



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edwin Wee
P.O. Box 1936
Media, PA 19063

OCT - 6 2014

Re: MUR 6735
Joseph A. Sestak

Dear Mr. Wee:

On September 25, 2014, the Federal Election Commission accepted the signed conciliation agreement you submitted in settlement of a violation of 2 U.S.C. § 432(e)(1) [now 52 U.S.C. § 30102(e)(1)], a provision of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ Accordingly, the file has been closed 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). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B) [now 52 U.S.C. § 30109(a)(4)(B)].

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Kamau Philbert", written over a horizontal line.

Kamau Philbert
Attorney

Enclosure
Conciliation Agreement

¹ 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.

of Joe Sestak was the 2013 April Quarterly Report, which disclosed \$8,644 beginning cash on hand, as well as \$460,250 in receipts and \$10,185 in disbursements for the first quarter.

2. The Federal Election Campaign Act of 1971, as amended (the "Act") defines candidate as "as individual who seeks nomination for election, or election, to Federal office." 2 U.S.C. § 431(2). An individual shall be deemed to seek nomination for election, or election, when he receives contributions or makes expenditures in excess of \$5,000. *Id.* A candidate is required to designate in writing a principal campaign committee within fifteen days of reaching this \$5,000 threshold. 2 U.S.C. § 432(e)(1).

3. The Commission has created a limited exemption to the definitions of contribution and expenditure — and therefore the \$5,000 candidacy threshold — to allow individuals to conduct certain activities designed to evaluate a potential candidacy (*e.g.*, to "test the waters"). *See* 11 C.F.R. §§ 100.72, 100.131. Funds received and payments made "solely for the purpose of determining whether an individual should become a candidate" are not considered contributions or expenditures under the Act. *Id.*

4. An individual who is testing the waters is not required to register with the Commission unless and until he decides to run for federal office, or conduct activities that indicate he or she has decided to become a candidate. *See* 11 C.F.R. §§ 100.72, 100.131. Commission regulations describe five non-exhaustive examples of activities that indicate an individual is not merely testing the waters, but has decided to become a candidate for federal office. *Id.* One example is an individual making or authorizing written or oral statements that refer to him or her as a candidate for a particular office. *Id.*

5. Beginning June 24, 2013, Friends of Joe Sestak sent at least eight fundraising e-mails in which Sestak or the Committee characterized Sestak as "seek[ing] the U.S. Senate." Some of

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9. The Committee provided the FEC with telephone records from its telephone service provider showing that Committee personnel made 26 phone calls between December 26, 2012 and May 23, 2013 totaling 2.4 hours to the telephone number for the Commission's Information Division hotline. Respondent contends that these calls were made to obtain guidance on how to maintain the Committee's desired status as a "testing the waters" committee.

V. Respondent violated 2 U.S.C. § 432(e)(1) by failing to file a Statement of Candidacy within 15 days of becoming a federal candidate.

VI. 1. Respondent will pay a civil penalty to the Commission in the amount of Five Hundred Dollars (\$500) pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent will cease and desist from committing violations of 2 U.S.C. § 432(e)(1).

3. Respondent will file a Statement of Candidacy within 15 days.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:



Daniel A. Petalas
Associate General Counsel
for Enforcement

10/3/14

Date

FOR THE RESPONDENT:



Edwin Wee
Counsel to Joseph A. Sestak

8/26/14

Date

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