

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL’S REPORT**

**MUR: 7590**

DATE COMPLAINT FILED: April 1, 2019

DATE OF NOTIFICATION: April 5, 2019

LAST RESPONSE RECEIVED: April 16, 2019

DATE ACTIVATED: July 30, 2019

EARLIEST SOL: December 9, 2021

LATEST SOL: April 15, 2022

ELECTION CYCLE: 2018

**COMPLAINANT:**

Ernest J. Dronenburg, Jr.

**RESPONDENTS:**

Matt Strabone

Matt Strabone Federal Exploratory Committee

Matt Strabone for Assessor/Recorder/County Clerk

2018

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(2)

52 U.S.C. § 30102

52 U.S.C. § 30103(a)

52 U.S.C. § 30104(a)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118

52 U.S.C. § 30121

52 U.S.C. § 30122

11 C.F.R. § 100.72(a)

11 C.F.R. § 100.131(a)

11 C.F.R. § 101.3.

11 C.F.R. § 102.15

11 C.F.R. § 103.3(a)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint in this matter alleges that Matt Strabone and Matt Strabone Federal Exploratory Committee (the “Exploratory Committee”) (collectively, “Respondents”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, it alleges

Strabone failed to file a Statement of Candidacy after he became a federal candidate in 2018.<sup>1</sup> Additionally, the Complaint alleges that although the Exploratory Committee received almost \$22,000 in campaign contributions, it failed to file a Statement of Organization, failed to establish a separate segregated fund, and failed to file disclosures with the Commission.<sup>2</sup>

Because the available information does not support a finding that Strabone ever became a federal candidate, we recommend the Commission dismiss the allegations that Strabone failed to file a Statements of Candidacy, in violation of 52 U.S.C. § 30102(e)(1), and the Matt Strabone Federal Exploratory Committee failed to file a Statement of Organization, establish and maintain records for a separate segregated fund, and file disclosure reports, in violation of 52 U.S.C. §§ 30102(b), 30103(a), and 30104(a). We also recommend the Commission dismiss allegations that Matt Strabone for Assessor/Recorder/County Clerk 2018 violated the Act in this matter.

## **II. FACTUAL BACKGROUND**

Matt Strabone (“Strabone”) was a candidate for San Diego County Assessor/Recorder/County Clerk in 2018. Matt Strabone for Assessor/Recorder/County Clerk 2018 (the “County Committee”) was his principal campaign committee in connection with that election. During that election, he ran against the incumbent assessor/Recorder/County Clerk, Ernest J. Dronenburg, Jr., the Complainant in this matter.

Before running for county office, Strabone established a committee to explore the possibility of running for the U.S. House of Representatives.<sup>3</sup> From December 2016 through March 14, 2017, Strabone raised approximately \$22,000, which Respondents assert was all

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<sup>1</sup> Compl. at 3-4 (Apr. 1, 2019). 52 U.S.C. § 30102(e)(1).

<sup>2</sup> 52 U.S.C. §§ 30102, 30103(a), 30104(a).

<sup>3</sup> Resp. at 1.

1 within the federal source restrictions and contribution limits.<sup>4</sup> Respondents contend that in  
 2 March 2017, Strabone decided that instead of running for Congress, he would run for San Diego  
 3 County Assessor/Recorder/County Clerk.<sup>5</sup> Respondents assert Strabone then ceased federal  
 4 exploratory activities and, on March 31, 2017, established the County Committee.<sup>6</sup> Using the  
 5 “first-in, first-out” accounting method to identify those contributions that were raised by the  
 6 Exploratory Committee that fell within the San Diego County contribution limits, Respondents  
 7 contend that the Exploratory Committee transferred those funds that were permissible under  
 8 California law from its account to the County Committee account.<sup>7</sup> Respondents further claim  
 9 the remaining funds in the Exploratory Committee account were refunded to the original  
 10 contributors.<sup>8</sup>

11 In June 2018, Strabone lost the local election to Dronenberg. In December 2018,  
 12 Dronenberg filed a complaint against the County Committee with the California Fair Political  
 13 Practices Commission (“FPPC”), alleging, among other things, that Strabone had evaded  
 14 disclosure by not reporting the activities of the Exploratory Committee. In Response, Strabone  
 15 asserted that his activities fell within the “testing-the-waters” exemption, and the California  
 16 complaint was dismissed.<sup>9</sup>

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<sup>4</sup> *Id.* at 1-2. The Complaint does not give a precise dollar amount raised but asserts the Exploratory Committee raised over \$20,000 from December 1, 2016-March 31, 2017. Compl. at 2-3. Respondents assert the Exploratory Committee raised a total of \$21,900. Resp. at 2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* The County Committee reported opening a Mission Federal Credit Union bank account on March 31, 2017. *Id.* (citing FPPC, Form 10, *Statement of Organization Recipient Committee* (Apr. 5, 2017)).

<sup>7</sup> *Id.*

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

<sup>9</sup> Resp. at 2., Attach. A.

Complainant also filed this matter alleging that Strabone violated the Act by failing to file a Statement of Candidacy, and the Exploratory Committee violated the Act by failing to file a Statement of Organization, establish a separate segregated fund for the Exploratory Committee, and file disclosure reports with the Commission, in violation of 52 U.S.C. §§ 30102(b), 30103(a), and 30104(a) and 11 C.F.R. § 103.3(a).

### 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 must file disclosure reports with the Commission.<sup>13</sup>

The Commission has established “testing-the-waters” exemptions from the definitions of “contribution” and “expenditure” for funds received and payments made solely to determine whether an individual should become a candidate, thereby permitting an individual to test the

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<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). See, e.g., Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Sestak); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning); Factual and Legal Analysis at 2, MUR 5363 (Alfred C. Sharpton).

1 feasibility of a campaign for federal office without becoming a candidate under the Act.<sup>14</sup> These  
2 testing-the-waters regulations seek to draw a distinction between activities directed to evaluating  
3 the feasibility of one's candidacy and conduct signifying that a decision to become a candidate  
4 has been made.<sup>15</sup> Testing-the-waters activities include, but are not limited to, payments for  
5 polling, telephone calls, and travel, and only funds permissible under the Act may be used for  
6 such activities.<sup>16</sup>

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

13 The testing-the-waters exceptions are not available to individuals who have decided to  
14 become a candidate.<sup>19</sup> Commission regulations set forth a non-exhaustive list of activities that  
15 indicate when an individual is no longer testing the waters and has decided to become a  
16 candidate. Such indicia include: (1) using general public political advertising to publicize his or

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<sup>14</sup> 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).

<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").

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 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 who is testing the waters achieves candidate status, 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>

Commission regulations also provide that an individual seeking more than one federal office, or a federal office and a state office, must designate separate principal campaign committees and maintain completely separate campaign organizations.<sup>25</sup> No funds, goods or

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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> 11 C.F.R. § 110.8(d); Advisory Op. 1995-3 (Gramm) (superseded in part on other grounds); *Campaign Guide for Congressional Candidates and Committees* at 59-60 (June 2014), (presenting example of "Candidate B," who "begins the 2014 election cycle as a House candidate, but later begins a campaign for a Senate seat in 2014"); see also 52 U.S.C. § 30102(e)(3) (prohibiting an authorized committee from supporting more than one candidate);

services may be transferred between or used by the separate campaigns.<sup>26</sup> If an individual wishes to contribute to both campaigns, the contributions for each election for each office must be made to separate committees.<sup>27</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>28</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>29</sup>

The Complaint alleges that Strabone became a federal candidate on December 22, 2016, when his Exploratory Committee raised more than \$5,000.<sup>30</sup> The Complaint bases its allegation on financial disclosure information filed by the County Committee with California’s FPPC in July 2017, which indicates that the Exploratory Committee accepted its first contribution on December 9, 2016, and received a total of \$5,100 from seven individuals by December 22.<sup>31</sup> In

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11 C.F.R. § 101.1(a) (requiring a candidate to include, *inter alia*, his or her name and address, party affiliation, and *office sought* when designating a principal campaign committee).

<sup>26</sup> 11 C.F.R. § 110.8(d)(2); *see* 52 U.S.C. § 30116(a)(5)(C); 11 C.F.R. § 110.3(c)(5), (7).

<sup>27</sup> 11 C.F.R. § 110.1(f). Each contribution must be designated in writing by the contributor for a particular office, and a committee generally may not transfer funds to, loan funds to, make contributions to, or make expenditures on behalf of the candidate’s other committee.

<sup>28</sup> Factual & Legal Analysis at 6-7, MUR 6449 (Jon Bruning); First Gen. Counsel Rpt. at 10, MUR 6533 (Perry Haney for Congress).

<sup>29</sup> 50 Fed. Reg. at 9,993.

<sup>30</sup> Compl. at 2-3, Attach. (FPPC Form 460). The contributions were for amounts that ranged from \$100 - \$1350.

<sup>31</sup> *Id.* The Exploratory Committee never filed disclosure reports with the Commission, so the information regarding its receipts comes from the County Committee’s state disclosure filings, which was formed after Strabone abandoned his potential federal candidacy and monies raised by the Exploratory Committee were transferred to the County Committee.

1 total, the Complaint alleges that Respondents received 48 contributions totaling approximately  
2 \$20,000 from December 9, 2016 to March 31, 2017.<sup>32</sup>

3 Respondents assert Strabone's activities fell squarely within the Act's "testing-the-  
4 waters" exemption.<sup>33</sup> They contend that in late 2016, Strabone began considering a potential  
5 candidacy for Congress and raised funds, within the federal limits and source restrictions, solely  
6 for the purpose of testing the waters.<sup>34</sup> Respondents state that Strabone ultimately decided not to  
7 become a candidate in March 2017 and was therefore under no obligation to register, report, or  
8 designate a bank account.<sup>35</sup> They further assert that the Complaint fails to allege any facts upon  
9 which a finding that the testing-the-waters exemption does not apply.<sup>36</sup>

10 A review of the available information does not indicate that Strabone decided to become  
11 a federal candidate before abandoning his Exploratory Committee. For example, there is no  
12 indication that Strabone used general public political advertising to publicize his intention to run  
13 for federal office or made written or oral statements referring to himself as a candidate for  
14 Congress.<sup>37</sup> There are also no indications that Strabone conducted activities in close proximity  
15 to an election or over a protracted period of time, or took any action to register or qualify for the  
16 ballot as a Congressional candidate in California.<sup>38</sup> The Complaint does not cite any activities  
17 by Strabone outside of his fundraising to support its allegation that he became a candidate by

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<sup>32</sup> *Id.*

<sup>33</sup> Resp. at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*; 11 C.F.R. §§ 100.71(a), 100.131(a).

<sup>36</sup> Resp. at 3.

<sup>37</sup> 11 C.F.R. §§ 100.71, 100.131.

<sup>38</sup> *Id.*



December 2016. Additionally, though Strabone raised almost \$22,000 from December 2016 through March 2017 for his exploratory committee, that amount is not in excess of what would be reasonably needed to test the waters for a congressional campaign over that time period.<sup>39</sup> Respondents specifically assert that Strabone did not take any action that would indicate he made a decision to become a federal candidate, and we are aware of no information to contradict their contention.<sup>40</sup> Accordingly, we recommend the Commission dismiss the allegation that Strabone failed to file a Statement of Candidacy in violation of 52 U.S.C. § 30102(e)(1).

In addition, the Complaint alleges that the Exploratory Committee failed to establish a separate segregated fund or file disclosure reports with the Commission, despite receiving contributions totaling almost \$22,000 for the period December 9, 2016 – March 31, 2017.<sup>41</sup> Because Strabone never became a federal candidate under the Act, the Exploratory Committee was under no obligation to file a Statement of Organization, set up a separate segregated fund, or file disclosure reports with the Commission. In addition, there is no indication that the transfer from the Exploratory Committee to the County Committee was improper. The Exploratory Committee receive its final contribution on March 14, 2017, and dissolved before the County Committee was even formed on March 31, 2017.<sup>42</sup> Because the funds were transferred from the

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<sup>39</sup> See, e.g., MUR 7263 (I Like Luke) (dismissing section 30102(e)(1) allegation where candidate had raised \$700,000 in 3 months before declaring candidacy); 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); MUR 5930 (Schuring) (dismissing complaint where exploratory congressional committee raised \$194,000); MUR 5703 (Rainville) (finding no reason to believe where \$100,000 raised); MUR 5661 (Butler) (same).

<sup>40</sup> Resp. at 3-4.

<sup>41</sup> Compl. at 4-5.

<sup>42</sup> Compl., Attach. (California FPPC Form 460). There is no information to refute Respondents' assertion that all of the funds received by the Exploratory Committee complied with the Act, and it was only after Strabone decided not to become a federal candidate and run for Assessor/Recorder/County Clerk 2018, that funds were transferred from the Exploratory Committee to the County Committee, in accordance with the "first-in, first-out" accounting method under California law. Resp. at 2 (citing Cal. Gov't Code § 85306(a)).

Exploratory Committee to the County Committee, and not the other way around, the Act's prohibition on soft money transfers, which is designed to ensure federal campaigns do not accept impermissible funds, is not implicated in this matter.<sup>43</sup>

Accordingly, we recommend that the Commission dismiss allegations that Matt Strabone Federal Exploratory Committee failed to file a Statement of Organization, failed to establish a separate segregated fund, and failed to file disclosure reports, in violation of 52 U.S.C. §§ 30102(b), 30103(a), 30104(a), and 11 C.F.R. § 103.3(a). We also recommend the Commission dismiss allegations that Matt Strabone for Assessor/Recorder/County Clerk 2018 violated the Act in this matter.

#### IV. RECOMMENDATIONS

1. Dismiss allegations that Matt Strabone violated 52 U.S.C. § 30102(e)(1) by failing to file a Statement of Candidacy;
2. Dismiss allegations Matt Strabone Federal Exploratory Committee violated 52 U.S.C. §§ 30102(b), 30103(a), and 30104(a) by failing to file a Statement of Organization, failing to establish and maintain records for a separate segregated fund, and failing to file disclosure reports;
3. Dismiss allegations that Matt Strabone for Assessor/Recorder/County Clerk 2018 violated the Act in this matter.
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and

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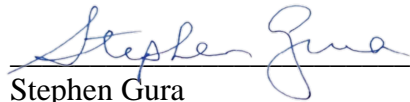
<sup>43</sup> 11 C.F.R. § 110.3(d); *see* Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) ("Transfers E&J") (explaining the transfer prohibition as intended to prevent "indirect" use of impermissible funds); *see also* MUR 7267 (Josh Hawley) (Commission determined that spending on advertisements by a state officeholder's state committee, while he was testing the waters for a federal candidacy, was not evidence he had become a federal candidate, because that spending was unrelated to his federal candidacy).

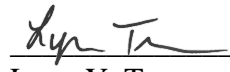
6. Close the file.


Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
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for Enforcement

10.2.19  
Date

  
Stephen Gura  
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