

LAW FIRM

OLSON

HAGEL &amp;

FISHBURN

LLP

April 9, 2010

**VIA FACSIMILE AND REGULAR MAIL**

Federal Election Commission  
 General Counsel's Office  
 Attn: Jeff S. Jordan  
 999 E Street NW  
 Washington DC 20463

RE: MUR 6256

Dear Mr. Jordan:

Our office has been retained by Michael Babich and Citizens to Elect Michael Babich in connection with the above referenced MUR. An executed Statement of Designation of Counsel was previously provided to your office.

This letter is sent to respond to the complaint which initiated this matter. In summary, my clients have complied with the filing requirements of the Federal Election Campaign Act of 1971, as amended, and therefore deny that any intentional violation of the law or the FEC's regulations has occurred. We respectfully request that the complaint be dismissed.

Relevant facts to this matter are set forth in the attached Declaration of Michael Babich.

The Complaint sets forth four allegations or counts. The overall basis for the allegations is the incorrect assumption that my client had qualified as a "candidate" within the meaning of 11 CFR section 100.3 at an earlier date than the actual date. Under the criteria in section 100.3, Mr. Babich was not a candidate until at least March 5, 2010 when he opened his campaign bank account and set up a Paypal account to collect contributions through his campaign website. Even at that time, he had not received contributions in excess of \$5,000 or made expenditures in excess of \$5,000, or otherwise met the criteria for a "candidate." In any event, the Declaration of Candidacy and Statement of Organization were then timely filed with the FEC on March 15, 2010.

The Complaint also cites to the regulations governing the "testing the waters" exception to the candidate filing requirements and argues my client had met the criteria for becoming a candidate under those rules. However, as the facts clearly show, my client was not collecting funds during the time period in

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Federal Election Commission  
General Counsel's Office  
April 9, 2010  
Page 2

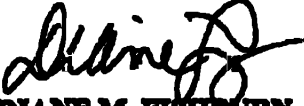
question and was certainly not claiming that he was "testing the waters" within the meaning of the FEC regulations. He was discussing his candidacy as a potential candidacy with voters and potential supporters to assist him in making the final decision to run for the office. He did not affirmatively solicit contributions for his candidacy until he had made the decision to run, opened his bank account and the Committee was registered with the FEC. He did incur some minor expenses as indicated in his Declaration, but these did not meet the \$5,000 threshold in the definition of "candidate." Accordingly, the "testing the waters" rules simply do not apply under these circumstances, and the only question is when he met the definition of "candidate."

The Complaint also references the fact that the website initially included a contribution option for the Study Committee for Sierra Nevada Leadership (Study Committee). As the Declaration explains, the funds raised for this committee were not raised in support of my client's candidacy and will not be used to support his campaign, and in fact, only \$700 was raised from four individuals (including the candidate, his mother and two other individuals) during the short time this option was on the website. As soon as the campaign bank account was open and the committee was registered, the website was revised to delete the contribution option for the Study Committee.

In summary response to the allegations in the Complaint, my clients did not violate the Act by not filing the required paperwork with the FEC at an earlier date. At this time, my clients have filed all of the required paperwork with the FEC in accordance with the definitions and requirements of the Act and FEC regulations. Thus we respectfully request that the Commission dismiss the Complaint.

Very truly yours,

OLSON HAGEL & FISHBURN LLP

  
DIANE M. FISHBURN

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