

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 6818
DATE COMPLAINT FILED: May 9, 2014
DATE OF NOTIFICATION: May 16, 2014
LAST RESPONSE RECEIVED: June 27, 2014
DATE OF ACTIVATION: September 4, 2014

ELECTION CYCLE: 2014
EXPIRATION OF SOL: Earliest: Oct. 1, 2018
Latest: Jan. 31, 2020

COMPLAINANT:

Erin Clements

RESPONDENTS:

Allen Weh
Allen Weh for Senate and Rebecca Sanchez in her
official capacity as Treasurer
Diego Espinoza
CSI Aviation Services, Inc.
Jerry W. Bettman

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)(i)
52 U.S.C. § 30102(e)(1)
52 U.S.C. § 30103(a)
52 U.S.C. § 30104(a), (b)
52 U.S.C. § 30116(a)(1)(A)
52 U.S.C. § 30116(f)
52 U.S.C. § 30118
52 U.S.C. § 30125(e)
11 C.F.R. § 100.52(d)(1)
11 C.F.R. § 100.72(a)
11 C.F.R. § 100.131(a)
11 C.F.R. § 101.2(b)
11 C.F.R. § 101.3
11 C.F.R. § 104.3(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Allen Weh, a candidate for the United States Senate in New Mexico in 2014, violated the Federal Election Campaign Act of 1971, as amended, by failing to timely file a Statement of Candidacy, and that his authorized committee, Allen Weh for Senate and Rebecca Sanchez in her official capacity as Treasurer (the "Committee"), failed to timely file its first disclosure report, failed to properly itemize payroll expenditures, and accepted corporate contributions from Weh's company, CSI Aviation, Inc., and an excessive contribution from Jerry W. Bettman. Respondents deny these allegations.¹

Based on the available information, we recommend that the Commission exercise prosecutorial discretion and dismiss with caution allegations the Committee violated 52 U.S.C. § 30104(b) as to the itemization of payroll expenditures,² find no reason to believe as to the other allegations, and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Alleged Reporting Violations

1. Failure to File Statements and Reports as a Candidate

The Act provides that once an individual achieves candidate status, the candidate must file a Statement of Candidacy within fifteen days and designate a principal campaign committee, which must file its Statement of Organization no later than ten days after it has been designated.³

¹ Respondents are all represented by the same counsel and submitted two joint responses — Response of Allen Weh for Senate and Rebecca Sanchez in her capacity as Treasurer ("Committee Response") and Response of Allen Weh, Diego Espinoza, Jerry W. Bettman and CSI Aviation Services, Inc. ("Consolidated Response"). The Consolidated Response mirrors the Committee Response.

² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

³ 52 U.S.C. §§ 30102(e)(1), 30103(a).

1 Under the Act, an individual becomes a candidate for federal office when his or her
2 campaign either receives in excess of \$5,000 in contributions or makes in excess of \$5,000 in
3 expenditures.⁴ An individual may nevertheless raise or spend more than \$5,000 without
4 triggering candidate status if he or she is engaged in permissible "testing the waters" activities
5 and has not yet decided to pursue office.⁵ While testing the waters, however, an individual may
6 not solicit, receive, or spend funds in connection with an election for federal office unless those
7 funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁶ A
8 committee is required to maintain records of expenditures incurred during the testing the waters
9 period and to disclose those expenditures in its first disclosure report filed with the
10 Commission.⁷ Thereafter, the Act requires a candidate's authorized committee to disclose to the
11 Commission all receipts, expenditures, and disbursements.⁸

12 Weh filed his Statement of Candidacy on January 15, 2014, and the Committee filed its
13 Statement of Organization on January 23, 2014, and its first disclosure report, the 2014 April
14 Quarterly Report, on April 14, 2014. The Complaint alleges that Weh had crossed from testing
15 the waters to candidate status as early as October 2013, and therefore, he did not timely file his
16 Statement of Candidacy and the Committee failed to file a 2013 Year End disclosure report.⁹
17 The Complaint's conclusion that Weh decided to become a candidate earlier than reported relies
18 on several items. It cites a December 5, 2012, online *Roll Call* article that quoted Weh as stating,

⁴ 52 U.S.C. § 30101(2).

⁵ See 11 C.F.R. §§ 100.72(a), 100.131(a).

⁶ *Id.*

⁷ See 11 C.F.R. §§ 101.3, 100.72(a), 100.131(a), 101.2(b), 104.3(a).

⁸ 52 U.S.C. § 30104(a), (b).

⁹ Compl. at 1-2 (May 9, 2014).

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1 "As anybody should do when considering a move like this, you do your homework. . . and gather
2 enough information to make a sound decision."¹⁰ It also contends that information "obtained
3 from GOP member, Mike Nagel," reflects that Weh introduced himself as a candidate for Senate
4 to several attendees at a Republican Party fundraising event in October 2013.¹¹ The
5 Complainant further alleges that she attended an event in December 2013 at which two
6 Republican Party officials, Russell Allen and Caren Lulich, announced that Weh was "certainly
7 in the race for United States Senate."¹² Finally, the Complaint alleges that, as early as October
8 2013, Weh was circulating nominating petitions in three New Mexico counties to get on the
9 ballot.¹³

10 The record here does not support the claim that Weh and the Committee failed to file any
11 report that was due before January 2014. Even if Weh decided to become a candidate for federal
12 office before January 2014 as alleged, the available information does not suggest that his
13 campaign raised or spent \$5,000 prior to January 2014.¹⁴ For example, even attributing the
14 alleged petition drive activity to Weh,¹⁵ the Respondents represent that the records maintained by
15 Weh's friends and family during that period reflect less than \$5,000 in activity,¹⁶ and we are
16 aware of no information suggesting otherwise.

¹⁰ *Id.* at 1 (citing Kyle Trygstad, *New Mexico: Weh Considering 2014 Senate Bid*, ROLL CALL (Dec. 5, 2012), <http://atr.rollcall.com/new-mexico-weh-considering-2014-senate-bid/>).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See 52 U.S.C. § 30101(2).

¹⁵ See 11 C.F.R. §§ 100.72(b)(5), 100.131(b)(5) (action taken by the individual to qualify for the ballot under state law suggests that an individual has decided to become a candidate).

¹⁶ Committee Resp. at 13; Consolidated Resp. at 13.

1 Accordingly, we recommend that the Commission find no reason to believe that Weh
2 violated 52 U.S.C. § 30102(e)(1), or that the Committee violated 52 U.S.C. §§ 30103(a) or
3 30104(a).

4 2. Itemization of Expenditures

5 A candidate's authorized committee must itemize all disbursements, including operating
6 expenditures that exceed \$200 or aggregate to over \$200 when added to other disbursements in
7 the same category made to the same payee during the election cycle.¹⁷ The Complaint alleges
8 that the Committee "hid payroll expenditures" on its 2014 April Quarterly Report by only
9 reporting lump sum disbursements to its payroll vendor, Payroll Company, and failing to
10 properly itemize the individual payroll disbursements for each of its staff members.¹⁸

11 The Committee's original 2014 disclosure reports do not itemize payroll expenditures to
12 individuals. Rather, on each report the Committee disclosed only one lump sum disbursement to
13 Payroll Company for "Salaries" and "Salaries & Fees."¹⁹ In 2014, the Committee disclosed a
14 total of \$285,953 in disbursements to Payroll Company for this purpose. The Committee's
15 campaign manager, Diego Espinoza, submitted a sworn declaration with the two Responses in
16 which he represents that, "As remuneration for my responsibilities as [the Committee's]

¹⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9. Cf. FEC, POLITICAL ACTION COMMITTEES, <http://www.fec.gov/rad/pacs/FederalElectionCommission-RAD-PACs.shtml#disb10> (last visited May 5, 2017) (explaining that a "lump sum paid to the payroll company must be followed by MEMO entries that include the individuals that were the ultimate recipients of the salary payments. . . . Payroll company disbursements and employee MEMO entries are disclosed in the same manner as credit card payments and ultimate recipients. (11 C.F.R. § 104.9)"); Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (addressing disclosure of ultimate payees with respect to credit card payments).

¹⁸ Compl. at 2-3.

¹⁹ This figure represents the sum of all such disclosures made in the Committee's original 2014 April Quarterly, Pre-Primary, July Quarterly, October Quarterly, Pre-General and Post-General Reports filed with the Commission.

1 Campaign Manager, I receive a monthly salary from the Committee.”²⁰ While the Committee
2 itemized disbursements to Espinoza for travel, mileage and advertising expenditures, its original
3 2014 disclosure reports reflected no itemized disbursements for salary payments to Espinoza. In
4 its Response, the Committee denied violating the regulatory requirement to itemize payroll
5 disbursements and asserted that, even though it was not required to, it would be amending its
6 2014 April Quarterly Report to “reflect end-user payroll expenditures made to [Committee] staff
7 during the appropriate reporting period.”²¹

8 On January 4, 2015, the Commission’s Reports Analysis Division (“RAD”) sent Requests
9 for Additional Information (“RFAIs”) to the Committee inviting it to explain its failure to
10 itemize payroll disbursements on the 2014 October Quarterly and Pre-General Election
11 Reports.²² On January 22, 2015, the Committee filed Amended 2014 April, July and October
12 Quarterly, Pre-Primary, Pre-General and Post-General Election Reports, which itemized
13 individual payroll disbursements.

14 Notwithstanding the Committee’s claim that it properly disclosed payroll disbursements,
15 the record reflects that the Committee failed to properly itemize its salary payments to Espinoza
16 and other Committee staff. Instead, the Committee reported lump-sum disbursements to its

²⁰ Decl. of Diego Espinoza ¶ 6 (June 25, 2014) (“Espinoza Decl.”) (attached as Exhibit 6 to the Committee Response and Consolidated Response).

²¹ Committee Resp. at 21-22.

²² See RFAI to Weh for Senate re 2014 October Quarterly Report at 5 (Jan. 4, 2015); RFAI to Weh for Senate re 2014 Pre-General Election Report at 1 (Jan. 4, 2015). 2014 RAD Review and Referral Procedures Standard 11 “Failure to Properly Itemize Disbursements,” states, “Authorized Committees – An RFAI will be sent for each report that does not properly itemize of the total entries but not less than on a supporting disbursement schedule. This will be calculated per line item on the Detailed Summary Page for Authorized Committees....(b) An RFAI will be sent for failure to properly itemize a single disbursement in excess of . (c) An RFAI will be sent for failure to properly itemized disbursements, of entries or of entries which aggregate or more.” 2014 RAD Review and Referral Procedures at 90. The Committee would have ordinarily received RFAIs inviting it to explain its failure to itemize disbursements on its 2014 April Quarterly, July Quarterly, Pre-Primary and Post-General Election Reports, but due to administrative oversight, the letters were not sent for these reports.

1 direct payroll vendor without identifying the individual employees who received salary payments
2 that exceeded \$200 during the cycle, which does not comply with both 11 C.F.R. § 104.3(b)(4)(i)
3 and (vi) requirements for the reporting of disbursements by a candidate's authorized committee.
4 Although the Committee stated in its June 2014 response to the Complaint that it would amend
5 its 2014 April Quarterly Report to reflect payroll payments to Committee staff, the Committee
6 did not amend any of its reports until January 22, 2015.

7 Nevertheless, in view of the Committee's corrective amendments shortly after receiving
8 RFAs that specifically addressed the requirement to itemized payroll disbursements,²³ we
9 recommend that the Commission exercise prosecutorial discretion and dismiss with caution the
10 Committee's violations of 52 U.S.C. § 30104(b) for failing to properly itemize payroll
11 expenditures.²⁴

12 **B. Alleged Corporate Contribution**

13 The Act prohibits corporations from making any contributions in connection with a
14 federal election.²⁵ Candidates and political committees are prohibited from knowingly accepting
15 corporate contributions, and corporate officers and directors are prohibited from consenting to
16 corporate contributions.²⁶ The Act defines a "contribution" as "any gift, subscription, loan,

²³ The Committee's failure to properly itemize payroll expenditures met the RAD Referral threshold for referral to the Alternative Dispute Resolution Office for the Committee's 2014 April, July and October Quarterly reports, but after the Committee's corrective action, its reporting violations are no longer referable. See 2014 RAD Review and Referral Procedures at 99.

²⁴ See, e.g., MUR 6576 (McLeod) F&LA at 12-13 (dismissing committee's failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject and before the election). Although the Commission did not caution the McLeod Committee, we believe that the Weh Committee should be cautioned here where no detailed salary information was available on the Committee's disclosure reports until after the 2014 general election.

²⁵ 52 U.S.C. § 30118.

²⁶ *Id.*

1 advance, or deposit of money or anything of value made by any persons for the purpose of
2 influencing any election for Federal Office.”²⁷ An “in-kind contribution” includes “anything of
3 value.”²⁸

4 The Complaint alleges that Weh’s corporation, CSI Aviation, Inc., made prohibited in-
5 kind contributions to the Committee by paying the salary of Diego Espinoza, Weh’s campaign
6 manager, who is also an employee of CSI.²⁹ The complaint also asserts that Espinoza is “very
7 likely handling campaign business” using CSI’s corporate offices.³⁰ While Respondents admit
8 that Diego Espinoza is both a part-time employee of CSI and Weh’s campaign manager, they
9 deny the allegation that CSI is making any contribution to the campaign, and provide a sworn
10 declaration from Diego Espinoza in support of their contention.³¹

11 In his statement, Espinoza asserts that he is a site supervisor at CSI who went from full to
12 part-time status in January 2014 to work for the Committee.³² He represents that he accepted a
13 50% salary reduction from his \$55,000 full-time status annual salary and reduced his hours at
14 CSI to 15-20 per week.³³ Espinoza further declares that his duties for the Committee involve
15 overseeing fundraising, advertising, polling, policy, outreach, strategy and administrative
16 operations as well as managing the campaign’s day-to-day activities and conduct of its

²⁷ *Id.* § 30101(8)(A)(i).

²⁸ 11 C.F.R. § 100.52(d)(1).

²⁹ Compl. at 2.

³⁰ *Id.*

³¹ Committee Resp. at 14-19, Ex. 6; Consolidated Resp. at 14-19, Ex. 6.

³² Espinoza Decl. ¶¶ 1-2.

³³ *Id.* ¶ 3. Espinoza asserts that the change in hours and reduction in salary and workload are memorialized in administrative documents in the possession of CSI’s personnel department. *Id.*

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1 employees, contractors, vendors and volunteers. His work at CSI involves supervising CSI sub-
2 contractors, overseeing negotiations with vendors, and managing daily operations in its special
3 contracts division.³⁴ Espinoza asserts he is paid a separate salary by the Committee for his work
4 as campaign manager.³⁵ The Committee's amended disclosure reports show that it paid
5 Espinoza a salary of \$1,500 twice a month from February 28, 2014 through October 31, 2014, a
6 monthly salary that is slightly more than the \$2,292 reduced monthly salary that he received
7 from CSI. Espinoza avers that none of the salary and benefits for which he is paid by CSI is for
8 Committee work, and that he refrains from using CSI resources or performing any political
9 activities related to the campaign while working in CSI offices or on CSI time.³⁶

10 The available information does not suggest that Espinoza was paid by CSI to perform
11 work for the Committee or utilized CSI resources for the benefit of the campaign. Other than the
12 fact that Espinoza worked for both entities at the same time, as the Respondents admit, the
13 Complaint does not offer any facts that tend to undermine Espinoza's sworn statement
14 concerning the division of his responsibilities between the two entities and their division of
15 payment for his services. Thus, we recommend that the Commission find no reason to believe
16 that CSI Aviation Services, Inc., Diego Espinoza, or the Committee violated 52 U.S.C. § 30118.

17 **C. Alleged Excessive Contribution**

18 During the 2014 election cycle, the Act limited the contributions by an individual person
19 to a candidate or his authorized committee to \$2,600 per election.³⁷ No candidate or political

³⁴ *Id.* ¶¶ 2, 5.

³⁵ *Id.* ¶ 6.

³⁶ *Id.* ¶¶ 4, 7, 8.

³⁷ 52 U.S.C. § 30116(a)(1)(A). *See* 2013-14 Campaign Cycle Contribution Limits, <http://www.fec.gov/info/contriblimitschart1314.pdf>. (last visited May 5, 2017).

1 committee may knowingly accept a contribution in excess of the limits set forth in section
2 30116.³⁸ The Complaint alleges that Jerry W. Bettman made a contribution of \$15,000 to the
3 Committee on January 23, 2014, an amount in excess of the contribution limit, which the
4 Committee failed to either refund or properly report.³⁹

5 The available information indicates that Bettman did not make an excessive contribution
6 to the Committee. The Committee's 2014 April Quarterly Report reflects a receipt of \$5,000
7 from Bettman for the primary election on January 23, 2014, \$2,400 of which was redesignated to
8 the general election.⁴⁰ The Committee contends that Bettman made his contribution in the form
9 of a \$5,000 personal check that was not designated for either the 2014 primary or 2014 general
10 election.⁴¹ The Committee presumptively designated \$2,600 to the primary election and \$2,400
11 to the general election, as permitted under 11 C.F.R. § 110.1(b), and notified Bettman of its
12 action, offering him the option of receiving a refund of the \$2,400 if he so elected.⁴²

13 Because the available information suggests that the Committee received a single \$5,000
14 contribution and followed the proper procedures for a timely, presumptive redesignation of a
15 potentially excessive contribution,⁴³ we recommend that the Commission find no reason to
16 believe that Jerry W. Bettman made, or the Committee accepted, an excessive contribution, in
17 violation of 52 U.S.C. §§ 30116(a)(1)(A) or 30116(f).

³⁸ *Id.* § 30116(f).

³⁹ Compl. at 3.

⁴⁰ Committee Resp. at 25, Ex. 10 (2014 April Quarterly Report at 9). Weh was a candidate in the June 3, 2014 primary election and the November 4, 2014 general election.

⁴¹ *Id.* at 24-25, Ex. 8 (Decl. of Rebecca Sanchez ¶ 6 (June 26, 2014)).

⁴² *Id.* at 25-26, Ex. 11 (Committee redesignation letter to Bettman (Jan. 23, 2014)).

⁴³ See 11 C.F.R. § 110.1(b).


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III. RECOMMENDATIONS

- (1) Find no reason to believe that Allen Weh violated 52 U.S.C. § 30102(e)(1) by failing to timely file a Statement of Candidacy;
- (2) Find no reason to believe that Allen Weh for Senate and Rebecca Sanchez in her official capacity as Treasurer violated 52 U.S.C. §§ 30103(a) or 30104(a) by failing to timely file a Statement of Organization or file a 2013 Year End Report;
- (3) Dismiss with caution the allegation that Allen Weh for Senate and Rebecca Sanchez in her official capacity as Treasurer violated 52 U.S.C. § 30104(b) by failing to properly itemize payroll expenditures;
- (4) Find no reason to believe that Allen Weh for Senate and Rebecca Sanchez in her official capacity as Treasurer violated 52 U.S.C. § 30118 by receiving a corporate contribution;
- (5) Find no reason to believe that CSI Aviation Services, Inc. or Diego Espinoza violated 52 U.S.C. § 30118 by making a corporate contribution;
- (6) Find no reason to believe that Allen Weh for Senate and Rebecca Sanchez in her official capacity as Treasurer violated 52 U.S.C. § 30116(f) by receiving excessive contributions;
- (7) Find no reason to believe that Jerry W. Bettman violated 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution;
- (8) Approve the attached Factual and Legal Analysis;
- (9) Approve the appropriate letters; and
- (10) Close the file.

Lisa J. Stevenson
Acting General Counsel

5/5/2017
Date


Kathleen M. Guith
Associate General Counsel
For Enforcement

Mark Allen

Mark Allen
Assistant General Counsel

Camilla Jackson Jones

Camilla Jackson Jones
Attorney

Attachment:
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Allen Weh **MUR: 6818**
Allen Weh for Senate and Rebecca Sanchez
in her official capacity as Treasurer
CSI Aviation, Inc.
Diego Espinoza
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6 **I. INTRODUCTION**

7 The Complaint in this matter alleges that Allen Weh, a candidate for the United States
8 Senate in New Mexico in 2014, violated the Federal Election Campaign Act of 1971, as
9 amended, by failing to timely file a Statement of Candidacy, and that his authorized committee,
10 Allen Weh for Senate and Rebecca Sanchez in her official capacity as Treasurer (the
11 "Committee"), failed to timely file its first disclosure report, failed to properly itemize payroll
12 expenditures, and accepted corporate contributions from Weh's company, CSI Aviation, Inc.,
13 and an excessive contribution from Jerry W. Bettman. Respondents deny these allegations.¹

14 Based on the available information, the Commission exercises prosecutorial discretion
15 and dismisses with caution allegations the Committee violated 52 U.S.C. § 30104(b) as to the
16 itemization of payroll expenditures,² finds no reason to believe as to the other allegations, and
17 closes the file.

¹ Respondents are all represented by the same counsel and submitted two joint responses — Response of Allen Weh for Senate and Rebecca Sanchez in her capacity as Treasurer ("Committee Response") and Response of Allen Weh, Diego Espinoza, Jerry W. Bettman and CSI Aviation Services, Inc. ("Consolidated Response"). The Consolidated Response mirrors the Committee Response.

² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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A. Alleged Reporting Violations

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The Act provides that once an individual achieves candidate status, the candidate must file a Statement of Candidacy within fifteen days and designate a principal campaign committee, which must file its Statement of Organization no later than ten days after it has been designated.³

Under the Act, an individual becomes a candidate for federal office when his or her campaign either receives in excess of \$5,000 in contributions or makes in excess of \$5,000 in expenditures.⁴ An individual may nevertheless raise or spend more than \$5,000 without triggering candidate status if he or she is engaged in permissible “testing the waters” activities and has not yet decided to pursue office.⁵ While testing the waters, however, an individual may not solicit, receive, or spend funds in connection with an election for federal office unless those funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁶ A committee is required to maintain records of expenditures incurred during the testing the waters period and to disclose those expenditures in its first disclosure report filed with the Commission.⁷ Thereafter, the Act requires a candidate’s authorized committee to disclose to the Commission all receipts, expenditures, and disbursements.⁸

³ 52 U.S.C. §§ 30102(e)(1), 30103(a).

⁴ 52 U.S.C. § 30101(2).

⁵ See 11 C.F.R. §§ 100.72(a), 100.131(a).

⁶ *Id.*

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1 Weh filed his Statement of Candidacy on January 15, 2014, and the Committee filed its
2 Statement of Organization on January 23, 2014, and its first disclosure report, the 2014 April
3 Quarterly Report, on April 14, 2014. The Complaint alleges that Weh had crossed from testing
4 the waters to candidate status as early as October 2013, and therefore, he did not timely file his
5 Statement of Candidacy and the Committee failed to file a 2013 Year End disclosure report.⁹

6 The Complaint's conclusion that Weh decided to become a candidate earlier than reported relies
7 on several items. It cites a December 5, 2012, online *Roll Call* article that quoted Weh as stating,
8 "As anybody should do when considering a move like this, you do your homework. . . and gather
9 enough information to make a sound decision."¹⁰ It also contends that information "obtained
10 from GOP member, Mike Nagel," reflects that Weh introduced himself as a candidate for Senate
11 to several attendees at a Republican Party fundraising event in October 2013.¹¹ The
12 Complainant further alleges that she attended an event in December 2013 at which two
13 Republican Party officials, Russell Allen and Caren Lulich, announced that Weh was "certainly
14 in the race for United States Senate."¹² Finally, the Complaint alleges that, as early as October
15 2013, Weh was circulating nominating petitions in three New Mexico counties to get on the
16 ballot.¹³

17 The record here does not support the claim that Weh and the Committee failed to file any
18 report that was due before January 2014. Even if Weh decided to become a candidate for federal

⁹ Compl. at 1-2 (May 9, 2014).

¹⁰ *Id.* at 1 (citing Kyle Trygstad, *New Mexico: Weh Considering 2014 Senate Bid*, ROLL CALL (Dec. 5, 2012), <http://atr.rollcall.com/new-mexico-weh-considering-2014-senate-bid/>).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

1 office before January 2014 as alleged, the available information does not suggest that his
2 campaign raised or spent \$5,000 prior to January 2014.¹⁴ For example, even attributing the
3 alleged petition drive activity to Weh,¹⁵ the Respondents represent that the records maintained by
4 Weh's friends and family during that period reflect less than \$5,000 in activity,¹⁶ and the
5 Commission is aware of no information suggesting otherwise.

6 Accordingly, the Commission finds no reason to believe that Weh violated 52 U.S.C.
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8 **2. Itemization of Expenditures**

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10 expenditures that exceed \$200 or aggregate to over \$200 when added to other disbursements in
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¹⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9. Cf. FEC, POLITICAL ACTION COMMITTEES, <http://www.fec.gov/rad/pacs/FederalElectionCommission-RAD-PACs.shtml#disb10> (last visited May 5, 2017) (explaining that a "lump sum paid to the payroll company must be followed by MEMO entries that include the individuals that were the ultimate recipients of the salary payments. . . . Payroll company disbursements and employee MEMO entries are disclosed in the same manner as credit card payments and ultimate recipients. (11 C.F.R. § 104.9)"); Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (addressing disclosure of ultimate payees with respect to credit card payments).

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2 individuals. Rather, on each report the Committee disclosed only one lump sum disbursement to
3 Payroll Company for "Salaries" and "Salaries & Fees."¹⁹ In 2014, the Committee disclosed a
4 total of \$285,953 in disbursements to Payroll Company for this purpose. The Committee's
5 campaign manager, Diego Espinoza, submitted a sworn declaration with the two Responses in
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²⁰ Decl. of Diego Espinoza ¶ 6 (June 25, 2014) ("Espinoza Decl.") (attached as Exhibit 6 to the Committee Response and Consolidated Response).

²¹ Committee Resp. at 21-22.

²² See RFAI to Weh for Senate re 2014 October Quarterly Report at 5 (Jan. 4, 2015); RFAI to Weh for Senate re 2014 Pre-General Election Report at 1 (Jan. 4, 2015).

1 Quarterly, Pre-Primary, Pre-General and Post-General Election Reports, which itemized
2 individual payroll disbursements.

3 Notwithstanding the Committee's claim that it properly disclosed payroll disbursements,
4 the record reflects that the Committee failed to properly itemize its salary payments to Espinoza
5 and other Committee staff. Instead, the Committee reported lump-sum disbursements to its
6 direct payroll vendor without identifying the individual employees who received salary payments
7 that exceeded \$200 during the cycle, which does not comply with both 11 C.F.R. § 104.3(b)(4)(i)
8 and (vi) requirements for the reporting of disbursements by a candidate's authorized committee.
9 Although the Committee stated in its June 2014 response to the Complaint that it would amend
10 its 2014 April Quarterly Report to reflect payroll payments to Committee staff, the Committee
11 did not amend any of its reports until January 22, 2015.

12 Nevertheless, in view of the Committee's corrective amendments shortly after receiving
13 RFAs that specifically addressed the requirement to itemized payroll disbursements, the
14 Commission exercises prosecutorial discretion and dismisses with caution the Committee's
15 violations of 52 U.S.C. § 30104(b) for failing to properly itemize payroll expenditures.²³

16 **B. Alleged Corporate Contribution**

17 The Act prohibits corporations from making any contributions in connection with a
18 federal election.²⁴ Candidates and political committees are prohibited from knowingly accepting
19 corporate contributions, and corporate officers and directors are prohibited from consenting to

²³ See, e.g., MUR 6576 (McLeod) F&LA at 12-13 (dismissing committee's failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject and before the election). Although the Commission did not caution the McLeod Committee, the Commission cautions the Committee here because no detailed salary information was available on the Committee's disclosure reports until after the 2014 general election.

²⁴ 52 U.S.C. § 30118.

1 corporate contributions.²⁵ The Act defines a “contribution” as “any gift, subscription, loan,
2 advance, or deposit of money or anything of value made by any persons for the purpose of
3 influencing any election for Federal Office.”²⁶ An “in-kind contribution” includes “anything of
4 value.”²⁷

5 The Complaint alleges that Weh’s corporation, CSI Aviation, Inc., made prohibited in-
6 kind contributions to the Committee by paying the salary of Diego Espinoza, Weh’s campaign
7 manager, who is also an employee of CSI.²⁸ The complaint also asserts that Espinoza is “very
8 likely handling campaign business” using CSI’s corporate offices.²⁹ While Respondents admit
9 that Diego Espinoza is both a part-time employee of CSI and Weh’s campaign manager, they
10 deny the allegation that CSI is making any contribution to the campaign, and provide a sworn
11 declaration from Diego Espinoza in support of their contention.³⁰

12 In his statement, Espinoza asserts that he is a site supervisor at CSI who went from full to
13 part-time status in January 2014 to work for the Committee.³¹ He represents that he accepted a
14 50% salary reduction from his \$55,000 full-time status annual salary and reduced his hours at
15 CSI to 15-20 per week.³² Espinoza further declares that his duties for the Committee involve

²⁵ *Id.*

²⁶ *Id.* § 30101(8)(A)(i).

²⁷ 11 C.F.R. § 100.52(d)(1).

²⁸ Compl. at 2.

²⁹ *Id.*

³⁰ Committee Resp. at 14-19, Ex. 6; Consolidated Resp. at 14-19, Ex. 6.

³¹ Espinoza Decl. ¶¶ 1-2.

³² *Id.* ¶ 3. Espinoza asserts that the change in hours and reduction in salary and workload are memorialized in administrative documents in the possession of CSI’s personnel department. *Id.*

1 overseeing fundraising, advertising, polling, policy, outreach, strategy and administrative
2 operations as well as managing the campaign's day-to-day activities and conduct of its
3 employees, contractors, vendors and volunteers. His work at CSI involves supervising CSI sub-
4 contractors, overseeing negotiations with vendors, and managing daily operations in its special
5 contracts division.³³ Espinoza asserts he is paid a separate salary by the Committee for his work
6 as campaign manager.³⁴ The Committee's amended disclosure reports show that it paid
7 Espinoza a salary of \$1,500 twice a month from February 28, 2014 through October 31, 2014, a
8 monthly salary that is slightly more than the \$2,292 reduced monthly salary that he received
9 from CSI. Espinoza avers that none of the salary and benefits for which he is paid by CSI is for
10 Committee work, and that he refrains from using CSI resources or performing any political
11 activities related to the campaign while working in CSI offices or on CSI time.³⁵

12 The available information does not suggest that Espinoza was paid by CSI to perform
13 work for the Committee or utilized CSI resources for the benefit of the campaign. Other than the
14 fact that Espinoza worked for both entities at the same time, as the Respondents admit, the
15 Complaint does not offer any facts that tend to undermine Espinoza's sworn statement
16 concerning the division of his responsibilities between the two entities and their division of
17 payment for his services. Thus, the Commission finds no reason to believe that CSI Aviation
18 Services, Inc., Diego Espinoza, or the Committee violated 52 U.S.C. § 30118.

³³ *Id.* ¶¶ 2, 5.

³⁴ *Id.* ¶ 6.

³⁵ *Id.* ¶¶ 4, 7, 8.

C. Alleged Excessive Contribution

During the 2014 election cycle, the Act limited the contributions by an individual person to a candidate or his authorized committee to \$2,600 per election.³⁶ No candidate or political committee may knowingly accept a contribution in excess of the limits set forth in section 30116.³⁷ The Complaint alleges that Jerry W. Bettman made a contribution of \$15,000 to the Committee on January 23, 2014, an amount in excess of the contribution limit, which the Committee failed to either refund or properly report.³⁸

The available information indicates that Bettman did not make an excessive contribution to the Committee. The Committee's 2014 April Quarterly Report reflects a receipt of \$5,000 from Bettman for the primary election on January 23, 2014, \$2,400 of which was redesignated to the general election.³⁹ The Committee contends that Bettman made his contribution in the form of a \$5,000 personal check that was not designated for either the 2014 primary or 2014 general election.⁴⁰ The Committee presumptively designated \$2,600 to the primary election and \$2,400 to the general election, as permitted under 11 C.F.R. § 110.1(b), and notified Bettman of its action, offering him the option of receiving a refund of the \$2,400 if he so elected.⁴¹

Because the available information suggests that the Committee received a single \$5,000 contribution and followed the proper procedures for a timely, presumptive redesignation of a

³⁶ 52 U.S.C. § 30116(a)(1)(A). See 2013-14 Campaign Cycle Contribution Limits, <http://www.fec.gov/info/contriblimitschart1314.pdf>. (last visited May 5, 2017).

³⁷ *Id.* § 30116(f).

³⁸ Compl. at 3.

³⁹ Committee Resp. at 25, Ex. 10 (2014 April Quarterly Report at 9). Weh was a candidate in the June 3, 2014 primary election and the November 4, 2014 general election.

⁴⁰ *Id.* at 24-25, Ex. 8 (Decl. of Rebecca Sanchez ¶ 6 (June 26, 2014)).

⁴¹ *Id.* at 25-26, Ex. 11 (Committee redesignation letter to Bettman (Jan. 23, 2014)).

- 1 potentially excessive contribution,⁴² the Commission finds no reason to believe that Jerry W.
- 2 Bettman made, or the Committee accepted, an excessive contribution, in violation of 52 U.S.C.
- 3 §§ 30116(a)(1)(A) or 30116(f).

⁴² See 11 C.F.R. § 110.1(b).