



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
New Republican PAC and Gentry Collins in his official) MURs 7370 & 7496
capacity as treasurer; Rick Scott for Florida and)
Salvatore Purpura in his official capacity as treasurer;)
Rick Scott)

**STATEMENT OF REASONS OF
CHAIR SHANA M. BROUSSARD AND COMMISSIONER ELLEN L. WEINTRAUB**

The role that contributions may play in corruption, or the appearance of corruption, of federal candidates and officeholders is at the heart of the Federal Election Campaign Act, as amended (the “Act”). In light of this role, the Act bans federal candidates and officers, their agents, and entities directly or indirectly established, financed, maintained, or controlled by a federal candidate or officeholder 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.”¹ The Supreme Court, in upholding this provision, commonly known as the “soft money” ban, stated that “Section [30125(e)]’s restrictions on solicitations are justified as valid anticircumvention measures. Large soft-money donations at a candidate’s or officeholder’s behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself.”²

These matters involve the relationship between Rick Scott, then-Governor of Florida and a candidate in the 2018 election for U.S. Senate, and New Republican PAC and Gentry Collins in his official capacity as treasurer (“New Republican”), an independent expenditure-only committee, and whether that relationship resulted in a violation of the Act’s soft money ban. The Complaint in Matter Under Review 7370 alleged that Scott, as New Republican’s Chair, improperly used New Republican to support his candidacy for U.S. Senate and thus became a candidate months before officially declaring his candidacy. The Complaint further alleged that

¹ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

² *McConnell v. FEC*, 540 U.S. 93, 182 (2003).

New Republican, as an entity controlled by Scott, a federal candidate, solicited and received prohibited and excessive contributions in violation of the Act.³

An individual becomes a candidate under the Act if: (a) the individual receives contributions or makes expenditures in excess of \$5,000, or (b) another person, with the individual's consent, receives contributions or makes expenditures in excess of \$5,000 on behalf of the individual.⁴ 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.⁵ The principal campaign committee must then file a Statement of Organization within ten days of its designation,⁶ and must file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a) and (b).⁷

Although the Commission has established limited “testing the waters” exemptions to permit an individual to explore the feasibility of a campaign for federal office without becoming a candidate,⁸ these exemptions are not available to individuals who have made a decision to become a candidate.⁹ Commission regulations set forth a non-exhaustive list of activities that indicate that an individual is no longer testing the waters and has decided to become a candidate. These activities include, for example, raising funds in excess of what an individual could reasonably be expected to use for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after the individual becomes a candidate.¹⁰ The Commission, in deciding whether an individual is no longer testing the waters and has made a decision to run for federal office, assesses the individual's objectively deliberate actions to discern whether and when the individual decided to become a candidate.¹¹

³ The Complaint in Matter Under Review 7496 alleges that after Scott declared his candidacy in April 2018, New Republican and Scott's principal campaign committee engaged in impermissible coordination resulting in an excessive contribution from New Republican to the Scott committee. However, based on the available information, the Office of General Counsel recommended taking no action at this time as to these allegations. First Gen. Counsel's Report in MURs 7370 and 7496 (New Republican PAC, *et al.*).

⁴ 52 U.S.C. § 30101(2).

⁵ *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁶ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

⁷ 52 U.S.C. § 30104(a); 11 C.F.R. § 104.1(a).

⁸ *See* 11 C.F.R. §§ 100.72 and 100.131; Factual and Legal Analysis at 7, MUR 6775 (Hillary Clinton); Factual and Legal Analysis at 8, MUR 6776 (Niger Innis); Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Sestak).

⁹ *See* AO 2015-09 (Senate Majority PAC and House Majority PAC) at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”).

¹⁰ 11 C.F.R. §§ 100.72(b)(2), 100.131(b)(2).

¹¹ *See* 11 C.F.R. §§ 100.72(b), 100.131(b). *See also* Statement of Reasons of Chair Ellen L. Weintraub in MUR 7273 (Robert J. Ritchie & Warner Bros. Records, Inc.), dated Nov. 26, 2018 (“In determining candidacy and applying the testing the waters exception, the Commission must rely on objective indications. It is impossible to

The available information supports a reason to believe that Scott, through New Republican, undertook activity designed to amass campaign funds that would be spent after he became a candidate, thus triggering candidacy months earlier than Scott's announcement on April 9, 2018. A brief history is helpful: New Republican registered with the Commission on May 8, 2013.¹² Its stated purpose was to advance "ideas of what the next generation of Republicans" should represent and "to support candidates who fit the 'New Republican' model."¹³ New Republican was active in the 2013-2014 election cycle, raising and spending roughly \$1.3 million, over \$500,000 of which was for independent expenditures;¹⁴ during the 2015-2016 election cycle it raised and spent only around \$600,000, none of which was for independent expenditures.¹⁵ On May 11, 2017, New Republican announced that then-Governor Scott would be its new Chair and the PAC hired several former Scott staffers, including his former chief of staff.¹⁶ In a press release announcing Scott's role, New Republican PAC stated that it would "rebrand the way the Republican Party approaches the challenges of the future" with the goal "to make the Republican Party Great Again" and support President Trump.¹⁷ According to a news report cited by the Complaint, political strategists in both parties viewed New Republican "as a vehicle to raise money ahead of Scott's anticipated bid to unseat Democratic U.S. Sen. Bill Nelson in 2018."¹⁸ Brian Burgess, a former spokesperson for Scott, was quoted as saying, "[h]e is running for Senate. That's all this is about."¹⁹

Indeed, once Scott became Chair, contributions to New Republican significantly increased. In the year prior to Scott joining New Republican, it reported raising no money.²⁰ Yet New Republican raised over \$270,000 in the seven weeks after its May 11 announcement.²¹

determine when a candidate – in her own mind – subjectively decides to run. We must look to external manifestations of intent: what the individual does and says.”).

¹² See New Republican PAC Statement of Organization (May 8, 2013); New Republican PAC MUR 7370 Resp. at 2 (Jun. 20, 2018) (hereinafter New Republican MUR 7370 Resp.).

¹³ New Republican MUR 7370 Resp. at 2.

¹⁴ New Republican PAC, Financial Summary for 2013-2014, *available at* <https://www.fec.gov/data/committee/C00544544/?cycle=2014>.

¹⁵ New Republican PAC, Financial Summary for 2015-2016, *available at* <https://www.fec.gov/data/committee/C00544544/?cycle=2016>.

¹⁶ MUR 7370 Compl. at 1, Ex. A.

¹⁷ First Gen. Counsel's Rpt. at 7 (citing a press release announcing Scott as Chair of New Republican).

¹⁸ Gary Rohrer, *Gov. Scott Forms New PAC Ahead of Likely U.S. Senate Run*, ORLANDO SENTINEL (May 22, 2017), MUR 7370 Compl. at Ex. I.

¹⁹ *Id.*

²⁰ New Republican raised \$150,000 in 2016, all of which was received in April. New Republican PAC, 2017 Am. May Monthly Report (Jul. 20, 2016); New Republican PAC, 2016 Year-End Report (Feb. 1, 2017). Similarly, New Republican received no contributions in 2017 until it was announced that Scott was becoming its Chair. See New Republican PAC, 2017 Am. Mid-Year Report (Oct. 2, 2017).

²¹ New Republican PAC, 2017 Am. Mid-Year Report (Oct. 2, 2017).

By the end of 2017, New Republican, under Scott's direction, had raised over \$1.1 million.²² In total, between May 12, 2017 and April 8, 2018, one day before Scott announced his candidacy, New Republican reported raising over \$2.3 million – more than twice what New Republican raised in the 2013-2014 and 2015-2016 election cycles combined.²³

Perhaps this fundraising alone would not be remarkable, but the ways in which New Republican spent its funds is telling. After reporting no independent expenditures since May 14, 2014, New Republican reported making its first independent expenditure in almost four years on May 3, 2018, opposing Bill Nelson, Scott's opponent for U.S. Senate.²⁴ Between May and November 2018, New Republican spent \$30,508,261.17 on independent expenditures, 97% of which were spent in support of Scott's candidacy.²⁵

Beyond the sheer volume of money raised by New Republican and spent in support of Scott's candidacy, the relationship between Scott and New Republican is evident in other ways. Respondents acknowledge that Scott continued to participate in New Republican fundraising events after he stepped down as Chair.²⁶ In particular, on March 3, 2018, Scott was a "featured guest" at a New Republican fundraiser, described as "one in a series of regular get-togethers" Scott had with New Republican donors while he was Chair.²⁷ Additionally, New Republican commissioned and paid for a poll in March 2018 to test Scott's competitiveness in a match-up against incumbent Senator Nelson.²⁸ There is no information in the available record indicating that New Republican commissioned polling regarding any other Senate candidates.

Finally, on April 9, 2018, the same day that Scott announced his candidacy, New Republican issued a press release describing itself as "focused on the election of Rick Scott in

²² New Republican PAC, 2017 Am. Year-End Report (Feb. 23, 2018).

²³ New Republican PAC, Raising for 2017-2018, *available at* <https://www.fec.gov/data/committee/C00544544/?tab=raising&cycle=2018>.

²⁴ MUR 7496 Compl. at 3; New Republican PAC MUR 7496 Resp. at 3 (Oct. 24, 2018).

²⁵ New Republican PAC, 2018 Post-General Report (Dec. 6, 2018). Since Scott and Nelson were the only candidates to receive at least 1% of the votes in the race, New Republican's independent expenditures opposing Nelson and those supporting Scott are referred to collectively as independent expenditures in support of Scott's candidacy. *See* Florida Department of State, Division of Elections, November 6, 2018 General Election Official Results, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE>.

The remaining \$969,982.60 that New Republican spent on independent expenditures in 2018 was in opposition to Katherine Porter, a candidate for the U.S. House of Representatives for California's 45th congressional district.

²⁶ Rick Scott for Florida and Rick Scott MUR 7370 Resp. at 2 (Jun. 14, 2018) (hereinafter, Scott MUR 7370 Resp.); New Republican MUR 7370 Resp. at 5-6; Rick Scott for Florida and Rick Scott MUR 7496 Resp. at 2 (Nov. 14, 2018).

²⁷ Sean Sullivan, *Florida Gov. Rick Scott to Put in Face Time with GOP Donors Ahead of Possible Senate Run*, WASHINGTON POST (Mar. 3, 2018), MUR 7370 Compl. at Ex. H.

²⁸ MUR 7370 Suppl. Compl. at 1, Ex. N.; *see also* New Republican MUR 7370 Resp. at 7, Hazelwood Aff. at ¶ 6.

the race for Florida United States Senate.”²⁹ At the same time, New Republican launched a new pro-Scott website,³⁰ which it acknowledges had been in the works since February 2018.³¹

By contrast, there is no available information to suggest that while Scott was New Republican’s Chair the committee spent *any* money on its stated purpose of supporting President Trump and his ideals. New Republican spent no money on independent expenditures in support of Trump or any other candidate during this time, and there is no available information suggesting that New Republican spent money on issue ads or other efforts to advance its purported purpose of supporting “New Republicans” during Scott’s tenure as Chair. Indeed, New Republican focused almost exclusively on Scott’s candidacy after he became Chair. Notwithstanding that there were 32 other Senate races in 2018, New Republican did not make an independent expenditure regarding any other Senate race *during the entire 2018 election cycle*.

Respondents state that Scott “stepped down” as Chair of New Republican in December 2017,³² although there is evidence to suggest that Scott was, in fact, Chair of New Republican as late as February 2018³³ (notably, based on the available information, it appears that no one replaced Scott as Chair of New Republican). Even accepting that Scott stepped down in December 2017, there is ample evidence that Scott had already triggered candidacy at that point, given that by the end of 2017 New Republican had amassed over \$1.1 million that was later spent on his campaign.

Alone, Scott’s failure to timely file a Statement of Candidacy and his committee’s failure to timely register and report with the Commission deprived the public of transparency. But the further implication of Scott becoming a candidate in 2017 while serving as New Republican’s Chair is glaring. It is undisputed that New Republican, as an independent expenditure-only committee, accepted both corporate and excessive funds throughout the 2018 election cycle.³⁴ In addition, New Republican solicited contributions in unlimited amounts on its website in

²⁹ MUR 7370 Compl. at Ex. K.

³⁰ *Id.* at 3; New Republican PAC, WAYBACK MACHINE (Apr. 13, 2018), available at <https://web.archive.org/web/20180413152004/https://newrepublican.org/>.

³¹ New Republican PAC 7370 Resp. at 7, Hazelwood Aff. at ¶ 7.

³² Scott MUR 7370 Resp. at 2; New Republican MUR 7370 Resp. at 4.

³³ Publicly available historical views of the New Republican website indicate that the website continued to reference Scott until at least January 18, 2021. *See* New Republican PAC, WAYBACK MACHINE (Jan. 18, 2018), available at <https://web.archive.org/web/20180118222610/https://newrepublican.org/>. Further, in an article discussing the Complaint filed in this matter, a spokesperson for Scott’s Senate campaign told a reporter in early April 2018 that “Scott stepped down as Chair [of New Republican] in February” 2018. John Kennedy, *Election Complaint Filed Against Rick Scott PAC*, THE GAINESVILLE SUN (April 10, 2018), available at <https://www.gainesville.com/news/20180410/elections-complaint-filed-against-rick-scott-pac>.

³⁴ *See, e.g.*, New Republican PAC, 2017 Am. Year-End Report (Feb. 23, 2018); New Republican PAC, 2018 April Quarterly Report (April 15, 2018).

December 2017.³⁵ If New Republican was established, financed, maintained, or controlled by Scott, then the solicitation and acceptance of these contributions was prohibited.³⁶

To determine whether a candidate or his or her agent “directly or indirectly establishes, finances, maintains, or controls” an entity, the Commission considers ten non-exhaustive factors “in the context of the overall relationship between the sponsor and the entity.”³⁷ Some of the factors include whether the candidate or his or her agent “has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity” or “has authority or ability to direct or participate in the governance of the entity.”³⁸

The available evidence supports a reasonable inference that Scott controlled New Republican. As Chair, Scott was involved in the staffing and governance of New Republican from May 2017 until at least December 2017. In the press release from New Republican announcing that Scott was coming on as Chair, Scott also announced that he had hired his former staff to work in senior roles at New Republican.³⁹ Among these staffers was Scott’s former chief of staff and 2014 re-election campaign manager, who would become New Republican’s new executive director.⁴⁰ In addition, New Republican hired Scott’s longtime fundraiser and a number of consulting firms that had previously done work for Scott’s campaigns.⁴¹

But lest there be disagreement over whether this information alone demonstrates that Scott controlled New Republican, New Republican itself acknowledges that Scott “exercised some degree of ‘control’” over New Republican in the second half of 2017.⁴² New Republican states that “[s]ince December 2017, Governor Scott has not ‘direct[ed] or participate[d] in the governance of the entity,’ and has not had ‘the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity.’”⁴³ If Scott never exercised control over New Republican, it could have said so.⁴⁴ Instead, New Republican disputes only that it was controlled by Scott in the spring of 2018 when he publicly

³⁵ See New Republican PAC, WAYBACK MACHINE (Dec. 9, 2017), available at https://web.archive.org/web/20171209062614/https://secure.newrepublican.org/new_rep_website.

³⁶ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

³⁷ 11 C.F.R. § 300.2(c)(2).

³⁸ *Id.* § 300.2(c)(2)(ii) and (iii).

³⁹ MUR 7370 Compl. at 2, Ex. A.

⁴⁰ *Id.*

⁴¹ *Id.* at 2, Exs. B, E.

⁴² New Republican MUR 7370 Resp. at 9.

⁴³ *Id.*

⁴⁴ By contrast, New Republican states that it was never financed or maintained by Scott. *Id.* at 10.

declared his candidacy. But, again, the available information indicates that Scott in fact became a candidate long before that time.

The available record here is clear: eleven months before a former Governor announced his candidacy for the U.S. Senate in 2018, he took over a dormant super PAC as its new chair. The PAC hired his former political staffers, amassed a war chest of campaign funds, and waited until he announced his candidacy to spend those funds on independent expenditures to support his campaign. On the basis of this information, we supported the Office of General Counsel's recommendations that the Commission find reason to believe that Scott filed his statement of candidacy late⁴⁵ and that the Commission find reason to believe that New Republican, as an entity controlled by a federal candidate, violated the Act by soliciting, receiving, directing, transferring, or spending non-federal funds.

However, several of our colleagues instead voted to dismiss the allegations regarding Scott's candidacy and to find no reason to believe that New Republican violated the Act's soft money ban. Thus, the Commission was unable to investigate the well-supported allegations that New Republican, while controlled by Scott, a candidate, raised at least \$1.1 million in soft money, the vast majority of which was spent to support Scott's candidacy.

While this outcome was unfortunate, it was hardly unexpected. For more than a decade, since the Supreme Court's *Citizens United* decision, there has been a rise in complaints involving allegations of candidates flouting the Commission's rules by outsourcing early campaigning to outside political committees.⁴⁶ Scott's conduct is a variation on that theme – in this case, finding a dormant PAC and commandeering it for his purposes. No matter the iteration, it is a violation of the soft money restrictions, deprives the public of valuable campaign information, and merited further review by the Commission.

July 15, 2021
 Date


 Shana M. Broussard
 Chair

July 15, 2021
 Date


 Ellen L. Weintraub
 Commissioner

⁴⁵ We also voted to find reason to believe that Scott's principal campaign committee failed to timely file its Statement of Organization, based on the same factual information that supports the reason to believe finding as to Scott's failure to timely file his Statement of Candidacy. Certification, MURs 7370 and 7496 (New Republican PAC, *et al.*) (May 20, 2021).

⁴⁶ See, e.g., MUR 6955 (John R. Kasich, *et al.*); MUR 6917 (Scott Walker); MUR 6928 (Rick Santorum, *et al.*)