



Remcho Johansen & Purcell LLP

1901 Harrison Street
Suite 1550
Oakland CA 94612

510.346.6200
www.rjp.com

April 16, 2019

Andrew Harris Werbrock
510.346.6214
aw@rjp.com

VIA EMAIL

Jeff S. Jordan
Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn.: Kathryn Ross
1050 First Street, NE
Washington, DC 20463
cela@fec.gov

Re: MUR 7590

Dear Mr. Jordan:

We are counsel to Matt Strabone, the Matt Strabone Federal Exploratory Committee, and Matt Strabone for Assessor/Recorder/County Clerk 2018 (collectively, "Respondents"). We write in response to the complaint filed by Mr. Ernest J. Dronenburg, Jr. on March 29, 2019. The Complaint alleges that Mr. Strabone "deliberately" violated the Federal Election Campaign Act of 1971, as amended (the "Act") by failing to register a committee when he raised funds in exploration of a potential federal candidacy. The Complaint lacks any basis in law or in fact. While Mr. Strabone raised funds in connection with exploring a *potential* federal candidacy, he did so within the "testing the waters" exemption, and the Complaint fails to identify any facts to show that the exemption was inapplicable here. Accordingly, the Commission must find no reason to believe that Respondents violated the Act and dismiss the matter promptly.

FACTUAL BACKGROUND

Matt Strabone was a candidate for San Diego County Assessor/Recorder/County Clerk during the June 2018 election. Matt Strabone for Assessor/Recorder/County Clerk 2018 (the "County Committee") was his committee in connection with that election. During that election, he ran against Complainant Ernest J. Dronenburg, the incumbent Assessor/Recorder/County Clerk.

Prior to becoming a candidate for county office, Mr. Strabone had established an exploratory committee to explore the possibility of running for United States Congress (the "Exploratory Committee"). In

Digitally signed
by Kathryn Ross
Date: 2019.04.16
19:12:01 -04'00'

Jeff S. Jordan
Federal Election Commission
April 16, 2019
Page 2

last 2016 and early 2017, Mr. Strabone raised a number of donations, all within the federal source restrictions and contribution limits, into that account, totaling \$21,900. However, in March 2017, Mr. Strabone decided that instead of running for Congress he would run for San Diego County Assessor/Recorder/County Clerk. He ceased engaging in federal exploratory activities and, on March 31, 2017, established the County Committee. As permitted by California law,¹ he used the “first-in, first out” accounting method to identify those donations that were raised into the Exploratory Committee within the San Diego County contribution limits, and transferred those funds to the County Committee. The remaining funds in the Exploratory Committee were refunded to the original contributors.

Complainant ultimately defeated Mr. Strabone in the June 2018 election. But, apparently, that was not enough for him, and he has engaged in a pattern of filing frivolous complaints against Mr. Strabone, solely to harass him. In December 2018, instead of celebrating the holiday season by spreading good will, Complainant channeled his inner Scrooge and filed a complaint against the County Committee with the California Fair Political Practices Commission (“FPPC”). Among other things, the complaint accused Mr. Strabone of evading disclosure by not reporting the activity of the Exploratory Committee. Mr. Strabone responded by explaining that his activity fell within the “testing the waters” exemption, and the FPPC dismissed the complaint in less than two weeks.²

Now, fully aware that the Exploratory Committee was under no obligation to file with the Commission, Complainant has filed another frivolous complaint contending otherwise.

LEGAL BACKGROUND AND ANALYSIS

1. The Complaint Does Not Allege Any Facts Constituting a Violation of the Act

The Complaint accuses Respondents of “deliberately” violating the Act by failing to file a Statement of Candidacy or Statement of Organization with the Commission, failing to file FEC reports, failing to establish a depository, failing to file personal funds used for campaign expenditures, and miscellaneous other “FEC Treasurer Duties.”³ To proceed to the reason to believe stage, “a complaint must identify

¹ Cal. Gov’t Code § 85306(a).

² A copy of the FPPC’s dismissal letter is attached as Attachment A.

³ Complaint at 1-6.

Jeff S. Jordan
Federal Election Commission
April 16, 2019
Page 3

sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”⁴ The Complaint does not provide any such facts.

Under the Act, an individual will become a “candidate” if he or she raises more than \$5,000 in contributions or makes more than \$5,000 in expenditures in connection with his or her candidacy for federal office.⁵ However, under the testing the waters exemption, funds received, and expenditures made, solely for the purpose of determining whether an individual should become a candidate are not contributions or expenditures.⁶ An individual who raises and spends funds for testing the waters activities is not required to register or report with the Commission, or maintain the funds in a campaign depository.⁷ However, the individual must maintain records of the funds received and, should the individual later trigger candidacy, disclose all the donations received and disbursements made to the Commission on the individual’s first FEC report.⁸

Mr. Strabone’s activities fell squarely within the “testing the waters” exemption. In 2016 he began considering a potential candidacy for Congress and raised funds, within the federal limits and source restrictions, solely for the purpose of testing the waters. He ultimately decided not to become a candidate and, accordingly, was under no obligation to register, report, or designate a bank account as alleged by the Complaint.

The Complaint fails to allege any facts to show that the exemption did not apply. It does not allege that Mr. Strabone used general public political advertising to publicize his intention to run for federal office – and, in fact, Mr. Strabone did not. It does not allege that Mr. Strabone raised funds in excess of what is reasonably needed to test the waters – and, in fact, Mr. Strabone did not. It does not allege that Mr. Strabone made written or oral statements referring to himself as a candidate for Congress – and, in

⁴ Statement of Reasons, Commissioners Mason, Sandstrom, Smith & Thomas, MUR 4950 (Dec. 21, 2000); *see* 11 C.F.R. § 111.4(d).

⁵ *See* 52 U.S.C. § 30101(2).

⁶ 11 C.F.R. § 100.72(a), 100.131(a).

⁷ *See id.*

⁸ *Id.*

Jeff S. Jordan
 Federal Election Commission
 April 16, 2019
 Page 4

fact, Mr. Strabone did not. It does not allege that Mr. Strabone conducted activities in close proximity to an election or over a protracted period of time – and, in fact, Mr. Strabone did not. And it does not allege that Mr. Strabone took any action to qualify for the ballot as a congressional candidate under California law – and, in fact, Mr. Strabone did not.⁹

Accordingly, there is no basis for the Commission to find reason to believe that Respondents violated the Act, and the Commission must dismiss it.¹⁰

2. The Commission Should Refer the Complainant to the Department of Justice for Violating the Federal Criminal Law

Under Commission regulations, a complaint must be based on the complainant's personal knowledge or else be accompanied by an identification of the source of the information forming the basis of the complaint.¹¹ It must distinguish between statement based upon personal knowledge and statements based upon information and belief.¹² And it must be made under penalty of perjury and false statement.¹³

The Complaint fails to meet these requirements and makes multiple false statements about Respondents. Under the circumstances, these statements appear to have been made knowing and willfully. For example, the Complainant states as fact that Respondents “deliberately” violated the Act,¹⁴ “intentionally ignored FEC basic disclosure,¹⁵ and “created a ‘shell game’” to avoid disclosure.¹⁶ We know that Complainant knew these statements were false because Complainant was informed that the Exploratory Committee's activities were exempt from disclosure after he filed the FPPC complaint. Moreover, as

⁹ See 11 C.F.R. § 100.72(b), 100.131(b).

¹⁰ While the Commission has identified Matt Strabone for Assessor/Recorder/County Clerk 2018 as a respondent in this matter, the Complaint does not allege *any* violation of the Act by that committee.

¹¹ 11 C.F.R. § 111.4(d)(2).

¹² *Id.* § 111.4(c).

¹³ *Id.*

¹⁴ Complaint at 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 5.

Jeff S. Jordan
Federal Election Commission
April 16, 2019
Page 5

Complainant artfully reminds us, “The laws are not complex to understand, and should be interrupted [sic] literally.”¹⁷ Given the clarity in this area of the law that Complainant espouses, Complainant was surely well aware that the testing the waters exemption applied when he filed this frivolous complaint.

The Complaint contains numerous other false statements. For example, Complainant states that the County Committee’s Treasurer, “authorized illegal expenditures” and “allowed noncompliance with the FEC rules.” These statements are false because the Treasurer did not work for the Exploratory Committee and, in any case, the Exploratory Committee did not make any illegal expenditures or otherwise violate FEC rules.

The Commission is all-too familiar with how the enforcement process has been used by political opponents for tactical advantage in the course of hard-fought campaigns. But this Complaint goes beyond ordinary political gamesmanship and contains outright lies. In order to protect the integrity of the Commission’s enforcement process, we respectfully request that the Commission refer this matter to the Department of Justice to investigate whether Complainant violated 18 U.S.C. § 1001 and 18 U.S.C. § 1621.

CONCLUSION

As described above, Mr. Strabone’s activities fell squarely within the Commission’s testing the waters exemption, and the Complaint fails to present any facts that demonstrate otherwise. Accordingly, the Commission must find no reason to believe that Respondents violated the Act and close the matter.

Sincerely,



Andrew Harris Werbrock
Counsel to Respondents

AHW:NL
Attachment
(00378006)

¹⁷ *Id.* at 1.

ATTACHMENT A



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

January 8, 2019

Ernest Dronenburg, Jr.

[REDACTED]
Fallbrook, CA 92028

Also sent to: [REDACTED]

Re: Sworn Complaint Against Matt Strabone for Assessor/Recorder/County Clerk 2018, Stephanie Sanchez, Matt Strabone (COM-12282018-03245)

Dear Mr. Dronenburg:

This letter is in response to the sworn complaint you submitted to the Enforcement Division of the Fair Political Practices Commission regarding the above-named committee and individuals. Based on a review of the complaint and documentation provided, the Enforcement Division found insufficient evidence of a violation of the Political Reform Act, and will not pursue an enforcement action in this matter. If you have any questions, please contact Chris Holm at 916-322-8064 or cholm@fppc.ca.gov.

Sincerely,

Galena West
Chief, Enforcement Division

GW:cah

cc: Andrew Werbrock o/b/o Matt Strabone for Assessor/Recorder/County Clerk 2018