



# Nebraska Democratic Party

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## BEFORE THE FEDERAL ELECTION COMMISSION

# COPY

Laura Wigley  
Nebraska Democratic Party  
1327 H Street, Suite 200  
Lincoln, NE 68508

Complainant,

v.

Jon Bruning  
P.O. Box 83950  
Lincoln, NE 68501

Bruning for Senate 2012 Exploratory Committee  
P.O. Box 83950  
Lincoln, NE 68501

Jon Bruning Exploratory Committee  
P.O. Box 84614  
Lincoln, NE 68501

Bruning for U.S. Senate, Inc.  
P.O. Box 83950  
Lincoln, NE 68501

Respondents.

## COMPLAINT

Complainant files this amended complaint under 2 U.S.C. § 437g(a)(1) against Jon Bruning, the Bruning for Senate 2012 Exploratory Committee, the Jon Bruning Exploratory Committee, and Bruning for U.S. Senate, Inc. (collectively, the "Respondents") for violations of the Federal Election Campaign Act ("Act").

MUR # 6449  
Amendment

OFFICE OF GENERAL  
COUNSEL

2011 JUN 13 PM 2:00

RECEIVED  
FEDERAL ELECTION  
COMMISSION

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**A. FACTS<sup>1</sup>**

Jon Bruning is the Attorney General of Nebraska and a candidate for U.S. Senate. As the initial complaint set forth in detail, Mr. Bruning evaded federal tax and campaign finance laws in a sustained pattern of non-disclosure that led up to his 2012 Senate candidacy. After becoming a Senate candidate briefly in 2007, Mr. Bruning subsequently withdrew from the 2008 Senate race and, before filing a termination report, transferred \$677,251.49 to the "Jon Bruning Exploratory Committee" (hereinafter, the "first exploratory committee"). But the first exploratory committee failed to register with the Federal Election Commission ("FEC") or the Internal Revenue Service ("IRS"). As the initial complaint explained, this failure to register means that the first exploratory committee must pay 35 percent tax, having failed to comply with the conditions of its tax-exempt status under the Internal Revenue Code.

This pattern of evasion and lawbreaking continued even after Mr. Bruning became a candidate for the 2012 election. On November 5, 2010, Mr. Bruning announced that he was "exploring" a run for the U.S. Senate in 2012 and also announced the formation of a new exploratory committee, the "Bruning for Senate 2012 Exploratory Committee" (hereinafter, the "second exploratory committee"). His public statements and actions showed that he had decided to be a candidate. Yet despite triggering actual candidacy no later than November 5, Mr. Bruning, Nebraska's attorney general, again failed to follow the law. He did not file a Statement of Candidacy within fifteen days, as the law required. He did not register his principal campaign committee with the FEC within ten days afterwards, as the law required. And he failed to file a Year-End Report by January 31, 2011.<sup>2</sup>

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<sup>1</sup> This amended complaint incorporates, by reference, the factual and legal allegations made against Respondents in the complaint filed on December 20, 2010 (hereinafter, the "initial complaint"), which is attached as Exhibit A.

<sup>2</sup> Mr. Bruning filed a Statement of Candidacy on January 3, 2011. See Statement of Candidacy for Jon C. Bruning (Jan. 3, 2011), available at <http://herndon1.sdrdc.com/pdf/156/11020010156/11020010156.pdf#navpanes=0>. His

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As his untimely April 15 report showed, Mr. Bruning's disregard for Federal campaign finance law was even more brazen than previously known. It was revealed that, on November 5, 2010, Mr. Bruning transferred \$448,349.52 from the first exploratory committee to Bruning for U.S. Senate, Inc. (hereinafter, the "Senate campaign"), without identifying any of the donors whose funds comprised the transfer.<sup>3</sup> One month later, on December 17, 2010, Mr. Bruning transferred an additional \$213.51 from the first exploratory committee to the Senate campaign.<sup>4</sup> Having transferred such a huge amount of funds to a federal campaign, the first exploratory committee was clearly a "political committee" under Federal law. It was required to register with the FEC and disclose both its donors and expenditures. Yet more than five months later, Mr. Bruning still has not registered this committee. As a result, the public does not know who funded his "exploratory" activities or how the "exploratory" funds were spent – including what happened to the \$66,586.46 that represents the difference between what Mr. Bruning transferred into the first exploratory committee in 2007 (\$677,251.49) and what he transferred out of it in 2010 (\$610,663.03).

This violation may be the tip of the iceberg. By hiding the donors to his exploratory committee, Mr. Bruning now appears to be trying to raise contributions in excess of Federal limits. Federal law requires that transfers from an exploratory committee to a Senate campaign be itemized, and that the funds comprising the transfer count against the original donors' \$2,500

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principal campaign committee registered the same day. See Statement of Organization for Bruning for U.S. Senate, Inc. (Jan. 3, 2011), available at <http://herndon1.sdrdc.com/pdf/160/11020010160/11020010160.pdf#navpages=0>. The principal campaign committee did not file its first report of contributions and expenditures until April 15, 2011. See Bruning for U.S. Senate Inc. Report of Receipts and Disbursements (April 15, 2011), available at <http://herndon1.sdrdc.com/pdf/732/11020160732/11020160732.pdf#navpages=0>. The effect of Mr. Bruning's non-filing was to evade legally required disclosure on January 31 and to avoid filing any report until April 15, well past his formal announcement of candidacy.

<sup>3</sup> See Bruning for U.S. Senate Inc. Report of Receipts and Disbursements (April 15, 2011), at 251 (Exhibit B).

<sup>4</sup> *Id.* On the same day, Mr. Bruning transferred an additional \$162,100 from the first exploratory committee to the Senate campaign, which he did properly itemize. *Id.*

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limit to the 2012 campaign. Otherwise, candidates could easily evade the contribution limits by raising money into "exploratory committees," transferring these funds to their campaigns, and then "triple-dipping" by having the same donors give another \$2,500 for the primary election and \$2,500 for the general election. But this is exactly what Mr. Bruning appears to be doing. When he reported the transfer of nearly \$450,000 from the first exploratory committee to the Senate campaign, Mr. Bruning did not disclose the donors whose funds comprised the transfer, clearing the way for these same donors to give again – illegally – to his campaign.<sup>5</sup> The public has no way of knowing from whom he is taking excessive contributions. This allows Mr. Bruning to raise under at least three separate limits for the 2012 Senate election, while his opponents raise under only two.

## **B. LEGAL ARGUMENT**

### **1. Mr. Bruning Hid His Violations From the Public by Failing to Register and Report Timely.**

The Act and FEC regulations define a "candidate" as an individual who "has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000."<sup>6</sup> Within 15 days of qualifying as a "candidate," the candidate must file a Statement of Candidacy designating a principal campaign committee.<sup>7</sup> And within 10 days of designation, the principal campaign committee must file a Statement of Organization.<sup>8</sup> The principal campaign committee must also file reports of contributions and expenditures with the FEC.<sup>9</sup>

There is no doubt that Mr. Bruning was a candidate on November 5, 2010, when he announced that he was "exploring" a Senate candidacy. His statements and actions – which were

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<sup>5</sup> *Id.*

<sup>6</sup> 11 C.F.R. § 100.3(a)(1).

<sup>7</sup> See 2 U.S.C. § 432(e)(1)

<sup>8</sup> See 2 U.S.C. § 433(a)

<sup>9</sup> See 2 U.S.C. § 434(a)

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detailed in the initial complaint – clearly showed that a "decision ha[d] been made to seek nomination for election, or election, to a Federal office," thereby triggering candidacy.<sup>10</sup> And if these statements and actions were not enough, he clearly triggered candidacy on November 5 when he transferred \$448,349.52 from his first exploratory committee to the Senate campaign – an amount in vast excess of what he needed to decide whether to run. Therefore, Mr. Bruning was required to file a Statement of Candidacy no later than November 22, 2010. Likewise, Bruning for U.S. Senate was required to file a Statement of Organization no later than December 2, 2010, and an initial report of contributions and expenditures with the Commission no later than January 31, 2011.

But Mr. Bruning did not file a Statement of Candidacy until January 3, 2011, more than forty days after he was legally obligated to do so – and, conveniently, just barely past the cut-off for having to file a January 31 report. The Senate campaign did not file its first report until April 15, 2011, nearly seventy-five days late. His failure to file violated 2 U.S.C. §§ 432(e)(1), 433(a), and 434(a).

**2. By Failing to Register or Report with the Commission, the First Exploratory Committee Violated Federal Law.**

Under Commission regulations, a "political committee" includes any "committee ... which makes expenditures aggregating in excess of \$1,000 during a calendar year ...."<sup>11</sup> When a committee not registered with the Commission transfers more than \$1,000 in a calendar year to a registered "political committee," the unregistered committee must register as a "political committee." *See* Adv. Op. 1991-12 (Schroeder) ("Such a transfer, if in excess of \$1,000 ... will cause the Fund to become a political committee subject to the registration and reporting

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<sup>10</sup> Advisory Opinion 1981-32 (Askew).

<sup>11</sup> 11 C.F.R. § 100.5(a).

requirements of the Act.").

Therefore, when the first exploratory committee transferred \$448,349.52 to the Senate campaign on November 5, 2010, it became a "political committee" and was required to both register with the Commission by November 15, 2010 and file a report of contributions and expenditures by January 31, 2011. See 11 C.F.R. § 102.1(d). Yet more than five months later, the first exploratory committee still remains unregistered and still has not disclosed its contributions and expenditures – including the \$66,586.46 in unaccounted for funds representing the difference between the transfer into the first exploratory committee in 2007 and the transfer out of the first exploratory committee in 2010. As a result, the public has no way of knowing where this money went, or whether it was spent legally.

The first exploratory committee's failure to register and report violates 2 U.S.C. §§ 433(a) and 434(a).

**3. Bruning for U.S. Senate Appears to Be Violating the Contribution Limits, and Causing its Donors to Violate the Limits As Well.**

The Commission requires "[p]olitical committees which have cash on hand at the time of registration [to] disclose on their first report the source(s) of such funds ...."<sup>12</sup> On its April 15 report, the Senate campaign reported nearly \$450,000 in unitemized transfers from the first exploratory committee, and did not disclose the donors whose contributions comprised these funds.

The failure to disclose these donors violated the law. Unless an exception applies, a committee receiving a transfer of funds from another committee must "itemize and report the original source of the contributions that make up the amount of the transfer as if such contributions had originally been made to the [recipient] committee and must aggregate those

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<sup>12</sup> 11 C.F.R. § 104.12.

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contributions with other contributions made to the [recipient] committee by the same contributors for contribution limitation purposes." Adv. Op. 1984-38 (Oberstar). While there is a narrow exception for transfers between "previous campaign committees" and "current campaign committees," that exception did not apply to these transfers. See 11 C.F.R. § 110.3(c)(4). The Commission has said clearly that "exploratory committees" do not qualify as "previous campaign committees" for purposes of this exception. See Adv. Op. 1991-12 (Schroeder) ("The Commission concluded, therefore, that the [testing-the-waters] Fund could not rely on 11 CFR 110.3(c)(4) to make unlimited transfers to Schroeder for Congress."). As a result, Bruning for U.S. Senate was required to disclose the donors whose funds comprised the nearly \$450,000 that it received from the first exploratory committee.

In addition, the funds contributed by these donors count against their \$2,500 limit. As the FEC has made clear, "the donations of any person that are included in the [exploratory committee's] cash on hand must be aggregated with any contribution made by that person to [the principal campaign committee] for the next election." *Id.* Mr. Bruning's failure to disclose these donors is a strong indication that he is trying to break the law and "triple-dip" from these donors. This would cause both the campaign *and* the donors to violate Federal law. See 2 U.S.C. §§ 441a(a)(1), 441a(f).

#### **C. REQUESTED ACTION**


As we have shown, there is overwhelming evidence that Jon Bruning has violated federal law. As Attorney General of Nebraska, he works in a building that bears the inscription, "The Salvation of the State Is Watchfulness in the Citizen." The Commission should show that same watchfulness and investigate these violations — including whether they were knowing and willful, given Mr. Bruning's prior federal candidacy and his current job as Nebraska's top law

enforcement official. Moreover, the Commission should audit his two exploratory committees and Bruning for U.S. Senate, pursuant to 2 U.S.C. § 437g(a)(2), to determine the full extent of their illegal activities. And it should enjoin Bruning from further violations, while seeking penalties in the maximum amount permitted by law.

Sincerely,

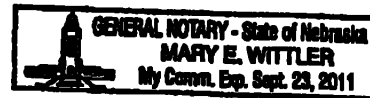


SUBSCRIBED AND SWORN to before me this 8 th day of June, 2011.

  
Notary Public

My Commission Expires:

9.23.11



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