



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463


**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Howard Schultz ) MUR 7567  
 )

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND  
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III**

In this matter, we voted to approve the Office of General Counsel’s recommendations to dismiss the allegation that Howard Schultz violated 52 U.S.C. §§ 30102(e)(1), 30103, and 30104 by failing to register and report as a candidate.


For the purposes of 52 U.S.C. § 30109(a)(8), we attach our proposed Factual and Legal Analysis in this matter.

  
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Allen Dickerson  
Vice Chair

December 3, 2021  
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Date

  
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Sean J. Cooksey  
Commissioner

December 3, 2021  
\_\_\_\_\_  
Date

  
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James E. "Trey" Trainor, III  
Commissioner

December 3, 2021  
\_\_\_\_\_  
Date

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Howard Schultz

MUR: 7567

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”). The Complaint alleges that Howard Schultz, former CEO of Starbucks, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to register and report as a candidate for U.S. President, contending that Shultz went beyond testing the waters by hiring political consultants, conducting polling, and laying the groundwork for paid advertising. From late January 2019 through mid-April, Schultz maintained a high public profile through interviews, town halls, and social media posts; however, from mid-April through September 6, 2019, the date when Schultz officially declared his intention not to run, Schultz receded from public life amid health concerns and a crowded Democratic primary field.

The Commission dismisses the allegation that Schultz violated 52 U.S.C. §§ 30102(e)(1), 30103, and 30104 by failing to register and report as a candidate because the available record indicates that Schultz’s expenses do not appear to have gone beyond testing the waters.

**II. FACTUAL BACKGROUND**

On January 27, 2019, Schultz, the former CEO of Starbucks Corporation, announced on CBS’s 60 Minutes that he was “seriously thinking of running for president” as a “centrist independent.”<sup>1</sup> Schultz indicated that he would promote his memoir while deciding whether to

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<sup>1</sup> Compl. at 1 (Feb. 14, 2019); 60 Minutes Interview at 0:12-17, CBS (Jan. 27, 2019), <https://www.youtube.com/watch?v=gnBhtwKRFhA>.

run for President and was willing to spend his personal fortune on his potential campaign.<sup>2</sup> The Complaint alleges that Schultz became a federal candidate because a news article at the time reported that he had hired political consultants, conducted polling, and laid the “groundwork for paid advertising that could debut in the next two months.”<sup>3</sup>

In late January, Schultz’s website principally contained marketing for his book, *From the Ground Up*, including an active book tour schedule traveling around the country.<sup>4</sup> In the following months, in addition to promoting his book, Schultz also discussed a potential campaign in televised town halls, speeches, news programs, and social media. For example, on February 12, 2019, Schultz discussed his positions on political issues at a televised town hall on CNN, stating that he was exploring a run, but had not yet made a decision whether to run.<sup>5</sup>

Schultz officially declared that he would not run for president on September 6, 2019.<sup>6</sup>

In response, Schultz asserts that he was testing the waters because he publicly stated on several occasions that he was only evaluating a run and never actually decided to run.<sup>7</sup> Schultz further asserts that, despite the allegation that he had laid the groundwork for political

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<sup>2</sup> Lisa Lerer, *Is Howard Schultz a Candidate Without a Constituency?*, N.Y. TIMES, Jan. 28, 2019, <https://www.nytimes.com/2019/01/28/us/politics/on-politics-howard-schultz-starbucks-independent.html>; Compl. at 2.

<sup>3</sup> Compl. at 2 (citing Michael Scherer, *Howard Schultz’s presidential ambitions spurred a months-long effort to disrupt the 2020 race*, WASH. 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](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)).

<sup>4</sup> Howard Shultz, (Jan. 31, 2019), <https://web.archive.org/web/20190131032136/https://www.howardschultz.com/>.

<sup>5</sup> Town Hall with Howard Schultz, CNN (Feb. 13, 2019), <https://www.youtube.com/watch?v=A45CoomULVc>.

<sup>6</sup> Greg Jaffe and Michael Scherer, *Former Starbucks chief executive Howard Schultz announces he will not run for president*, WASH. POST, Sept. 6, 2019, [https://www.washingtonpost.com/politics/former-starbucks-chief-executive-howard-schultz-announces-he-will-not-run-for-president/2019/09/05/230b0fa2-d046-11e9-87fa-8501a456c003\\_story.html](https://www.washingtonpost.com/politics/former-starbucks-chief-executive-howard-schultz-announces-he-will-not-run-for-president/2019/09/05/230b0fa2-d046-11e9-87fa-8501a456c003_story.html).

<sup>7</sup> Resp. at 2 (Apr. 12, 2019).

advertising, he never actually disseminated any ads “to publicize his intention to campaign for Federal office” as set forth in Commission regulations.<sup>8</sup> Moreover, Schultz argues that expenses for polling and the hiring of consultants to evaluate a potential bid are traditional testing-the-waters expenses.<sup>9</sup>

### III. LEGAL ANALYSIS

An individual becomes a candidate under the Act when: (a) such individual receives contributions or makes expenditures in excess of \$5,000; or (b) such individual gives 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 or has made such expenditures in excess of \$5,000.<sup>10</sup> Once the \$5,000 threshold has been met, the candidate has 15 days to designate a principal campaign committee by filing a Statement of Candidacy with the Commission.<sup>11</sup> The principal campaign committee must file a Statement of Organization within ten days of its designation,<sup>12</sup> and it must file disclosure reports with the Commission.<sup>13</sup>

The Commission has established “testing-the-waters” regulations excepting from the definitions of “contribution” and “expenditure” funds received and payments made solely to determine whether an individual should become a candidate, thereby permitting an individual to test the feasibility of a campaign for federal office without becoming a candidate under the Act.<sup>14</sup>

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<sup>8</sup> *Id.* at 3

<sup>9</sup> *Id.* at 4.

<sup>10</sup> 52 U.S.C. § 30101(2).

<sup>11</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>12</sup> *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>13</sup> 52 U.S.C. § 30104(a), (b).

<sup>14</sup> *See* 11 C.F.R. §§ 100.72 and 100.131.

These testing-the-waters regulations seek to draw a distinction between activities directed to evaluating the feasibility of one's candidacy and conduct signifying that a decision to become a candidate has been made.<sup>15</sup> Testing-the-waters activities include, but are not limited to, payments for polling, telephone calls, and travel, and only funds subject to the Act's source and amount prohibitions may be used for such activities.<sup>16</sup>

An individual who is testing the waters is not required to register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for federal office.<sup>17</sup> However, an individual who tests the waters must keep financial records, and if he or she becomes a candidate, all funds received, or payments made in connection with testing the waters must be reported as contributions and expenditures in the first report filed by the candidate's principal campaign committee.<sup>18</sup>

The testing-the-waters exceptions are not available to an individual who has decided to become a candidate.<sup>19</sup> Commission regulations set forth a non-exhaustive list of activities that indicate when an individual is no longer testing the waters and has decided to become a candidate. Such indicia include: (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or

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<sup>15</sup> See Advisory Op. 1981-32 (Askew) ("AO 1981-32").

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; see also Advisory Op. 2015-09 (Senate Maj. PAC, *et al.*) ("AO 2015-09").

<sup>18</sup> 11 C.F.R. § 101.3.

<sup>19</sup> See AO 2015-09 at 5. See also Payments Received for Testing the Waters Activities, 50 Fed Reg. 9,992, 9,993 (Mar. 13, 1985) (exemption "explicitly limited 'solely' to activities designed to evaluate a potential candidacy").

authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time;<sup>20</sup> and (5) taking action to qualify for the ballot under state law.<sup>21</sup>

Once an individual has decided to be a candidate, he or she must designate a principal campaign committee within 15 days, which must file a Statement of Organization within ten days of being designated by the candidate.<sup>22</sup> The committee must establish a separate segregated fund, maintain a record of all contributions received and expenditures made while testing the waters, and disclose all receipts and disbursements in the committee's first financial report filed with the Commission.<sup>23</sup> All funds raised and spent for testing-the-waters activities are subject to the Act's limitations and prohibitions.<sup>24</sup>

In determining whether an individual has moved from testing the waters to candidate status, the Commission considers whether the individual has engaged in activities or made statements that would indicate the individual has decided to run for federal office.<sup>25</sup> “[T]he determination of whether an individual has crossed the line from ‘testing the waters’ to campaigning must be made on a case-by-case basis.”<sup>26</sup>

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<sup>20</sup> The Commission has advised that there is no specific time limit for such activities, and the length of time spent testing the waters is but one factor in determining whether an individual becomes a candidate. AO 2015-09 at 6.

<sup>21</sup> 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>22</sup> See 52 U.S.C. §§ 30102(e)(1), 30103(a), 30104(a).

<sup>23</sup> 52 U.S.C. §§ 30102(b), 30104(a); 11 C.F.R. § 101.3.

<sup>24</sup> 11 C.F.R. §§ 100.72(a); 100.131(a).

<sup>25</sup> Factual & Legal Analysis at 6-7, MUR 6449 (Jon Bruning); First Gen. Counsel Rpt. at 10, MUR 6533 (Perry Haney for Congress).

<sup>26</sup> 50 Fed. Reg. at 9,993.

Here, the available information does not indicate that Schultz decided to become a federal candidate before formally declaring his intention not to run. The Complaint bases its allegation that Schultz became a candidate primarily on the first factor — that Schultz was “laying the groundwork for paid advertising,” arguing that even in the absence of any public statement that Schultz had become a candidate, expenditures for political advertising would be sufficient to trigger candidacy.<sup>27</sup> In his Response, Schultz argues that he did not run any ads specifically for the purpose of publicizing “his intention to campaign for Federal office” as set forth in Commission regulations.<sup>28</sup> The Complaint did not identify any specific ads.

Second, the Commission does not have any information regarding Schultz’s fundraising or spending. There is no allegation in the Complaint that Schultz raised or spent a significant amount of money. News reports indicate that Schultz committed to spending \$300 to \$500 million of his personal funds if he ran, suggesting that Schultz was not actively fundraising.<sup>29</sup> In

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<sup>27</sup> Compl. at 4.

<sup>28</sup> Resp. at 3.

<sup>29</sup> Compl. at 2 (citing Michael Scherer, *Howard Schultz’s presidential ambitions spurred a months-long effort to disrupt the 2020 race*, WASH. 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](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)).

any event, the Commission has found that raising significant amounts of money, without other indicia of candidacy, is not sufficient to trigger candidacy.<sup>30</sup>

Third, Schultz's activity predated the first primaries by more than a year and lasted only several months and thus was not in close proximity to the election or over a protracted period of time.<sup>31</sup>

While not directly relevant to any one factor, the Complaint also alleges that Schultz conducted polling and hired political consultants.<sup>32</sup> The Complaint, however, does not explain how these activities establish candidacy, in contrast to reflecting permissible testing-the-waters activity. Polling, for example, is an explicitly enumerated testing-the-waters activity,<sup>33</sup> and the Commission has previously found that expenses for polling and consultants can be valid testing-the-waters expenses if done to explore a run.<sup>34</sup>

In sum, the available information does not establish that Schultz had made the private decision to run and therefore had become a candidate. Instead, Schultz's contemporaneous public statements that he was exploring a potential run, and his ultimate decision not to run, indicate that Schultz never made the private decision to run. Therefore, because Schultz's expenses appear to have been for testing the waters and due to the lack of countervailing

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<sup>30</sup> See, e.g., Factual and Legal Analysis at 6 n.11, MUR 6533 (Haney) (dismissing 30102(e)(1) allegation where candidate's committee had received almost \$112,000, primarily in the form of loans from the candidate); Factual and Legal Analysis at 6, MUR 6224 (Carly Fiorina) (finding no reason to believe where exploratory committee raised \$225,000, and candidate spent \$400,000 in personal funds); MUR 5934 (Thompson) (dismissing where candidate had raised more than \$12 million and spent more than \$5 million); MUR 5703 (Rainville) (finding no reason to believe where \$100,000 raised was not dispositive); MUR 5661 (Butler) (same).

<sup>31</sup> Factual and Legal Analysis at 6, MUR 6948 (Nancy Rotering for Congress) (finding no reason to believe where, *inter alia*, the activity occurred more than one year before the primary).

<sup>32</sup> Compl. at 2.

<sup>33</sup> 11 C.F.R. § 100.131(a).

<sup>34</sup> See, e.g., Advisory Op. 1982-03 (Cranston) at 4-5 (hiring of political consultants can be for testing the waters if the candidate had not yet decided to run).



information in the available record, the Commission dismisses the allegation that Schultz violated 52 U.S.C. §§ 30102(e)(1), 30103, and 30104 by failing to register and report as a candidate.