

**FEDERAL ELECTION COMMISSION**  
**999 E Street, NW**  
**Washington, DC 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 6314**

**DATE RECEIVED: June 15, 2010**

**DATE ACTIVATED: December 7, 2010**

**EARLIEST SOL: February 12, 2015**

**LATEST SOL: Ongoing**

**COMPLAINANT:**

**Melanie Sloan, Citizens for Responsibility and  
Ethics in Washington**

**RESPONDENTS:**

**Gregory Brown**

**Gregory Brown for Congress and Carol Bausinger,  
in her official capacity as treasurer**

**RAD REFERRAL: 10L-09**

**DATE REFERRED: October 18, 2010**

**DATE ACTIVATED: December 7, 2010**

**EARLIEST SOL: February 12, 2015**

**LATEST SOL: Ongoing**

**SOURCE:**

**INTERNALLY GENERATED**

**RESPONDENTS:**

**Gregory Brown for Congress and Carol Bausinger,  
in her official capacity as treasurer**

**RELEVANT STATUTES:**

**2 U.S.C. § 433(a)**

**2 U.S.C. § 434(a)**

**2 U.S.C. § 434(b)**

**11 C.F.R. § 104.12**

**INTERNAL REPORTS CHECKED:**

**Disclosure Reports  
RFAI's**

**FEDERAL AGENCIES CHECKED:**

**None**

**I. INTRODUCTION**

**These matters involve various alleged reporting violations by South Carolina  
congressional candidate Gregory Brown and his principal campaign committee, Gregory Brown  
for Congress and Carol Bausinger, in her official capacity as treasurer ("Committee"). The June**

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1 15, 2010, MUR 6314 complaint alleges that Respondents failed to file both the 2010 April  
2 Quarterly and 12-Day Pre-Primary Reports. The Committee actually filed the 2010 April and  
3 July Quarterly Reports on June 10, 2010, five days before the Commission received the  
4 complaint. On June 20, 2010, the Committee also filed amendments to the April and July  
5 Quarterly Reports. Information from the initial disclosure reports indicates that Respondents  
6 also filed the Committee's Statement of Organization at least two months late.

7 In RR 10L-09, the Reports Analysis Division ("RAD") referred the Committee to the  
8 Office of General Counsel for consideration of three issues regarding the 2010 April Quarterly  
9 and July Quarterly Reports:

- 10 • The 2010 April Quarterly Report – the Committee's first report – discloses an initial cash  
11 balance of \$10,000 without disclosing the source of that balance.  
12
- 13 • The Amended 2010 April Quarterly Report discloses a negative ending cash-on-hand  
14 balance of \$54,118.45.  
15
- 16 • There is an unexplained discrepancy of \$54,118.45 between the ending cash-on-hand  
17 balance disclosed in the Amended 2010 April Quarterly Report and the beginning cash-  
18 on-hand balance disclosed in the 2010 July Quarterly Report.

19 In response to the RAD Referral, Respondents acknowledged accounting errors, but asserted that  
20 there was no inappropriate use of funds.

21 We recommend that the Commission open a MUR in connection with RR 10L-09 and  
22 merge it with MUR 6314. We also recommend that the Commission find reason to believe that  
23 Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated  
24 2 U.S.C. §§ 434(a), 434(b), and 433(a) by failing to timely file the 2010 April Quarterly and  
25 2010 12-Day Pre-Primary Reports, failing to properly disclose the source of contributions and  
26 the existence of debts owed by the Committee, and failing to timely file a Statement of  
27 Organization. Additionally, we recommend that the Commission find no reason to believe that  
28 the candidate, Gregory Brown, violated 2 U.S.C. § 434(a) and close the file as to him.

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**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Gregory Brown was a candidate in the June 8, 2010, South Carolina primary election, seeking the Democratic nomination to represent the state's Sixth Congressional District in the U.S. House of Representatives. On February 1, 2010, Mr. Brown filed a Statement of Candidacy with the Commission that designated the Committee as his principal campaign committee. The Committee filed its Statement of Organization on April 26, 2010.

The Committee has filed the following disclosure reports with the Commission:

**Table 1. Reports Filed with the Commission**

<b>Date</b>	<b>Report</b>
6/10/10	April Quarterly Report
6/10/10	July Quarterly Report
6/11/10	July Quarterly Report (Amended)
6/20/10	April Quarterly Report (Amended)
6/20/10	July Quarterly Report (Amended)
7/28/10	Termination Report
11/7/10	Termination Report
1/4/11	Termination Report
2/9/11	Termination Report

The Committee attempted to terminate after Mr. Brown lost the primary election, but RAD informed the Committee that it needed to resolve outstanding discrepancies in its reports before it could terminate.

**1. MUR 6314**

Complainant alleges that Respondents knowingly and willfully violated 2 U.S.C. § 434(a)(2)(A)(i), (iii) and 11 C.F.R. § 104.5(a)(1)(i), (2)(i) by failing to file both the 2010 April Quarterly and 12-Day Pre-Primary Reports.

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1 Respondents admit that the disclosure reports were untimely. Respondents maintain that  
2 any delays in filing the required reports were "not the result of any intentional or willful  
3 misconduct," and they now have filed all required reports. See Response. Without providing  
4 any specific information, Respondents claim that they mistakenly relied on information provided  
5 by the state political party. They also claim, again without providing any specific information, to  
6 have relied on information the Commission provided to them regarding filing requirements.<sup>1</sup>  
7 Respondents further claim that they relocated their campaign headquarters, which resulted in lost  
8 mail and "temporary loss of full communication." *Id.*

9 2. RR 10L-09

10 On July 1, 2010, RAD sent the Committee two Requests for Additional Information  
11 ("RFAI's") regarding the 2010 April and July Quarterly Reports, respectively. The Committee  
12 has not yet filed a response to these RFAI's; however, the Committee's treasurer contacted a  
13 RAD Analyst on July 27, 2010, to inquire about the process for terminating. Between September  
14 3, 2010, and September 28, 2010, RAD Analysts made several attempts to contact the  
15 Committee to notify them of potential Commission action. However, as the Committee's phone  
16 numbers and e-mail addresses were no longer in service, RAD left a message at Mr. Brown's  
17 business, Keystone Enterprises, which was not returned.

18 On October 18, 2010, RAD referred the Committee to the Office of General Counsel for  
19 the following reporting violations:

- 20 • Failing to correct an initial cash balance of \$10,000 on its 2010 April Quarterly  
21 Report, the first disclosure report filed with the Commission. Both the original  
22 and Amended April Quarterly Reports reflect this balance, and neither includes a  
23 supporting schedule disclosing the source of this initial balance.  
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<sup>1</sup> RAD Analysts record all communications with committees, and there is no record of the Committee contacting RAD until July 27, 2010, after it had filed the Amended 2010 April and July Quarterly Reports.

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- Failing to correct a negative ending cash-on-hand balance on its April 2010 Quarterly Report. The April Quarterly Report filed on June 10, 2010, discloses a negative ending cash-on-hand balance of \$35,164.65; the amended report, filed ten days later, discloses a negative ending cash-on-hand balance of \$54,118.45.
- Failing to correct a cash-on-hand balance discrepancy between two consecutive reports: while the Amended 2010 April Quarterly Report discloses a negative ending cash-on-hand balance of \$54,118.45, the 2010 July Quarterly Report discloses a beginning cash-on-hand balance of \$0.00. The Amended 2010 July Quarterly Reports also disclose a \$0.00 beginning cash-on-hand balance.

On December 16, 2010, the Committee responded to the notification of the referral by contending that the candidate deposited the original funds in the campaign account, and thereafter the campaign ran a negative balance to be paid by the candidate himself. The Committee acknowledges that there may have been accounting defects, but asserts that there was no inappropriate use of funds.

#### B. Legal Analysis

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), an individual becomes a candidate for federal office when his or her campaign exceeds \$5,000 in contributions or expenditures. 2 U.S.C. § 431(Z). Based on its Amended 2010 April Quarterly Report, it appears that the Committee exceeded the \$5,000 threshold on February 2, 2010, when it made a \$10,000 disbursement to Steven Fooshe & Associates for a "campaign questionnaire."<sup>2</sup> Accordingly, Mr. Brown was a candidate for federal office on February 2, 2010, which was the day after the Commission received Mr. Brown's Statement of Candidacy.

<sup>2</sup> Although the Amended 2010 April Quarterly Report discloses the \$10,000 disbursement on February 2, 2010, it discloses only \$400 in contributions for the entire reporting period, in addition to the initial \$10,000 cash balance. It is possible that the Committee may have exceeded the \$5,000 contribution threshold before February 2, 2010, through an undisclosed transaction, but there is no information to indicate the nature or amount of this potential undisclosed transaction.

1                   1.     **MUR 6314: Timeliness of Disclosure Reports**

2             Political committee treasurers are required to file reports of receipts and disbursements in  
3 accordance with 2 U.S.C. § 434(a). A principal campaign committee of a candidate for the U.S.  
4 House of Representatives, in any calendar year during which there is a regularly scheduled  
5 election for which its candidate is seeking election, shall file quarterly reports no later than the  
6 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii). Furthermore,  
7 such committee shall file a pre-election report no later than the 12th day before any election in  
8 which such candidate is seeking election. 2 U.S.C. § 434(a)(2)(A)(i).

9             The Committee was required to file the 2010 April Quarterly Report by April 15, 2010.  
10 However, the Committee actually filed this report, which disclosed \$400 in receipts and  
11 \$45,564.65 in disbursements (later amended to \$64,518.45 in disbursements), on June 10, 2010 –  
12 56 days late. Similarly, the Committee was also required to file a report no later than twelve  
13 days before the June 8, 2010, primary in which Mr. Brown was a candidate. This report, due  
14 May 27, 2010, should have covered the period from April 1, 2010, to May 19, 2010. To date, the  
15 Committee has not filed this report; however, the same period of activity was eventually covered  
16 by the 2010 July Quarterly Report, which disclosed \$300 in receipts (later amended to \$24,300)  
17 and \$20,504.72 in disbursements (later amended to \$39,366.89) that should have been disclosed  
18 on the pre-primary report.

19             Although the Committee failed to timely file the 2010 April Quarterly Report and failed  
20 to file the 2010 12-Day Pre-Primary Report, there is no information to indicate either that these  
21 violations were knowing and willful, or that the candidate, Mr. Brown, was personally liable for  
22 the Committee's failure to file timely disclosure reports. Accordingly, we recommend the  
23 Commission find reason to believe that Gregory Brown for Congress and Carol Bausinger, in her  
24 official capacity as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii). We also recommend

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1 the Commission find no reason to believe that Gregory Brown violated 2 U.S.C.  
2 § 434(a)(2)(A)(i) and (iii) and close the file as to him.

3                   2.       RR 10L-09: Content of Disclosure Reports

4           The Act requires political committees to report the amount of cash-on-hand at the  
5 beginning of the reporting period, as well as identify each person who makes aggregate  
6 contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1), (3). Commission  
7 regulations further clarify that committees which have cash-on-hand at the time of their  
8 registration shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12.  
9 Based on the information provided in the referral, the response, and the Committee's disclosure  
10 reports, it appears that Mr. Brown initially made a personal \$10,000 contribution to the  
11 Committee, which the Committee disclosed as an initial cash balance on its first report.  
12 However, by failing to disclose Mr. Brown as the source of its initial \$10,000 cash balance, the  
13 Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.12.

14           The Act also requires that reports disclose the amount and nature of outstanding debts  
15 and obligations owed by the political committee. 2 U.S.C. § 434(b)(8). Based on the referral,  
16 the response, and disclosure reports, it appears that the Committee incurred \$54,118.45 in debt  
17 and reported it as a negative cash balance instead of as a debt or obligation. By failing to  
18 disclose this \$54,118.45 as debt, the Committee violated 2 U.S.C. § 434(b)(8).

19           Finally, the discrepancy between the ending cash-on-hand balance on the Amended 2010  
20 April Quarterly Report (-\$54,118.45) and the beginning cash-on-hand balance on the 2010 July  
21 Quarterly Report (\$0.00) could indicate that the Committee failed to disclose all contributions,  
22 offsets, and operating expenditures in violation of 2 U.S.C. § 434(b)(7). However, it appears that  
23 this discrepancy is attributable to the misreported debt discussed above: if the Committee had  
24 reported \$54,118.45 as debt on its Amended 2010 April Quarterly Report, its ending cash-on-

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1 hand balance would be \$0.00, which would match the beginning cash-on-hand balance reported  
2 in the 2010 July Quarterly Report. Thus, the discrepancy does not appear to be a separate  
3 violation of 2 U.S.C. § 434(b)(7). Accordingly, we recommend the Commission find reason to  
4 believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity as  
5 treasurer, violated 2 U.S.C. § 434(b)(1), (3), and (8) and 11 C.F.R. § 104.12.

6 **3. Late Statement of Organization**

7 Based on the information in its disclosure reports, the Committee appears to have filed its  
8 Statement of Organization late. A candidate's authorized principal campaign committee is  
9 required to file a Statement of Organization within ten days of designation. 2 U.S.C. § 433(a).  
10 Mr. Brown designated the Committee as his principal campaign committee on February 1, 2010;  
11 therefore, the Committee should have filed its Statement of Organization by February 11, 2010.  
12 Instead, the Committee filed its Statement of Organization on April 26, 2010 – 74 days late.

13 The Commission has pursued violations for late-filed Statements of Organization where  
14 the respondent committee also failed to file its Statement of Candidacy and first disclosure report  
15 on time, *see* MURs 5363 (Sharpton), or where the Commission also pursued other reporting  
16 violations, *see* MURs 5334/5341/5524 (Marilyn F. O'Grady). The Commission has previously  
17 dismissed late-filed Statement of Organization violations in matters where the respondent  
18 committee had filed its first disclosure report on time, *see* MUR 5251 (Joe Rogers), or where the  
19 Commission also dismissed or found no reason to believe as to the accompanying reporting  
20 violations, *see* MUR 6292 (Joe Walsh) (Commission dismissed several allegations and issued a  
21 letter of caution). Here, the Committee failed to file its first disclosure report on time, and we  
22 are recommending that the Commission pursue this and other reporting violations, so it would be  
23 consistent with precedent to pursue the § 433(a) violation. Accordingly, we recommend the

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Commission find reason to believe that Gregory Brown for Congress and Carol Bausinger, in her  
official capacity as treasurer, violated 2 U.S.C. § 433(a).

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9 **IV. RECOMMENDATIONS**

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1. Open a MUR in RR 10L-09 and merge it into MUR 6314.

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2. Find reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), and 434(b), and 11 C.F.R. § 104.12.

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3. Find no reason to believe that Gregory Brown violated 2 U.S.C. § 434(a) and close the file as to him.

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4. Approve the attached Factual & Legal Analysis.

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7. Approve the appropriate letters.

3/7/11  
Date

P. Christopher Hughey  
Acting General Counsel

BY:

  
Stephen Gura  
Deputy Associate General Counsel

  
Mark Shonkwiler  
Assistant General Counsel

  
Margaret Ritzert  
Attorney

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