

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6267

DATE RECEIVED: March 22, 2010

DATE ACTIVATED: May 6, 2010

EXPIRATION OF SOL: Earliest: Nov. 23, 2014
Latest: Dec. 14, 2015

COMPLAINANT:

Arizona Democratic Party

RESPONDENTS:

Jonathan Paton

Paton for Senate and Jonathan Paton, in his official
capacity as Treasurer

Jonathan Paton for Congress and
Jeffrey John Mill, in his official capacity as
Treasurer

RELEVANT STATUTES:

2 U.S.C. § 431(2)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(a)
2 U.S.C. § 441i(e)
11 C.F.R. § 100.72(a)
11 C.F.R. § 100.131(a)
11 C.F.R. § 110.3

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

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1 **I. INTRODUCTION**

2 This matter involves allegations that former Arizona State Senator Jonathan Paton
3 used \$7,566 in non-federal funds from his state campaign committee, Paton for Senate

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1 and Jonathan Paton, in his official capacity as Treasurer (the "State Committee"), to
2 conduct surveys and polling on behalf of his start-up federal committee, Jonathan Paton
3 for Congress and Jeffrey John Hill, in his official capacity as Treasurer (the "Federal
4 Committee"). The complaint also alleges that Jonathan Paton failed to file his Statement
5 of Candidacy timely, in violation of 2 U.S.C. § 432(e)(1).

6 Respondents admit that the State Committee paid for \$7,566 in in-kind
7 contributions that benefited the Federal Committee, but argue that these contributions
8 were refunded once the Federal Committee was established. Respondents admit that
9 Jonathan Paton did not timely file his Statement of Candidacy, but characterize the
10 violation as inadvertent. Respondents argue that their errors were minor, were quickly
11 corrected, and will not be repeated.

12 Based on a thorough review of the complaint, the response, and other available
13 information, we recommend the Commission find reason to believe that Jonathan Paton
14 and Paton for Senate and Jonathan Paton, in his official capacity as Treasurer, violated
15 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by disbursing non-federal funds in
16 connection with a federal election. We also recommend the Commission find reason to
17 believe that Jonathan Paton for Congress and Jeffrey John Hill, in his official capacity as
18 Treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by receiving these
19 prohibited funds. Finally, we recommend the Commission find reason to believe that
20 Jonathan Paton violated 2 U.S.C. § 432(e)(1) by failing to file his Statement of
21 Candidacy timely.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Jonathan Paton, a former Arizona State Senator, is a candidate for the U.S. House of Representatives from the 8th District of Arizona.

On January 26, 2010, the Federal Committee filed its Statement of Organization with the Commission, which designated Jonathan Paton as the candidate. Although the Federal Committee reports receiving and/or making at least \$5,000 in contributions and expenditures by January 26, 2010, Paton did not file his Statement of Candidacy until April 1, 2010. Complaint at 1.

Meanwhile, on November 23, 2009, the State Committee reported an expenditure of \$2,709 for "Survey," and on December 14, 2009, it reported an expenditure of \$4,857 for "Vulnerability Study & Expenses." Complaint at 2. The response states that these disbursements were related to Paton's "state campaign and the testing the waters phase of a federal candidacy." Response at 1. On February 23, 2010, the Federal Committee made a disbursement to the State Committee in the amount of \$7,566 for items described as "polling & research" as a 100% reimbursement to the State Committee for the November "Survey" and December "Vulnerability Study." See Response at 1. The Federal Committee reported this disbursement in its April 2010 Quarterly Report, which was filed timely.

There is no information in the publicly available documents of any other contributions or expenditures paid by the State Committee for the benefit of Paton's federal candidacy.

B. Analysis

1. Improper Use of Non-Federal Funds

The Act prohibits a Federal candidate, a candidate's agent, and entities established, financed, maintained, or controlled by them from soliciting, receiving, directing, transferring, or spending funds in connection with a Federal election, unless those funds are subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(c)(1)(A).

The Act also prohibits transfers of funds or assets from a candidate's campaign committee or account for a non-federal election to his or her principal campaign committee or other authorized committee for a Federal election. 11 C.F.R. § 110.3(d); *see also* Explanation and Justification, 57 Fed. Reg. 36,344 (August 12, 1992). If a candidate has an account for a non-federal election, those funds must be kept separate from federal funds and may not be transferred to his or her federal account or used to pay for expenditures related to his or her federal election activities. *Id.*

The Act states that an individual becomes a candidate for Federal office when his or her campaign either receives or makes \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). As an exception to this general rule, 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 if the individual gives no indication that a decision to run has already been made. *See* 11 C.F.R. §§ 100.72(a) and 100.131(a). A candidate who is testing the waters is also precluded from soliciting, receiving, or spending funds in connection with an election for Federal office, unless those funds are

1 subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C.
2 § 441i(e).¹

3 In November and December 2009, while Paton was testing the waters for a
4 federal candidacy, the State Committee, which Paton established, maintained, financed,
5 or controlled, paid amounts of \$2,709 and \$4,857 (totaling \$7,566) for survey and polling
6 that benefited the testing the waters phase of Paton's federal candidacy. Response at 1.
7 The Federal Committee reimbursed the State Committee for 100% of these survey and
8 polling expenses on February 23, 2010, a fact which was disclosed in the Federal
9 Committee's April 2010 Quarterly Report. *Id.* at Attach. C.

10 Though the response to the Complaint asserts that the polling and surveys were
11 "relevant" to Paton's state and federal campaigns, it provides no explanation why the
12 Federal Committee reimbursed 100% of the related expenditures to the State Committee.
13 Under these circumstances, there does not appear to be any basis for a claim that the
14 polling and survey expenses should be allocated between Paton's state and federal
15 committees, pursuant to 11 C.F.R. § 106.4.

16 By using non-federal funds to pay for a federal campaign's polling and survey
17 costs, the State Committee transferred and/or spent, and the Federal Committee received,
18 non-federal funds in violation of 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). See
19 AR 09-06 (Kuhl for Congress) (finding RTB that the candidate's federal committee

¹ For example, a candidate and his committee may not accept in excess of \$2,400 per election from an individual, or \$5,000 per calendar year from a candidate committee. See 2 U.S.C. §§ 441a(f) and 441a(a)(1). A candidate may not accept funds from prohibited sources, including corporations, unions, foreign nationals and persons in the name of another. 2 U.S.C. §§ 441a(f), 441b, 441e, and 441f. The candidate must also maintain a record of all contributions received and expenditures made while testing the waters and must disclose all receipts and disbursements in the federal committee's first financial report filed with the Commission. See 2 U.S.C. § 434(a).

1 received prohibited in-kind contributions in violation of § 441i(e) and 110.3(d) when the
2 state committee paid for polling and other expenses that should have been paid by the
3 federal committee); MUR 5426 (Dale Schultz for Congress) (finding RTB that the
4 candidate's federal committee effectively received prohibited transfer of funds in
5 violation of § 441i(e) and 110.3(d) when his state committee paid for expenses that were
6 incurred in connection with his federal election); MUR 5488 (Levetan) (finding RTB that
7 a state lawbreaker and his state and federal committees violated § 441i(e) and 110.3(d) by
8 using funds from the state committee's non-federal account to pay for polling
9 expenditures that directly benefited the federal campaign).

10 Based on undisputed evidence, we recommend that the Commission find reason
11 to believe that Jonathan Paton, Paton for Senate and Jonathan Paton, in his official
12 capacity as Treasurer, and Jonathan Paton for Congress and Jeffrey John Hill, in his
13 official capacity as Treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d)
14 by making and receiving prohibited in-kind contributions of non-federal funds in
15 connection with an election for federal office.

16 2. Reporting Violations

17 Once an individual who is "testing the waters" achieves candidate status, the Act
18 requires him to file a Statement of Candidacy within fifteen days, designating a principal
19 campaign committee. 2 U.S.C. § 432(e)(1). The candidate's principal campaign
20 committee must file a Statement of Organization no later than ten days after it has been
21 designated by the candidate. 2 U.S.C. § 433(a).

22 The Federal Committee's April 2010 Quarterly Report indicates that Paton
23 received \$5,000 in contributions no later than January 26, 2010, the date on which the

1 Federal Committee filed its Statement of Organization, which listed Paton as the
2 candidate being supported. Although Paton's obligation to file a Statement of Candidacy
3 was triggered no later than January 26, 2010, Paton did not file his Statement of
4 Candidacy until April 1, 2010, nearly two months late, and a week after the complaint in
5 this matter had been filed.

6 Respondents do not deny that the Statement of Candidacy was filed late, but
7 simply asserts that the failure to file timely was "inadvertent." Response at 1.

8 Accordingly, we recommend the Commission find reason to believe that Jonathan Paton
9 violated 2 U.S.C. § 432(e)(1).

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14 **IV. RECOMMENDATIONS**

- 15 1 Find reason to believe that Jonathan Paton and Paton for Senate and Jonathan
16 Paton, in his official capacity as Treasurer, violated 2 U S C § 441i(e)(1)(A)
17 and 11 C F R § 110 3(d),
- 18 2 Find reason to believe that Jonathan Paton for Congress and Jeffrey John Hill,
19 in his official capacity as Treasurer, violated 2 U S C § 441i(e)(1)(A) and
20 11 C F R § 110 3(d),
- 21 3 Find reason to believe that Jonathan Paton violated 2 U S C § 432(e)(1),
- 22 4
- 23
- 24 5 Approve the attached Factual and Legal Analysis, and

6. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

Kathleen M. Guith
Acting Associate General Counsel for
Enforcement

8/4/10
Date

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