



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Kevin Herring, Campaign Manager
Jonathan Paton for Congress
7400 N. Oracle Rd., Suite 125
Tucson, AZ 85704

OCT 8 2010

RE: MUR 6267
Jonathan Paton;
Paton for Senate and Jonathan Paton, in his
official capacity as Treasurer;
Jonathan Paton for Congress and
Jeffrey John Hill, in his official capacity as
Treasurer

Dear Mr. Herring:

On March 24, 2010, the Federal Election Commission notified Jonathan Paton, Paton for Senate and Jonathan Paton, in his official capacity as Treasurer, and Jonathan Paton for Congress and Jeffrey John Hill, in his official capacity as Treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was provided at the time.

After reviewing the allegations contained in the complaint, your response, and publicly available information, the Commission, on October 5, 2010, found reason to believe that Jonathan Paton, Paton for Senate and Jonathan Paton, in his official capacity as Treasurer, and Jonathan Paton for Congress and Jeffrey John Hill, in his official capacity as Treasurer, violated 2 U.S.C. § 441i(e)(1)(A), a provision of the Act, and 11 C.F.R. § 110.3(d) of the Commission's regulations. Additionally, the Commission found reason to believe that Jonathan Paton violated 2 U.S.C. § 432(e)(1). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,

Matthew S. Petersen
Chairman

Enclosures

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jonathan Paton

MUR: 6267

Paton for Senate and Jonathan Paton,
as Treasurer

Jonathan Paton for Congress
and Jeffrey John Hill, as Treasurer

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

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

14 Based on a thorough review of the complaint, the response, and other available
15 information, the Commission found reason to believe that Jonathan Paton and Paton for
16 Senate and Jonathan Paton, in his official capacity as Treasurer, violated 2 U.S.C.
17 § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by disbursing non-federal funds in connection

1 with a federal election. The Commission also found reason to believe that that Jonathan
2 Paton for Congress and Jeffrey John Hill, in his official capacity as Treasurer, violated
3 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by receiving these prohibited funds.
4 Finally, the Commission found reason to believe that Jonathan Paton violated 2 U.S.C.
5 § 432(e)(1) by failing to file his Statement of Candidacy timely.

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Factual Background**

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

10 On January 26, 2010, Jonathan Paton for Congress and Jeffrey John Hill, in his
11 official capacity as Treasurer (the "Federal Committee"), filed its Statement of
12 Organization with the Commission, which designated Jonathan Paton as the candidate.
13 Although the Federal Committee reports receiving and/or making at least \$5,000 in
14 contributions and expenditures by January 26, 2010, Paton did not file his Statement of
15 Candidacy until April 1, 2010. Complaint at 1.

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

1 Federal Committee reported this disbursement in its April 2010 Quarterly Report, which
2 was filed timely.

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

6 **B. Analysis**

7 **1. Improper Use of Non-Federal Funds**

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

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

20 The Act states that an individual becomes a candidate for Federal office when his
21 or her campaign either receives or makes \$5,000 in contributions or expenditures.
22 2 U.S.C. § 431(2). As an exception to this general rule, an individual may raise or spend
23 more than \$5,000 without triggering candidate status only if he or she is engaged in
24 permissible "testing the waters" activities, and if the individual gives no indication that a

1 decision to run has already been made. *See* 11 C.F.R. §§ 100.72(a) and 100.131(a). A
2 candidate who is testing the waters is also precluded from soliciting, receiving or
3 spending funds in connection with an election for Federal office, unless those funds are
4 subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C.
5 § 441i(e).¹

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

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

19 By using non-federal funds to pay for a federal campaign's polling and survey
20 costs, the State Committee transferred and/or spent, and the Federal Committee received,

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 non-federal funds in violation of 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). See
2 AR 09-06 (Kuhl for Congress) (finding RTB that the candidate's federal committee
3 received prohibited in-kind contributions in violation of § 441i(e) and 110.3(d) when the
4 state committee paid for polling and other expenses that should have been paid by the
5 federal committee); MUR 5426 (Dale Schultz for Congress) (finding RTB that the
6 candidate's federal committee effectively received prohibited transfer of funds in
7 violation of § 441i(e) and 110.3(d) when his state committee paid for expenses that were
8 incurred in connection with his federal election); MUR 5480 (Levetan) (finding RTB that
9 a state lawmaker and her state and federal committees violated § 441i(e) and 110.3(d) by
10 using funds from the state committee's non-federal account to pay for polling
11 expenditures that directly benefited the federal campaign).

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

17 2. Reporting Violations

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

23 The Federal Committee's April 2010 Quarterly Report indicates that Paton
24 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 assert that the failure to file timely was "inadvertent." Response at 1.
8 Accordingly, the Commission found reason to believe that Jonathan Paton violated
9 2 U.S.C. § 432(e)(1).