

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20063**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR 6257**

**DATE COMPLAINT FILED February 25, 2010**

**DATE OF NOTIFICATION March 10, 2010**

**DATE OF LAST RESPONSE April 23, 2010**

**DATE ACTIVATED May 18, 2010**

**EXPIRATION OF SOL**    **Earliest May 6, 2014**  
   **Latest June 22, 2014**

**COMPLAINANT:**

**Robert A Gleason, Jr**

**RESPONDENTS:**

**John Callahan**  
**John Callahan for Congress and John V Filipos,**  
                                 **in his official capacity as treasurer**  
**Friends of John Callahan and John V Filipos,**  
                                 **in his official capacity as treasurer**

**RELEVANT STATUTES  
AND REGULATIONS:**

**2 U S C § 431(2)(A)**  
**2 U S C § 434(b)**  
**2 U S C § 441i(e)**  
**11 C F R § 100 72**  
**11 C F R § 100 131**  
**11 C F R § 110 3(d)**

**INTERNAL REPORTS CHECKED:**

**Disclosure Reports**

**OTHER AGENCIES CHECKED:**

**Pennsylvania Department of State**  
**Disclosure Reports**

**RECEIVED**  
**FEDERAL ELECTION**  
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**I INTRODUCTION**

**In 2009, John Callahan was simultaneously an unopposed candidate for mayor of**  
**Bethlehem, Pennsylvania and a federal candidate for Pennsylvania's 15<sup>th</sup> Congressional District**  
**The complaint in this matter alleges that Callahan's mayoral campaign paid for research used to**  
**determine the feasibility of Callahan running for Congress**

1 Callahan's mayoral committee, Friends of John Callahan and John V Filipos, in his  
2 official capacity as treasurer, ("Mayoral Committee") made two payments totaling \$9,932 to  
3 vendor Stanford Campaigns, the first on May 6, 2009 for \$4,500 and the second on June 22,  
4 2009, for opposition self-research.<sup>1</sup> The complaint alleges that the research was for the purpose  
5 of "testing the waters" in connection with a possible federal candidacy, and therefore  
6 constituted an impermissible in-kind contribution to John Callahan and Callahan for Congress  
7 and John V Filipos, in his official capacity as treasurer ("Federal Committee"). Complaint at 3  
8 The complaint further alleges that the Federal Committee did not disclose the contribution

9 The Respondents deny that the research was "testing the waters" activity related to  
10 Callahan's federal candidacy. Instead, they state that the research commissioned by the  
11 Mayoral Committee had "inherent value" and was "procured, and originally used" by  
12 Callahan's mayoral campaign, and was therefore properly paid for with funds from the Mayoral  
13 Committee. Response at 1, 2. The Respondents also state that when the Federal Committee  
14 eventually utilized the research to further Callahan's federal candidacy in January 2010, it paid  
15 the Mayoral Committee what it believed to be the fair market value of the research and timely  
16 disclosed the disbursement. *Id.* at 2.

17 Based on the complaint, the response, and other available information, we recommend  
18 that the Commission find reason to believe that John Callahan, Friends of John Callahan and  
19 John V Filipos, in his official capacity as treasurer, and John Callahan for Congress and John  
20 V Filipos, in his official capacity as treasurer, violated 2 U S C § 441(e) and 11 C F R  
21 § 110.3(d), and that John Callahan for Congress and John V Filipos, in his official capacity as  
22 treasurer, violated 2 U S C § 434(b)(3) and (4), and authorize an investigation.

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<sup>1</sup> According to their website, Stanford Research, an entity in Austin, Texas, performs a wide variety of campaign-related services, including opposition research, for various organizations, including local, state and Federal candidates. <http://www.oppresearch.com>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Summary**

John Callahan is a candidate for the United States House of Representatives for Pennsylvania's 15<sup>th</sup> Congressional District. Callahan officially announced his federal candidacy on July 27, 2009. He filed his Statement of Candidacy with the Commission on July 31, 2009, and his Federal Committee filed its Statement of Organization on the same day. Before that time he had made no official statements indicating that he had decided to run and raised no funds for a Congressional race.<sup>2</sup> The Federal Committee timely filed its first disclosure report, the 2009 October Quarterly Report, on October 15, 2009.

Callahan is also the current mayor of Bethlehem, Pennsylvania. He was first elected to the office in November 2003, and ran for and won re-election in 2005 and 2009. See <http://www.bethlehem-pa.gov/about/mayor>. He ran unopposed in the 2005 general election, as well as in the May 19, 2009, primary and the November 3, 2009, general election. *Id.*

The complaint alleges that disbursements made by Callahan's Mayoral Committee to Stanford Campaigns funded "testing the waters" activity related to Callahan's federal candidacy, and that "[o]bviously the results of this research were used in determining whether or not Callahan should become a candidate," and therefore constituted an impermissible in-kind contribution to the Federal Committee. In support of the allegation, the complaint points to an October 22, 2009, article ("*Morning Call* article") regarding the opposition research tactics of

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<sup>2</sup> Although Callahan declared his candidacy on July 25, 2009, he reportedly "confirmed his interest" in a Federal candidacy as early as June 24, 2009, when he stated that he was "seriously considering a run." See Lynn Olanoff, *U.S. Rep. Charlie Dent's Campaign Manager Calls for Bethlehem Mayor John Callahan to Drop his Mayoral bid if he runs for Congress* (June 25, 2009), at <http://www.lehighvalleylive.com/bethlehem/index.ssf?base/news-1/12459027875130.xml&coll=3> (last visited August 3, 2010). See also Bill Wichert, *Bethlehem Mayor John Callahan announces Congressional Bid*, (July 25, 2009), at [http://www.lehighvalleylive.com/bethlehem/index.ssf/2009/07/bethlehem\\_mayor\\_john\\_callahan\\_2.html](http://www.lehighvalleylive.com/bethlehem/index.ssf/2009/07/bethlehem_mayor_john_callahan_2.html) (Callahan announces his Congressional candidacy).

1 Callahan and Representative Charlie Dent, the leading Democratic and Republican candidates  
2 for the 15<sup>th</sup> District Congressional seat, respectively Complaint, Attachment 3 The article  
3 reports that, "Callahan, before he even announced a run, hired a Democratic research firm to  
4 find out what criminal background checks in the name John Callahan would dig up, according  
5 to campaign manager Justin Schall " *Id* The article also states that Callahan was curious to  
6 know "what a check of contractors who had done business with the city would reveal " *Id*

7 Respondents deny that the research was "tasting the waters" activity in relation to  
8 Callahan's federal candidacy, and instead maintain that it had "inherent value" to the mayoral  
9 campaign and therefore was properly paid for with funds from the Mayoral Committee  
10 Response at 2 Respondents also maintain that background self-research, unlike a poll, does not  
11 clearly indicate that a candidate is considering a run for office, but "may be used for a variety of  
12 purposes not related to federal elections " *Id* at 3 They also assert that at the time of the  
13 payments, Callahan had made no decision regarding a possible Congressional run and was in  
14 fact still raising funds for his mayoral election *Id* at 2

15 Respondents point out that the *Morning Call* article does not directly quote Callahan's  
16 federal campaign manager, and that he never stated that the research was to benefit the federal  
17 campaign, or even to "taste the waters" for a possible federal candidacy *Id* at 3 Respondents  
18 also state that the federal campaign manager "made clear to the reporter several times that the  
19 research had intrinsic value to the ongoing mayoral campaign and therefore had to be paid for  
20 with funds from the mayoral campaign committee " *Id* In addition, Respondents maintain that  
21 the federal campaign manager informed the reporter that "the federal campaign was not using  
22 the research but that, when and if the mayoral campaign was over, and a potential federal  
23 campaign decided to utilize the research, the federal committee would pay the Mayoral

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1 committee the fair market value for use of the research " *Id* According to Respondents, the  
2 Federal Committee paid \$5,000 to the Mayoral Committee on January 15, 2010 "for the pro-  
3 rated cost to purchase the research," before it used the research *Id* at 4 The Federal  
4 Committee reported that \$5,000 payment on its 2010 April Quarterly Report filed with the  
5 Commission

6 **B. Legal Analysis**

7 At issue is whether the research procured and funded by the Mayoral Committee was for  
8 the use of the mayoral campaign, or if, as alleged, it was intended to be used, and was used, for  
9 the purpose of determining the feasibility of Callahan's federal candidacy If the research was  
10 for the latter, it constituted "testing the waters" activity related to Callahan's federal campaign  
11 and, therefore, could only be paid for with funds subject to the limitations and prohibitions of  
12 the Federal Election Campaign Act of 1976, as amended (the "Act")

13 Under 2 U S C § 431(2)(A), an individual is deemed to be a "candidate" when  
14 campaign activity exceeds \$5,000 in either contributions or expenditures However, money  
15 raised and spent solely to "test the waters," or to determine the feasibility of a federal  
16 candidacy, does not count towards this dollar threshold until the individual decides to run for  
17 federal office or conducts activities that indicate he or she has decided to become a candidate  
18 11 C F R §§ 100 72(a) and 100 131(a) At the point that the individual becomes a candidate,  
19 funds raised and spent to "test the waters" become contributions and expenditures and must be  
20 disclosed as such, regardless of the dates that the contributions were received or expenditures  
21 were made See 11 C F R §§ 100 72(a) and 100 131(a) Only federally compliant funds may  
22 be used for "testing the waters" activities See 11 C F R §§ 100 72(a) and 100 131(a)

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1       The Act prohibits a federal candidate, a candidate's agent and entities established,  
2       financed, maintained or controlled by them from soliciting, receiving, directing, transferring or  
3       spending funds in connection with a federal election, unless those funds are subject to the  
4       limitations, prohibitions and reporting requirements of the Act 2 U S C § 441(e)(1)(A)  
5       Likewise, transfers of funds or assets from a candidate's non-federal campaign committee or  
6       account to his or her principal campaign committee for a federal election are prohibited  
7       11 C F R § 110.3(d). Thus, if the research paid for by the Mayoral Committee to Stanford  
8       Campaigns was for the purpose of "testing the waters" for Callahan's possible federal  
9       candidacy or was used by the Federal Committee prior to January 15, 2010 to further Callahan's  
10      candidacy, then the research costs may have constituted an improper in-kind contribution to the  
11      Federal Committee. See e.g., MUR 5426 (Dale Schultz for Congress) (Schultz's Federal  
12      Committee effectively received prohibited transfer of funds when the Schultz State Committee  
13      paid for expenses that the candidate incurred in connection with his federal election), see also  
14      MUR 5480 (Levetan) (Levetan's Federal Committee received prohibited transfer of funds when  
15      Levetan's State Committee paid for a poll in connection, at least in part, to the federal election)  
16      The contention that the opposition self-research by Stanford Campaigns had "inherent  
17      value" to an unopposed mayoral race, absent any evidence of the research or specification of  
18      its intended or actual use, raises questions. See Response at 2. By May 6, 2009, the date of the  
19      first payment, Callahan already knew that he was running unopposed in the May 19, 2009,  
20      Democratic mayoral primary, and that there was no Republican primary candidate. In addition,  
21      although an Independent candidate could file to be placed on the general election ballot until  
22      August 2, 2009, Respondents do not claim that there was even speculation that a serious

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1 Independent candidate would oppose Callahan in the general election.<sup>3</sup> There is also no  
2 information suggesting that the Mayoral Committee commissioned similar research at the time  
3 of Callahan's 2005 unopposed reelection bid

4 On the other hand, background self-research could be useful to an unopposed mayoral  
5 candidate in deciding whether to run for federal office. Respondents' assertion that Callahan  
6 had not yet decided to run for Congress when the Mayoral Committee paid for the research, or  
7 that he was still raising funds for his run for mayor, are not probative. The allegation is that  
8 Callahan used the research to help him determine whether to run, and Callahan continued his  
9 campaign for mayor after he became a federal candidate. Callahan formally announced his  
10 federal candidacy on July 25, 2009, approximately one month after the last payment to Stanford  
11 Campaigns. According to the *Morning Call* article attached to the complaint, the day after  
12 Callahan announced his federal candidacy, the National Republican Congressional Committee  
13 and a GOP consultant requested from the City of Bethlehem a multitude of public records,  
14 including Callahan's City Council voting and attendance records, his travel expenses, his phone  
15 logs, government e-mails and salary information. Information garnered from the opposition  
16 self-research that Stanford Campaigns had performed presumably could have provided Callahan  
17 with foreknowledge of his potential vulnerabilities if he decided to enter the federal race, and  
18 allowed his federal campaign to formulate defenses against possible later attacks. In addition,  
19 although Respondents assert the Federal Committee did not use the research the Mayoral  
20 Committee had paid for until January 15, 2010, Respondents appear to acknowledge that the  
21 federal campaign had access to, and familiarity with, the Stanford Campaigns' research as early

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<sup>3</sup> We did not locate any press reports even speculating that any Independent candidate had considered opposing Callahan.

1 as October 2009, when Callahan's federal campaign manager indicated to the *Morning Call*  
2 reporter that he was aware of the research

3 If the research paid for by the Mayoral Committee was used by Callahan in determining  
4 the feasibility of running for Congress, and by the Federal Committee prior to January 15, 2010,  
5 then the Federal Committee failed to timely disclose in-kind contributions from the Mayoral  
6 Committee. In addition, depending on the timing and extent that the two committees used the  
7 research, it is possible that the Federal Committee's January 15, 2010, payment was not timely  
8 or accurately disclosed. See 2 U S C § 434(b)(3) and (4)

9 Based on the above, we recommend that the Commission find reason to believe that  
10 John Callahan, Friends of John Callahan and John V. Filipos, in his official capacity as  
11 treasurer, and John Callahan for Congress and John V. Filipos, in his official capacity as  
12 treasurer, violated 2 U S C § 441(e) and 11 C F R § 110.3(d). We also recommend that the  
13 Commission find reason to believe that John Callahan for Congress and John V. Filipos, in his  
14 official capacity as treasurer, violated 2 U S C § 434(b)(3) and (4)

15 **III. PROPOSED INVESTIGATION**

16 Because Callahan was unopposed in the mayoral campaign, and Respondents did not  
17 provide a copy of the research, explain how it had "inherent value" to the mayoral campaign,  
18 how it was used by the mayoral campaign, or provide affidavits from Callahan or from Mayoral  
19 and Federal Committee personnel, we believe Respondents have not sufficiently refuted the  
20 complaint's allegations and a limited investigation is therefore warranted. The investigation  
21 would seek to substantiate the intended purpose of the research procured and paid for by the  
22 Mayoral Committee and its actual use, including whether Callahan used it to determine the  
23 feasibility of running for federal office. Depending on what we discover, we will also explore

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whether the Federal Committee's January 15, 2010, payment of \$5,000 for use of the research represented a timely and accurate "pro-rated" value of the cost of the research. In the event that Respondents do not cooperate with informal requests for documents and interviews, we recommend that the Commission authorize the use of compulsory process, including the issuance of appropriate subpoenas.

**IV. RECOMMENDATIONS**

- 1 Find reason to believe that John Callahan, Friends of John Callahan and John V Filipos, in his official capacity as treasurer, and John Callahan for Congress and John V Filipos, in his official capacity as treasurer, violated 2 U S C § 441(c) and 11 C F R § 101.3(d),
- 2 Find reason to believe that and John Callahan for Congress and John V Filipos, in his official capacity as treasurer, violated 2 U S C § 434(b)(3) and (4),
- 3 Authorize compulsory process,
- 4 Approve the attached Factual and Legal Analysis, and
- 5 Approve the appropriate letter

Thomasena P. Duncan  
General Counsel

Date August 16, 2010

BY

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