

BEFORE THE
FEDERAL ELECTION COMMISSION

COMMISSION
SECRETARIAT

Chris Redfern
Chairman, Ohio Democratic Party
340 East Fulton Street
Columbus, OH 43215

2012 FEB 23 P 1:41

OFFICE OF
COUNCIL

2012 FEB 22 PM 4:29

FEDERAL ELECTION
COMMISSION

Complainant,

v.

Citizens for Josh Mandel
Kathryn D. Kessler, Treasurer
50 West Broad Street, Suite 1900
Columbus, OH 43215

MUR # 6534

Josh Mandel
50 West Broad Street, Suite 1900
Columbus, OH 43215

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) for apparent violations of the Federal Election Campaign Act ("FECA" or the "Act") against Josh Mandel, Citizens for Josh Mandel, and Kathryn D. Kessler, treasurer ("Respondents"). In 2010, Mandel ran and was elected State Treasurer of Ohio. He is now running for U.S. Senate. From recent state and federal campaign finance reports, it appears that Mandel has been using money left over from his state race to fund his senate campaign. After only a month in to his four year term as Treasurer, and immediately before he declared his candidacy for the Senate, Mandel began emptying his state committee, Citizens for Josh Mandel (the "State Committee"), and appears to have paid for at least 10 trips, including to Utah, New York, and Washington, D.C. for the purpose of taking "political meetings." Shortly thereafter, contributions to Mandel's federal

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campaign began pouring in from the same locations. Given the timing of these trips, they were clearly part of Mandel's testing the waters activity. Federal law prohibits using state campaign money to support a federal campaign in this manner – this rule is necessary to ensure that only funds that are permissible under federal law are used in a federal race. Accordingly, the FEC should immediately investigate Mandel's apparent attempts to circumvent the law.

A. FACTS

Josh Mandel was elected State Treasurer of Ohio on November 2, 2010. Then, less than three months after taking office, he started a run for U.S. Senate. Mandel filed his Statement of Candidacy with the FEC on April 6, 2011 and designated "Citizens for Josh Mandel" as his principal campaign committee. As he is only in the first year of a four year term, Mandel is not currently running for re-election for his position of Treasurer in Ohio. Despite this fact, Mandel's state campaign committee has been making a number of expenditures for travel for the purpose of "political meetings," apparently in support of Mandel's Senate campaign. Overall, Mandel spent over \$25,000 out of his State Committee in the first six months of 2011, essentially emptying the account. Almost all of these expenditures were made just before he established his federal committee, and then after launching his federal campaign, he has made essentially no expenditures from the State Account for the rest of the year. This plainly points to the fact that Mandel was using the State Committee to get his federal campaign off the ground before he was able to raise federal contributions.

According to Ohio campaign finance records, Mandel's state campaign has spent over \$8,000 on airfare, hotels, and other travel expenses to visit Utah, New York, and

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Washington, D.C. including for "political meetings."¹ Even Mandel's campaign spokesman has admitted that the trips were made in order to have "political discussions."² In all, his filings and news reports indicate that Mandel took ten trips in the weeks immediately before he filed his Statement of Candidacy in the Senate race.³ Then, illustrating that the trips were clearly on behalf of his Senate campaign, contributions started flooding in from these same locations. Starting just six days after registering with the FEC, Mandel started receiving contributions from the New York area for his Senate campaign, contributions that totaled over \$176,000 in the first three months. Similarly, Mandel received a check from the Washington, D.C. area just two days after registering with the FEC, and over the next months, raised \$57,000 from the D.C. area. Some of the travel expenses Mandel's state campaign made in Washington D.C. may have also been in connection with a reported meeting Mandel had with Senator Jim DeMint to discuss his Senate candidacy.⁴

B. LEGAL ARGUMENT:

- 1. The FEC should investigate whether Citizens for Josh Mandel has accepted a prohibited in-kind contribution from the State Campaign.**

The Act places limitations and prohibitions on the sources and amounts of contributions to a federal election campaign. The campaign committee of a candidate for federal office is permitted to raise money only from certain sources, including individuals, partnerships, and political action committees. See 2 U.S.C. § 441a. Many

¹ See Citizens for Josh Mandel committee reports filed with the Ohio Secretary of State, available here http://www2.sos.state.oh.us/pls/cfonline/f?p=119:37:4366243529038430::NO:RP:P37_ENTITY_ID,P37_ENTITY_TYPE:10854,CAC.

² *Id.*

³ Stephen Koff, "Josh Mandel's early political travel as treasurer questioned by Ohio Democrats," Cleveland Plain Dealer (August 26, 2011), available at http://www.cleveland.com/open/index.ssf/2011/08/josh_mandels_early_political_t.html.

⁴ John J. Miller, "Meet Josh Mandel," National Review (December 19, 2011), available at <http://www.hgymiller.com/2011/12/meet-josh-mandel/>.

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states impose fewer restrictions on contributions to campaigns for state elective offices. In Ohio, for example, individuals and PACs are permitted to make contributions in far excess of the federal limits. This disparity creates concerns about the injection of "soft money" into federal elections in the form of transfers or in-kind contributions between a candidate's state campaign and federal campaign committee. Explanation and Justification, Transfer of Funds from State to Federal Campaigns, 57 Fed. Reg. 36344 (Aug. 12, 1992).

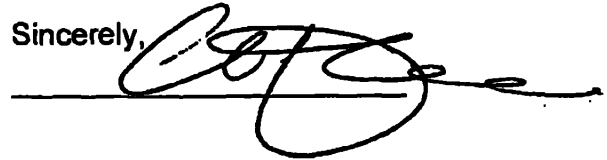
In order to preserve the integrity of the federal election process, the FEC enacted regulations to specifically prohibit "transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election." 11 C.F.R. § 110.3(d). As explained by the Commission, this blanket prohibition is a necessary means for ensuring that only permissible funds under the Act are used in connection with a campaign for federal elective office. Explanation and Justification, 57 Fed. Reg. at 36345. A state campaign committee cannot pay for expenses of a federal committee, and even when a candidate is only testing the waters, the funds used by the candidate are subject to the Act's contribution limits. 11 C.F.R. §§ 100.72(a) and 100.131(a).

Here, all available information indicates that Mandel's out-of-state trips, made immediately before he filed his Statement of Candidacy, and described as being made for "political meetings," were for testing the waters and drumming up support for his Senate campaign, and accordingly, it was a violation of the Act for Mandel's State Committee to pay for such travel.

C. REQUESTED ACTION

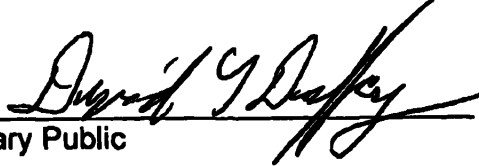
Given the evidence described above, the FEC should investigate whether Respondents violated federal law. Should the Commission determine that Respondents have done so, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 15 day of February, 2012.

Notary Public



My Commission Expires:

DAVID L. DUFFY
Notary Public, State of Ohio
My Commission has no Expiration Date