

OFFICE OF
GENERAL COUNSEL
BEFORE THE
FEDERAL ELECTION COMMISSION
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Bradley Beychok
American Bridge 21st Century
455 Massachusetts Ave NW, Ste 650
Washington, DC 20001

MUR # 7567

Complainant,

v.

Howard Schultz
c/o Schultz Family Foundation
4209 21st Ave W., Ste 401
Seattle, WA 28199

Respondents.

COMPLAINT

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against Howard Schultz (“Respondent”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (“Commission”) regulations by making expenditures for the purpose of advancing his own presidential campaign without filing a statement of candidacy with the Federal Election Commission or disclosing those expenditures to the Commission and the public.

FACTUAL BACKGROUND

On Sunday, January 27, after months of speculation,¹ Howard Schultz announced on national television that he was “seriously thinking of running for president.”² He also announced that he “will run as a centrist independent, outside of the two-party system.”³

¹ Brian Schwartz, CNBC.com (Nov. 9, 2018) <https://www.cnbc.com/2018/11/09/ex-starbucks-ceo-howard-schultz-builds-elite-pr-team-as-he-mulls-white-house-run.html>.

² Javier E. David, Tucker Higgins, CNBC.com (Jan. 27, 2019) <https://www.cnbc.com/2019/01/27/ex-starbucks-ceo-howard-schultz-weighs-bid-for-us-presidency.html>.

³ *Id.*

Since his announcement, details have emerged about Mr. Schultz's preparations to run for president. Mr. Schultz has indicated that due to his \$3.5 billion in personal wealth, he is likely to fund much of his campaign with personal funds.⁴ According to press reports, Mr. Schultz has been hiring political consultants with presidential experience and conducting polling related to a potential presidential run.⁵ He has also reportedly "la[id] the groundwork for paid advertising that could debut in the next two months."⁶

LEGAL ANALYSIS

The FEC should immediately investigate whether Howard Schultz has engaged in activities that went beyond merely "testing the waters" for a presidential campaign and instead made expenditures to further his own candidacy for president. The Commission should also investigate whether Mr. Schultz failed to file a statement of candidacy and report his campaign expenditures as required by the Act and Commission regulations.

In general, an individual becomes a "candidate" for purposes of the Act upon receiving contributions or making expenditures of more than \$5,000 to influence an election for federal office.⁷ However, potential candidates may collect contributions and make expenditures for the purpose of "testing the waters" if they have not yet decided whether to become federal candidates.⁸ Examples of "testing the waters" activities include conducting polls, travelling, and making telephone calls to determine the viability of a potential federal candidacy.⁹ However,

⁴ Scott Pelley, CBS News, "Former Starbucks CEO Howard Schultz Says He's Considering Independent Run for President," (Jan. 27, 2019) <https://www.cbsnews.com/news/howard-schultz-starbucks-ceo-considering-independent-run-for-president-60-minutes/>.

⁵ Michael Scherer, Washington Post, "Howard Schultz's Presidential Ambitions Spurred a Months-Long Effort to Disrupt the 2020 Race," (Jan. 29, 2019) https://www.washingtonpost.com/politics/howard-schultzs-presidential-ambitions-spurred-a-months-long-effort-to-disrupt-the-2020-race/2019/01/29/30a22154-2408-11e9-ad53-824486280311_story.html.

⁶ *Id.*

⁷ See 52 U.S.C. §§ 30101(2).

⁸ 11 C.F.R. §§ 100.72, .131.

⁹ *Id.* § 100.131(a).

within 15 days of deciding to run for federal office and receiving contributions or making expenditures exceeding the \$5,000 threshold, the candidate must file a statement of candidacy and designate a primary campaign committee.¹⁰ The candidate must then disclose all campaign activity that has occurred during the “testing-the-waters” period on the campaign committee’s first report.¹¹

During the testing-the-waters period, a potential candidate must conduct activity “solely for the purpose” of “determining whether [the] individual should become a candidate.”¹² The exemption is not available to individuals who have already decided to become candidates, to activities that indicate an individual has decided to become a candidate, or to activities that are “relevant to conducting a campaign.”¹³ FEC regulations provide a non-exhaustive list of examples of activities that indicate an individual has decided to become a candidate; payments made for the following activities do not qualify as testing-the-waters activities:

- Using public political advertising to publicize an intention to campaign for Federal office;
- Raising funds in excess of what could reasonably be expected to be used for exploratory activities or amassing campaign funds that would be spent after the individual becomes a candidate;
- Making or authorizing written or oral statements that refer to the individual as a candidate;
- Engaging in a protracted period of exploratory activity or engaging in exploratory activity in close proximity to an election; or
- Taking action to qualify for the ballot under state law.¹⁴

¹⁰ *Id.* § 101.1(a)

¹¹ *Id.* § 101.3.

¹² *Id.* §§ 100.72, .131.

¹³ *Id.* § 100.131(b).

¹⁴ *See id.*

While the Commission has looked at public statements or activities that clearly indicate a decision has been made to seek federal office to determine whether an individual is no longer testing the waters, a private decision to become a candidate will also trigger the candidacy registration and reporting requirements.¹⁵ The FEC has previously determined that once an individual “has moved beyond the deliberative process of deciding to become a candidate, and into the process of planning and scheduling public activities designed to heighten his political appeal to the electorate, then . . . the activity would cease to be within the exemption, and candidacy would arise”¹⁶ Thus, even a candidate who is careful to craft his public comments to avoid publicly referring to himself as a candidate can trigger candidacy by making expenditures to further his candidacy once a private decision has been made.

By “laying the groundwork for paid advertising,”¹⁷ Mr. Schultz has gone beyond the scope of the testing-the-waters exemption and has become a candidate for federal office. 11 C.F.R. § 100.131 plainly excludes payments for “general public political advertising” from the category of activities that constitute “testing the waters.” Under the FEC’s subsequent guidance on this exemption, expenditures for paid advertising intending to promote Mr. Schultz’s candidacy and heighten his appeal with the electorate would clearly trigger candidacy even if those expenditures are made from personal funds.¹⁸ Mr. Schultz cannot continue to skirt the Act’s disclosure requirements by publicly stating that he has not made a final decision regarding

¹⁵ *See id.* § 100.72(b); FEC Matter Under Review 5693 (Aronsohn), General Counsel’s Report #2 (“The determining factor is whether the individual’s activities “take on a partisan political quality [that] would indicate that a decision has been made to seek nomination for election, or election, to a Federal office”) (citing Advisory Opinion 1981-32); FEC Matter Under Review 5363 (Sharpton), Factual and Legal Analysis; FEC Matter Under Review 6449 (Bruning), Factual and Legal Analysis (stating that candidacy is triggered when “a private decision to become a candidate has been made.”).

¹⁶ Advisory Opinion 1981-32 (Askew).

¹⁷ Michael Scherer, Washington Post (Jan. 29, 2019) https://www.washingtonpost.com/politics/howard-schultzs-presidential-ambitions-spurred-a-months-long-effort-to-disrupt-the-2020-race/2019/01/29/30a22154-2408-11e9-ad53-824486280311_story.html

¹⁸ *See* Advisory Opinion 1981-32 (Askew).

his candidacy if such a decision has already been made and he has begun making expenditures to further his candidacy. If Mr. Schultz has made expenditures for paid advertising, he should be required to file a statement of candidacy within 15 days of such expenditures exceeding \$5,000.

REQUESTED ACTION

In light of the foregoing, the evidence suggests that Respondent has gone beyond the exploratory phase and is instead attempting to exploit the “testing the waters” exemption to avoid declaring his candidacy and reporting activities in furtherance of that candidacy to the FEC and the public. The Commission should immediately investigate whether Respondent did in fact violate the Federal Election Campaign Act, and if so, the exact date that his candidacy began. If a violation is found, we respectfully request the Commission compel disclosure of any expenditures made to further Respondent’s candidacy, enjoin Respondent from further violations, and fine Respondent the maximum amount permitted by law.

Sincerely,



Bradley Beychok
American Bridge 21st Century
455 Massachusetts Ave NW, Ste 650
Washington, DC 20001



SUBSCRIBED AND SWORN to before me this 7th day of February, 2019.



GREGORY SENSING
Notary Public

My Commission Expires:

07-14-2021