

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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CITIZENS FOR RESPONSIBILITY AND )  
 ETHICS IN WASHINGTON and )  
 MELANIE SLOAN, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 FEDERAL ELECTION COMMISSION, )  
 )  
 Defendant. )

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No. 1:10-cv-01350-RMC

**FEC EXHIBIT 1**



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FAX (202-588-5020) and CERTIFIED MAIL**

**AUG 24 2010**

Melanie Sloan  
Executive Director  
Citizens for Responsibility and Ethics in Washington  
1400 Eye St, N.W., Suite 450  
Washington, D.C. 20005

RE: MUR 5908

Dear Ms. Sloan:

On July 23, 2010, you were informed that the Commission had closed the file in this matter. Enclosed, please find a Statement of Reasons issued by the Commission to explain the basis for its decision. If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at 202-694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler".

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Statement of Reasons



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	MUR 5908
Duncan Hunter;	)	
Hunter for President, Inc. and Bruce Young, in his	)	
official capacity as Treasurer;	)	
Peace through Strength PAC and Meredith G. Kelley, in	)	
her official capacity as Treasurer	)	

**STATEMENT OF REASONS**

**CHAIRMAN MATTHEW S. PETERSEN AND COMMISSIONERS CAROLINE C. HUNTER, DONALD F. McGAHN II, STEVEN T. WALTHER AND ELLEN L. WEINTRAUB**

**I. INTRODUCTION**

This matter arises out of a complaint alleging that former Congressman Duncan Hunter, Peace Through Strength Political Action Committee and Meredith G. Kelley, in her official capacity as Treasurer (“PTS PAC”), and Hunter for President, Inc. and Bruce Young, in his official capacity as Treasurer (the “Hunter Committee”) (collectively, “Respondents”), violated the Federal Election Campaign Act of 1971, as amended, (“FECA” or the “Act”). The Complaint alleges that, during approximately the same time that Congressman Hunter was testing the waters for a potential presidential bid, PTS PAC paid for, and the Hunter Committee accepted, in-kind contributions in the form of expenditures for Hunter’s presidential campaign travel activities and television advertisements that exceeded the Act’s contribution limits. Additionally, the Complaint alleges that Congressman Hunter and the Hunter Committee failed to file a Statement of Candidacy, Statement of Organization and disclosure reports in a timely manner, as required by the Act.

On January 28, 2009, the Federal Election Commission found reason to believe that PTS PAC made excessive in-kind contributions to the Hunter Committee, in violation of 2 U.S.C. § 441a, and that the Hunter Committee accepted and failed to report those excessive in-kind contributions, in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 100.72 and 100.131. The Commission also found reason to believe that Congressman Hunter and the Hunter Committee failed to timely file a Statement of Candidacy, Statement of Organization and disclosure reports, as required by 2 U.S.C. §§ 432(e)(1), 433(a) and 434(a)(3), respectively, and authorized an investigation of Respondents’ potential violations of the Act. However, at that time, there was

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insufficient basis to find reason to believe that the television advertisements paid for by PTS PAC were related to Hunter's presidential election campaign, thereby constituting excessive contributions to the Hunter Committee, and the Commission voted to take no action as to those allegations. PTS PAC Factual and Legal Analysis at 6-7.

The Commission's investigation into the remaining issues has concluded. The Commission has determined that there is insufficient evidence to establish whether there is probable cause to believe that Congressman Hunter became a candidate before January 2007, or whether travel disbursements by PTS PAC constituted in-kind contributions to the Hunter Committee. In addition, there is insufficient evidence to conclude whether Congressman Hunter failed to timely file his Statement of Candidacy. Moreover, the Commission notes that the Hunter Committee filed its Statement of Organization and disclosure reports in a timely manner, and all of the travel expenses at issue were publicly disclosed on PTS PAC's disclosure reports.

Even if the investigation had established a violation of the Act, given the relatively small amount of the disbursements at issue, the evidence suggesting that the disbursements may have been legitimate PTS PAC expenses, the fact that the Statement of Candidacy was filed, at most, only three-days late and the timely filing of the Hunter Committee's Statement of Organization and disclosure reports, the Commission voted to exercise its prosecutorial discretion and take no further action in this matter and close the file.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Factual Background**

Duncan Hunter was a member of Congress representing California's 52nd Congressional District, and at one time, a candidate for the 2008 presidential election. PTS PAC is a non-connected, multi-candidate political committee established by Hunter as his leadership PAC in 2002, and for which Hunter serves as honorary chairman. PTS PAC's declared mission is to provide financial support to Congressional candidates who espouse President Reagan's views, and to bring public attention to the PAC's views on a number of national public policy issues including national defense, immigration, international trade, energy, and the preservation of religious symbols from judicial interference. MUR 5908, Response of PTS PAC (Apr. 30, 2007) at 1-2. Hunter for President, Inc. is the principal authorized candidate committee for Congressman Hunter's presidential campaign.

In late-2006 through January 2007, Congressman Hunter was testing the waters for a potential presidential bid. During the same period, PTS PAC aired television advertisements in several states, including the so-called "early primary states." These advertisements concerned immigration and national security issues, and featured Duncan Hunter as the narrator. The Commission's investigation did not establish that these advertisements violated the Act. GCR #2 at 3. At the same time, Congressman Hunter traveled to locations around the country. According to Respondents, Hunter undertook this travel in his capacity as honorary chairman of PTS PAC to publicize the PAC's views on public policy issues. See Hunter Affidavit (Ex. 1 to PTS PAC Response). PTS PAC paid for and reported approximately \$10,200 in expenditures

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related to this travel, which Respondents claim was undertaken in connection with PTS PAC's issue advertising campaign.

## **B. Legal Analysis**

### **1. Excessive Contributions**

The Act states that an individual becomes a candidate for federal office, thus triggering the Act's registration and reporting obligations, when his or her campaign either receives \$5,000 in contributions or makes \$5,000 in expenditures. 2 U.S.C. § 431(2). An individual may raise or spend more than \$5,000 without triggering candidate status only if he or she is engaged in permissible "testing the waters" activities and gives no indication that a decision to run has already been made. *See* 11 C.F.R. §§ 100.72(a) and 100.131(a). However, a potential candidate who is testing the waters is still subject to the prohibitions, limitations and reporting requirements of the Act, and must report all campaign-related receipts and disbursements incurred during the testing the waters period once he achieves candidate status. *Id.*

The Act provides that no multicandidate political committee shall make contributions to any candidate and his authorized political committee, which, in the aggregate, exceeds \$5,000 per calendar year, *see* 2 U.S.C. § 441a(a)(2)(A), and no candidate or political committee shall knowingly accept contributions in violation of the limitations and prohibitions of the FECA. 2 U.S.C. § 441a(f).

The Commission's investigation indicates that PTS PAC made approximately \$10,200 in disbursements for travel expenses incurred during approximately the same time that Congressman Hunter was testing the waters for his presidential campaign. Specifically, between the months of October 2006 and January 2007, Congressman Hunter made six trips where he was involved in events and where he made public statements regarding issues of longstanding concern to PTS PAC. These disbursements were paid entirely by PTS PAC. PTS PAC is subject to a maximum contribution limit of \$5,000. Therefore, if any of the disbursements at issue were on behalf of the Hunter Committee, they would have resulted in up to \$10,200 in in-kind contributions that were not reported, of which up to \$5,200 would have been excessive. On the other hand, if the disbursements were made solely on behalf of PTS PAC, then no in-kind contribution would have resulted.

Nothing revealed in the Commission's investigation contradicts the conclusion that the travel disbursements advanced PTS PAC's core mission. The Commission notes further that any disbursements benefitting both the presidential campaign and PTS PAC would have been allocable between the two committees. Even if one assumes that PTS PAC and the Hunter Committee benefitted equally from the disbursements, such an allocation would reduce the amount of potentially excessive contributions to just over \$100. In light of the relatively small amount potentially in violation, the Commission voted to exercise its prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831 (1985), and take no further action as to the allegations regarding excessive in-kind contributions.

## 2. Reporting Violations

The Act provides that a political committee must file reports of all receipts and disbursements, including contributions from other political committees. *See* 2 U.S.C. § 434(a) & (b). Once an individual achieves candidate status by raising or spending more than \$5,000 and engaging in activities indicating that he or she has decided to run for a particular office, the candidate and his committee are subject to the registration and reporting requirements of the Act.

Within fifteen days of becoming a candidate, the individual must file a Statement of Candidacy with the Commission that designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization no later than ten days after it has been designated by the candidate, 2 U.S.C. § 433(a), and disclose all reportable amounts from the beginning of the "testing the waters" period in the first financial disclosure report filed by the committee, regardless of the date the funds were received or the payments made. *See* 2 U.S.C. § 434(a)(3), 11 C.F.R. § 104.3(a) and (b). The candidate has a duty to maintain a record of contributions received and expenditures made while "testing the waters," and report those contributions and expenditures once he or she registers his or her principal campaign committee with the Commission. 11 C.F.R. §§ 100.72 and 100.131.

The complaint in this matter alleged that Congressman Hunter may have already decided to become a candidate prior to filing his Statement of Candidacy. The Commission found reason to believe that a violation of the Act may have occurred. However, the subsequent investigation did not produce sufficient evidence to establish that Congressman Hunter failed to timely file his Statement of Candidacy.

Even if the investigation had established that PTS PAC's payments for Congressman Hunter's travel in October 2006 to January 2007 were all in-kind contributions to the Hunter Committee, those payments did not exceed \$5,000 until January 5, 2007 at the earliest.<sup>1</sup> Since a Statement of Candidacy need not be filed until fifteen days after \$5,000 is raised or spent for the campaign, and Congressman Hunter filed his Statement of Candidacy on January 23, 2007, his Statement was, at most, three days late.<sup>2</sup> Moreover, the Hunter Committee timely filed its Statement of Organization on January 25, 2007, and its first disclosure report on April 15, 2007. Finally, the Commission notes that PTS PAC disclosed all of the travel disbursements at issue.

Because Hunter's Statement of Candidacy was filed, at most, only a few days late, any potential violation would be *de minimis*, and accordingly the Commission voted to exercise its prosecutorial discretion and take no further action as to the alleged reporting violations.

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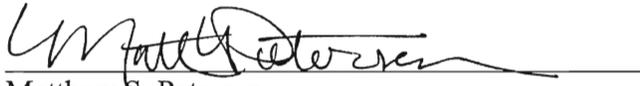
<sup>1</sup> The Hunter Committee did not receive over \$5,000 in direct contributions until January 25, 2007.

<sup>2</sup> If one were to assume that PTS PAC and the Hunter Committee benefitted equally from the disbursements, Hunter would not have received over \$5,000 in contributions until January 12, 2007, in which case Hunter's Statement of Candidacy would have been timely filed.

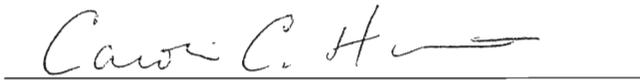
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For the aforementioned reasons, the Commission voted to close the file in this matter.

8/23/10  
Date

  
Matthew S. Petersen  
Chairman

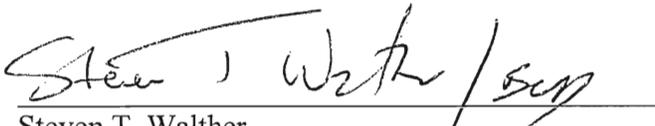
8/23/10  
Date

  
Caroline C. Hunter  
Commissioner

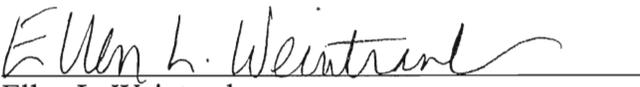
8/23/10  
Date

  
Donald F. McGahn II  
Commissioner

8/23/10  
Date

  
Steven T. Walther  
Commissioner

8/23/10  
Date

  
Ellen L. Weintraub  
Commissioner



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**FAXED**  
 8/24/10

**DATE:** 8/24/10  
**TIME:** \_\_\_\_\_

<b>To:</b>	Name: Melanie Sloan
	Company/Committee: Citizens for Responsibility and Ethics in Washington
	Fax Number: 202-588-5020
	Voice Phone: 202-408-5565

<b>From:</b>	Name: Mark D. Shonkwiler, Asst. GC
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Number of pages (following cover page): 6

**Message:** MUR 5908

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