



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 12 2011

Bryan K. Gould, Esq.
Brown, Olson, & Gould
2 Delta Drive
Suite 301
Concord, NH 03301

RE: MUR6431
New Hampshire Republican Senate Majority
Committee

Dear Mr. Gould:

On November 18, 2010, the Federal Election Commission notified your client, the New Hampshire Republican Senate Majority Committee ("NHRSMC"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 1, 2011, the Commission found, on the basis of the information in the complaint, and information provided by the respondents, that there is no reason to believe NHRSMC violated 2 U.S.C. §§ 432, 433, and 434. Additionally, the Commission was equally divided on the Office of General Counsel's recommendations related to potential violations of 2 U.S.C. §§ 441a, 441b, 441d, and 441i(b)(1), and 11 C.F.R. § 110.11. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding of no reason to believe that NHRSMC violated 2 U.S.C. §§ 432, 433, and 434 is enclosed. A Statement of Reasons further explaining the basis for the rest of the Commission's decision will follow.

If you have any questions, please contact William A. Powers, the attorney assigned to this matter at (202) 694-1650.

Sincerely,


Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: New Hampshire Republican Senate
Majority Committee

MUR: 6431

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Raymond Eucley. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND

The New Hampshire Republican Senate Majority Committee is a state political committee registered with the New Hampshire Secretary of State. *See* State of New Hampshire: 2010 Political Committee Registration – RSA 664:3, Republican Senate Majority Committee (Dec. 9, 2008) (hereinafter “RSMC N.H. Registration”), *available at* <http://www.sos.nh.gov/Pacs2010.html> (last visited August 26, 2011). The chairman of RSMC is Peter Bragdon, a state senator who served as the minority leader of the New Hampshire Senate in 2009-2010, and now serves as the president of the Senate. RSMC Response at 1-2. Bob Odeil, who serves as RSMC’s treasurer, is also a Republican state senator in New Hampshire. *See* RSMC N.H. Registration. According to disclosure reports filed with the New Hampshire Secretary of State, RSMC accepts contributions from sources prohibited by the Act, but permitted under state law, such as corporations. *See* RSMC Statement of Receipts and Expenditures (June 23, Aug. 25, Sept. 9 and 22, Oct. 13 and 27, and Nov. 10, 2010).

1 Kelly Ayotte is currently a U.S. Senator from New Hampshire and was the
2 Republican candidate for U.S. Senator in 2010. Ayotte served as Attorney General for
3 New Hampshire, until she resigned to explore a run for the U.S. Senate in 2009. Her
4 principal campaign committee is Friends of Kelly Ayotte. H. Scott Flegal serves as the
5 committee's treasurer.

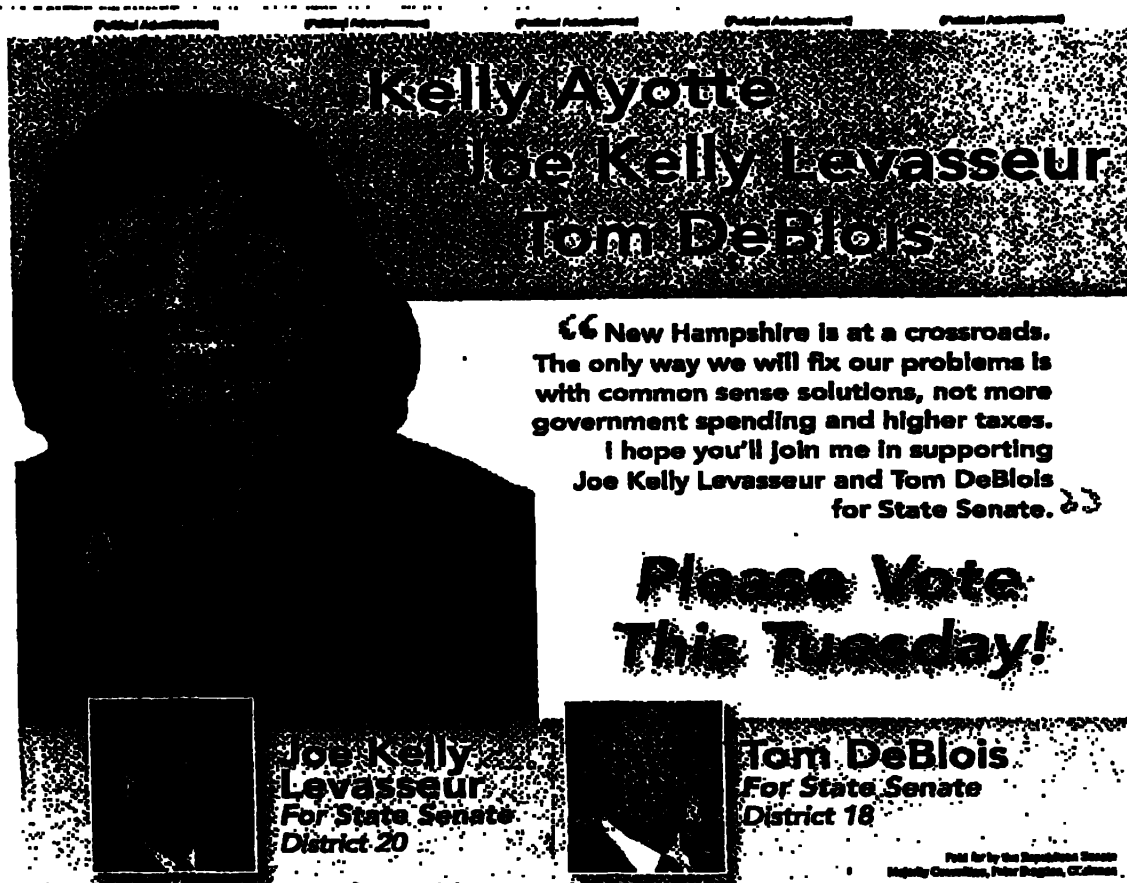
6 In October of 2010, a consultant for RSMC, Michael Dennehy, suggested RSMC
7 consider running advertisements in which Ayotte, who had a lead in the polls, would
8 endorse New Hampshire state senate candidates. RSMC Response at 2; *see also* RSMC
9 Response, Attachment, Affidavit of Peter Bragdon ¶¶ 6 and 7; Affidavit of Michael
10 Dennehy ¶¶ 7 and 8. After RSMC approved this recommendation, Dennehy "contacted
11 one of Ms. Ayotte's campaign consultants and asked whether Ms. Ayotte would be
12 willing to endorse certain state senate candidates." RSMC Response, Affidavit of
13 Michael Dennehy ¶ 8. "Ms. Ayotte's [campaign] consultant later informed [Dennehy]
14 that [RSMC] could proceed with the endorsement advertisements for those candidates."
15 *Id.*

16 The Ayotte committee directed RSMC that "no reference to Kelly Ayotte's
17 federal candidacy appear[] anywhere in the newspaper ads, nor [should] her status as a
18 former Attorney General [be] referenced in the ad." Ayotte Committee Response at 2.
19 Dennehy, who worked with an RSMC political advertising consultant on the endorsement
20 advertisements, states that the "Ayotte campaign did not propose any of the content or
21 layout of the [RSMC's] advertisements." RSMC Response, Affidavit of Michael
22 Dennehy at ¶¶ 9 and 10. However, Dennehy "did provide Ms. Ayotte's consultant with
23 an exemplar of the advertisements before submitting them for publication and [the

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- 1 consultant's] response was that the advertisements were 'fine.'" RSMC Response,
2 Affidavit of Michael Dennehy ¶ 10.

- 3 Each of the advertisements listed Ms. Ayotte's name followed by the names of the
4 state candidates, set forth Ms. Ayotte's endorsement of the candidates and stated "Please
5 Vote This Tuesday." An example is set forth below:



- 6
7 RSMC ran the advertisements featuring Ayotte endorsing candidates for state senate on
8 November 1, 2010, the day before the 2010 election, in at least four newspapers: the

1 UNION LEADER, the CONCORD MONITOR, the NASHUA TELEGRAPH DAILY, and the
2 FOSTER'S DAILY DEMOCRAT. *See* Complaint at 1, and Exhibit 1 (the "Ayotte
3 advertisements"). The cost of these four advertisements appears to be approximately
4 \$5,783. *See* Complaint at 2.

5 **B. LEGAL ANALYSIS**

6 The Complaint alleges that RSMC should have registered and complied with
7 other requirements as a political committee under the Act. Under the Act, groups that
8 trigger political committee status are required to organize as a political committee,
9 register with the Commission, and publicly disclose all of their receipts and
10 disbursements. 2 U.S.C. §§ 432, 433, and 434. The Act defines a "political committee"
11 as any committee, association, or other group of persons that receives "contributions" or
12 makes "expenditures" which aggregate in excess of \$1,000 during a calendar year. 2
13 U.S.C. § 431(4)(A).¹ An organization that has made expenditures in excess of \$1,000,
14 however, will not be considered a "political committee" unless, in addition, its "major
15 purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal
16 candidate)." Political Committee Status: Supplemental Explanation and Justification, 72
17 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Supplemental E&J"). *See Buckley v. Valeo*, 424
18 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986)
19 ("*MCFL*").

20 Even if RSMC exceeded the \$1,000 statutory threshold for either contributions or
21 expenditures related to the Ayotte advertisements, *see* 2 U.S.C. § 431(4), RSMC does not

¹ The term "expenditure" is defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). The term "contribution" is similarly defined by 2 U.S.C. § 431(8)(A)(i).

1 appear to have the nomination or election of a federal candidate as its major purpose.
2 Rather, RSMC is a New Hampshire political committee that has a purpose "to support the
3 political activities of NH Senate Republicans and the election of Republican state senate
4 candidates," *see* RSMC N.H. Registration (Dec. 9, 2008), and "to achieve the election of
5 a Republican majority to the New Hampshire Senate in 2010." RSMC Response at 1.
6 Moreover, RSMC raised and spent approximately \$130,000 during the 2010 elections
7 and there is no indication that it spent any sums on communications or other campaign
8 activity arguably related to the nomination or election of a federal candidate other than
9 the allowable portion of the \$5,873 spent on the Ayotte advertisements. Given the limited
10 amount spent on the Ayotte advertisements, RSMC's spending on them cannot be
11 considered so extensive that its major purpose may be considered the nomination or
12 election of a federal candidate. RSMC therefore cannot be considered a political
13 committee under the Act because it does not have as its major purpose "federal campaign
14 activity (*i.e.* the nomination or election of a Federal candidate)." Supplemental E&J, 72
15 Fed. Reg. at 5597. *See Buckley*, 424 U.S. at 79; *MCFL*, 479 U.S. at 262.

16 Accordingly, the Commission finds no reason to believe that the New Hampshire
17 Republican Senate Majority Committee violated 2 U.S.C. §§ 432, 433, and 434 by failing
18 to organize, register, and report as a political committee.

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