

OFFICE OF
GENERAL COUNSEL

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January 10, 2018

MUR # 7307
Amended Compl

Ms. Lisa J. Stevenson
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Thomas Edward Homan,

Orange City, Florida 32763,

("Complainant") files the below amended Complaint pursuant to 52 U.S.C. § 30109(a)(1) against
dentist and two-time failed candidate Frederick "Fred" Costello, residing at

Ormond Beach, Florida 32174, and his campaign committee Fred Costello for Congress,
700 W. Granada Blvd., Suite 201, Ormond Beach, Florida 32174, for violating the Federal
Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission
("FEC") regulations, as described below. This amended complaint is to provide additional
information that may lead to even further violations from the complaint filed with the FEC on
December 29, 2017, and should be assigned the same MUR number. All of the statements in this
Complaint are based on my personal knowledge, unless otherwise indicated.

I. FACTS

Fred Costello, a two-time failed candidate for Florida's sixth U.S. congressional district,
has made public statements that he is running for that seat for a third time in 2018 and has even
gone to public events asking voters to support him as a candidate. However, he failed to inform
the FEC through the required disclosures until December 27, 2017. On Wednesday, August 9,

2017, the *Ormond Beach Observer* published an article quoting Costello that he was running for Florida's sixth U.S. congressional district, and was planning a formal announcement at a later date. "If [DeSantis] chooses to run for anything other than Congress, I feel like I'm the best candidate." He added that "I'm passionate about it. I'm prepared. I'm ready to do it and I look forward to the opportunity to represent the sixth district."²

In another article published that same day, now nearly five months ago, Mr. Costello further described the issues he would work on if elected: "I pledge to fight for our local infrastructure and local needs in a shrinking pot."³ The article confirmed that the candidate himself made that statement by a phone interview, and the candidate went on to discuss prioritizing health care, national debt, veterans issues, and education.⁴

Costello himself appears to have so thoroughly made up his mind to run for federal office that he designed a logo and printed it on business cards that read "Fred / He Stands for US! / Costello for Congress." These cards were distributed to attendees at events as early as November 9, at a Veterans Appreciation Breakfast held by the Volusia (Florida) County Chamber of Commerce. See Attachment B.

On November 19, 2017, after initially publicizing his candidacy through an orchestrated press rollout in August, he appeared at the Flagler Trump Club, confirming the intent of those August articles. In a stump speech to a room of conservative activists and voters, Costello

¹ *Ormond Beach Observer*, "Former Ormond Beach Mayor Fred Costello to run for Congress in 2018," Aug. 9, 2017, available at, <https://www.ormondbeachobserver.com/article/former-ormond-beach-mayor-fred-costello-to-run-for-congress-in-2018>.

² *Id.*

³ *The Daytona Beach News-Journal*, "Former state Rep. Fred Costello eyes 6th District Congressional seat," Aug. 9, 2017, available at <http://www.news-journalonline.com/news/20170809/former-state-rep-fred-costello-eyes-6th-district-congressional-seat>; see also Attachment A.

⁴ *Id.*

pushed for the support of the audience in his candidacy for Florida's sixth U.S. congressional district. Costello told the audience that "[w]e need to send people to Washington that understand states' rights: I'm the guy." Costello referred to the only declared and filed candidate for the Republican nomination, who was also in the room that night, as "my friend that's also in this race." Costello claimed that in his candidacy for the sixth U.S. congressional district, he is "the only one that will be [NRA] A-rated." As if his candidacy was not totally decided and clear to everyone in the room at that point, he closed his speech by telling the audience: "I hope to have your support."

In furtherance of his unannounced campaign, at an event held on December 12 with the Volusia County (Florida) Republican Executive Committee, a representative of his yet-unfiled campaign handed out business cards to attendees identifying himself as the “campaign manager.” See Attachment C. Costello has been actively and openly campaigning for Florida’s sixth U.S. congressional district since at least August 9, 2017, and failed to file any paperwork with the FEC until December 27, 2017, demonstrating his candidacy and thereby informing the public of his activities.

On December 28, in what may have been an attempt to “reset” his candidacy date, the Costello campaign distributed an email entitled “YOU are invited to the Fred Costello for Congress Campaign Kick-Off January 6.” See Attachment D. In reality, the campaign had been kicked-off since his first announcement on August 9, 2017, and Costello had been acting as a candidate since that date. And despite the campaign email naming a campaign committee and a Treasurer, the email, which solicited funds on behalf of the campaign, was sent to any number of recipients without any of the required disclaimers for public communications by a federal campaign, continuing to deprive the public of the information required by the Act. See

Attachment D. Moreover, the campaign website linked in the email was not yet functional at the time the email was sent.

Costello certainly cannot demonstrate an unfamiliarity with FEC regulations. Indeed, Costello has filed federal Statements of Candidacy with the FEC for his previous campaigns, on April 16, 2012 for his first campaign, then on January 29, 2016 for his most recent foray into federal politics. He likely is also aware that his campaign committee treasurer for his unsuccessful 2016 campaign is still filing FEC reports of debt incurred in that effort. Costello is seemingly well-enough versed in federal election law to understand that when a person becomes a candidate, he or she must inform the public of that decision through required FEC filings. It appears that instead, Costello has conducted a congressional campaign for months in a lack of regard for the Act and the FEC's implementing regulations.

II. LEGAL ARGUMENT

A person who becomes a candidate for federal office must register and report as a candidate with the FEC within fifteen days.⁵ Candidates register using the FEC's Form 2 Statement of Candidacy. A "Candidate" is an individual who seeks a nomination for election, or election to federal office.⁶ An individual will become a candidate when he or she "has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000" or "given 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 aggregating in excess of \$5,000 or has made such expenditures aggregating in excess of \$5,000."

⁵ 11 C.F.R. §§ 100.3(a); 101.1(a)

⁶ 52 U.S.C. § 30102.

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The FEC allows for a limited exception to automatic registration thresholds which permit an individual to test the feasibility of a campaign for Federal office without becoming a candidate.⁷ These "testing the waters" exceptions to spending, promulgated at 11 C.F.R. §§ 100.72 and 100.131, narrowly exempt monies that would otherwise be considered "contributions" and "expenditures," triggering a candidate status if in excess of \$5,000.

However, the FEC has explicitly limited this exception to not apply to individuals "who have decided to become candidates."⁸ The FEC has identified a number of examples that demonstrate when an individual has decided to become a candidate, including that the individual: (1) uses general public political advertising to publicize his or her intention to campaign for federal office; (2) raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office; (4) conducts activities in close proximity to the election or over a protracted period of time; and (5) has taken action to qualify for the ballot under state law.¹⁰

A candidate who has moved "beyond the deliberative process of deciding to become a candidate, and into the process of planning and scheduling public activities" to gather support for a campaign has likely triggered a candidacy and therefore a filing requirement with the FEC.¹¹ "Once an individual becomes a candidate, equivocal statements of intent or a future 'official

⁷ *Id.*

⁸ Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992-93 (Mar. 13, 1985) (Final Rules and Explanation and Justification).

⁹ 11 C.F.R. § 100.72(b).

¹⁰ *Id.*; 11 C.F.R. § 100.131(b).

¹¹ See AO 1981-32 (Askew).

announcement' do not eradicate the registration and reporting requirements that have [already] been triggered."¹²

As early as August 9, 2017, Costello had made unequivocal public statements through an orchestrated and planned media rollout that he was a candidate for Florida's sixth U.S. congressional district. This triggered Costello's obligation to file a Statement of Candidacy within fifteen days of this decision, i.e. August 24, 2017. His further description of that intent on November 19, resolving any potential ambiguity from the August 9 statements, obligate a filing date of no later than December 4, 2017. However, Costello chose to not file any Statement of Candidacy from Costello until December 27, 2017, well past any reasonable candidacy date.

An individual who calls himself "the best candidate" for a congressional seat, as Costello did on August 9, has clearly made statements that refer to himself as a candidate and therefore move any activity from that date forward outside of the "testing the waters" exception. Certainly, his later statements that "I'm the guy" voters should send to Washington, and referring to a fellow candidate as "also in this race" make clear that, in his own mind, Costello is a candidate whether or not he has filed the required paperwork with the FEC. Once Costello made the decision to become a candidate, he had a legal duty to register and report as a candidate with the FEC. He is not able to avoid this requirement by delaying any kind of "formal announcement," and he has clearly been conducting a campaign since August 9, 2017, in violation of the Act.

Additionally, the Act requires certain disclaimers to be on identified communications. In particular, a political committee must include a disclaimer on bulk electronic mail, *regardless* of whether those communications expressly advocate the election or defeat of a clearly identified candidate, or solicits funds in connection with a federal election. The disclaimer must identify

¹² MUR 5363 (Sharpton), Factual and Legal Analysis at 8.

who paid for the message.¹³ Solicitations must also contain a statement of federal election purpose and limitations, and a "best efforts" statement.¹⁴ Costello's "kick-off" email of December 28, 2017 likely falls within the definition of "bulk electronic mail," *did* solicit funds, and therefore should have contained the disclaimers required by the Act.¹⁵

III. REQUESTED RELIEF

As described above, Costello has violated the Act and FEC regulations by not filing his Statement of Candidacy no later than August 24, 2017, and continues to violate the Act and FEC regulations by conducting his campaign as an unfiled candidate for federal office through December 27, 2017. He must register as a candidate and report expenses and contributions associated with his candidacy and as required by the Act since at least since his announcement on August 9, 2017. I respectfully request that the FEC promptly enjoin the Respondent from further violations of the Act and FEC regulations, that the FEC investigate these violations pursuant to federal law at 52 U.S.C. § 30109(a)(2), and that Respondent be fined the maximum amount permitted by law.

Sincerely,



¹³ 11 C.F.R. § 110.11(b)(1).

¹⁴ 11 C.F.R. §§ 102.5(a)(2)(ii)-(iii); 104.7(b)(1).

¹⁵ The Costello campaign also failed to include an Internal Revenue Service non-deductibility statement, however enforcement of that violation is outside of the jurisdiction of the FEC.

Tom Homan
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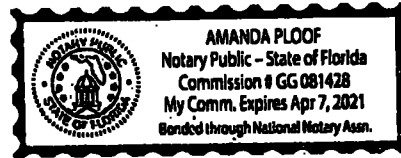
SIGNED AND SWORN to before me this 10th day of January, 2018
by Thomas Edward Homan III who produced FL Drivers License.

Amanda Ploof

Notary Public

My Commission Expires:

Apr 7, 2021



With YOUR support, I will take my proven record of standing up for US locally as Mayor of Ormond Beach and for US as a State Representative in Tallahassee to Washington where it will be my great honor to again Stand for US!

I hope to see lots of you on the 6th!

GodSpeed!

PS: My apology if any of you get this email more than once.

Fred Costello for Congress

Steve Tacinelli, Campaign Treasurer

Holland Tax & Accounting

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