

BEFORE THE
FEDERAL ELECTION COMMISSION

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Brad Woodhouse
American Democracy Legal Fund
455 Massachusetts Avenue, NW
Washington, DC 20001

MUR # 7302

Complainant,

v.

Tom Campbell for North Dakota
Paul Kilgore, Treasurer
700 9th Street, South
Fargo, ND 58103

Respondents.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Tom Campbell for North Dakota, and Paul Kilgore, in his official capacity as Treasurer (collectively “Respondents”) for violating the Federal Election Campaign Act of 1971, as amended (“the Act”), and Federal Election Commission (“FEC” or “Commission”) regulations, as described below. Publicly available reports indicate that Tom Campbell used equipment from his private company in a political advertisement, but failed to report such use as an expenditure from or in-kind contribution to his principal campaign committee in violation of Commission regulations.

FACTS

On August 16, 2017, North Dakota State Senator Tom Campbell officially announced his candidacy for the U.S. Senate and registered his principal campaign committee, Tom Campbell for North Dakota (“Campaign Committee”) with the Commission.¹ News sources report that,

¹ Tom Campbell (@tomfornd), Twitter (Aug. 16, 2017, 7:12 AM), <https://twitter.com/tomfornd/status/897823449128857600>; see also FEC Statement of Organization, Tom Campbell for North Dakota (filed Aug. 16, 2017).

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between August 16, 2017 and September 24, 2017, Campbell spent about \$250,000 on statewide TV advertising for his campaign.² In one of those campaign ads—released on September 14, 2017—Tom Campbell is standing in front of a truck that prominently displays the words “Campbell Farms” on the window of the automobile.³ At two different points in the ad, Mr. Campbell is standing in front of the “Campbell Farm” truck relaying to the public his experience in potato farming and his plans the Senate.⁴

According to the Campbell Farms website—which includes the same “Campbell Farms” logo as is featured on the truck in Mr. Campbell’s September 14 campaign advertisement—Tom Campbell is a “Partner” of Campbell Farms.⁵ Campbell Farms is registered with the North Dakota Secretary of State as a “fictitious name,”⁶ which appears to be affiliated with Campbell Farms-Big Lake, LLP.⁷ The October Quarterly Report filed with the FEC by the Campaign Committee (“October FEC Report”) does not list any expenditure to or in-kind contribution from Campbell Farms or Campbell Farms-Big Lake, LLP for use of the company truck in Mr. Campbell’s campaign advertisement.⁸ The October FEC Report does, however, include a \$389,950 payment to Axiom Strategies for “Media Consulting.”⁹

LEGAL ANALYSIS

² Mike McFeely, *McFeely: Tom Campbell Spends \$100,000 More on TV Ads*, Dickinson Press (Sept. 20, 2017), available at <http://www.thedickinsonpress.com/opinion/4331187-mcfeely-tom-campbell-spends-100000-more-tv-ads> (“From Sept. 4 to Sept. 24, Campbell spent about \$100,000 on statewide TV advertising, according to Federal Communications Commission filings. That’s down from the approximately \$150,000 Campbell spent between Aug. 16 and Sept. 3.”).

³ Tom Campbell for North Dakota, *New Crop*, YouTube (Sept. 14, 2017), <https://youtu.be/T4yqB26VV1E>.

⁴ *Id.* at :01-:04, :19-:25.

⁵ Team Members, Campbell Farms, available at <http://www.tricampbellfarms.com/OurFarms/TeamMembers/tabid/96/Default.aspx> (last accessed Nov. 19, 2017).

⁶ Campbell Farms, N.D. Sec’y of State Business Records Search, available at https://apps.nd.gov/sc/busnsrch/busnSearch.htm#Search_Results (last accessed Nov. 19, 2017).

⁷ Campbell Farms-Big Lake, LLP, N.D. Sec’y of State Business Records Search, available at https://apps.nd.gov/sc/busnsrch/busnSearch.htm#Search_Results (last accessed Nov. 20, 2017).

⁸ FEC October Quarterly Report, Tom Campbell for North Dakota (filed Oct. 13, 2017).

⁹ *Id.* at 41.

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The definition of “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 election for Federal office.”¹⁰ Commission regulations make clear that “the term anything of value includes all in-kind contributions.”¹¹ Unless specifically exempt, “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services” will qualify as an in-kind contribution.¹² “Examples of such goods or services include, but are not limited to... facilities, equipment, [and] supplies.”¹³ The valuation of in-kind contributions—referred to above as the “usual and normal charge” of the good or service—“means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; [or, for services,] the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.”¹⁴

In terms of reporting in-kind contributions, the FEC has been very clear: “Any in-kind contribution received by a committee must be reported as an operating expenditure (even though money has not been expended by the committee) in addition to being reported as a contribution received.... This reporting adjustment allows the committee to balance its cash on hand.”¹⁵ Accordingly, an in-kind contribution received by a candidate committee that exceeds the \$200

¹⁰ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

¹¹ 11 C.F.R. § 100.52(d)(1).

¹² *Id.*

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ *Id.* § 100.52(d)(2).

¹⁵ FEC Campaign Guide for Congressional Candidates at 52, available at <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>; *see also* 11 C.F.R. §§ 100.111(e), 104.13(a)(2); FEC Adv. Op. 2004-36 (Risley), at 2 (“Because it is as if funds were given to pay for the goods or services in question, an in-kind contribution is treated as both a ‘contribution’ to and an ‘expenditure’ by the political committee receiving the in-kind contribution.”).

aggregate threshold must be reported as both a contribution *and* an expenditure by the receiving committee in order to comply with federal law.¹⁶

The Campaign Committee filed its October FEC Report on October 13, 2017.¹⁷ The report covers activity between July 1, 2017 and September 30, 2017.¹⁸ The ad at issue was released to the public on September 14, 2017—clearly falling within the relevant reporting period for the October FEC Report.¹⁹ In fact, the Campaign Committee reported a very large expenditure for media consulting during this same reporting period which is undoubtedly tied to the numerous advertisements produced by the Campaign Committee during this period.²⁰

Nonetheless, Campbell Farms is only listed on the October FEC Report one time: as the employer of an individual who contributed \$2,700 to the Campaign Committee.²¹ Otherwise, there are no contributions reported from Campbell Farms *or* Campbell Farms-Big Lake, LLP, and there are no operating expenditures reported as paid to either Campbell Farms or Campbell Farms-Big Lake, LLP in the October FEC Report. While the exact value of the use of the truck in the campaign ad is unknown, an hourly charge to rent an equivalent truck at a commercially reasonable rate would certainly exceed the \$200 threshold to trigger reporting for the Campaign Committee.

REQUESTED ACTION

As we have shown above, Respondents have violated the Act and Commission regulations by failing to report an in-kind contribution from and an expenditure to Campbell Farms or Campbell

¹⁶ 11 C.F.R. §§ 104.3(a)(4)(i), (a)(2), 104.13(a). A candidate's authorized committee must report and itemize all contributions received from individuals that aggregate in excess of \$200 per election cycle. All operating expenditures must also be itemized on a candidate committee's FEC report.

¹⁷ FEC October Quarterly Report, *supra* note 8.

¹⁸ See Quarterly Reports, FEC, available at <https://www.fec.gov/help-candidates-and-committees/filing-reports/quarterly-reports/>.

¹⁹ Tom Campbell for North Dakota, *New Crop*, YouTube (Sept. 14, 2017), <https://youtu.be/T4yqB26V1E>.

²⁰ FEC October Quarterly Report, *supra* note 8 at 41.

²¹ *Id.* at 20.

Farms-Big Lake, LLP for use of the company's truck in a campaign advertisement benefiting Mr. Campbell's Senate run. Failing to report these receipts and disbursements is a clear violation of the Act and Commission regulations. We respectfully request that the Commission investigate these violations, and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 28 day of November 2017.


Notary Public

My Commission Expires:

Nov 30, 2021



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