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FIRST GENERAL COUNSEL'S REPORT

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MUR 6917

DATE COMPLAINT FILED: February 23, 2015
DATE SUPPLEMENTAL COMPLAINT FILED:
March, 26, 2015
DATES OF NOTIFICATION: March 2, 2015, and
November 3, 2015
DATE OF LAST RESPONSE: December 22, 2015
DATE ACTIVATED: June 24, 2015

EXPIRATION OF SOL: November 18, 2019
(earliest) to January 29, 2021 (latest)
ELECTION CYCLE: 2016

COMPLAINANT:

Brad Woodhouse, American Democracy Legal Fund

RESPONDENTS:

Governor Scott Walker
Scott Walker, Inc. and Kate Lind in her
official capacity as treasurer
Our American Revival and Andrew Hitt
in his official capacity as treasurer¹

MUR 6929

DATE COMPLAINT FILED: March 31, 2015
DATES OF NOTIFICATION: April 3, 2015, and
November 3, 2015
DATE OF LAST RESPONSE: December 22, 2015
DATE ACTIVATED: June 24, 2015

EXPIRATION OF SOL: November 18, 2019
(earliest) to January 29, 2021 (latest)
ELECTION CYCLE: 2016

COMPLAINANTS:

Campaign Legal Center
Democracy 21

¹ Andrew Hitt, the treasurer of OAR, was notified that he was a respondent in these matters and subsequently joined in OAR's and Walker's Response. The complaints do not allege that Our American Revival ("OAR") is a political committee. Under these circumstances, we are not making recommendations as to Hitt at this time.

1 statements and disclosure reports, and used impermissible non-federal funds from OAR for
2 campaign activity.³

3 The Responses assert that Walker conducted no testing the waters activities prior to June
4 17, 2015, and that the Committee properly disclosed its activities during Walker's testing the
5 waters period.⁴ The Responses further assert that Walker was not a federal candidate prior to his
6 July announcement of candidacy.⁵

7 The available information indicates that Walker conducted testing the waters activities
8 prior to June 17, 2015, that those activities were funded by OAR, and that Committee failed to
9 report expenses related to those activities, either as disbursements or as in-kind contributions.
10 We recommend, therefore, that the Commission find reason to believe that OAR violated
11 52 U.S.C. §§ 30116(a) and 30118 by making, and Walker and the Committee violated 52 U.S.C.
12 §§ 30116(f) and 30125(e) by accepting, excessive in-kind contributions. We also recommend
13 that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by
14 failing to report testing the waters expenses and in-kind contributions from OAR. Additionally,
15 we recommend that the Commission find reason to believe that Walker violated 52 U.S.C.
16 § 30102(e)(1) by failing to timely file a Statement of Candidacy, but take no action at this time
17 as to the allegation that the Committee violated 52 U.S.C. §§ 30103(a) and 30104 by failing to
18 timely file a Statement of Organization and disclosure reports with the Commission. We also
19 recommend that the Commission take no action at this time as to OAR's acceptance and receipt
20 of non-federal funds. Finally, we recommend that the Commission authorize compulsory

³ MUR 6917, Supp. Compl. at 1-2 (Mar. 26, 2015); MUR 6929, Compl. ¶ 2.

⁴ Scott Walker, Inc. Resp. at 2 n.4 (Dec. 21, 2015).

⁵ Walker and OAR Resp. at 3 (June 2, 2015).

1 process for use, if necessary, in an investigation to determine the amount, timing, and sources of
2 funds that Walker spent on testing the waters activities for his 2016 presidential candidacy.

3 **II. FACTUAL BACKGROUND**

4 On June 19, 2015, Walker posted a message on his official Twitter account with the title
5 "Why I'm considering running for President of the United States."⁶ According to Walker, this
6 date marked the beginning of his testing the waters activity related to a possible 2016
7 presidential candidacy. Only two weeks later, on July 2, 2015, the Committee filed a Statement
8 of Organization with the Commission,⁷ and Walker revealed his federal campaign logo on his
9 Twitter account.⁸ Walker then publicly announced that he was running for President on July 13,
10 2015,⁹ and filed his formal Statement of Candidacy with the Commission on August 5, 2015.¹⁰

11 Though Walker asserts that he did not engage in any testing the waters activities until two
12 weeks prior to his announcement,¹¹ the Complaints allege that Walker engaged in a variety of
13 activities related to an eventual 2016 presidential campaign as early as November 2014, and that
14 once OAR was formed, it impermissibly funded those testing the waters activities.

⁶ Twitter, Governor Scott Walker, @ScottWalker (June 19, 2015).

⁷ The Committee amended the Statement of Organization on July 31, 2015, to include the name of the candidate on Line 5 of the form. *See* Scott Walker, Inc., Amended Statement of Organization (July 31, 2015).

⁸ Twitter, Governor Scott Walker, @ScottWalker (July 2, 2015).

⁹ Scott Walker, FACEBOOK, Statement (Sept. 21, 2015), <https://www.facebook.com/scottkwalker/posts/>. Walker ultimately withdrew from the election on September 21, 2015. Scott Walker, FACEBOOK, Statement (Sept. 21, 2015), <https://www.facebook.com/scottkwalker/posts/10156030779870405>.

¹⁰ Scott Walker, Statement of Candidacy (Aug. 5, 2015). On July 2, 2015, the same day the Committee filed its Statement of Organization, Walker submitted to the FEC a letter in lieu of a Statement of Candidacy (Form 2) stating that he "had received contributions of more than \$5,000 within the last 15 days." Letter to FEC from Governor Scott Walker (July 2, 2015). This document was not made available as a public filing of the candidate through the Federal Election Commission website. A copy may be found in the Voting Ballot Matters folder.

¹¹ The Committee's first filed report, the 2015 October Quarterly Report, disclosed that it made its first disbursements on June 19, 2015. The report does not indicate whether the Committee's earliest reported disbursements were advance payments for services rendered at a later date or whether they are related to testing the waters activities.

1 **A. Testing the Waters Activity**

2 According to the Complaints, Walker made numerous statements starting as early as
 3 November 2014 which indicate that he was testing the waters for a presidential bid. The
 4 Complaint first points to a speech Walker gave at the Republican Governors Association
 5 Conference in Boca Raton, Florida. Walker stated that it was “pretty obvious” that he should
 6 consider running for President and that “I spend a lot of time not just talking with people but
 7 praying about, thinking about with my family as well whether or not eventually that might be a
 8 call to run for the presidency.”¹²

9 In January 2015, Walker also gave a number of interviews cited by the Complaint as
 10 evidence that he was testing the waters at that time:

- 11 • Radio show interview in Milwaukee, Wisconsin: Walker referred to himself as a
 12 prospective candidate, stating, “The media is going to peg any prospective candidate
 13 with a tag. I’d rather have bland or uncharismatic than dumb or ignorant, or corrupt
 14 or any of the other things that they could label other would-be candidates out there, or
 15 old, for that matter.”¹³
- 16 • Interview with reporters in Madison, Wisconsin: “Putting that power in the hands of
 17 the states, and more importantly, more directly in the hands of the people — I think
 18 that’s something that will help transform America. It’s an idea that I certainly share,
 19 and it’s an idea that I think a vast majority of Americans do. And certainly, if I got to
 20 a point — *right now we’re exploring* — but if I got to a point of going forward with a
 21 campaign, that would be a fundamental plank of it.”¹⁴

¹² During the same speech, Walker reportedly said of a 2016 presidential bid, “I think, right now, my wife would be on board [for] just about anything,” and his college-aged sons are “excited about that opportunity should it become available.” *Scott Walker Says He Is Seriously Weighing Presidential Bid*, MILWAUKEE-WISCONSIN JOURNAL SENTINEL (Nov. 18, 2014), available at <http://www.jsonline.com/news/statepolitics/scott-walker-says-hes-seriously-weighing-presidential-bid-b99393523z1-283139761.html>.

¹³ Scott Bauer, *Wisconsin Governor Finds Gaps in 2016 GOP Field Encouraging*, WASHINGTON TIMES (Jan. 28, 2015), available at <http://www.washingtontimes.com/news/2015/jan/28/walker-says-he-sees-gaps-in-potential-2016-gop-fie/> [hereinafter Bauer, *Wisconsin Governor Finds Gaps in 2016 GOP Field Encouraging*].

¹⁴ Jessie Opoien, *Scott Walker Says Fundraising Committee Is About 'Ideas,' Not Promoting a Candidate*, THE CAPITAL TIMES (Jan. 28, 2015), available at: <http://host.madison.com/news/local/writers/jessie-opoien/scott->

- 1
- 2 • Interview with reporters in Madison, Wisconsin: Walker told reporters that he could
- 3 balance a campaign with his duties as governor, comparing the situation to his 2012
- 4 recall election, which he told reporters required extensive travel and campaigning:
- 5 “We’ll manage it — if that were to happen — we’ll manage it the way we did in the
- 6 recall.”
- 7
- 8 • Interview with Sean Hannity, FOX News: Walker said that he was “very interested”
- 9 in a presidential bid, stating “I think we need new, bold leadership from outside of
- 10 Washington that’s proven to take on the challenges we face in this country right
- 11 now.”¹⁵ After describing his own record, Walker said that he would consider running
- 12 if there was a sense that people want candidates with a proven record: “And so the
- 13 first step is to get out in those states, talk about that. But I think if there’s a sense out
- 14 there, which I heard on Saturday, that people want not just dynamic speakers, they
- 15 want people who’ve got a proven record, who’ve actually done something, not just
- 16 talked about it, who are from outside of Washington. And increasingly, I think they
- 17 want new, fresh leaders.”¹⁶ In this interview, Walker also described the agenda that
- 18 he would promote if he were President.¹⁷
- 19

20 Further, the Complaints point to Walker appearances at events that are traditional stops

21 for declared and hopeful presidential candidates. In February 2015 he attended the Conservative

22 Political Action Conference (“CPAC”) in National Harbor, Maryland, where he was asked

23 “Should you become Commander-in-Chief, how would you deal with threats such as ISIS?”

24 Walker responded, “I want a Commander-in-Chief who will do everything in their power to

25 ensure that the threat from radical Islamic terrorists do not wash up on America soil. If I can

26 take on 100,000 protesters, I can do the same across the world.” In response to a separate

walker-says-fundraising-committee-is-about-ideas-not-promoting/article_ef9829dd-572f-5dab-b8fb-4ede66b8f52c.html (emphasis added) [hereinafter “Opoien, *Scott Walker Says Fundraising Committee Is About 'Ideas'*”].

¹⁵ Transcript, Interview by Sean Hannity, FOX News, with Governor Scott Walker, at FOX News Network (Jan. 27, 2015) [hereinafter “Transcript, Hannity Interview”].

¹⁶ *Id.* Walker also stated that he and his team had been tested during the last four years and that Americans wanted leadership. *Id.*

¹⁷ *Id.*

1 question, he stated, “To me the guiding principle should be freedom, and that’s what we are
2 going to do on any decisions going forward should we choose...my lawyers love it when I say,
3 we are exploring a campaign, should we choose to run for the highest office in the land.”¹⁸

4 In May 2015, Walker attended the Republican Party of Iowa’s Lincoln Dinner. The
5 program for the event, which listed Walker as a featured speaker, announced: “There’s always
6 the chance for a candidate to have a defining moment at an event like this in Iowa. This dinner is
7 an opportunity for our distinguished guests to set themselves apart and announce to Iowa and the
8 country why they should be the next President of the United States. . . . [T]he Republican Party
9 will be holding a vibrant debate on the future of this country. . . . The Lincoln Dinner is an
10 important stepping stone for candidates on their way to the caucuses in February 2016.”¹⁹

11 **B. Our American Revival (“OAR”)**

12 Walker stated that he had been involved with the creation of OAR, which was formed on
13 January 16, 2015, as a 527 organization.²⁰ The Complaint in MUR 6929 alleges that Walker
14 created and used OAR as his presidential exploratory committee, and that Walker and OAR have
15 remained closely identified since its inception.²¹ The purpose of OAR as stated on its Form 8871
16 (Notice of Section 527 Status) filed with the IRS is to “communicate a vision and work to enact

¹⁸ Governor Scott Walker, Remarks at the Conservative Political Action Conference (Feb. 26, 2015),
available at: <http://www.c-span.org/video/?324557-12/governor-scott-walker-remarks-cpac>.

¹⁹ Republican Party of Iowa, *Iowa GOP to Host Presidential Candidates at Lincoln Dinner on May 16, 2015*
in Des Moines, EVENT-BRITE, <http://www.eventbrite.com/e/lincoln-dinner-tickets-16325824982?>

²⁰ Walker announced that “we created” OAR. Transcript, Hannity Interview. OAR’s Form 8871 (Notice of
Section 527 Status) filed with the IRS identifies a treasurer and a custodian of records but does not include Walker.
See Our American Revival, Form 8871 (Political Organization: Notice of Section 527 Status) (Jan. 16, 2015)
[hereinafter “OAR Form 8871”].

²¹ MUR 6929, Compl. ¶ 5. In response to Sean Hannity’s question, “[W]hat’s it going to take for you to
make that decision,” Walker stated that, during “this early stage” of the process, “We created
OurAmericanRevival.com to get out and start talking about the issues.” Transcript, Hannity Interview. Walker also
did not object when Hannity noted that Walker had taken the first steps toward a presidential bid by forming Our
American Revival. *Id.* The joint Walker and OAR Response do not address Walker’s role in forming OAR.

1 policies that will lead to a freer and more prosperous America for all by restoring power to the
2 states and - more importantly - the people” and to “lead a revival of the shared values that make
3 our country great by limiting the size and scope of government so it is leaner, more efficient,
4 more effective and more accountable to the American people.”²² Over the course of the five
5 months that followed OAR’s creation, Walker engaged in OAR-funded travel to attend speaking
6 engagements throughout the country.

7 Public sources cited by the Complaints state that Walker, when discussing the type of
8 president that voters want, told reporters he had formed OAR to determine whether his ideas
9 resonated with voters, and that, “[i]f we see that’s a message that resonates, that would probably
10 encourage us to go forward.”²³ Respondents dispute that OAR raised money in connection with
11 a specific 2016 presidential campaign or that OAR has ever made any disbursements to influence
12 a federal election.²⁴ Respondents state that OAR provided logistical support for Walker’s
13 domestic and international travel to address groups and organize the conservative grassroots
14 base.²⁵

15 OAR’s website shows that it published 65 blog posts from January 2015 through
16 September 2015—when Walker suspended his presidential campaign—and fifteen blog posts
17 from September 2015 through July 2016.²⁶ Sixty-two of the sixty-five blog posts that OAR

²² OAR Form 8871.

²³ Bauer, *Wisconsin Governor Finds Gaps in 2016 GOP Field Encouraging*. In its Response to the Complaint, OAR asserts that it was created to “move the issues debate forward by disseminating the accomplishments and solutions coming out of state governments.” Walker and OAR Resp. at 2. To this end, Respondents state, OAR has attempted to establish itself in various states, using Walker’s reforms as a “major example of successful state-based solutions.” *Id.*

²⁴ Walker and OAR Resp. at 2-4.

²⁵ *Id.* at 2.

²⁶ OUR AMERICAN REVIVAL, www.ouramericanrevival.org.

1 published from January 2015 through September 2015 feature Walker, describing his statements
2 or his accomplishments, and contain information about no other public figure or officeholder.²⁷
3 Moreover, OAR has adopted Walker's statements—and no other officeholder's statements—as
4 its own.²⁸ Walker is the only officeholder or public figure featured in OAR's only
5 advertisement, which highlights Walker's policies in Wisconsin.²⁹

6 OAR accepted \$5,284,191 in contributions during the first half of 2015.³⁰ Of this total,
7 OAR accepted \$921,107 from sources that would be prohibited under the Act, and \$1,440,116
8 from individuals whose contributions exceed the Act's \$2,700 individual limit for the 2016
9 presidential primary election.³¹ During this period, OAR spent \$4,952,760; \$1,048,156 was
10 spent from July 1, 2015, through September 21, 2015, when Walker officially terminated his
11 candidacy, and \$546,250 was spent from September 21, 2015 through the end of 2015.³²

12 III. LEGAL ANALYSIS

13 A. There is Reason to Believe that OAR Made, and Walker Accepted, Excessive 14 In-Kind Contributions for Testing the Waters Activities Prior to June 2015

15 Walker contends that he did not begin testing the waters to become a candidate until June
16 17, 2015, two weeks prior to Scott Walker, Inc.'s Statement of Organization on July 2, 2015.
17 The Complaints in these matters allege that Walker's testing the waters activity dates back as

²⁷ *Id.*

²⁸ For instance, OAR's website indicates that its official response to Hillary Clinton's announcement of candidacy is a statement issued by Walker. See Our American Revival, *Our American Revival's Statement on Hillary Clinton's Re-Launch* (July 30, 2015), available at: <https://www.ouramericanrevival.com/news/our-american-revivals-statement-on-hillary-clintons-re-launch/>.

²⁹ Our American Revival, Our American Revival Video (Jan. 28, 2015), <https://www.youtube.com/watch?v=7Qm4xGQYHBk>.

³⁰ OAR, Mid-Year Report to the Internal Revenue Service (2015).

³¹ See 52 U.S.C. § 30116(a)(1)(A).

³² OAR, Year-End Report to the Internal Revenue Service (2015).

1 early as November 2014 and that OAR began funding these activities upon its formation in
2 January 2015.

3 An individual becomes a candidate if he or she receives contributions or makes
4 expenditures in excess of \$5,000, or consents to another doing so on his or her behalf.³³ The
5 Commission's regulations create a limited exemption to the definitions of contribution and
6 expenditure—and therefore to the \$5,000 candidacy threshold—to allow individuals to conduct
7 certain activities to evaluate a potential candidacy, *i.e.*, to “test the waters.”³⁴ These exemptions
8 exclude from the definition of “contribution” and “expenditure” those funds received and
9 payments made solely to determine whether an individual should become a candidate.³⁵ Testing
10 the waters activities include, but are not limited to, payments for polling, telephone calls, and
11 travel, and only funds permissible under the Act may be used for such activities.³⁶ When an
12 individual becomes a candidate, any such funds received or payments made in connection with
13 testing the waters activity become contributions or expenditures subject to the reporting
14 requirements of the Act and are to be reported as such on the first disclosure report filed by the
15 candidate's authorized committee.³⁷

16 The Act prohibits any person from making contributions to any candidate and his
17 authorized political committee with respect to any election for federal office which, in the

³³ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

³⁴ See 11 C.F.R. §§ 100.72(a), 100.131(a); *see also* Explanation and Justification for Final Rules of Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9592 (Mar. 13, 1985); Explanation and Justification to the Disclosure Regulations, House Doc. No. 95-44, Communication from the Chairman, FEC, Transmitting the Commission's proposed Regulations Governing Federal Elections, at 40 (Jan. 12, 1977).

³⁵ 11 C.F.R. §§ 100.72(a), 100.131(a).

³⁶ See Advisory Opinion 1981-32 (Askew).

³⁷ 11 C.F.R. § 101.3. A contribution includes any “gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing” any federal election. 52 U.S.C. § 30101(8)(A). “[A]nything of value” includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1).

1 aggregate, exceed \$2,700 for the 2016 election cycle.³⁸ The Act also prohibits any candidate or
2 political committee from knowingly accepting any excessive contribution.³⁹ Federal candidates
3 may not solicit, receive, direct, transfer or spend funds in connection with either federal or non-
4 federal elections, unless the funds comply with the Act's federal contribution limits, source
5 restrictions, and reporting requirements.⁴⁰ In a recent Advisory Opinion, the Commission
6 concluded that a 527 organization's "use of funds raised outside of the Act's limitations and
7 prohibitions to pay for individuals' testing the waters activities would violate Commission
8 regulations if those individuals decide to become candidates."⁴¹

9 Here, the available information indicates that OAR funded activities that were carried out
10 in order to test the waters of a potential presidential candidacy by Walker well before Walker
11 entered his self-proclaimed two week testing the waters period. Therefore, Walker should have
12 only used funds permissible under the Act for these activities. Instead, OAR funded the testing
13 the waters activity and its contributions to Walker exceeded the permissible limits of the Act.

14 First, OAR was formed with Walker's participation in January 2015, less than six months
15 before he first disclosed to the Commission that was a candidate. Further, reported statements by
16 Walker and his representatives tend to support the conclusion that OAR funded testing the waters
17 activities. Walker reportedly told reporters, when discussing the type of president that voters

³⁸ 52 U.S.C. § 30116(a)(1)(A).

³⁹ 52 U.S.C. § 30116(f).

⁴⁰ *See* 52 U.S.C. § 30125(e).

⁴¹ Advisory Opinion 2015-09 (Senate Majority PAC and House Majority PAC) at 5 (concluding that 527 organizations' payment for testing the waters activities with soft money would violate 11 C.F.R. §§ 100.72(a) and 100.131(a)).

1 want, that he had formed OAR to determine whether his ideas resonated with voters, and that,
2 “[i]f we see that’s a message that resonates, that would probably encourage us to go forward.”⁴²

3 Second, it appears that OAR subsidized Walker’s travel for events at which Walker gave
4 speeches indicating that he was considering a presidential candidacy. OAR’s filings with the
5 IRS indicate that OAR paid for travel and lodging on dates and in states that are consistent with
6 Walker’s itinerary. Information available to the Commission demonstrates that Walker made
7 statements regarding a potential candidacy at several of the events for which OAR appears to
8 have sponsored him. For instance, OAR appears to have paid at least \$19,349 in travel, lodging,
9 speechwriting, and meeting costs associated with the CPAC Conference in Baltimore, Maryland,
10 on February 26, 2015, when Walker stated during a speech, “My lawyers love . . . when I say, we
11 are exploring a campaign, should we choose to run for the highest office in the land.”⁴³ OAR
12 also appears to have paid \$1,786 for lodging in West Palm Beach, Florida at the time that Walker
13 attended the Winter Economic Conference, sponsored by Club for Growth, in that location in late
14 February.⁴⁴ OAR made payments to enable Walker to attend these events at which he spoke
15 about the possibility of a presidential campaign. Thus, OAR may have made testing the waters
16 expenditures for Walker that should have been reported as contributions once Walker became a
17 candidate.

⁴² Bauer, *Wisconsin Governor Finds Gaps in 2016 GOP Field Encouraging*. In its Response to the Complaint, OAR asserts that it was created to “move the issues debate forward by disseminating the accomplishments and solutions coming out of state governments.” Walker and OAR Resp. at 2. To this end, Respondents state, OAR has attempted to establish itself in various states, using Walker’s reforms as a “major example of successful state-based solutions.” *Id.*

⁴³ Governor Scott Walker, Remarks at the Conservative Political Action Conference (Feb. 26, 2015), available at: <http://www.c-span.org/video/?324557-12/governor-scott-walker-remarks-cpac>.

⁴⁴ See David M. Drucker, *Club for Growth Dives into 2016: 'We're Not Going to Be Bought,'* WASH. EXAMINER (Sept. 5, 2015), available at <http://www.washingtonexaminer.com/club-for-growth-dives-into-2016-were-not-going-to-be-bought/article/2571502>.

1 Moreover, Walker engaged in testing the waters activity by soliciting funds for a
2 potential candidacy through events sponsored by OAR. In March 2015, for instance, Walker
3 reportedly planned an OAR fundraiser in Florida.⁴⁵ Additionally, public sources state that
4 Walker confirmed financial commitments from donors in California, Florida, New York, and
5 Texas.⁴⁶ And Walker accepted a check for \$100,000 from Citadel Investment Group founder
6 Kenneth Griffin for OAR.⁴⁷ OAR then reportedly provided a list of donors to CNN that had
7 committed to raising funds for Walker or his campaign.⁴⁸ Information available to the
8 Commission therefore suggests that OAR sponsored events at which Walker may have raised
9 funds for testing the waters activities for a potential candidacy, and that OAR's related
10 expenditures were contributions to Walker.

11 Third, OAR hired staff whose duties included conducting testing the waters activities for
12 Walker. OAR also made expenditures for polling, media consultants, and political strategists
13 who list either Walker or Walker2016—not OAR—as a past or current client.⁴⁹ The
14 Commission has previously advised that the employment of “political consultants for the purpose
15 of assisting with advice on the potential mechanics of constructing a national campaign

⁴⁵ James Hohmann & Kenneth P. Vogel, *Walker Targets Romney Donors, Jeb Turf*, POLITICO (Feb. 4, 2015), available at: <http://www.politico.com/story/2015/02/walker-targets-romney-donors-jeb-turf-114894.html>.

⁴⁶ *Id.* (listing names of donors).

⁴⁷ *Id.* OAR disclosed the receipt of a \$100,000 contribution from Griffin. See OAR, Mid-Year Report to the Internal Revenue Service at 9 (2015). Griffin acknowledged that he intended his contribution to benefit Walker. See Transcript, Citadel Founder & CEO Ken Griffin Speaks with CNBC's Kate Kelly on “Squawk on the Street” Today (Nov. 19, 2015), <http://www.cnbc.com/2015/11/19/cnbc-exclusive-cnbc-transcript-citadel-founder-ceo-ken-griffin-speaks-with-cnbc-kate-kelly-on-squawk-on-the-street-today.html>.

⁴⁸ Erin McPike, *Scott Walker PAC: Jeb Bush Is Not the Only One Who Can Raise Money*, CNN (Mar. 26, 2015), available at: <http://www.cnn.com/2015/03/16/politics/scott-walker-pac-donors-bundlers/>.

⁴⁹ OAR made an expenditure to Madison Strategies, a public relations and political consulting firm, whose publicly available Facebook page indicates that Scott Walker is a client. See Madison Strategies, Firm profile on FACEBOOK, <https://www.facebook.com/MadisonStrategies>. OAR also made an expenditure to the Tarrance Group, whose official website lists Walker2016 as a client. See TARRANCE GROUP, <http://www.tarrance.com/>.

1 organization” constitutes testing the waters activity,⁵⁰ as is the “[e]mployment of a specialist in
2 opinion research to conduct polls for the purpose of determining the feasibility of a national
3 campaign.”⁵¹ OAR hired senior members of the Tarrance Group to conduct polling in early
4 2015.⁵² And OAR paid \$6,750 in speechwriting services in March 2015. As such, it is likely
5 that Walker engaged in testing the waters activities by hiring consultants for polling. Under
6 Commission precedent, OAR’s expenditures for these consultants and strategists constitute in-
7 kind payments to the Walker campaign for testing the waters activity.⁵³

8 The available information further indicates that OAR hired Rick Wiley as its Executive
9 Director, and that Wiley recruited potential staffers for a Walker presidential bid in January
10 2015, five months before Walker claims he began conducting testing the waters activities.⁵⁴ In
11 response to a question about whether payments made for administrative expenses should be
12 classified as testing the waters expenditures, the Commission advised that expenditures for

⁵⁰ Advisory Opinion 1981-32 (Askew) at 2-4 (concluding that hiring political consultants to assist with advice on the potential and mechanics of constructing a national campaign organization and employing a specialist in opinion research to conduct polls for the purpose of determining the feasibility of a national campaign were within the scope of the testing the waters exemption as long as the prospective candidate conducted the activities while continuing to deliberate his decision to become a candidate); *see also* F&LA at 5-6, MUR 6196 (Kennedy) (concluding that having discussions with political consultants to determine the viability of a potential candidacy and commissioning a poll to assess name recognition were within the testing the waters exemption).

⁵¹ Advisory Opinion 1981-32 (Askew) at 3-4; F&LA at 5-6, MUR 6196 (Kennedy) (concluding that having discussions with political consultants to determine the viability of a potential candidacy and commissioning a poll to assess name recognition were within the testing the waters exemption).

⁵² OAR, Mid-Year Report to the Internal Revenue Service at 62, 64, 75, 82, 83, 108, 114 (2015) (listing payments to Tarrance Group); Mark Preston, *Eyeing 2016, Walker Adds Veteran Operatives to Political Team*, CNN (Feb. 2, 2015), *available at*: <http://www.cnn.com/2015/02/02/politics/scott-walker-2016-campaign-hires/> [hereinafter “Preston, *Eyeing 2016*”].

⁵³ *See* MUR 2133 (Republican National Committee, *et al.*) (Commission found that the Republican National Committee made an in-kind testing the waters disbursement for a poll for then Vice President George H. W. Bush, who had not yet declared his candidacy for president).

⁵⁴ Peter Hamby, *Walker Builds 2016 Team with Likely Campaign Manager*, CNN (Jan. 8, 2015), *available at*: <http://www.cnn.com/2015/01/07/politics/walker-builds-2016-team-with-likely-campaign-manager/>. *See* OAR, Mid-Year Report to the Internal Revenue Service at 53, 68, 96, 98, 102 (2015) (payments to Wiley).

1 salaries, fees, and administrative expenses must be classified in the same manner as the
2 underlying activities to which they relate.⁵⁵ Therefore, salaries for staff who work on testing the
3 waters activities constitute testing the waters expenditures. The Complaints allege that OAR
4 hired the following Republican campaign managers and consultants and placed them in positions
5 with OAR in early 2015: Matt Mason, David Polyansky, Ed Goeas, Brian Tringali and BJ
6 Martino, Kirsten Kukowski, and Mark Stephenson.⁵⁶ Scott Walker, Inc.'s disclosure reports
7 indicate that, after Walker declared his candidacy in July 2015, the Committee hired these
8 staffers for Walker's campaign.⁵⁷ OAR paid approximately \$94,309 to these staffers for travel
9 reimbursements, in addition to their salaries. The OAR Response does not address, and available
10 information does not indicate, to what extent these staffers worked on Walker's testing the
11 waters activities while on the payroll of OAR. Given that the Committee transferred these staff
12 members to his campaign in the same positions—and often with the same titles—in which they
13 worked at OAR upon his official declaration of candidacy, and that OAR released a website,

⁵⁵ See Advisory Opinion 1985-40 (Republican Majority Fund) at 10-11.

⁵⁶ MUR 6917, Compl. at 2-3; MUR 6929, Compl. ¶ 15; Mike Allen & Daniel Lippman, *Politico Playbook* (Jan. 28, 2015), available at: <http://www.politico.com/playbook/0115/playbook16884.html> (reporting that Rick Wiley, the Republican National Committee's ("RNC") Political Director, joined OAR as its Executive Director, and Matt Mason, the RNC's National Field Director, joined OAR as the National Political Director); Jennifer Jacobs, *GOP Strategist with Iowa Ties Joins Team Scott Walker*, DES MOINES REGISTER (Jan. 25, 2015), available at: <http://www.desmoinesregister.com/story/news/politics/2015/01/23/gop-strategist-david-polyansky-joins-team-scott-walker/22201093/> ("[David] Polyansky, a Texan who played senior roles in two Iowa presidential campaigns and was a top strategist in Republican Joni Ernst's successful campaign for U.S. Senate this past fall, will be Team Walker's senior adviser [at OAR] in Iowa," reportedly confirmed by Rick Wiley); Preston, *Eyeing 2016* (reporting that Kirsten Kukowski, the RNC's Deputy Communications Director and Press Secretary, was hired as OAR's Communications Director; key members of the Tarrance Group were hired to conduct polling and provide strategic political advice to Walker, with Tarrance President and CEO Ed Goeas serving as a Senior Adviser and Tarrance Partner Brian Tringali and Senior Vice President B.J. Martino overseeing polling; Mark Stephenson, who worked on Iowa Senator Joni Ernst's campaign, was hired as Walker's chief data officer at OAR).

⁵⁷ See Scott Walker, Inc., 2015 October Quarterly Report Sch. B-P (disbursements to Kirsten Kukowski, Mark Stephenson, and The Tarrance Group, whose staff includes Ed Goeas, Brian Tringali, and BJ Martino); Katie Glueck, *The Power Players Behind Scott Walker's Campaign*, POLITICO (July 14, 2015), available at: <http://www.politico.com/story/2015/07/scott-walker-2016-campaign-staff-power-players-120086.html> (reporting that Rick Wiley, Ed Goeas, Brian Tringali, B.J. Martino, Matt Mason, Kirsten Kukowski, Mark Stephenson, and David Polyansky joined Walker's presidential campaign in key staff positions).

1 Twitter account, and Facebook account featuring Walker in early 2015,⁵⁸ it is likely that these
2 individuals worked on Walker's testing the waters activities while serving as OAR staffers, and
3 that in this way OAR provided in-kind contributions to Walker. Based on the totality of these
4 circumstances, there is reason to believe that OAR funded testing the waters activity for Walker.

5 **B. There is Reason to Believe that Scott Walker, Inc. Failed to Report**
6 **Contributions and Expenditures**

7 When an individual becomes a candidate under the Act, any funds received or payments
8 made for testing the waters activities become contributions or expenditures subject to the
9 reporting requirements of the Act and are to be reported as such on the first disclosure report
10 filed by the candidate's authorized committee.⁵⁹ Though the available information indicates that
11 OAR made disbursements for testing the waters activities by Walker, Walker's authorized
12 campaign committee, Scott Walker, Inc., did not report any in-kind contributions from OAR in
13 its first disclosure report.⁶⁰ Therefore, we recommend that the Commission find reason to
14 believe that Scott Walker, Inc. violated 52 U.S.C. § 30104(b) by failing to report in-kind
15 contributions from OAR.

58 Bauer, *Wisconsin Governor Finds Gaps in 2016 GOP Field Encouraging*. See Philip Elliott & Kathleen Ronayne, *Wisconsin's Walker: Sons Ditching College for Fall Campaign*, ASSOCIATED PRESS (Mar. 14, 2015), available at: <http://news.yahoo.com/wisconsins-walker-sons-ditching-college-fall-campaign-174319679--election.html> (Walker stated that he would return to New Hampshire many more times) [hereinafter "Elliott & Ronayne, *Wisconsin's Walker: Sons Ditching College for Fall Campaign*"]; Opoien, *Scott Walker Says Fundraising Committee Is About 'Ideas'* (Walker stated that "he'll likely visit other early primary states such as New Hampshire and South Carolina on weekends" in the near future).

59 11 C.F.R. § 101.3.

60 Scott Walker, Inc. reported that it paid \$15,436.09 to OAR for the purchase of office equipment and photography services. See Scott Walker, Inc., 2015 October Quarterly Report, at 2425-26.

1 **C. There is Reason to Believe that Walker Failed to Timely File His Statement**
2 **of Candidacy**

3
4 An individual becomes a candidate under the Act if: (a) such individual receives
5 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her
6 consent to another person to receive contributions or make expenditures on behalf of such
7 individual and if such person has received such contributions or has made such expenditures in
8 excess of \$5,000.⁶¹ Once the \$5,000 threshold has been met, the candidate has fifteen days to
9 designate a principal campaign committee by filing a Statement of Candidacy with the
10 Commission.⁶² The principal campaign committee must file a Statement of Organization within
11 ten days of its designation,⁶³ and must file disclosure reports with the Commission in accordance
12 with 52 U.S.C. § 30104(a) and (b).⁶⁴

13 Walker publicly announced he was running for President on July 13, 2015, and he had
14 already received over \$5,000 in contributions by that time.⁶⁵ Walker did not file his Statement of
15 Candidacy with the Commission until 23 days later on August 5, 2015.⁶⁶ Thus, his Statement of
16 Candidacy was eight days late.

⁶¹ 52 U.S.C. § 30101(2).

⁶² 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁶³ *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

⁶⁴ *See, e.g.*, Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Sestak); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning); Factual and Legal Analysis at 2, MUR 5363 (Alfred C. Sharpton).

⁶⁵ Scott Walker, FACEBOOK, Statement (Sept. 21, 2015), <https://www.facebook.com/scottkwalker/posts/>. Walker ultimately withdrew from the election on September 21, 2015. Scott Walker, FACEBOOK, Statement (Sept. 21, 2015), <https://www.facebook.com/scottkwalker/posts/10156030779870405>.

⁶⁶ Scott Walker, Statement of Candidacy (Aug. 5, 2015). On July 2, 2015, the same day the Committee filed its Statement of Organization, Walker submitted to the FEC a letter in lieu of a Statement of Candidacy (Form 2) stating that he "had received contributions of more than \$5,000 within the last 15 days" despite not having publicly declared his candidacy. Letter to FEC from Governor Scott Walker (July 2, 2015). This document was not made available as a public filing of the candidate through the Federal Election Commission website. A copy may be found in the Voting Ballot Matters folder.

1 Further, Walker may have engaged in activities that made him a candidate prior to this
2 time. Commission regulations set out five non-exhaustive factors to be considered in
3 determining whether an individual has decided to become a candidate. An individual indicates
4 that he or she has gone beyond testing the waters and has decided to become a candidate by
5 (1) using general public political advertising to publicize his intention to campaign for federal
6 office; (2) raising funds in excess of what could reasonably be expected to be used for
7 exploratory activities or undertaking activity designed to amass campaign funds that would be
8 spent after he becomes a candidate; (3) making or authorizing written or oral statements that
9 refer to him as a candidate for a particular office; (4) conducting activities in close proximity to
10 the election or over a protracted period of time; and (5) taking action to qualify for the ballot
11 under state law.⁶⁷

12 According to the Committee's initial disclosure report, the 2015 October Quarterly
13 Report, the Committee had raised \$639,450 before Walker submitted a letter to the Commission
14 in lieu of a Statement of Candidacy (Form 2) on July 2, 2015. In previous matters, the
15 Commission has not found reason to believe that an individual went beyond the testing the
16 waters exemptions and became a candidate simply because he or she raised a significant amount
17 of funds.⁶⁸ Thus, the amount of Respondents' fundraising does not itself suggest candidate status
18 for Walker earlier than July 2, 2015.

19 However, available information suggests that Walker may have moved beyond testing the
20 waters by his other actions, for example, by making or authorizing statements indicating he was

⁶⁷ 11 C.F.R. §§ 100.72(b), 100.131(b).

⁶⁸ See MUR 6224 (Fiorina) (no reason to believe where a U.S. Senate candidate committee raised in excess of \$600,000 and spent over \$300,000 during the testing the waters phase); MUR 5934 (Thompson) (no reason to believe where presidential candidate committee raised \$9.52 million and spent only \$2.9 million before formal candidate announcement).

1 a candidate. Walker reportedly called himself the “front-runner” after hearing that President
2 Obama had mentioned him with regard to right-to-work legislation,⁶⁹ and at one point reportedly
3 stated: “My view has changed. I’m flat out saying it. A candidate can say that. Sometimes they
4 don’t.”⁷⁰ In March 2015, Walker reportedly said that his sons were planning to take time from
5 their college semester the following year to assist Walker in New Hampshire: “They twisted our
6 arms to figure out a way to maybe take part of a semester off next year, next fall, to come to New
7 Hampshire, to come around the country and talk to young people like themselves.”⁷¹

8 Though the statements suggest that Walker could have been a candidate as early as
9 March 2015, we do not believe that these statements, in isolation, are sufficient to show that he
10 had moved beyond the testing the waters phase. The factors set forth in § 100.72(b) are not
11 exhaustive, but they suggest that an individual must engage in a level of activity that is greater
12 than what is present here. We therefore believe that the record is insufficient to determine
13 whether Walker became a candidate prior to his statement of candidacy, so we recommend that
14 the Commission take no action at this time with regard to whether Walker became a candidate
15 prior to July 2015.

16 **D. The Commission Should Take No Action At This Time As to OAR’s Solicitation**
17 **and Receipt of Non-Federal Funds**

18 The Act prohibits federal candidates and officeholders, their agents, and entities directly
19 or indirectly established, financed, maintained or controlled by or acting on behalf of one or
20

⁶⁹ Jon Fleischman, Interview: Governor Scott Walker, Breitbart (Mar. 11, 2015) (“Fleischman Interview”), available at: <http://www.breitbart.com/big-government/2015/03/11/breitbart-california-interview-governor-scott-walker/> [hereinafter “Fleischman Interview”].

⁷⁰ Jose A. DelReal, *Scott Walker Says He Opposes Comprehensive Immigration Reform. He Didn’t Always*, WASHINGTON POST (Mar. 1, 2015), available at: <http://www.washingtonpost.com/news/post-politics/wp/2015/03/01/scott-walker-says-he-opposes-comprehensive-immigration-reform-he-didnt-always/>.

⁷¹ See Elliott & Ronayne, *Wisconsin’s Walker: Sons Ditching College for Fall Campaign*.

1 more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
2 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
3 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”⁷²
4 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
5 was designed to “plug the soft-money loophole.”⁷³

6 OAR’s acceptance and receipt of non-federal funds while Walker was a candidate would
7 amount to a violation of the Act if Walker established, financed, maintained, or controlled OAR as
8 contemplated by § 30125(e)(1). While we recognize that some information suggests that Walker was
9 involved with the creation of OAR,⁷⁴ we do not have sufficient information to indicate that Walker
10 was a federal candidate at the time of OAR’s establishment. Accordingly, we do not believe that the
11 available information provides a sufficient basis, at this time, to go forward under a theory that he
12 established, financed, maintained, or controlled OAR while he was a federal candidate. Thus, we
13 recommend that the Commission take no action at this time as to OAR’s solicitation and receipt of
14 non-federal funds.

15 **IV. INVESTIGATION**

16 This matter will require an investigation to ascertain the amount that OAR paid for
17 Walker’s testing the waters activities. The investigation will also seek to determine whether
18 Walker became a candidate prior to his declaration by, for instance, verifying that the work done
19 by the consultants and staff members hired by OAR was not related to Walker’s federal
20 campaign. Although we plan to utilize informal investigative methods, we recommend that the
21 Commission authorize the use of compulsory process, including orders to submit written answers

⁷² 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

⁷³ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁷⁴ *See supra* note 20.

1 and subpoenas to produce documents, which we would use in the event the parties do not
2 cooperate in providing this information.

3 **V. RECOMMENDATIONS**

- 4 1. Find reason to believe that Governor Scott Walker and Scott Walker, Inc. and Kate Lind
5 in her official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R.
6 §§ 100.72(a) and 100.131(a);
- 7 2. Find reason to believe that Our American Revival violated 52 U.S.C. § 30116(a);
- 8 3. Find reason to believe that Scott Walker, Inc. and Kate Lind in her official capacity as
9 treasurer violated 52 U.S.C. § 30104(b);
- 10 4. Find reason to believe that Governor Scott Walker violated 52 U.S.C. § 30102(e)(1) and
11 11. C.F.R. § 101.1(a);
- 12 5. Take no action at this time as to the allegation that Scott Walker, Inc. and Kate Lind in
13 her official capacity as treasurer violated 52 U.S.C. §§ 30103(a) and 30104;.
- 14 6. Take no action at this time as to the allegation that Our American Revival violated 52
15 U.S.C. § 30125(e);
- 16 7. Authorize the use of compulsory process, as necessary;
- 17 8. Approve the attached Factual and Legal Analyses;

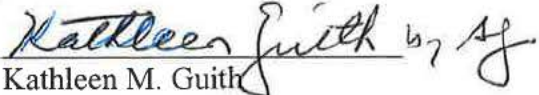
1 9. Approve the appropriate letters.

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3/6/2017
Date




Lisa J. Stevenson
Acting General Counsel



Kathleen M. Guith
Associate General Counsel
for Enforcement



Lynn Y. Tran
Assistant General Counsel



Christopher L. Edwards
Attorney