



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 11 2014

Stephen W. Spence  
Phillips, Goldman & Spence, P. A.  
1200 N. Broom Street  
Wilmington, DE 19806

RE: MUR 6665

Dear Mr. Spence:

On October 17, 2012, the Federal Election Commission notified you and your clients, Alex Pires for U.S. Senate and you, as treasurer; Alexander J. Pires, Jr.; Bottle & Cork; and Jimmy's Grille & Catering, LLC, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 8, 2014, based upon information contained in the complaint, and information you provided, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on December 8, 2014.

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. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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

Sincerely,

General Counsel

BY: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

1 FEDERAL ELECTION COMMISSION

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3 FACTUAL AND LEGAL ANALYSIS

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5 RESPONDENTS: Alex Pires for U.S. Senate MUR 6665  
6 Stephen W. Spence as treasurer  
7 Alexander J. Pires, Jr.  
8 Bottle & Cork  
9 Jimmy's Grille & Catering, LLC  
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12 I. INTRODUCTION

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14 This matter was generated by a Complaint alleging violations of the Federal Election  
15 Campaign Act of 1971, as amended (the "Act")<sup>1</sup> and Commission regulations by Respondents  
16 Alexander J. Pires, Jr. ("Pires"), Alex Pires for U.S. Senate and Stephen W. Spence in his official  
17 capacity as treasurer (collectively the "Committee"), Bottle & Cork, and Jimmy's Grille & Catering,  
18 LLC ("Jimmy's Grille"). After reviewing the record, the Commission dismisses the allegations.

19 II. FACTUAL AND LEGAL ANALYSIS

20 A. Factual Background

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22 The Complaint alleges that Pires, an independent candidate in 2012 for the U.S. Senate from  
23 Delaware and his Committee violated the Act and Commission regulations by accepting prohibited  
24 in-kind corporate contributions in connection with two campaign events and by failing to affix  
25 disclaimers to the campaign's website and certain campaign materials. Compl. at 1-4. The  
26 Complaint alleges that Bottle & Cork and Jimmy's Grille are two incorporated businesses owned by  
27 Pires. *Id.* at 1. Pires reportedly held a kick-off event for his campaign, on May 26, 2012, at which  
28 food and beverages were provided to attendees "free of charge." *Id.* at 1-2. In addition, Bottle &

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<sup>1</sup> On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 Cork employees allegedly dressed in their employee t-shirts and collected signatures in connection  
2 with Pires's effort to appear on the general election ballot. *Id.* at 2. After reviewing the  
3 Committee's financial disclosure reports, the Complaint alleges that no disbursements to Bottle &  
4 Cork were reported for food, beverages, use of the company's space, or time spent by its employees  
5 for their work at the event, resulting in prohibited in-kind corporate contributions. *Id.*

6 Subsequently, Pires and the Committee held a one-hour campaign event on June 11, 2012, at  
7 Woodward Outdoor Equipment featuring "free chicken for attendees from Jimmy's Grille." *Id.* at  
8 2; *see also id.*, Ex. A (news release announcing the event). The Complaint alleges that the  
9 Committee's financial disclosure reports fail to disclose any disbursements to Jimmy's Grille for the  
10 food reportedly provided at the event. *Id.* at 2. Therefore, the Complaint contends that the  
11 Committee received prohibited in-kind corporate contributions from Jimmy's Grille and Woodward  
12 Outdoor Equipment.<sup>2</sup> *Id.* at 3.

13 The Complaint also alleges that printed literature reportedly distributed by the Committee  
14 constituted "general public political advertising" and, as such, should have included appropriate  
15 disclaimers. *Id.* at 2-3; *see also id.*, Ex. B at 1-3 (copy of double-sided card with Pires's logo and  
16 language supporting him and criticizing incumbent senator Tom Carper, as well as a document  
17 entitled "Five Things I Believe" and identifying Pires by name).

18 More specifically, the Complaint alleges that the disclaimers also should have complied with  
19 the Commission's regulations pertaining to printed material. *Id.* at 3. Finally, the Complaint

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<sup>2</sup> The Complaint surmises that "these events may be just the tip of the iceberg, as the FEC reports indicate very few disbursements for event-related expenses . . ." Compl. at 3. Authorized candidate committees, such as the Pires Committee, must itemize disbursements to a vendor if the aggregated payments to that vendor exceed \$200 for the election cycle. 52 U.S.C. § 30104(b)(4)-(6) (formerly 2 U.S.C. § 434(b)(4)-(6)). Based on the available information, the record does not reflect that the Committee made payments to the vendors in this matter that would require itemization. Therefore, the Commission does not address this allegation further.

1 alleges that the campaign's website, [www.36YearsIsEnough.com](http://www.36YearsIsEnough.com), failed to include an appropriate  
2 disclaimer. *Id.*

3 Stephen W. Spence ("Spence"), the Committee's treasurer, filed a joint response on behalf  
4 of the Committee, Pires, Bottle & Cork, and Jimmy's Grille ("Joint Response"). He explains that  
5 "Bottle & Cork" is a trade name for Bottle Taproom, Inc., a Delaware corporation owned by Pires,  
6 and that Jimmy's Grille is "affiliated with Mr. Pires." Joint Resp. at 1-2. Spence states that the  
7 May 26, 2012 "Kick Off Event" included "a cameo appearance" by Pires, a first-time candidate, at  
8 Bottle & Cork's musical "Jam Session," which was one of several events held throughout the  
9 summer. *Id.* at 1-2. During a break in the music, Pires reportedly announced his candidacy for the  
10 U.S. Senate. *Id.* at 2. Spence asserts that the announcement, which took no more than a few  
11 minutes, did not transform the "previously-scheduled and unrelated" event into a campaign event,  
12 and he denies that Bottle & Cork provided free food or beverages. *Id.* at 1-2.

13 Spence states that the Pires campaign set up a table outside Bottle & Cork on the same day,  
14 where paid staff and volunteers "solicited signatures from Delaware registered voters to get Mr.  
15 Pires on the Delaware ballot." *Id.* at 2. Spence asserts that he paid several individuals \$50 each in  
16 cash for their efforts, and that his payments were reported as part of a campaign contribution  
17 totaling \$300. *Id.* He denies that any of the individuals wore Bottle & Cork t-shirts and claims that  
18 if any Bottle & Cork employees wore official t-shirts while soliciting signatures, they did so without  
19 the campaign's knowledge or permission. *Id.*

20 Spence asserts that while he did not attend the June 11, 2012 event, he believes it was held  
21 on Respondent Christopher Woodward's driveway and that fewer than ten individuals attended. *Id.*  
22 at 2-3. Spence asserts that Jimmy's Grille supplied food worth \$166, but that, due to a billing error,

1 he did not receive the invoice until the Complaint was filed. *Id.*; *see also id.*, Ex. A at 4-5. Once  
2 the invoice was discovered, Spence indicates that the Committee paid it on November 2, 2012. *Id.*

3 Addressing the Complaint's disclaimer allegations, Spence concedes that the Committee's  
4 website initially included identifying information, but lacked the requisite language stating that the  
5 Committee had paid for it. *Id.* at 3. After being made aware of the Complaint, Spence had the  
6 disclaimer "Paid for and authorized by Alex Pires for U.S. Senate" added to the website. *Id.*

7 Spence describes the two pieces of campaign literature appended to the Complaint as a "Five  
8 Things I Believe" handout, a one-page document, which was written by Pires in the first person, and  
9 a double-sided 5-inch by 7-inch campaign card. *Id.* at 3-4. Spence explains that Pires or his  
10 campaign staff delivered the "Five Things I Believe" handouts to approximately 100 individuals at  
11 meetings early in the campaign and argues that there "could be no doubt who prepared or  
12 distributed the document." *Id.* at 3. As for the campaign card, Spence acknowledges that the first  
13 order of 5,000 cards, which were printed in May 2012 and distributed at several campaign stops,  
14 lacked disclaimers. *Id.* at 4. When the campaign manager noticed the lack of attribution language  
15 in June 2012, the cards were discarded and new cards were printed bearing the disclaimer "Paid for  
16 by Alex Pires for U.S. Senate." *Id.*; *see also id.*, Ex. A at 2.

17 **B. Legal Analysis**

18 The Act and Commission regulations define "contribution" as any "gift, subscription, loan

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19 . . . or anything of value made by any person for the purpose of influencing any election for Federal  
20 office." 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); *see also* 11 C.F.R.

21 § 100.52(a). "Anything of value" includes all in-kind contributions, including the provision of  
22 goods or services without charge or at a charge that is less than the usual and normal charge.

23 11 C.F.R. § 100.52(d)(1). The term "contribution" does not include "the value of services provided

1 without compensation by any individual who volunteers on behalf of a candidate or political  
2 committee.” 52 U.S.C. § 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R.  
3 § 100.74 (the value of services provided by a volunteer is not a contribution).

4 The Act and Commission regulations also prohibit candidates and their campaign  
5 committees from knowingly accepting or receiving corporate contributions in connection with  
6 federal elections. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); *see also* 11 C.F.R. § 114.2.

7 This prohibition extends to a campaign’s unreimbursed use of a corporation’s facilities, with limited  
8 exceptions pertaining to volunteer activity at 11 C.F.R. § 114.9(a). Any person who uses a  
9 corporation’s facilities for activity in connection with a Federal election is required to reimburse the  
10 corporation within a commercially reasonable time in the amount of the normal and usual rental  
11 charge. 11 C.F.R. § 114.9(d).

12 The Act and Commission regulations require a disclaimer whenever a political committee  
13 makes a disbursement for the purpose of financing any public communication through any  
14 broadcast, cable, satellite communication, newspaper, magazine, outdoor advertising facility, mass  
15 mailing, or any other type of general public political advertising. 52 U.S.C. §§ 30101(22); 30120  
16 (formerly 2 U.S.C. §§ 431(22), 441d(a)); *see also* 11 C.F.R. §§ 100.26, 110.11. A disclaimer is also  
17 required for all websites of political committees available to the general public. 11 C.F.R.

18 § 110.11(a)(1). If a communication requiring a disclaimer is paid for by a candidate, a candidate’s  
19 authorized committee, or its agents, the disclaimer must clearly state that the communication was  
20 paid for by the authorized committee. 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1));  
21 *see also* 11 C.F.R. § 110.11(b)(1).

22 While the Committee may have accepted in-kind corporate contributions, the Commission  
23 concludes that the contributions appear to have been *de minimis*, and dismisses the allegations

1 accordingly. With respect to Bottle & Cork, although Pires announced his candidacy at the “Jam  
2 Session,” and the Committee collected signatures outside Bottle & Cork the same day, the possible  
3 use of any associated corporate facilities appears to have been *de minimis*. Additionally, to the  
4 extent that off-duty Bottle & Cork employees acted as volunteers to assist the campaign in  
5 collecting signatures, such activity would not constitute a contribution. 52 U.S.C. § 30101(8)(B)(i)  
6 (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74 (the value of services provided by a  
7 volunteer is not a contribution). With respect to the June 11, 2012 event held in the driveway of  
8 Woodward Outdoor Equipment, based on the location and number of persons who purportedly  
9 attended, any potential corporate contribution resulting from the one-hour event was likely  
10 *de minimis*.<sup>3</sup>

11 With respect to its website, the Committee acknowledges that although it included  
12 identifying information, the website initially lacked the disclaimers required under 11 C.F.R.  
13 § 110.11(a)(1). Joint Resp. at 3. When it was made aware of the omission through the Complaint in  
14 this matter, the Committee states that it added a disclaimer to its website stating “Paid for and  
15 authorized by Alex Pires for U.S. Senate.” *Id.* Because the website contained some identifying  
16 information and because the Committee took remedial action to ensure the website had proper  
17 disclaimers, here the Commission dismisses the allegations with respect to the website.

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<sup>3</sup> During the June 11, 2012 event, the Pires campaign admittedly purchased \$166 worth of food from Jimmy's Grille. Joint Resp. at 2-3; *see also* Ex. A at 4-5 (Invoice from Jimmy's Grille). The Committee's failure to pay the bill until November 2, 2012, almost five months later may have been an extension of credit outside of Jimmy's Grille's normal course of business and, thus, may have constituted a contribution until paid. 11 C.F.R. § 100.55; *see also* 11 C.F.R. § 116.3(a)-(c). Although the facts at hand are not clear, to the extent that Jimmy's Grille, a limited liability company, has elected treatment as a corporation for federal tax purposes, the contribution could be considered a corporate contribution. 11 C.F.R. § 110.1(g). Even assuming the contribution was prohibited, it only amounted to \$166.

1           The other two communications at issue were apparently distributed by hand, and contained  
2 information identifying them as Pires's campaign literature. *Id.* at 3-4. The cost of the "Five  
3 Things I Believe" handouts, which were written by Pires and were distributed to only about 100  
4 individuals, was likely *de minimis*. While the Committee concedes that campaign cards lacking a  
5 disclaimer were distributed for approximately one month early in the campaign, the Committee  
6 asserts that it noticed the lack of a disclaimer, discarded the cards, and printed new cards that  
7 included a disclaimer, all before the Complaint in this matter was filed. *Id.* Because the two  
8 communications contained some identifying information, because the first was distributed only to a  
9 small number of people, and because the Committee took remedial action to ensure the second had  
10 proper disclaimers, the Commission dismisses the allegations with respect to these two  
11 communications.

12           In light of the Committee's remedial action and the *de minimis* nature of the potential  
13 violations, the Commission exercises its prosecutorial discretion and dismisses the allegations that  
14 Alexander J. Pires, Jr., Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity as  
15 treasurer, Bottle & Cork, and Jimmy's Grille & Catering, LLC violated 52 U.S.C. § 30118(a)  
16 (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2. *See Heckler v. Chaney*, 470 U.S. 821 (1985).  
17 The Commission also exercises its prosecutorial discretion and dismisses the allegations that  
18 Alexander J. Pires, Jr. and Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity  
19 as treasurer violated 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)) and 11 C.F.R.  
20 § 110.11(a)(1) and (b)(1). *See Heckler*, 470 U.S. at 821.