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June 14, 2018

Kristina Portner
Supervisory Attorney
Office of Complaints Examination
& Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Response of Rick Scott for Florida and Governor Rick Scott in MUR 7370

Dear Ms. Portner:

This Response is submitted by the undersigned counsel¹ on behalf of Rick Scott for Florida and its Treasurer and Governor Rick Scott (“Respondents”) in response to the April 10, 2018, complaint from End Citizens United, designated as Matter Under Review 7370 (“Complaint”). For the reasons set forth below, the Commission should find no reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), or any Commission regulation (“Regulations”). Accordingly, the Complaint warrants no further consideration and should be promptly dismissed.

The Complaint makes three distinct, but related, allegations, albeit in a haphazard manner. First, it alleges that Governor Rick Scott (“Scott”) and Rick Scott for Florida (the “Campaign”) violated the Act’s “testing the waters” exemption by accepting and using non-federal funds to weigh his potential candidacy, and thereafter exceeding the candidacy threshold. The Complaint separately alleges that Scott improperly raised and spent non-federal funds after becoming a federal candidate, by nature of his former position with New Republican PAC, a registered Super PAC. Finally, the Complaint claims that New Republican PAC (“NR PAC”) stands in violation of the Act and Regulations by nature of its continued solicitation and receipt of non-federal funds. Complainants contend that NR PAC is and was “established, financed, maintained or controlled” by Scott, a federal candidate, and is therefore limited to raising and spending funds within the limits and source prohibitions of the Act. Each of these allegations is not only baseless, but incorrect as a matter of law. The two former claims will be addressed

¹ Please note that Rick Scott for Florida is represented by Jason Torchinsky of Holtzman Vogel Josefiak Torchinsky PLLC. New Republican PAC is represented by Michael Bayes of the same firm. This representation is undertaken pursuant to a “firewall” separation between counsel.

below. Scott and the Campaign have no information to provide with respect to the PAC's operations following Governor Scott ending his association with New Republican.

I. Factual Background

Rick Scott is the current Governor of Florida and a candidate for U.S. Senate, with his principal campaign committee designated as Rick Scott for Florida. New Republican PAC is a registered Super PAC established in May 2013.² Rick Scott served as Chair of NR PAC from May 11, 2017 to early December 2017,³ after which date the committee operated independently of Scott. Its website was updated to reflect this change on January 2, 2018. Aside from attending a limited number of NR PAC fundraising events as a special guest after his departure as Chair, the last of which was a March 3, 2018 event in Naples, Florida, he has had no further involvement with NR PAC.

Scott formally announced his candidacy for U.S. Senate on April 9, 2018. Prior to that date, Scott engaged in exploratory activities aimed at discerning whether he should, in fact, become a federal candidate. These activities began in January 2018, and included consulting, focus groups, polling, research and travel through March 2018. *See* Exhibit I. These expenses, totaling in excess of \$166,500, were invoiced to and paid by Scott personally,⁴ as has been his practice in the past.⁵ Scott conducted no fundraising to finance his exploratory endeavors, nor in any way accepted or assented to contributions otherwise.

Meanwhile, it appears from news stories that independent groups and organizations were conducting their own concurrent research and polling and widely publicizing the results.⁶ Although it appears that NR PAC was among the groups engaging in such prospecting activities with respect to the Florida Senate race, any associated polling by NR PAC was conducted without Governor Scott's knowledge and appears to have been both commissioned and conducted after Scott's departure as Chair. The intent to conduct this poll, nor its development or results, were ever discussed or shared with Scott or the Campaign.

Scott officially became a candidate for the office of U.S. Senate on March 26, 2018. He filed his FEC Form 2 on April 8, 2018, designating Rick Scott for Florida as his principal campaign committee. Rick Scott for Florida filed its Form 1 Statement of Organization on April 10, 2018. The Campaign will file its first quarterly report with the Commission on July 15, 2018 for the quarter ended June 30, 2018.

² *See* New Republican PAC, Statement of Organization (May 8, 2013).

³ New Republican Press Release, *Governor Scott to Chair "New Republican" Federal Super PAC; PAC Focused on Rebranding the Republican Party, Deregulating America's Economy & Reinventing Government* (May 11, 2017).

⁴ *Id.*

⁵ *See* James Hohmann, *Scott's Self-Funding: \$12.8 Million* (Nov. 1, 2014), <https://www.politico.com/story/2014/11/rick-scott-florida-self-funding-112403> (last visited June 7, 2018); *see also* Greg Allen and Jessica Taylor, *Republican Florida Governor Jumps Into Florida Senate Race, Shaking Up 2018 Map* (Apr. 9, 2018), <https://www.npr.org/2018/04/09/600250760/as-rick-scott-eyes-senate-evolving-florida-governor-faces-toughest-test-yet> (last visited June 7, 2018).

⁶ *See, e.g.*, Real Clear Politics, Polls: Florida Senate - Scott vs Nelson, https://www.realclearpolitics.com/epolls/2018/senate/fl/florida_senate_scott_vs_nelson-6246.html#polls (last visited June 7, 2018).

II. Legal Analysis

A. Scott Did Not Violate the “Testing the Waters” Exemption

Complainants allege that Scott “may have” violated the Act’s “testing the waters” provisions by accepting and spending non-federal funds in connection with his exploratory activities while weighing a run for U.S. Senate. The Complaint identifies NR PAC as the source of these funds, conjecturing that Scott used the Super PAC to support his federal candidacy prior to his announcement to run, thereby triggering candidacy in addition to violations of the Act’s contribution limits and source prohibitions. Not only is this claim sheer conjecture gleaned from media accounts and press, it is unfounded and patently false. Neither Scott nor the Campaign were in receipt of any funds – contributions or otherwise – from NR PAC in connection with either his testing the waters phase or candidacy. In fact, records demonstrate that Scott has spent a significant amount of his own money to finance the activities associated with weighing his candidacy.

An individual becomes a candidate when he or she, or his or her authorized agent, receives contributions or makes expenditures in excess of \$5,000. 11 C.F.R. § 100.3(a)(1), (2). An individual may, however, conduct a variety of “testing the waters” activities to determine whether he or she should become a candidate without regard to the \$5,000 threshold, so long as the funds raised or spent in connection with such activity comply with federal limits and source prohibitions. *See*, 11 C.F.R. §§ 100.72; 100.131. Permissible activities include polling, telephone calls and travel undertaken to weigh a possible candidacy, but do not include making statements referring to the individual as a candidate, using general public political advertising to publicize an intention to campaign, raising more money than is necessary to test the waters, taking action to qualify for the ballot, or any other activity indicating that a decision to become a candidate has been made. *Id.* A potential candidate may organize an “exploratory committee” for these purposes, but it is not required.

Once an individual begins to campaign or definitively decides to run for office, any funds raised or spent to test the waters apply to the \$5,000 candidacy threshold, which, when exceeded, qualifies the individual as a candidate and subjects him or her to the registration and reporting requirements in §§ 101.1(a), 102.12(a), and 104.3. *See* 11 C.F.R. § 101.3. Until such a decision has been made, however, an individual may engage in testing the waters activities to any extent without becoming a candidate or subject to the registration or reporting requirements of the Act. *See* 11 C.F.R. §§ 100.72(b); 100.131(b).

The Complaint alleges that Scott became a candidate well before his official announcement, going as far as to imply he triggered candidacy as early as May 2017. Complaint at 3. Rick Scott became a federal candidate on March 26, 2018. Prior to that date, despite what Complainants and certain media outlets will contend, no such decision had been made. Although numerous accounts of a potential Senate run began surfacing as early as January of 2017,⁷ these amount to nothing more than products of the political rumor mill and efforts to

⁷ *See* Alex Isenstadt and Marc Caputo, *Trump urges Rick Scott to run for prized Florida Senate seat*, Politico (Jan. 31, 2017), <https://www.politico.com/story/2017/01/donald-trump-rick-scott-234393> (last visited June 4, 2017);

generate a story. By the latter part of 2017, Scott made no secret about the fact that he was considering challenging Florida incumbent Bill Nelson, but repeatedly asserted that his focus was on his current job and the 2018 legislative session in Tallahassee, and publicly state on multiple occasions that he would decide whether to run for the U.S. Senate after Florida's 2018 legislative session was adjourned.⁸

"[D]isplaying 'confidence'" or discussing positive polling numbers, as the Complaint contends, are not sufficient to signify a decision, nor are others' opinions that an announcement is "imminent." *See* Statement of Reasons, Matter Under Review 5934. In fact, the Commission has previously found actions and statements far bolder than these to have been well within the boundaries of testing the waters, and not indicative of a decision. *Id.* Because federal candidacy under § 100.3(a) cannot be triggered until such a decision is made, the claim that Scott became a candidate prior to the date of his decision to run for office is wholly unfounded and without evidence. Unless Complainants can channel their crystal ball to offer proof of Scott's state of mind at some date prior to the date he says he made his decision, the Commission must disregard this otherwise circumstantial inference.

Complainants offer an alternative argument that, even if he had not made a decision to run, Scott triggered federal candidacy and violated testing the waters provisions by consenting to contributions or expenditures made on his behalf; specifically, by NR PAC. Complaint at 3. They provide, however, absolutely no factual basis for this conjecture, and with good reason. There exists no evidence demonstrating that Scott "used" NR PAC to support his own federal candidacy during his time as Chair because he was not a federal candidate during his time as NR PAC Chair. NR PAC files regular reports with the Commission, all of which are publicly available. Complainants point to nothing in those reports, nor anything else for that matter, that indicates any improper activity conducted on behalf of Scott during that time whatsoever, for exploratory activities or otherwise.

Moreover, the "evidence" the Complaint does include is irrelevant and misguided. Scott's attendance at NR PAC events, for instance, does not amount to the receipt of a contribution simply because a potential Senate bid may have been incidentally discussed. *See* Statement of Reasons, Matter Under Review 6484, at 4. The makeup of NR PAC's staff is similarly irrelevant to the inquiry, because Complainants fail to identify any activity related to the U.S. Senate race in Florida while Scott was serving as Chair. Any such occurrence that took place after his departure, such as NR PAC's website redesign, was done independently of Scott, without his knowledge or prior consultation. Since there were no contributions from or expenditures conducted by NR PAC for Scott to have consented to or "used," he in no way triggered candidacy by way of § 100.3(a)(2), nor did he violate §§ 100.72(b) or 100.131(b) by using nonfederal funds in connection with testing the waters activity.

Ledyard King, *Gov. Rick Scott says he's got time to decide on Florida Senate run*, USA Today Network (Jan. 18, 2017), <https://www.news-press.com/story/news/2017/01/18/gov-rick-scott-says-hes-got-time-decide-senate-run/96736708/> (last visited June 4, 2018).

⁸ *See* Marc Caputo and Matt Dixon, *Scott Takes Big Step Toward Florida Senate Challenge*, Politico, (Feb. 1, 2018), <https://www.politico.com/story/2018/02/01/rick-scott-florida-senate-bill-nelson-midterms-381262> (last visited June 4, 2018); *see also* Zac Anderson, *Rick Scott's Improving Public Image Could Make Senate Run More Likely*, Sarasota Herald-Tribune (Feb. 7, 2018), <http://www.heraldtribune.com/news/20180207/rick-scotts-improving-public-image-could-make-senate-run-more-likely> (last visited June 4, 2018).

Further bolstering our position is the clear evidence that Scott engaged in his own exploratory activities in his personal capacity, separate and apart from NR PAC or any other group. Complainants conveniently overlook the fact that Scott retained a consulting firm to undertake these efforts and assist him in determining whether a run for U.S. Senate in Florida was viable, and personally financed the endeavor. *See* Exhibit I. These actions are in full compliance with §§ 100.72(b) or 100.131(b) and are precisely the type contemplated by the FEC in drafting the testing the waters exemption. The fact that Scott did not establish an exploratory committee, which Complainants frame as an indication of wrongdoing, is irrelevant – it is in no way required by the Regulations. *See* Complaint at 4.

Based on the foregoing, it is clear that Scott did not violate the portions of §§ 100.72(a) and 100.131(a) requiring the use of federally compliant funds, and similarly did not undertake any action triggering candidacy on a date prior to March 26, 2018 that would result in violations of the registration and reporting requirements of §§ 101.1(a), 102.12(a), and 104.3. Accordingly, we flatly deny this allegation and urge the Commission to dismiss it. *See* Statement of Reasons, Matter Under Review 5934.

B. Scott Did Not Raise or Spend Non-Federal Funds in Violation of 52 U.S.C. § 30125(e)(1)(A)

The Complaint alleges that it “appears as if” Scott improperly raised or spent nonfederal funds both prior to and during his candidacy by virtue of his role with NR PAC. Prior to candidacy, Complainants contend that he did this by assenting to non-federal contributions and expenditures made on his behalf by NR PAC; after candidacy, by continuing to serve as Chair of NR PAC, a registered Super PAC. As stated above, each of these claims is baseless speculation and wholly devoid of truth, amounting to nothing more than attempted smear tactics.

Federal candidates are prohibited from soliciting, receiving, directing, transferring, spending or disbursing funds outside of federal limits and source prohibitions in connection with a federal election. 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. As discussed above, this prohibition applies prior to candidacy, placing restrictions on the types of funds that may be used for testing the waters activity. 11 C.F.R. §§ 100.72(b); 100.131(b). Once a candidate, it applies not only to an individual's own campaign committee, but also to activities he undertakes in support of other committees; that is, a candidate generally may not solicit non-federal funds for state and local elections, or for Super PACs and other 527 organizations. Advisory Opinion 2011-12; *see also* 11 C.F.R. § 300.64(1)-(2). Additionally, a federal candidate may not directly or indirectly “establish, finance, maintain or control” any organization that raises or spends non-federal funds in connection with an election. 2 U.S.C. § 441i(e)(1). This includes serving in a capacity that would provide any indicia of such a role, as determined by the factors set forth in the Regulations. 11 C.F.R. § 300.2(c).

Complainants allege that Scott used NR PAC to support his candidacy prior to his candidacy date of March 26, 2018. Complaint at 3. Specifically, they claim that Scott “used” the non-federal committee to pay his own consultants and serve as a platform for his impending candidacy while he prepared for a Senate bid. As thoroughly detailed in the previous section, the

Complaint contains no direct evidence supporting such an assertion; rather, this claim appears to be gleaned from a single article with questionable accuracy. Moreover, even assuming the article *is* factually sound, the Commission has gone so far as to state that a political committee or other organization may provide a prospective candidate “with a platform to speak about issues, support other candidates, and maintain a public profile” without the associated expenses being considered contributions. Statement of Reasons, Matter Under Review 6484 at 4. NR PAC made no expenditures on behalf of Scott's exploratory efforts, nor did Scott request or consent to any. Because NR PAC was not engaged in any activity related to the Senate race during Scott's short tenure there, the allegation that Scott "used" the committee to support his candidacy is just not possible. Accordingly, Scott in no way violated 52 U.S.C. § 30125(e)(1)(A) in connection with his exploratory activities.

Additionally, the Complaint claims that Scott impermissibly raised or spent nonfederal funds by virtue of a continued role as NR PAC Chair after qualifying as a federal candidate. This claim is uninformed and entirely without merit. Scott stepped down as Chair of NR PAC in early December 2017, at which time he ceased to be involved in the committee's operations. He did not become a federal candidate thereafter until March 26, 2018, approximately four months after his separation from NR PAC. Although Complainants seem to believe that Scott's role as Chair "unquestionably" continues to this day, that simply is not the case. Scott conducted no fundraising outside of federal limits and source prohibitions on behalf of NR PAC or any other group after becoming a federal candidate.

Despite what Complainants argue, Scott was not a federal candidate at any time during his time as NR PAC Chair, and stepped down as Chair well in advance of becoming a federal candidate. Accordingly, Scott did not raise or spend nonfederal funds in violation of 52 U.S.C. § 30125(e)(1)(A), either in connection with testing the waters or his previous involvement with a Super PAC. By this same reasoning, Scott did not “establish, finance, maintain or control” an organization that raises or spends non-federal funds in connection with an election while a federal candidate. We request that the Commission conclude the same and dismiss this allegation.

III. Conclusion

The allegations contained in the Complaint are without basis and, therefore, fail to withstand scrutiny. Neither Rick Scott nor Rick Scott for Florida have violated the testing the waters provisions at §§ 100.72(a) and 100.131(a) or the prohibition on raising or spending non-federal funds at 2 U.S.C. § 441i(e)(1). For the reasons detailed above, we urge the Commission to promptly dismiss the Complaint and take no further action on the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Torchinsky". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jason Torchinsky
Counsel to Rick Scott for Florida

EXHIBIT I

Invoice



Rick Scott

Date: 3/13/2018

Invoice: 8669

Due Date: Net 15

Description

Focus Group:	4 Dial Groups	\$ 50,613.16
Field Dates:	February 20018	
Video Production		\$ 3,000.00
Lisa Goodspeed		
	Pay for Feb 12-Mar 11, 2018	\$ 7,000.00
	Travel Expenses for 2/24-2/26	\$ 457.02
Caitlin Collins		
	Pay for Jan 18-Feb 17, 2018	\$ 12,000.00
	Pay for Feb 18-Mar 17, 2018	\$ 12,000.00

Remaining Amount Due: **\$ 85,070.18**

Remit Payment To:
OnMessage Inc.
 705 Melvin Ave # 105
 Annapolis, MD 21401
 (410)295-9710
DMlaccounting@onmessageinc.com

817 Slaters Lane, Alexandria, VA 22314 • (703)683-3806 (p) • (703)683-1978 (f)
 705 Melvin Ave #105, Annapolis, MD 21401 • (410)295-9710 (p) • (410)295-9711 (f)

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 705 Melvin Ave #105, Annapolis, MD 21401 • (410)295-9710 (p) • (410)295-9711 (f)

Invoice



Rick Scott

Date: 4/13/2018

Invoice: 8738

Due Date: Net 15

Description

Survey:	Florida Statewide	\$ 66,270.00
Field Dates:	March 19-21, 2018	
Travel Expenses for Curt & Joanna		\$ 3,351.79
Finance Expenses		\$ 2,600.88
Lisa Goodspeed		
Pay for Mar 11-25, 2018		\$ 3,500.00
Caitlin Collins		
Pay for Mar 17-25, 2018		\$ 3,000.00
Underpayment correction for Jan 16-Mar17, 2018		\$ 1,000.00
Office Set Up Expenses		\$ 55.78
Travel Expenses		\$ 1,724.63

Remaining Amount Due: \$ 81,503.08Remit Payment To:

OnMessage Inc.
705 Melvin Ave # 105
Annapolis, MD 21401
(410)295-9710

DMlaccounting@onmessageinc.com

817 Slaters Lane, Alexandria, VA 22314 • (703)683-3806 (p) • (703)683-1978 (f)
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