



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Joseph Sandler, Esq.
Neil Reiff, Esq.
Dara Lindenbaum, Esq.
Sandler Reiff Rosenstein & Birkenstock PC
1025 Vermont Avenue NW, Suite 300
Washington, DC 20005

FEB 15 2019

RE: MUR 6926
Martin O'Malley
Win Back Your State

Dear Messrs. Sandler and Reiff and Ms. Lindenbaum:

The Federal Election Commission previously notified your clients, Martin O'Malley, Win Back Your State f/k/a O'Say Can You See PAC and Martin Cadogan in his official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

On February 7, 2019, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Win Back Your State f/k/a O'Say Can You See PAC and Martin Cadogan in his official capacity as treasurer violated 52 U.S.C. § 30116(a), and no reason to believe that Martin O'Malley violated 52 U.S.C. § 30116(f). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Martin O'Malley MUR 6926
4 Win Back Your State f/k/a
5 O'Say Can You See PAC and Martin Cadogan
6 in his official capacity as treasurer
7 O'Malley for President and Terry Lee Lierman
8 in his official capacity as treasurer

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by
11 the Campaign Legal Center and Democracy 21 alleging violations of the Federal Election
12 Campaign Act of 1971, as amended (the "Act"), by Martin O'Malley, Win Back Your State f/k/a
13 O'Say Can You See PAC ("OPAC") and Martin Cadogan in his official capacity as treasurer,¹
14 and O'Malley for President and Terry Lee Lierman in his official capacity as treasurer.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Background**

17 Between January 2007 and January 2015, Martin O'Malley served as governor of
18 Maryland. In July 2012, Governor O'Malley reportedly launched OPAC, which was registered
19 with the Commission at the time of the Complaint as a nonconnected multicandidate committee.²

¹ On November 16, 2017, O'Say Can You See PAC filed an amended Statement of Organization changing its name to Win Back Your State. Martin Cadogan remains the committee's treasurer. To avoid confusion, the committee will be referred to as O'Say Can You See PAC throughout this document.

² Compl. ¶ 3 (citing John Wagner, *O'Malley Launches Federal PAC as Profile Rises*, WASHINGTON POST, July 26, 2012, http://www.washingtonpost.com/blogs/maryland-politics/post/omalley-launches-federal-pac-as-national-profile-rises/2012/07/26/gJQADPR6AX_blog.html); O'Say Can You See PAC, Statement of Organization (July 23, 2012). On February 19, 2014, OPAC notified the Commission that it had qualified as a multicandidate committee. See O'Say Can You See PAC, Notification of Multicandidate Status (Feb. 19, 2014). OPAC filed an Amended Statement of Organization on June 9, 2015, in which the committee identified itself as a Leadership PAC with O'Malley serving as "Sponsor." See OPAC, Amended Statement of Organization (June 9, 2015).

1 On May 29, 2015, O'Malley filed a Statement of Candidacy with the Commission for the
2 2016 presidential election and his principal campaign committee filed a Statement of
3 Organization.³ The next day, O'Malley publicly announced that he was seeking the Democratic
4 nomination for President.⁴ OPAC and the Committee subsequently disclosed transactions
5 showing that OPAC paid for certain testing the waters expenses of O'Malley starting in January
6 2015 and that the O'Malley Committee repaid OPAC shortly after O'Malley filed his Statement
7 of Candidacy. Specifically, the Committee disclosed disbursing \$46,579.47 to OPAC on
8 June 13, 2015 (15 days after O'Malley filed his Statement of Candidacy), for "Expense
9 Reimbursement."⁵ Memo entries indicate that the reimbursement covered 16 payments made by
10 OPAC for travel expenses, catering, rent, office supplies, and fees.⁶ OPAC disclosed its receipt
11 of the payment from the Committee as "a reimbursement of O'Malley for President exploratory
12 expenses paid by O' Say Can You See PAC."⁷ The following chart details OPAC's expenditures
13 and the Committee's reimbursements:

³ See Martin O'Malley, Statement of Candidacy (May 29, 2015); O'Malley for President, Statement of Organization (May 29, 2015).

⁴ See O'MALLEY FOR PRESIDENT HOMEPAGE, *Announcement Speech*, May 30, 2015, <https://martinomalley.com/category/the-latest/>.

⁵ O'Malley for President, Amended 2015 July Quarterly Report at 590 (Jan. 31, 2017). Although the Committee's disclosure report states that the total amount reimbursed to OPAC was \$46,579.47, the related memo entries actually total \$46,472.35. *Id.* at 590-95.

⁶ *Id.* According to the disclosure report, the Committee also owed OPAC a total of \$1,196.03 for "travel." *Id.* at 636. The report does not state when this debt, which appears to be separate from the reimbursed goods and services discussed in this report, was accrued. The debt was apparently repaid on July 14, 2015. O'Malley for President, 2015 October Quarterly Report at 775 (Oct. 15, 2015).

⁷ O'Say Can You See PAC, 2015 Mid-Year Report at 65-66.

Reimbursed Expenditures		
Payee and Purpose	Date of OPAC Expenditure	Amount
Amtrak:	5/20/2015	\$95.10
Travel expenses	5/21/2015	\$255.00
	5/24/2015	\$176.00
	5/24/2015	\$68.00
	5/24/2015	\$284.00
Carey:	5/21/2015	\$733.25
Travel expense		
Costco:	6/02/2015	\$320.64
Office supplies		
Eychaner Properties (Des Moines, IA): Rent	5/15/2015	\$4,800.00
Google Aps:	6/13/2015	\$341.88
Subscription Fee/Technology		
H&W Printing:	5/15/2015	\$2,058.81
Printing expenses		
Maestro (Oakland, CA):	6/08/2015	\$247.00
Catering		
Tidewater Inn (Easton, MD):	1/30/2015	\$4,450.00
Rental deposit	4/23/2015	\$12,474.00
Lodging/catering/space rental		
U. of Baltimore:	5/15/2015	\$150.00
Space rental	5/20/2015	\$800.00
Welldoc, Inc. (Baltimore, MD): Office rent deposit	5/15/2015	\$19,218.67
		Total: \$46,472.35

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B. Legal Analysis

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The Complaint in this matter, which was filed on March 31, 2015, alleges that O'Malley

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started testing the waters for the 2016 Democratic nomination for president as early as 2012-

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2013 and failed to comply with the requirement that such activities be paid for with funds that

1 comply with the Act's contribution limits and restrictions.⁸ OPAC and O'Malley deny the
2 allegations in a joint response and contend that the Complaint is speculative and conclusory.⁹

3 Under the Act, a candidate is required to designate in writing a principal campaign
4 committee within 15 days of becoming a candidate.¹⁰ The designated principal campaign
5 committee, in turn, is required to file a Statement of Organization within 10 days of designation
6 and report any subsequent changes on that Statement within 10 days of the change.¹¹

7 The Act defines "contribution" to include "any gift . . . of money or anything of value
8 made by any person for the purpose of influencing any election for Federal office."¹² No
9 multicandidate committee shall make contributions to any candidate, or his or authorized
10 committee which, in the aggregate, exceeds \$5,000.¹³ Commission regulations permit a
11 candidate to use his or her personal funds to make unlimited contributions to his campaign.¹⁴

12 The Commission created the exemptions to the definitions of contribution and
13 expenditure to allow individuals to conduct certain activities designed to evaluate a potential

⁸ Compl. ¶¶ 3, 9. The Complaint states that O'Malley's testing the waters activities included making telephone calls, traveling to key primary and battleground states, meeting privately with state party leadership to gauge support for a possible presidential candidacy, and retaining staff and vendors for services rendered in connection with establishing campaign offices. *Id.* ¶ 34.

⁹ Martin O'Malley and OPAC Joint Resp. at 1 (May 22, 2015) (citing Statement of Reasons, Comm'rs Mason, Sandstrom, Smith and Thomas at 2, MUR 4960 (Hillary Clinton)). O'Malley for President was notified of the Complaint in November 2015, and because its response incorporated the Joint Response as Exhibit A, a single response is referenced.

¹⁰ *Id.* § 30102(e)(1).

¹¹ *Id.* § 30103(a), (c).

¹² *Id.* § 30101(8)(A)(i). "Anything of value" covers all in-kind contributions, including the provision of goods and services without charge or at less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1).

¹³ 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b).

¹⁴ 11 C.F.R. § 110.10; *see also* Advisory Op. 1988-7 (Bakal).

1 candidacy (*i.e.*, to “test the waters”).¹⁵ Funds received and payments made “solely for the
2 purpose of determining whether an individual should become a candidate” are not considered
3 contributions or expenditures under the Act.¹⁶ Testing the waters activities are those “conducted
4 to determine whether an individual should become a candidate.”¹⁷ The Commission has
5 described testing the waters activities as those undertaken while an individual “continues to
6 deliberate his decision to become a presidential candidate” and include, but are not limited to,
7 “conducting a poll, telephone calls, and travel.”¹⁸ Funds received and spent for “testing the
8 waters” activities are subject to the limitations and prohibitions of the Act and, if the individual
9 subsequently becomes a candidate, are also subject to reporting requirements.¹⁹

10 1. Alleged Testing the Waters Activities From 2012-2014.

11 Based primarily on a number of news articles published between July 26, 2012, and
12 March 25, 2015,²⁰ the Complaint asserts that O'Malley (and his agents) engaged in the following
13 political activities gauged to test the waters for a presidential run: launched OPAC in 2012 for
14 the express purpose of promoting O'Malley's potential federal candidacy; sponsored a website,
15 <http://www.martinomally.com>, featuring O'Malley to the exclusion of other candidates,²¹ stated
16 publicly before November 2013 that O'Malley was weighing a presidential bid and intended to

¹⁵ *Id.* §§ 100.72, 100.131.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* These funds must be reported with the first report filed by the principal campaign committee of the candidate, regardless of when the funds were received or the payments made. *Id.*

²⁰ Compl. ¶¶ 3, 7-12.

²¹ *Id.* ¶¶ 3-4, 6 (citing Wagner *supra* note 2); see also James Pindell, *Potential Democratic Presidential Candidate Martin O'Malley to Visit N.H.*, BOSTON GLOBE, (Jan. 29, 2015).

1 campaign on behalf of other candidates during the 2014 mid-term elections in an “effort to build
2 good will”;²² promoted O'Malley's future political endeavors by directing OPAC's hiring of
3 experienced political operatives to serve as senior advisors and field staff in primary states
4 during the 2014 mid-term elections;²³ and frequently visited Iowa and New Hampshire in 2014
5 to meet with voters, attend fundraisers, and make speeches before influential party officials.²⁴ In
6 addition, the Complaint asserts that O'Malley tested the waters when he established campaign
7 offices, incurred administrative expenses such as rent and utilities in connection with staffing
8 those offices, and formed “steering committees” in early caucus/primary states with the
9 understanding that those committees would later become the official campaign organizations.²⁵
10 The Complaint asserts that OPAC, O'Malley, and “others” violated the Act and Commission
11 regulations by paying for these testing the waters activities.²⁶

12 Respondents acknowledge in their May 2015 response that O'Malley “has been
13 considering running for President.”²⁷ Moreover, O'Malley was reportedly considering a 2016

²² *Id.* ¶¶ 9, 12 (citing John Wagner, *O'Malley Invited to N.H. for Democratic Dinner, as He Weighs 2016 Presidential Bid*, WASHINGTON POST (Sept. 18, 2013) and John Wagner, *Not Waiting for Clinton, MD Gov. O'Malley Prepares for Possible Presidential Bid*, WASHINGTON POST (Feb. 1, 2014)).

²³ *Id.* ¶¶ 7-8 (citing Ben Wolfgang, *Martin O'Malley Faces Steep Climb to 2016 Presidential Bid*, WASHINGTON TIMES (Oct. 20, 2014) and John Wagner, *O'Malley in Wait-and-See Mode, Looks to Spring to Launch Race Against Clinton*, WASHINGTON POST (Dec. 26, 2014)).

²⁴ *Id.* ¶¶ 9-11 (citing Reuters, *Maryland Gov. O'Malley Tests Presidential Waters in New Hampshire Visit*, BALTIMORE SUN (June 14, 2014); James Pindell, *Potential Democratic Presidential Candidate Martin O'Malley to Visit N.H.*, BOSTON GLOBE, (Jan. 29, 2015); Mark Preston, *Can This Democrat Really Beat Hillary Clinton?* CNNPolitics.com (Mar. 25, 2015), and Jennifer Jacobs, *O'Malley Looks to Gain Ground*, DES MOINES REGISTER (Feb. 3, 2015)).

²⁵ *Id.* ¶ 34.

²⁶ *Id.* ¶ 35. The Complaint alleges that these payments violated the candidate contribution limits established at 52 U.S.C. § 30116(a).

²⁷ Resp. at 2.

1 presidential campaign as early as 2013.²⁸ According to Respondents, during the 2014 election
2 cycle, OPAC contributed directly to federal, state, and local candidates and party committees,
3 and provided staff to assist Democratic campaigns in “a number of states including Iowa and
4 South Carolina.”²⁹

5 The press reports cited by the Complaint focus on O'Malley's efforts to raise his national
6 profile.³⁰ For instance, the Complaint contends that O'Malley's appearance at the November
7 2013 Jefferson-Jackson Dinner in New Hampshire as the keynote speaker, where his political
8 staff were observed leaving contact information on the seats of dinner attendees urging them to
9 “stay in touch” and view social media sites, constituted testing the waters activities.³¹ The
10 Complaint, however, does not provide information that OPAC (or anyone else) was involved
11 with, or paid for, this activity and does not demonstrate that O'Malley presented himself as a
12 potential 2016 candidate at the dinner.³²

²⁸ Complaint ¶ 12 (citing John Wagner, *O'Malley Invited to N.H. for Democratic Dinner, as He Weighs 2016 Presidential Bid*, WASHINGTON POST (Sept. 18, 2013), https://www.washingtonpost.com/local/md-politics/omalley-invited-to-nh-for-democratic-dinner-as-he-weighs-2016-presidential-bid/2013/09/18/2ea2438c-2096-11e3-a45b-9131e6a4cadf_story.html?utm_term=.4b3e0fdb3e69 (O'Malley said to be weighing a 2016 bid, although aides said he was unlikely to run if Clinton becomes a candidate)).

²⁹ Resp. at 2. During the 2014 election cycle, OPAC contributed \$199,941 to federal, state and local candidates, joint fundraising committees, as well as national, state, and local party committees. OPAC's disclosure reports indicate that the PAC had receipts totaling \$1,403,200 and expenditures totaling \$852,232 during this time period. See O'Say Can You See PAC, Amended 2013 Year-End Report (Feb. 11, 2014); 2014 Year End-Report (Jan. 31, 2014). According to the Response, O'Malley personally supported a number of the same candidates who received contributions from OPAC. Resp. at 2.

³⁰ Compl. ¶¶ 3, 9, 12 (citing Wagner *supra* note 2 and Wagner *supra* note 28).

³¹ Compl. ¶ 9 (citing John Wagner, *O'Malley Recounts Leadership of Baltimore in Speech to New Hampshire Democrats*, WASHINGTON POST, Nov. 17, 2013, https://www.washingtonpost.com/local/md-politics/omalley-recounts-leadership-of-baltimore-in-speech-to-new-hampshire-democrats/2013/11/17/ad97618e-4f8c-11e3-9fe0-fd2ca728e67c_story.html?utm_term=.c9b66744a806).

³² *Id.*

1 The Complaint also alleges that O'Malley's travel to primary states, including New
2 Hampshire, Iowa, South Carolina and Nevada, where he campaigned for Democratic candidates
3 in 2014, serves as evidence that he was actively considering a presidential run at that time.³³
4 Relying on disclosure reports filed with the Commission, the Complaint states that OPAC paid
5 for field staff to assist in these same federal elections and work for state party organizations.³⁴
6 The Complaint, however, does not present specific information establishing that OPAC was
7 working in these states to advance O'Malley's 2016 presidential ambitions, or that O'Malley's
8 speaking engagements and fundraising for candidates and political parties constituted testing the
9 waters of his *own* federal campaign during the 2014 election period. While O'Malley's close
10 association with OPAC activities may have served to raise his national profile, the available
11 information does not support the conclusion that OPAC was supporting O'Malley's testing the
12 waters before 2015.³⁵

13 2. Testing the Waters and Candidate Status During 2015

14 Disclosure reports indicate that in the first half of 2015, OPAC contributed directly to
15 federal, state, and local candidates and party committees, and made disbursements for
16 advertising, consulting, salaries, fundraising, travel, rent, and office supplies. In the joint
17 response filed prior to O'Malley declaring his candidacy, Respondents state that if O'Malley

³³ Compl. ¶¶ 9-11.

³⁴ *Id.* ¶¶ 7-8 (citing Wolfgang *supra* note 24 and Wagner *supra* note 28). OPAC's disclosure reports indicate that approximately 32 OPAC-sponsored field staff and worked in eight primary states, including Iowa, New Hampshire, South Carolina, Nevada, and Wisconsin during the 2014 mid-term elections. See O'Say Can You See PAC, 2014 Amended Pre-Primary Report (Nov. 28, 2014), 2014 October Quarterly Report (Oct. 15, 2014), 2014 Post-General Report (Dec. 04, 2014), Amended 2015 Mid-Year Report. Some of these individuals were subsequently retained by O'Malley's presidential campaign. See O'Malley for President, Amended 2015 July Quarterly Report.

³⁵ OPAC supported a variety of other candidates, as noted. Indeed, its status as a multicandidate committee indicates that OPAC has supported multiple federal candidates. See 52 U.S.C. § 30116(a)(4).

1 were to become a presidential candidate, his campaign committee would, in accordance with
2 Commission regulations, timely reimburse OPAC for any of these disbursements that OPAC
3 spent to test the waters on O'Malley's behalf, and disclose the disbursements on its own reports.
4 It appears they did so. The Committee and OPAC, through their disclosure reports, explicitly
5 acknowledge that the multicandidate committee paid for testing the waters activities on behalf of
6 O'Malley starting in January 2015.³⁶ The available information does not indicate that O'Malley,
7 or the "others" referenced in the Complaint, financed any of O'Malley's testing the waters
8 activities.³⁷

9 Section 110.2(l) of the Commission's regulations permit an individual to reimburse a
10 multicandidate committee within 30 days of becoming a presidential candidate for certain pre-
11 candidacy expenditures that would otherwise be deemed in-kind contributions.³⁸ The specific
12 goods and services covered under this regulation are:

- 13 • polling expenses for determining the favorability, name recognition, or relative
14 support level of the candidate involved;
- 15

³⁶ The Committee reported the reimbursement of these testing the waters activities on its first disclosure report. O'Malley for President, Amended 2015 July Quarterly Report at 590; O'Say Can You See PAC, 2015 Mid-Year Report at 65, 66 (Miscellaneous Text).

A second transfer of funds between these two committees occurred on August 19, 2015, when OPAC reimbursed the Committee \$39,834.40 for payment of payroll and advertising expenses. *See* O'Malley for President, 2015 October Quarterly Report at 3 (Oct. 15, 2015); O'Say Can You See PAC, 2015 Year-End Report at 18-21 (Jan. 31, 2016). In response to a November 5, 2015, Request for Additional Information from the Commission's Reports Analysis Division, the O'Malley Committee stated that "the committee incurred expenses that were activities of" OPAC, "not activities of the campaign." *Id.*, Miscellaneous Text (Dec. 10, 2015).

³⁷ Commission regulations permit candidates to finance their campaigns using personal funds. *See* 11 C.F.R. § 110.10 (candidates for Federal office may make unlimited expenditures to their authorized campaign committees from personal funds).

³⁸ 11 C.F.R. § 110.2(l)(1), (2). The Commission designed this regulation to address situations where unauthorized committees closely associated with an individual intending to run for President cover expenses that are properly treated as in-kind contributions unless reimbursed by that individual's presidential campaign committee. *See Public Financing of Presidential Candidates and Nominating Conventions, Final Rule and Explanation and Justification*, 68 Fed. Reg. 47386, 47407 (Aug. 8, 2003) ("Section 110.2(l) E&J").

- 1 • compensation paid to employees, consultants, and vendors for services rendered
2 in connection with establishing and staffing offices in states where Presidential
3 primaries, caucuses, or preference polls are to be held, other than offices in the
4 candidate's home state and in or near the District of Columbia;
- 5
- 6 • administrative expenses, including rent, utilities, office supplies, and equipment,
7 in connection with establishing offices in States where Presidential primaries,
8 caucuses, or preference polls are to be held, other than offices in the candidate's
9 home state and in or near the District of Columbia; and
- 10
- 11 • expenses of individuals seeking to become delegates in the Presidential
12 nomination process.³⁹

13 An analysis of OPAC and the Committee's disclosure reports indicates that the only
14 expenses potentially qualified for reimbursement under section 110.2(l) is the office rent paid to
15 the Iowa-based Eychaner Properties totaling \$4,800. This expense, initially paid for by OPAC,
16 was reimbursed on June 13, 2015, by the Committee within 30 days of O'Malley's Statement of
17 Candidacy.⁴⁰

18 Some of the remaining goods and services paid for by OPAC, such as travel, conference
19 services, lodging, catering, and printing (totaling \$17,094.16), while occurring during the pre-
20 candidacy period, are not the types of goods and services that qualify for reimbursement under
21 section 110.2(l).⁴¹ These include expenditures to Amtrak and Carey (Car Service) (travel), the
22 University of Baltimore (space rental), H&W Printing (printing),⁴² and the April 23, 2015
23 expenditure to the Tidewater Inn (lodging, catering, space rental). In addition, OPAC's
24 \$19,218.67 expenditure to Welldoc, Inc. for office rent in Baltimore is not reimburseable under

³⁹ 11 C.F.R. § 110.2(l)(1)(iii)(A)-(D).

⁴⁰ *Id.* § 110.2(l)(2).

⁴¹ 11 C.F.R. §§ 100.72, 100.131.

⁴² The available information indicates that the \$2,058.81 payment to H&W Printing was for save-the-date cards for two events, including the May 16, 2015, Preakness Stakes held in Baltimore, Maryland.

1 section 110.2(l) because the campaign office was established in O'Malley's home state.⁴³
2 Nevertheless, the Committee appears to have reimbursed OPAC for the full amount of these
3 expenditures (\$36,312.83) within the 60 days permitted by the regulations for resolving potential
4 excessive contribution violations.⁴⁴ Therefore, the amount of these goods and services provided
5 by OPAC did not result in an excessive in-kind contribution.⁴⁵

6 Other goods and services purchased by OPAC on behalf of the Committee in June 2015,
7 such as the Google subscription, Costco office supplies, and expenditure to Maestro restaurant
8 for catering (totaling \$909.52) are ineligible for reimbursement under section 110.2(l) because
9 they were procured after O'Malley became a candidate.⁴⁶ Nevertheless, as with the other
10 expenditures listed above that do not qualify for reimbursement under section 110.2(l), the
11 Committee, by reimbursing OPAC for the full amount of these expenditures within 60 days,
12 resolved any potential excessive contribution within the regulatory timeframe provided for
13 committees to cure excessive contributions.⁴⁷

14 The Committee reimbursed OPAC's January 30, 2015, \$4,450 expenditure to the
15 Tidewater Inn (rental deposit) on June 13, 2015 — 134 days after the expenditure was made.

⁴³ See 11 C.F.R. § 110.2(l)(1)(C).

⁴⁴ 11 C.F.R. § 103.3(b)(3). Reimbursed in-kind contributions are treated in the same manner as monetary contributions. See Advisory Op. 2004-37, at 2, 4 (Waters) (The Commission determined that the reimbursement of costs associated with the production and distribution of a brochure featuring several federal candidates would not constitute in-kind contributions provided that the federal campaign committees provide reimbursements "in a timely manner."); Advisory Op. 2003-17, at 7-8 (Treffinger) (The Commission determined that, consistent with Section 103.3(b), which requires the refund of illegal contributions, Treffinger's Senate committee was required to reimburse the county for salary paid to county employees working on the campaign.).

⁴⁵ See 11 C.F.R. § 100.52(d)(1). The Commission has stated that in situations not addressed in section 110.2(l), including when expenditures are paid for by multi-candidate committees after candidacy, the general provisions related to in-kind contributions apply. See Section 110.2(l) E&J, 68 Fed. Reg. at 47407.

⁴⁶ See 11 C.F.R. § 110.2(l)(1).

⁴⁷ 11 C.F.R. § 103.3(b)(3).

1 Accordingly, OPAC made a contribution to the Committee in this amount. However, because
2 OPAC had not disclosed any contributions to the Committee, it appears that the entire \$5,000
3 contribution limit to the Committee was available.⁴⁸

4 The record therefore does not support a finding that OPAC made excessive in-kind
5 contributions to the Committee in connection with payments for O'Malley's testing the waters
6 activities. Accordingly, the Commission finds no reason to believe that Win Back Your State
7 f/k/a O'Say Can You See PAC and Martin Cadogan, in his official capacity as treasurer, made
8 excessive in-kind contributions to the Committee in violation of 52 U.S.C. § 30116(a). For the
9 same reason, the Commission finds no reason to believe that O'Malley for President and Terry
10 Lee Lierman, in his official capacity as treasurer, accepted excessive in-kind contributions in
11 violation of 52 U.S.C. § 30116(f). The Commission also finds no reason to believe that Martin
12 O'Malley violated 52 U.S.C. § 30116(f).

⁴⁸ See 52 U.S.C. § 30116(a)(2)(A).