



ASHBY

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VIA EMAIL

Mr. Jonathan A. Peterson, Esq.
 Office of General Counsel
 Federal Election Commission
 1050 First Street, NE
 Washington, District of Columbia 20436

MURs 6917 & 6929: Response of Our American Revival to Factual & Legal Analysis

Dear Mr. Peterson:

On behalf of Our American Revival and its Treasurer, C. Ryan Burchfield, thank you for the opportunity to submit the following factual information and legal analysis relevant to the Commission's continuing review of this matter. We are disappointed to learn, however, that your office has begun seeking information from OAR's former employees and consultants without first having reviewed and considered our response.

Overview

On April 23, 2019, the Commission found reason to believe that Our American Revival violated 52 U.S.C. § 30116(a) because it "paid at least \$19,349 in travel, lodging, speechwriting, and meeting costs associated with the [Conservative Political Action Committee] Conference in Baltimore, Maryland on February 26, 2015,"¹ and because then-Wisconsin Governor Scott Walker "solicit[ed] funds for a potential candidacy in conjunction with OAR."

The Factual & Legal Analysis ("FLA") upon which the Commission founded its reason to believe finding is thin and deeply flawed. First, the FLA disregards the fact that Governor Walker was a successful incumbent Governor who was implementing a bold conservative reform agenda, a hero to conservative activists across America, and a proven draw at events for conservative organizations and activists. He had, for years prior to 2015, been doing exactly the same things

¹ The 2015 Conservative Political Action Conference was held in National Harbor, Maryland, not Baltimore.



he did with OAR in 2015—traveling around the country, talking about his policy successes in Wisconsin and promoting his conservative reform agenda to a broader audience.

Second, the FLA relies almost entirely on selectively chosen, anonymously-sourced news reports, promotional materials of unrelated third party groups and off-hand responses to hypothetical questions posed by others, while ignoring the overwhelming weight of the evidence in support of OAR’s mission as an issues-driven organization that promoted conservative, state-based policy solutions, in specific states and to a national audience—both before and after Governor Walker became a presidential candidate.

Third, the FLA fails to identify a single expenditure made by OAR that constitutes a testing the waters expenditure as a matter of law. And fourth, there is an insufficient basis for the FLA’s conclusion that “OAR sponsored events at which Walker may have raised funds for testing the waters activities for a potential candidacy.”

For all these reasons, OAR objects to the FLA as a factually- and legally-insufficient basis for this continued investigation and urges the Commission to bring an immediate halt to it.

Discussion

1. The FLA breaks with a generation of agency jurisprudence on the ability of individuals and organizations to engage in issue advocacy without being deemed to have made testing the waters expenditures.

For at least the past 34 years, the Commission, its Commissioners and the Office of General Counsel variously have recognized that an organization does not make testing the waters expenditures when it provides a potential future federal candidate with a platform to talk about issues and policies, build a following and raise or maintain his or her national political profile, including but not limited to when the organization promotes its association with the individual and pays the travel and related costs of the individual’s attendance at political events around the country. This is true even when the activities take place amidst a swirl of speculation in the political media echo chamber about the individual’s thinking and future plans, and even when the individual’s possible candidacy is discussed at the event.

In 1985, then-Vice President George H.W. Bush was “one of the Republican Party’s most active campaigners and [was] **highly sought after** as a speaker, fundraiser, and supporter by party candidates and party officials.” FEC Advisory Opinion (“AO”) 1986-06 (Mar. 14, 1986) (emphasis added). The Vice President was “**frequently mentioned in the press** as a potential presidential candidate in 1988.” *Id.* (emphasis added.) In those circumstances, the Commission opined that Vice President Bush could found The Fund for America’s Future, Inc., a multicandidate political committee, serve as its honorary national chairman, and engage in various party-building and candidate support activities—and that related expenses would not be deemed to be in support of Vice President Bush’s potential future presidential campaign, as long as the organization did not solicit funds on behalf of the Vice President’s potential candidacy, hold more than incidental meetings related to it, distribute campaign paraphernalia or otherwise promote the potential candidacy.



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Additionally, and importantly, the Commission opined that “incidental contacts and incidental remarks, such as those in response to questions” from “the public or the press” about Vice President Bush’s “potential candidacy . . . in 1988” would not transform the organization’s activities into expenditures that needed to be allocated to the Vice President’s future candidacy. AO 1986-06 at 3-5 (emphasis added).

Years later, in 2000, then-Missouri Congressman Jim Talent opted not to seek reelection and ran instead for Governor of Missouri. In early 2001, following his defeat for Governor and departure from Congress, Rep. Talent helped form Missouri Renewal, a state political committee of which he served as honorary chairman. MUR 5260, First General Counsel’s Report (“FGCR”) (Dec. 20, 2002) at 4-5. Missouri Renewal “functioned as a platform for Talent, if not to campaign, then to keep up his public profile and support Republican candidates and causes until he determined his political future.” *Id.* at 26. Upon declaring his candidacy for U.S. Senate, Rep. Talent stated that he had received “encouragement” to run for Senate “during his travels around the State.” *Id.* at 13. When Rep. Talent announced his candidacy, the organization vacated its office and Talent’s Senate campaign committee moved in, hired some of the organization’s personnel and purchased some of its assets. *Id.* at 26-27. Additionally, the organization stopped accepting funds a month prior to Talent’s candidacy declaration, and effectively ceased operations immediately thereafter. *Id.* at 13-14.

Addressing a complaint alleging that Rep. Talent used Missouri Renewal to campaign for U.S. Senate prior to declaring his candidacy, such as when it paid for travel expenses associated with his attendance at a Lincoln Day festival in 2001, the Commission in MUR 5260 unanimously agreed that further investigation was unwarranted and adopted the First General Counsel’s Report’s recommendation of no reason to believe. According to the Report, “the heart of complaint’s claim appears to concern the association between Talent and Missouri Renewal and public conjecture concerning Talent’s potential candidacy for Senate” *Id.* at 29. The First General Counsel’s Report found that the complaint “provides no information regarding whether [Talent] solicited support for a Senate run at the [Lincoln Day] festival or whether he held meetings with individuals or the press regarding such potential candidacy.” *Id.* at 27 (finding that the complaint “provides no specific instances of federal campaign activity conducted by Missouri Renewal” in the time period at issue). The Report concluded that “[t]his Office [i.e., the Office of General Counsel] believes that a finding of reason to believe” based upon “the association between Talent and Missouri Renewal and public conjecture concerning Talent’s potential candidacy . . . without something tending to show a nexus between Missouri Renewal and federal campaign activity, would constitute mere speculation and conjecture.” *Id.* at 29 (emphasis added) (noting that “purely speculative charges do not form an adequate basis to find reason to believe that a violation of the Act has occurred”).

Along these same lines, in MUR 6907, the Office of General Counsel recommended that the Commission find no reason to believe in a matter involving former Arkansas Governor Mike Huckabee and America Takes ACTION, a 501(c)(4) organization with which Governor Huckabee worked to “educat[e] Americans about economic, social, education, tax, national defense, and other public policy issues.” MUR 6907 FGCR (July 28, 2015) at 2-3. The Complaint alleged that Governor Huckabee “created ATA with the ‘veiled purpose’ of planning his 2016 Presidential campaign, and that ATA operated as Huckabee’s ‘exploratory committee in disguise.’” *Id.* at 5.



But OGC derided the complaint as “recit[ing] general assertions made in a news article by individuals described as Republicans close to Huckabee who are familiar with his activities,” failing to “describe specific identifiable activities of the parties,” and “instead simply characterize[ing] the nature of [the organization] in conclusory terms—an ‘employment perch’ for Huckabee’s political team, a ‘landing spot’ for staff and money” *Id.* at 9. “General characterizations of [the organization]’s purpose, without more,” OGC advised the Commission, “do not afford a reasonable basis to conclude the Respondents may have violated the Act or Commission regulations.” *Id.*

In another matter, three Commissioners voted not to find reason to believe in a matter arising out of then-former Massachusetts Governor Mitt Romney’s campaign for the Republican presidential nomination in 2011 and 2012. In MURs 6470, 6482 and 6484, complainants challenged Governor Romney’s service as honorary chair of Free and Strong America PAC, and his participation in several events allegedly hosted by the organization around the country in February and March 2011, before he declared his candidacy for President in April of that year. Explaining their votes, those Commissioners stated:

[A] political committee or other organization may provide an individual who is testing the waters (and later becomes a candidate) with a platform to speak about issues, support other candidates, and maintain a public profile without the payments for such activities necessarily being considered contributions to the future candidate’s campaign.

MURs 6470, 6482 & 6484, Statement of Reasons of Chmn. Petersen and Comm’rs Hunter & Goodman (“Petersen Hunter Goodman SOR”) (Mar. 30, 2016) at 4 (emphasis added).

Taken together, these Commission precedents establish first that an organization does not make testing the waters expenditures when it hosts or pays the travel and other costs of events at which an individual who is thinking about running for future federal office—or even testing the waters of a campaign—discusses issues and policy and supports other candidates. Second, at such events, an individual’s response to questions about a potential future candidacy will not transform an event into a testing the waters activity. And third, the Commission does not entertain complaints—let alone make formal agency findings that individuals and organizations have violated the Act—based upon media speculation and unsworn, anonymously-sourced news reports.

The Commission’s finding in this matter, and the underlying FLA, are a sharp—and unjustified—departure from this jurisprudence.

2. The FLA’s “nexus” argument fails because Governor Walker was an incumbent governor and national leader who had been engaging in legitimate issue advocacy activities in states across America for years prior to 2015.

The Commission’s disposition of MUR 5260 (Talent) establishes the requirement of a “nexus” between an organization and federal campaign activity before the organization’s expenditures will be deemed to be testing the waters expenses. “As a public figure and politician,” however, an individual’s “association with a social welfare organization is not suggestive of a testing-the-



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waters violation in itself.” MUR 6907 (Huckabee) FGCR at 9, fn. 41 (citing MUR 5260 (Talent) FGCR at 26-27 (“the fact that a state leadership PAC served as a candidate’s ‘platform’ to ‘keep up his political profile and support Republican candidates and causes,’ does not indicate that the PAC assisted with the candidate’s testing-the-waters or federal election activities.”)).

The FLA in this matter attempts to manufacture such a nexus by arbitrarily limiting its focus to Governor Walker’s activities in 2015, while ignoring years of historical context that puts those activities in a different and more accurate light and defeats any nexus between OAR’s legitimate, issue-based activities and the Governor’s future federal candidacy.

Indeed, in the four years preceding 2015, Governor Walker was traveling the country talking about policy issues, highlighting his successful record in Wisconsin and offering ideas for other states and America. In 2011, Governor Walker traveled to Iowa to speak about budgetary reforms to a Heritage Foundation [event](#).² He addressed school choice at the American Federation for Children’s [National Policy Summit](#)³ in Washington, D.C. He spoke on labor issues and his impending recall election at a Republican Governors Association event in [Florida](#).⁴

In 2012, Governor Walker [campaigned](#)⁵ in New Hampshire for GOP presidential nominee Mitt Romney. He traveled to Florida to speak about entitlement reform at a [meeting](#)⁶ of the James Madison Institute, to Washington, D.C. to [address](#)⁷ public sector pension reform at the American Enterprise Institute and job creation at the U.S. Chamber of Commerce’s [Jobs Summit](#),⁸ and to the Ronald Reagan Presidential Library and Foundation in California where he [discussed](#)⁹ various policy and political issues.

In 2013, Governor Walker was in Washington, D.C. to participate in POLITICO’s annual [State Solutions Conference](#),¹⁰ where he discussed [immigration policy](#).¹¹ He also spoke to the

² <https://www.radioiowa.com/2011/10/26/protesters-gather-to-greet-wisconsins-gop-governor/>.

³ <https://www.federationforchildren.org/event/2011-national-policy-summit/>.

⁴ <https://www.cbsnews.com/news/wisconsin-gov-scott-walker-braces-for-recall-effort/>.

⁵ <https://www.bostonherald.com/2012/09/29/paul-ryan-in-nh-live-free-and-prosper/>.

⁶ [http://archive.naplesnews.com/business/protestors-supporters-line-up-to-greet-wisconsin-gov-scott-walker-in-naples-ep-390087004-330860431.html/](http://archive.naplesnews.com/business/protestors-supporters-line-up-to-greet-wisconsin-gov-scott-walker-in-naples-ep-390087004-330860431.html).

⁷ <http://www.aei.org/publication/gov-walker-controversial-reforms-have-protected-the-middle-class/>.

⁸ <https://www.uschamberfoundation.org/event/jobs-summit-2012>.

⁹ <https://www.youtube.com/watch?v=4BSBckazR40&t=54m25s>.

¹⁰ <https://blogs.microsoft.com/on-the-issues/2013/03/06/microsoft-politico-present-third-annual-state-solutions-conference-in-washington-dc/>.



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American Enterprise Institute,¹² the Federalist Society's [2013 Lawyers Convention](#)¹³ and [Long Island Chapter](#)¹⁴ about his gubernatorial record. He [headlined](#)¹⁵ a National Republican Congressional Committee dinner in Washington, spoke to nearly 1,000 Republican donors and activists at events in [Dallas](#)¹⁶ and [Indianapolis](#),¹⁷ and keynoted a dinner at the annual [Western Conservative Summit](#)¹⁸ in Denver. He participated with other governors in a [panel discussion](#)¹⁹ about economic and workforce development, education, tax and immigration policy at the Aspen Institute in Aspen, Colorado.

In 2014, Governor Walker traveled to New York to discuss his record as Governor at the [Manhattan Institute](#).²⁰ In Nevada, he spoke to the [Republican Jewish Coalition](#)²¹ about his record, the importance of executive leadership, and foreign policy.

Throughout all of these years, Governor Walker participated in numerous local, state and national media interviews. He campaigned for Republican candidates in [Virginia](#),²² [Connecticut](#),²³ [Alabama](#),²⁴ [South Carolina](#),²⁵ [Nebraska](#),²⁶ [Iowa](#)²⁷ and [New York](#),²⁸ among other

¹¹ <https://www.politico.com/story/2013/02/scott-walker-supports-path-to-citizenship-087960>.

¹² <http://www.aei.org/events/unintimidated-a-conversation-with-governor-scott-walker/>.

¹³ <https://www.youtube.com/watch?v=mVH-KhSDCa8>.

¹⁴ <https://fedsoc.org/events/address-book-event-with-gov-scott-walker>.

¹⁵ <http://www.rollcall.com/politics/nrcc-raises-14-4-million-at-annual-march-dinner/>

¹⁶ <https://www.dallasnews.com/news/local-politics/2013/03/23/wisconsin-gov.-scott-walker-urges-texas-republicans-to-be-optimistic-at-dallas-event>.

¹⁷ <https://www.nwitimes.com/9db481b0-6cee-50a8-a688-ffb6b1cc8b.html>.

¹⁸ <https://www.washingtontimes.com/news/2013/jul/27/gop-stars-head-colorados-western-conservative-summ/>.

¹⁹ <https://www.aspeninstitute.org/events/mccloskey-speaker-series-conversation-republican-governors/>.

²⁰ <https://www.manhattan-institute.org/html/young-leaders-circle-forum-scott-walker-8109.html>.

²¹ <http://politicalticker.blogs.cnn.com/2014/03/29/scott-walker-highlights-executive-experience-to-gop-donors/>.

²² https://www.washingtonpost.com/local/va-politics/wisconsin-gov-scott-walker-to-headline-fundraiser-for-cuccinelli-next-month/2013/02/27/7b93fefa-8114-11e2-8074-b26a871b165a_story.html?utm_term=.15a0e9ae4ea9.

²³ <https://blog.ctnews.com/politics/2013/06/26/rga-mobilizing-early-in-ct-sends-in-walker/>.

²⁴ http://blog.al.com/wire/2013/08/gov_scott_walker_we_need_to_em.html.



states. And he spoke at CPAC—first in [2012](#),²⁹ then again in [2013](#).³⁰ (Governor Walker also spoke at CPAC in [2016](#), [2017](#) and [2019](#).) *Cf.* MUR 6928 (Santorum), Statement of Reasons of Vice Chmn. Petersen and Comm'r Hunter ("Petersen Hunter SOR") at 11-12 ("That Santorum frequently attended CPAC well before becoming a candidate in 2016 tends to undermine any particular significance of his CPAC attendance in 2015. His regular attendance instead lends credibility to the argument that he attended CPAC because he cares about the issues addressed at CPAC, something the Commission has no jurisdiction to regulate.").

These are just a very select few of Governor Walker's many out of state public events in the years leading up to 2015, all covered in news articles revealed through simple Google searches.³¹ Together, they demonstrate that, almost from the inception of his first term as Wisconsin's Governor in January 2011, Governor Walker was doing what successful governors do—traversing America to talk about issues, to engage in the national policy debate and to support candidates and philosophically-aligned organizations. *Cf.* MUR 6928 (Santorum) Petersen Hunter SOR at 7-8 ("Before becoming a candidate, an individual may already be a public figure with a history of public activism and discourse who engages in activities, such as travel and speaking, for reasons other than a potential campaign. Indeed, it should be assumed that individuals considering federal candidacy are actively interested in public affairs, and it should not be a surprise that these individuals speak about their views prior to becoming candidates. Thus, an individual's mere association with an organization prior to becoming a candidate does not give rise to a violation of the Act or Commission regulations, even where the individual 'use[s] [the organization] as a platform to maintain [a] public image and advance certain issues.'"); *see also* MUR 6907 (Huckabee) FGCR at 9, n.41.

Governor Walker's schedule also demonstrates that he was a significant, compelling national political figure—in high demand as a guest and speaker at policy and political events all over

²⁵ https://thetandd.com/news/local/govt-and-politics/haley-kicks-off-re-election-campaign-with-other-gop-governors/article_3d24dfc6-0ecd-11e3-9468-0019bb2963f4.html.

²⁶ <http://archive.jsonline.com/blogs/news/240418791.html>.

²⁷ <https://okhenderson.com/2012/10/15/wisconsins-scott-walker-to-help-branstad-raise-money-for-2014/>.

²⁸ <https://observer.com/2014/06/rob-astorino-to-scott-walker-fund-raiser-critics-im-a-union-man/>.

²⁹ <https://www.youtube.com/watch?v=cOcjxT8ZAuU>.

³⁰ <https://www.politico.com/video/2013/03/cpac-2013-gov-scott-walker-008661>.

³¹ As it has done in some other matters, the Commission selectively "augmented the Complaint in this matter," MUR 6928 (Santorum) Petersen Hunter SOR at 5, by pulling in information about Governor Walker's presidential campaign launch and logo from his social media pages while ignoring other available materials such as videos of his speeches that would have provided more context about the events at issue in this matter. *See* MUR 6928 (Santorum) Petersen Hunter SOR at 12, fn. 79 ("The Commission must be consistent in its approach to supplementing the record in enforcement matters.").



the country, because of his principled conservative leadership, bold record of reform, and skill at communicating complex policy proposals in a relatable, easy-to-understand manner.

In 2012, for instance, the Wisconsin State Journal reported that "the Wisconsin governor has become one of the most sought-after figures in the Republican Party." Scott Bauer and Sean Murphy, ["In conservative circles, Scott Walker greeted as rock star,"](#) Wisconsin State Journal (Apr. 18, 2012);³² *see also* Molly Ball, "The Cheesehead Mafia: Paul Ryan and the Rise of Wisconsin Republicans," [The Atlantic](#) (Aug. 29, 2012) ("Ryan, Walker and Priebus are three of the GOP's brightest national stars");³³ James B. Kelleher, "Wisconsin's union battler Walker is Republican star," [Reuters](#) (June 6, 2012) ("Wisconsin's Scott Walker, derided by Democrats as 'The Rock Star of the Right,' emerged from a bruising fight for his political life on Tuesday as a rising Republican star").³⁴ That same year, POLITICO reported that then-presidential candidate Mitt Romney went to Wisconsin to "bask[]" in Governor Walker's "glow," Juana Summers, ["Romney basks in Walker glow,"](#) POLITICO (June 18, 2012),³⁵ and Business Insider named Governor Walker to its list, "The 36 Most Powerful People of 2012," calling him a "rising national star in the Republican Party," "an immediate rock star among conservatives" and "an influential voice." Grace Wyler, Brett LoGiurato and Walt Hickey, ["The 36 Most Powerful People of 2012,"](#) Business Insider (Jan. 2, 2013).³⁶ National Public Radio called him "the Right's Newest Hero," opined that his "national profile [was] rising," and quoted one supporter as saying that he was "a national symbol of standing up to the enemies of the right." David Schaper, ["Walker moves forward as the Right's Newest Hero,"](#) NPR (June 6, 2012).³⁷ In 2014, GQ labeled him "a conservative folk hero." Robert Draper, ["Can Scott Walker Unite the Republicans?"](#) GQ (Sept. 30, 2014).³⁸

Against this background, Governor Walker was the ideal national figurehead for OAR as it sought to promote conservative, state-based solutions—and a perfect guest for organizations seeking to draw attendance and media attention to their own events. Indeed, in seeking to maximize the value of their events for activists, donors and media members choosing from among many different possible events and other professional, political and personal priorities, it makes sense that organizations would invite and prominently feature "one of the most sought-

³² https://madison.com/wsj/news/local/govt-and-politics/in-conservative-circles-scott-walker-greeted-as-rock-star/article_1d44bb5e-8972-11e1-bdaf-001a4bcf887a.html.

³³ <https://www.theatlantic.com/politics/archive/2012/08/the-cheesehead-mafia-paul-ryan-and-the-rise-of-wisconsin-republicans/261727/>.

³⁴ <https://www.reuters.com/article/us-usa-wisconsin-recall-walker/wisconsins-union-battler-walker-is-republican-star-idUSBRE85509D20120606>.

³⁵ <https://www.politico.com/story/2012/06/romney-basks-in-walker-glow-077532>.

³⁶ <https://www.businessinsider.com/most-powerful-people-in-politics-2012#scott-walker-27>.

³⁷ <https://www.npr.org/2012/06/06/154443420/walker-moves-forward-as-the-rights-newest-hero>.

³⁸ <https://www.gq.com/story/scott-walker>.



after figures in the party,” one of the Republican Party’s “brightest national stars,” a governor who was regarded as a “rock star” and a “hero.” It also makes sense that the same governor, seeking to advance his governing philosophy and policy proposals in other states around the country,³⁹ would travel to where activists and cameras were gathered.

The position advanced by the FLA in this matter would put governors and others in public office and public life, considering⁴⁰ or being considered for a potential federal campaign, to a choice: either form testing the waters committees in order to continue traveling around the country to attend political and policy events, or confine themselves to their respective states or districts until they either decide not to run or media chatter about their political future subsides. The Act, Commission regulations and three decades of agency jurisprudence, however, do not force that choice.

The law is clear. “[A]n individual’s mere association with an organization prior to becoming a candidate does not give rise to a violation of the Act or Commission regulations, even where the individual ‘use[s] [the organization] as a platform to maintain [a] public image and advance certain issues’” unless there is “a nexus between the activities and an eventual campaign.” MUR 6928 (Santorum) Petersen Hunter SOR at 8 (citing MUR 5260 (Talent) FGCR at 29, MUR 6907 (Huckabee) FGCR at 9); *see also* MURs 6470, 6482 & 6484 (Romney) Petersen Hunter Goodman SOR at 4 (citing MUR 5260 (Talent) FGCR at 26-29). In this matter, Governor Walker’s activities in 2015 with OAR were exactly the same as his activities with other organizations in 2014, 2013, 2012 and 2011—legitimate issue advocacy in states across America—and defeat any attempt to conjure up a nexus to his eventual presidential campaign. *Cf.* MUR 6928 (Santorum) Petersen Hunter SOR at 11-12 (“That Santorum frequently attended CPAC well before becoming a candidate in 2016 tends to undermine any particular significance of his CPAC attendance in 2015. His regular attendance instead lends credibility to the argument that he attended CPAC because he cares about the issues addressed at CPAC, something the Commission has no jurisdiction to regulate.”).

3. The FLA ignores what OAR and Governor Walker actually did, and instead credits unsourced speculation and prognostication by the horse-race obsessed national political media.

The complaints in this matter are founded on “news articles that tend to recount what unsworn authors were told by other, unsworn third parties.” MUR 6928 (Santorum) Petersen Hunter SOR at 9. The FLA, in turn, finds the reason to believe finding on a scant few of Governor Walker’s responses to questions, as quoted in news articles speculating about the then-upcoming 2016 presidential race. *Cf.* AO 1986-06 at 4 (“[I]ncidental contacts and incidental

³⁹ See, e.g., Wyler, LoGiurato and Hickey, [“The 36 Most Powerful People of 2012,”](#) Business Insider (Jan. 2, 2013) (Walker “has also emboldened other Republican governors to take similar steps to limit the influence of unions, such as Gov. Rick Snyder in Michigan”); Tim Padgett, [“Emboldened by Walker’s Recall Win, Florida’s Rick Scott Goes to War on Voter Registration,”](#) TIME (June 11, 2012); Peter Hamby, [“Ambitious governors shift political power, focus to states,”](#) CNN (Feb. 25, 2011) (reporting that “[m]any GOP governors are rallying around Walker’s bold moves”).

⁴⁰ “[T]hinking about running for office is not the same thing as spending money to evaluate a possible run for office.” MUR 6928 (Santorum) Petersen Hunter SOR at 13 (emphasis in original).



remarks, such as those in response to questions" from "the public or the press" about a potential future federal candidacy, do not transform an organization's activities into expenditures that needed to be allocated to the future campaign).

In this regard, the complaints and FLA both suffer from the same fundamental flaw. They fall for the chatter of a national political media that is obsessed with horse race prognostication, and fail to separate it from the actual news reporting. They rely on a few news reports that "selectively quoted statements made by [the future candidate] and others . . . but often omitted any context or other information about what transpired at these events." MURs 6470, 6482 & 6484 (Romney) Petersen Hunter Goodman SOR at 6.

For instance, the FLA makes much of Governor Walker's off-hand remark—following his speech in response to the question, "What would be your plan to deal with that attempt to regulate the Internet?"—that "[t]o me, the guiding principle should be freedom, and that's what we are going to do on any decision 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." FLA at 5. The complaint and FLA both ignore the Governor's disclaimer, given at the outset of his answer, as follows:

"Well those are the sorts of things we're going to talk about going forward should I choose to be a candidate, but I think on that or any principle, to me, the guiding principle should be freedom"

[Governor Scott Walker Remarks at CPAC](#), C-Span (Feb. 26, 2015) at 17:00.⁴¹ (In this same vein, the FLA also cites Governor Walker's answer to the plainly hypothetical question, "Should you become Commander-in-Chief, how would you deal with threats such as ISIS?" *Id.* (emphasis added).)

The FLA's reliance on these incidental remarks does not comport with the Commission's disposition of AO 1986-06, the Statements of Reasons in MURs 6470, 6482 and 6484 (Romney) or the Statement of Reasons in MUR 6928 (Santorum).⁴² The FLA also ignores what Governor Walker actually said in his 13-minute speech at CPAC. He discussed his philosophy of governing and leadership, economic growth, foreign policy with Yemen, Iran and Russia, fighting terrorism, taxes, education, right to work and regulatory reform, among other issues—all topics consistent with OAR's issues-based mission. [Governor Scott Walker Remarks at CPAC](#), C-Span (Feb. 26, 2015).⁴³ And he never once mentioned or alluded to running for president in 2016.

⁴¹ <https://www.c-span.org/video/?324557-12/governor-scott-walker-remarks-cpac>.

⁴² The Commission never before has held one individual or organization responsible for the questions of another, and required an individual, considering or being considered for a future federal campaign, to refuse to answer a question about what he or she in the future would do if he or she held some other office.

⁴³ <https://www.c-span.org/video/?324557-12/governor-scott-walker-remarks-cpac>.



The FLA additionally relies upon Governor Walker's attendance at a Lincoln Day dinner in Iowa. FLA at 5. It does not take issue with anything OAR did or Governor Walker said at the dinner, however. Rather, bizarrely, it rests the RTB finding upon an invitation to the dinner apparently prepared and distributed by the Republican Party of Iowa which breathlessly predicted, "There's always the chance for a candidate to have a defining moment at an event like this in Iowa." Such collateral material of third parties cannot seriously form any part of the basis for a reason to believe finding. *Cf.* MURs 6470, 6482 & 6484 (Romney) Petersen Hunter Goodman SOR at 7 ("The FGCR notes that a hearsay press article characterized an invitation to the event as suggesting Romney would discuss his potential campaign. The alleged invitation is not in the record before the Commission, so we have no way of judging its existence or contents. **Moreover, there is no evidence—either in the news article, complaint, or FGCR—that FSA disseminated or approved this alleged invitation.**" (emphasis added)).

More important than the Iowa GOP's invitation to its Lincoln Day Dinner is what Governor Walker did and said while he was there. Consistent with OAR's mission, Governor Walker talked about his record and reforms in areas including budgeting, teacher performance, protection of unborn children and election administration. [Scott Walker Iowa Lincoln Day Dinner](#), C-Span (May 16, 2015).⁴⁴ He did not discuss or refer to a potential future campaign for president in 2016.

Beyond those two specific events, the FLA avers generally that "Walker engaged in OAR-funded travel to attend speaking engagements throughout the country." FLA at 6. The FLA does not discuss what he did or said at those events, but news reports do. At an event in Iowa, Governor Walker "blasted big government . . . touted a long list of conservative reforms" and discussed "Voter ID laws, education reforms, tax cuts and defunding Planned Parenthood." Cameron Joseph, ["Scott Walker shows fire in Iowa,"](#) The Hill (Jan. 24, 2015).⁴⁵ In New Hampshire, he answered a question about "a young New Hampshire teacher of the year nominee in 2009 who was been laid off due to last-hired/first-fired union rules," and "took questions on several topics such as how to deal with the Islamic State and how to grow the economy." Matthew DeFour, ["Scott Walker receives warm welcome in New Hampshire on first visit since 2012,"](#) Wisconsin State Journal (Mar. 14, 2015).⁴⁶ He also discussed "the nation's heroin epidemic, the Common Core State Standards for education and the Affordable Care Act" with current and former federal, state and local elected officials. *Id.* In South Carolina, he spoke about "eliminating a budget deficit, cutting taxes, defunding Planned Parenthood, requiring photo IDs for voting and making Wisconsin a right-to-work state. Rudolph Bell, ["Walker Rouses Greenville Republicans,"](#) Greenville News (Mar. 19, 2015).⁴⁷ In Tennessee, he

⁴⁴ <https://www.c-span.org/video/?c4537927/scott-walker-iowa-lincoln-dinner>.

⁴⁵ <https://thehill.com/blogs/ballot-box/presidential-races/230636-walker-shows-fire-in-iowa>.

⁴⁶ https://madison.com/wsj/news/local/govt-and-politics/gov-scott-walker-receives-warm-welcome-in-new-hampshire-on/article_be205aae-ab78-567b-bdb3-100d5ad781c0.html.

⁴⁷ <https://www.greenvilleonline.com/story/money/business/2015/03/19/walker-rouses-greenville-republicans/25054045/>.



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discussed Second Amendment Rights, his A+ NRA rating and bills he signed in Wisconsin to permit concealed carry and establish the "Castle Doctrine." Dave Boucher, ["Scott Walker touts 'freedom,' jabs Obama in NRA speech,"](#) The Tennessean (Apr. 10, 2015).⁴⁸ At an appearance on Glenn Beck's radio show, Governor Walker talked about right to work, public sector pension reform, merit-based pay raises for teachers, photo ID for voting, defunding Planned Parenthood and cutting taxes, as well as his general governing philosophy. ["How does conservative Scott Walker win over and over in one of the most progressive states?"](#) GlennBeck.com (Apr. 20, 2015).⁴⁹

At these and other events throughout early 2015, Governor Walker consistently promoted OAR's mission of moving the issues debate forward by disseminating the accomplishments and solutions coming out of state governments, and holding up his Wisconsin record as a major example of successful state-based solutions. This pile of news clips, containing characterizations and actual quotes of Governor Walker's own remarks, towers over the anonymously-sourced, third person speculative accounts the FLA relies upon, and the few off-hand remarks Governor Walker made in response to others' questions. They overwhelmingly demonstrate that OAR and Governor Walker were engaged in bona fide issue advocacy during the period of time at issue.

Moreover, the FLA fails to account for OAR's continued issue advocacy efforts and operations following Governor Walker's entry into the presidential primary election and after his withdrawal. In the second half of 2015, OAR engaged in advocacy on [tax](#)⁵⁰ and [budget](#)⁵¹ policy, [educational choice](#)⁵² and [federal energy policy](#).⁵³ It called on Republicans in Congress to [elect a new speaker](#)⁵⁴ and [lauded](#)⁵⁵ then-Rep. Paul Ryan's leadership. It urged support for our

⁴⁸ <https://www.greenvilleonline.com/story/money/business/2015/03/19/walker-rouses-greenville-republicans/25054045/>.

⁴⁹ https://www.glenbeck.com/2015/04/20/how-does-conservative-scott-walker-win-over-and-over-in-one-of-the-most-progressive-states/?utm_source=glenbeck&utm_medium=contentcopy_link.

⁵⁰ <http://www.ouramericanrevival.com/news/oar-blog-post-republican-led-states-leading-the-way-on-tax-freedom/>.

⁵¹ <http://www.ouramericanrevival.com/news/oar-blog-post-balancing-the-budget-you-cannot-deficit-spend-at-the-kitchen-table/>.

⁵² <http://www.ouramericanrevival.com/news/a-great-education-is-a-moral-imperative/>.

⁵³ <http://www.ouramericanrevival.com/news/standing-up-to-federal-overreach/>.

⁵⁴ <http://www.ouramericanrevival.com/news/oar-blog-post-congress-getting-back-to-work/>.

⁵⁵ <http://www.ouramericanrevival.com/news/oar-blog-post-paul-ryan-the-conservative-unifier-that-this-nation-needs/>.



nation's [veterans](#)⁵⁶ and [troops](#).⁵⁷ Publicly-filed IRS Form 8872s reveal that OAR maintained a staff, engaged in fundraising, conducted issue advocacy and paid for events and travel through 2016 and into 2017. It remains a going concern today. *Cf.* MUR 6928 (Santorum) Petersen Hunter SOR at 14 ("[T]hat Patriot Voices and the PAC continue operations to this day further underlines any claim that they were mere shells to pay for Santorum's testing-the-waters expenses.").

In sum, these facts demonstrate that, in the midst of endless media speculation and parlor-style guessing games about who was doing what in preparation for the 2016 presidential campaign, OAR and Governor Walker were engaged in bona fide issue advocacy activities throughout the first part of 2015—advocacy that, as noted above, Governor Walker consistently had undertaken for years, and that OAR continued well into 2017. On this record, to conclude based upon responses to incidental questions and "hearsay reports or editorial characterizations contained in press articles" that OAR and Governor Walker were testing the waters for a 2016 presidential campaign is unfair, unfounded and unsupported by over 30 years of Commission precedent.

4. The FLA fails to identify a single expenditure by OAR that constitutes a testing the waters expenditure.

In addition to the general flaws discussed in Sections 2 and 3, above, the FLA suffers from another specific problem. It fails to identify a single expenditure by OAR that constitutes a testing the waters expenditure as a matter of law.

"[U]nlike 'candidacy,' which is a generalized status under the Act, the Commission's testing-the-waters regulations speak in terms of particularized payments for specific activities." MUR 6928 (Santorum) Petersen Hunter SOR at 9. "Even if the individual [refers](#) to a possible candidacy in 'incidental remarks' or 'responses to questions' while engaging in those activities, **those references, by themselves, will not convert the activities to testing-the-waters activities.**" *Id.* "Thus, when conducting a testing-the-waters analysis, the Commission's proper purpose is on whether a particular payment is made solely for the purpose of determining whether an individual should become a candidate." *Id.* In other words, an individual cannot talk his or her way into testing the waters. Testing the waters is only done by making specific types of expenditures.

In this regard, the FLA's reliance on two incidental statements uttered by Governor Walker over a span of approximately six months—"right now, we're exploring" and "we are exploring a campaign"—is unavailing. So is its attempt to conflate Governor Walker's stated desire to talk about issues and ideas with people in other states with exploratory activity for a presidential campaign. The mere fact that Governor Walker might be "encourage[d]," FLA at 6, to "go

⁵⁶ <http://www.ouramericanrevival.com/news/the-new-year-beckons-be-the-beacon-of-hope-for-tommorow/>.

⁵⁷ <http://www.ouramericanrevival.com/news/oar-blog-post-support-our-troops-through-the-holidays/>.



forward”⁵⁸ as a result of those discussions does not mean that they were for the purpose of exploring a campaign. *Cf.* MUR 5260 (Talent) FGCR at 13 (“Talent stated that based upon the encouragement he received during his travels around the State, he was confident that support for his campaign would be forthcoming”). Rather, they were—as detailed in Section 2, above—bona fide policy discussion and issue advocacy, which are legitimate ends unto themselves.

In the end, the FLA cites just one “particularized payment for a specific activity”—the costs associated with Governor Walker’s 2015 speech at CPAC—and refers non-specifically to one other event, the Iowa GOP’s Lincoln Day Dinner. For the reasons discussed in Section 3, above—the fact that Governor Walker was and continues to be a regular speaker at CPAC, and the fact that the record is devoid of any evidence that OAR approved or disseminated the Iowa GOP’s dinner invitation—these cannot fairly be identified as testing the waters expenditures. *Cf.* MUR 6928 (Santorum) Petersen Hunter SOR at 11-12 (“That Santorum frequently attended CPAC well before becoming a candidate in 2016 tends to undermine any particular significance of his CPAC attendance in 2015 [and] instead lends credibility to the argument that he attended CPAC because he cares about the issues addressed at CPAC”); MURs 6470, 6482 & 6484 (Romney) Petersen Hunter Goodman SOR at 7 (“[T]here is no evidence—either in the news article, complaint, or FGCR—that FSA disseminated or approved this alleged invitation.” (emphasis added)).

In the absence of any evidence that OAR made one or more testing the waters expenditures—and, in particular, the FLA’s failure to identify any “particularized payments for specific activities”—further investigation on this point is unjustified.

5. There is no evidence that OAR raised funds for Governor Walker’s presidential campaign, just speculation.

Lastly, the FLA alleges 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.” As the sole basis for this allegation, the FLA cites a news story based upon interviews with unidentified “supporters” of Governor Walker, “sources close” to a single donor, and “Republicans familiar with” certain discussions. Erin McPike, [“Scott Walker PAC: Jeb Bush is not the only one who can raise money.”](#) CNN (Mar. 16, 2015).⁵⁹

“As a general evidentiary matter,” the Commission “decline[s] to open investigations based solely upon hearsay reports or editorial characterizations contained in press articles, particularly where, as here, the speculation is rebutted by record evidence.” MURs 6470, 6482 & 6484 (Romney) Petersen Hunter Goodman SOR at 7, fn. 29, cited in MUR 6928 (Santorum) Petersen

⁵⁸ The FLA seems to assume that Governor Walker meant that he would “go forward” to declare a presidential candidacy, but he did not say that. Particularly in light of his remarks about “this early stage” of the process,” FLA at 3, Governor Walker could have been referring to going forward to form an exploratory committee to make testing the waters expenditures—which, as the FLA correctly notes, he ultimately did.

⁵⁹ <https://www.cnn.com/2015/03/16/politics/scott-walker-pac-donors-bundlers/index.html>.



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Hunter SOR at 12, n. 79.⁶⁰; *see also* MUR 4960 (Clinton), Statement of Reasons of Comm'r's Mason, Sandstrom, Smith & Thomas at 3 (purely speculative charges do not form an adequate basis to find reason to believe that a violation of the Act has occurred), cited in MUR 6907 (Huckabee) FGCR at 8, n. 39. For these reasons, the CNN article is a legally insufficient basis for the Commission's RTB finding, and further investigation on this point is unjustified.

Conclusion

For all these reasons, Our American Revival objects to the Factual & Legal Analysis and moves the Commission to halt further investigation of this matter as unwarranted by the facts and unsupported by the law.

Sincerely,

Chris Ashby
 Counsel, Our American Revival

cc: All Commissioners and Commissioners' Staff

⁶⁰ "[U]nsworn news reports by authors who are not first-hand complainants or witnesses before the Commission present legal and practical problems for the Commission and respondents and, in any event, may be of limited probative value. The Act requires complaints to be sworn subject to penalty of perjury. Because journalists often write quickly and their observations may be factually incorrect, complaints based upon an author's unsworn summary observations or paraphrases provide questionable legal and factual bases upon which to substantiate a reason to believe finding." MUR 6518 (Gingrich), Statement of Reasons of Chmn. Petersen and Comm'r's Hunter & Goodman at 6-7. Illustrating the point—and the danger of relying on news stories as the basis for complaints, let alone RTB findings and subsequent investigations—this particular article refers to OAR incorrectly as a "PAC," and now contains a correction that recants one of its main contentions, a supposed commitment by an important Republican donor to support Walker.