one day late.

11 Respondents, however, contend that the filing of the 2013 Year-End Report eleven hours
12 late does not warrant a Commission investigation, and the Commission agrees. Resp. at 3. The
13 Commission, therefore, dismisses this allegation in the exercise of its prosecutorial discretion.
14 *See Heckler*, 470 U.S. 821.

15 **C. Excessive Contributions**

16 The Act prohibits candidates from accepting contributions in excess of the Act's
17 limitations. 52 U.S.C. § 30116(f). For the 2013-2014 election cycle, individuals were permitted
18 to contribute a maximum of \$2,600 to a candidate or candidate committee per election.
19 52 U.S.C. § 30116(a)(1)(A).

20 The Complaint asserts that the Committee violated the Act by accepting three allegedly
21 excessive contributions, Compl. at 2, since the Committee's original 2013 Year-End Report
22 disclosed three \$10,000 contributions from three separate individuals: Alice Baker on November

22, 2013; Dwight Kadar on December 22, 2013; and Michael Rusing on October 1, 2013. *See* Kwasman for Congress, 2013 Year-End Report at 5, 13, 21 (Feb. 1, 2014).

Three days after filing this report, however, the Committee filed an amended 2013 Year-End Report reducing each of these three contributions to only \$1,000. *See* Kwasman for Congress, Amended 2013 Year-End Report at 6, 14, 23 (Feb. 4, 2014). The amended report also disclosed a \$1,000 disbursement to Michael Rusing on October 1, 2013, with no purpose listed. *Id.* at 47. The committee disclosed no refunds of the \$10,000 contributions. Thus, although the Committee's Response does not explain the discrepancy, it appears that the initial disclosures of the \$10,000 contributions may simply have been a typographical error, as the amended report reduces all three contributions to permissible amounts without disclosing refunds to the contributors. Accordingly, the Commission dismisses the allegation that the Committee accepted excessive contributions. *See Heckler*, 470 U.S. 821.

D. Use of State Campaign Assets

The Complaint further alleges that Kwasman used assets from his state legislative campaign to support his federal congressional campaign. Compl. at 3. Federal candidates and officeholders, or entities directly or indirectly established, financed, maintained or controlled by them, are prohibited from soliciting, receiving, directing, transferring, or spending funds that do not comply with the limitations and prohibitions of the Act. 52 U.S.C. § 30125(e)(1)(A). In addition, Commission regulations state that transfers of funds or assets from a candidate's campaign account for a non-federal election to his or her principal campaign committee for a federal election are prohibited. 11 C.F.R. § 110.3(d).

In support of its allegations that Kwasman used state campaign funds to support his federal campaign, the Complaint attaches two photographs (the first two found in Appendix C to

1 the Complaint), which show the candidate and supporters next to or holding signs. In the first
2 photograph, only Kwasman's name is visible on a sign; in the second photograph, the signs read
3 "Adam Kwasman State Representative." Compl., Appendix C. There is no other information
4 before the Commission about the events or state campaign assets that Kwasman's federal
5 campaign may have used. The Response asserts that the Complaint fails to identify any events at
6 which Kwasman may have used assets paid for by his state legislative campaign committee to
7 support his congressional campaign, and also fails to identify where and when the photographs
8 referring to Kwasman's service as a state representative were taken. Resp. at 3.

9 Based on the available information in the record before the Commission, the only
10 apparent potential use of state campaign resources was the signs referring to Kwasman as a state
11 representative, the value of which is likely minimal.² In light of the lack of information
12 concerning these events and other state campaign assets that may have been used by Kwasman's
13 federal committee and the likely *de minimis* value of the campaign signs, the Commission also
14 dismisses this allegation. See *Heckler*, 470 U.S. 821.

15 **E. Disclaimer**

16 Finally, the Complaint alleges that Kwasman and volunteers for the Committee
17 distributed campaign materials that included the disclaimer "Paid for by Kwasman for Congress,
18 Exploratory," a committee not registered with the Commission. Compl. at 3. The Complaint
19 references campaign materials attached to the Complaint in Appendix C. The third and fourth
20 photographs in Appendix C are federal campaign materials referencing Kwasman's
21 congressional candidacy, but only the fourth photograph, a sign describing Kwasman's

² Kwasman for Arizona's disclosure reports do not disclose significant contributions or expenditures that would, on their face, raise questions about whether Kwasman used state committee funds for his federal campaign. See <http://www.azsos.gov/cfs/FilerDetail.aspx?id=201200127>.

1 accomplishments and views, contains the legible disclaimer, "Paid for by Kwasman for
2 Congress, Exploratory." Compl., Appendix C. The Response explains that "Kwasman for
3 Congress, Exploratory" was a 527 organization organized for Kwasman's testing-the-waters
4 activities and was not required to register with the Commission. Resp. at 4.

5 Under the Act, all "public communications"³ by a political committee and all public
6 communications by any person that expressly advocate the election or defeat of a clearly
7 identified federal candidate must contain a disclaimer. 52 U.S.C. § 30120; 11 C.F.R.

8 § 110.11(a)(2). A communication that is paid for and authorized by a candidate or candidate's
9 committee must state that it is paid for by the authorized committee. 11 C.F.R. § 110.11(b)(1).

10 A communication that is authorized by a candidate, the candidate's authorized committee, or an
11 agent of either, but is paid for by any other person, must state that the communication is paid for
12 by another person and is authorized by such candidate, committee, or agent. *Id.* § 110.11(b)(2).

13 The Commission dismisses this allegation because the campaign materials at issue here
14 contained a partial disclaimer stating that Kwasman for Congress, Exploratory — which the
15 Response identifies as a registered 527 organization — paid for the communications, and it is
16 unlikely that the public was misled about whether the candidate authorized the communication.
17 *See e.g.*, MUR 6683 (Fort Bend County Democratic Party) (dismissing disclaimer violation
18 where disclaimer was incomplete but contained some information identifying the payor); MUR
19 6633 (Republican Majority Campaign PAC) (same); MUR 6438 (Arthur B. Robinson) (same);
20 MUR 6270 (Rand Paul Committee) (same); MUR 6278 (Segers) (same); *see also Heckler*, 470
21 U.S. 821.

³ A "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26.