FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

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 treasurer

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

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.
I. INTRODUCTION

Wisconsin Governor Scott Walker publicly announced that he was running for President of the United States on July 13, 2015, only two weeks after he claims to have begun testing the waters for a possible candidacy. The Complaints make three primary allegations about the months leading up to Walker's declaration of candidacy. First, that Walker began testing the waters for a potential candidacy as early as November 2014. Second, that Our American Revival ("OAR"), a 527 organization that Walker helped create in January 2015, made, and Walker accepted, excessive, unreported contributions by paying for testing the waters activity for Walker in the five months leading up to Walker's announcement. Second, that Walker became a candidate prior to his July 2015 declaration of candidacy and thereby failed to file timely disclosure reports.

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2 MUR 6917, Compl. at 1, 2 (Feb. 23, 2015); MUR 6929, Compl. ¶¶ 1, 4, 5 (Mar. 31, 2015).
statements and disclosure reports, and used impermissible non-federal funds from OAR for campaign activity.\(^3\)

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

The available information indicates that Walker conducted testing the waters activities prior to June 17, 2015, that those activities were funded by OAR, and that Committee failed to report expenses related to those activities, either as disbursements or as in-kind contributions. We recommend, therefore, that the Commission find reason to believe that OAR violated 52 U.S.C. §§ 30116(a) and 30118 by making, and Walker and the Committee violated 52 U.S.C. §§ 30116(f) and 30125(e) by accepting, excessive in-kind contributions. We also recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to report testing the waters expenses and in-kind contributions from OAR. Additionally, we recommend that the Commission find reason to believe that Walker violated 52 U.S.C. § 30102(c)(1) by failing to timely file a Statement of Candidacy, but take no action at this time as to the allegation that the Committee violated 52 U.S.C. §§ 30103(a) and 30104 by failing to timely file a Statement of Organization and disclosure reports with the Commission. We also recommend that the Commission take no action at this time as to OAR's acceptance and receipt 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).
process for use, if necessary, in an investigation to determine the amount, timing, and sources of
funds that Walker spent on testing the waters activities for his 2016 presidential candidacy.

II. FACTUAL BACKGROUND

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

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

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9 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
8 Twitter, Governor Scott Walker, @ScottWalker (July 2, 2015).
Walker ultimately withdrew from the election on September 21, 2015. Scott Walker, FACEBOOK, Statement (Sept.
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.
A. Testing the Waters Activity

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

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

- Radio show interview in Milwaukee, Wisconsin: Walker referred to himself as a prospective candidate, stating, “The media is going to peg any prospective candidate with a tag. I’d rather have bland or uncharismatic than dumb or ignorant, or corrupt or any of the other things that they could label other would-be candidates out there, or old, for that matter.”\textsuperscript{13}

- Interview with reporters in Madison, Wisconsin: “Putting that power in the hands of the states, and more importantly, more directly in the hands of the people — I think that’s something that will help transform America. It’s an idea that I certainly share, and it’s an idea that I think a vast majority of Americans do. And certainly, if I got to a point — right now we’re exploring — but if I got to a point of going forward with a campaign, that would be a fundamental plank of it.”\textsuperscript{14}


Interview with reporters in Madison, Wisconsin: Walker told reporters that he could balance a campaign with his duties as governor, comparing the situation to his 2012 recall election, which he told reporters required extensive travel and campaigning: “We’ll manage it — if that were to happen — we’ll manage it the way we did in the recall.”

Interview with Sean Hannity, FOX News: Walker said that he was “very interested” in a presidential bid, stating “I think we need new, bold leadership from outside of Washington that’s proven to take on the challenges we face in this country right now.” After describing his own record, Walker said that he would consider running if there was a sense that people want candidates with a proven record: “And so the first step is to get out in those states, talk about that. But I think if there’s a sense out there, which I heard on Saturday, that people want not just dynamic speakers, they want people who’ve got a proven record, who’ve actually done something, not just talked about it, who are from outside of Washington. And increasingly, I think they want new, fresh leaders.” In this interview, Walker also described the agenda that he would promote if he were President.

Further, the Complaints point to Walker appearances at events that are traditional stops for declared and hopeful presidential candidates. In February 2015 he attended the Conservative Political Action Conference (“CPAC”) in National Harbor, Maryland, where he was asked “Should you become Commander-in-Chief, how would you deal with threats such as ISIS?” Walker responded, “I want a Commander-in-Chief who will do everything in their power to ensure that the threat from radical Islamic terrorists do not wash up on America soil. If I can take on 100,000 protesters, I can do the same across the world.” In response to a separate

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

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

B. Our American Revival (“OAR”)

Walker stated that he had been involved with the creation of OAR, which was formed on
January 16, 2015, as a 527 organization. The Complaint in MUR 6929 alleges that Walker
created and used OAR as his presidential exploratory committee, and that Walker and OAR have
remained closely identified since its inception. The purpose of OAR as stated on its Form 8871
(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),

19 Republican Party of Iowa, Iowa GOP to Host Presidential Candidates at Lincoln Dinner on May 16, 2015

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.
policies that will lead to a freer and more prosperous America for all by restoring power to the
states and - more importantly - the people” and to “lead a revival of the shared values that make
our country great by limiting the size and scope of government so it is leaner, more efficient,
more effective and more accountable to the American people.”

Over the course of the five
months that followed OAR’s creation, Walker engaged in OAR-funded travel to attend speaking
engagements throughout the country.

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

OAR’s website shows that it published 65 blog posts from January 2015 through
September 2015—when Walker suspended his presidential campaign—and fifteen blog posts
from September 2015 through July 2016. Sixty-two of the sixty-five blog posts that OAR

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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
element of successful state-based solutions." Id.

24 Walker and OAR Resp. at 2-4.

25 Id. at 2.

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

OAR accepted $5,284,191 in contributions during the first half of 2015.\^30 Of this total,
OAR accepted $921,107 from sources that would be prohibited under the Act, and $1,440,116
from individuals whose contributions exceed the Act’s $2,700 individual limit for the 2016
presidential primary election.\^31 During this period, OAR spent $4,952,760; $1,048,156 was
spent from July 1, 2015, through September 21, 2015, when Walker officially terminated his
candidacy, and $546,250 was spent from September 21, 2015 through the end of 2015.\^32

III. LEGAL ANALYSIS

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

Walker contends that he did not begin testing the waters to become a candidate until June
17, 2015, two weeks prior to Scott Walker, Inc.’s Statement of Organization on July 2, 2015.
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=
7Qm4xGQYH5k.

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


\^32 OAR, Year-End Report to the Internal Revenue Service (2015).
early as November 2014 and that OAR began funding these activities upon its formation in January 2015.

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

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

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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).
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). “Anything of value” includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1).
aggregate, exceed $2,700 for the 2016 election cycle.  

The Act also prohibits any candidate or political committee from knowingly accepting any excessive contribution. Federal candidates may not solicit, receive, direct, transfer or spend funds in connection with either federal or non-federal elections, unless the funds comply with the Act’s federal contribution limits, source restrictions, and reporting requirements. In a recent Advisory Opinion, the Commission concluded that a 527 organization’s “use of funds raised outside of the Act’s limitations and prohibitions to pay for individuals’ testing the waters activities would violate Commission regulations if those individuals decide to become candidates.”

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

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

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

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

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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.


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

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

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46 Id. (listing names of donors).


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

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

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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).


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).

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

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

MUR 6917, Compl. at 2-3; MUR 6929, Compl. ¶ 15; Mike Allen & Daniel Lippman, Politico Playbook
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:
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, Eve ning 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).

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

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

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


59 11 C.F.R. § 101.3.

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

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

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

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

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

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

\textsuperscript{67} 11 C.F.R. §§ 100.72(b), 100.131(b).

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

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

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

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


\(^{71}\) See Elliott & Ronayne, Wisconsin’s Walker: Sons Ditching College for Fall Campaign.
more candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”
This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
was designed to “plug the soft-money loophole.”
OAR’s acceptance and receipt of non-federal funds while Walker was a candidate would
amount to a violation of the Act if Walker established, financed, maintained, or controlled OAR as
contemplated by § 30125(e)(1). While we recognize that some information suggests that Walker was
involved with the creation of OAR, we do not have sufficient information to indicate that Walker
was a federal candidate at the time of OAR’s establishment. Accordingly, we do not believe that the
available information provides a sufficient basis, at this time, to go forward under a theory that he
established, financed, maintained, or controlled OAR while he was a federal candidate. Thus, we
recommend that the Commission take no action at this time as to OAR’s solicitation and receipt of
non-federal funds.

IV. INVESTIGATION

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

52 U.S.C. § 30125(e)(1)(A); see also 11 C.F.R. § 300.61.
See supra note 20.
and subpoenas to produce documents, which we would use in the event the parties do not cooperate in providing this information.

V. RECOMMENDATIONS

1. Find reason to believe that Governor Scott Walker and Scott Walker, Inc. and Kate Lind in her official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 100.72(a) and 100.131(a);

2. Find reason to believe that Our American Revival violated 52 U.S.C. § 30116(a);

3. Find reason to believe that Scott Walker, Inc. and Kate Lind in her official capacity as treasurer violated 52 U.S.C. § 30104(b);

4. Find reason to believe that Governor Scott Walker violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a);

5. Take no action at this time as to the allegation that Scott Walker, Inc. and Kate Lind in her official capacity as treasurer violated 52 U.S.C. §§ 30103(a) and 30104;

6. Take no action at this time as to the allegation that Our American Revival violated 52 U.S.C. § 30125(e);

7. Authorize the use of compulsory process, as necessary;

8. Approve the attached Factual and Legal Analyses;
9. Approve the appropriate letters.

3/6/2017

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