



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 6, 2021

**Via First Class Mail &
Electronic Mail to aw@rjp.com**

Andrew Harris Werbrock, Esq.
Remcho, Johansen & Purcell, LLP
1901 Harrison Street
Suite 1550
Oakland CA 94612

RE: MUR 7590
Matt Strabone
Matt Strabone Exploratory Committee
Matt Strabone for Assessor/Recorder/
County Clerk 2018

Dear Mr. Werbrock:

On April 5, 2019, the Federal Election Commission notified your clients, Matt Strabone, Matt Strabone Exploratory Committee, and Matt Strabone for Assessor/ Recorder/County Clerk 2018 of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 30, 2021, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Matt Strabone, Matt Strabone Exploratory Committee, and Matt Strabone for Assessor/Recorder/County Clerk 2018 violated 52 U.S.C. §§ 30102, 30103(a), and 30104(a) of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or cjacksonjones@fec.gov.

Sincerely,

Peter G. Blumberg

Peter G. Blumberg
Acting Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Matt Strabone MUR 7590
 Matt Strabone Federal Exploratory Committee
 Matt Strabone for Assessor/Recorder/
 County Clerk 2018

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 2018.¹ 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 account, and failed to file disclosures with the Commission.²

Because the available information does not support a finding that Strabone ever became a federal candidate, the Commission finds no reason to believe that Strabone failed to file a Statements of Candidacy, in violation of 52 U.S.C. § 30102(e)(1), and that Matt Strabone Federal Exploratory Committee failed to file a Statement of Organization, establish and maintain records for a separate account, and file disclosure reports, in violation of 52 U.S.C. §§ 30102(b), 30103(a), and 30104(a). The Commission finds no reason to believe 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

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

² 52 U.S.C. §§ 30102, 30103(a), 30104(a).

1 “County Committee”) was his principal campaign committee in connection with that election.
2 During that election, he ran against the incumbent Assessor/Recorder/County Clerk, Ernest J.
3 Dronenburg, Jr., the Complainant in this matter.

4 Before running for county office, Strabone established a committee to explore the
5 possibility of running for the U.S. House of Representatives.³ From December 2016 through
6 March 14, 2017, Strabone raised approximately \$22,000, which Respondents assert was all
7 within the federal source restrictions and contribution limits.⁴ Respondents contend that in
8 March 2017, Strabone decided that instead of running for Congress, he would run for San Diego
9 County Assessor/Recorder/County Clerk.⁵ Respondents assert Strabone then ceased federal
10 exploratory activities and, on March 31, 2017, established the County Committee.⁶ Using the
11 “first-in, first-out” accounting method to identify those contributions that were raised by the
12 Exploratory Committee that fell within the San Diego County contribution limits, Respondents
13 contend that the Exploratory Committee transferred those funds that were permissible under
14 California law from its account to the County Committee account.⁷ Respondents further claim
15 the remaining funds in the Exploratory Committee account were refunded to the original
16 contributors.⁸

³ Resp. at 1.

⁴ *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.

⁵ *Id.* at 2.

⁶ *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)).

⁷ *Id.*

⁸ *Id.*

1 In June 2018, Strabone lost the local election to Dronenberg. In December 2018,
2 Donenberg filed a complaint against the County Committee with the California Fair Political
3 Practices Commission (“FPPC”), alleging, among other things, that Strabone had evaded
4 disclosure by not reporting the activities of the Exploratory Committee. In Response, Strabone
5 asserted that his activities fell within the “testing-the-waters” exemption, and the California
6 complaint was dismissed.⁹

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

12 **III. LEGAL ANALYSIS**

13 An individual becomes a candidate under the Act when: (a) such individual receives
14 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her
15 consent to another person to receive contributions or make expenditures on behalf of such
16 individual and if such person has received such contributions or has made such expenditures in
17 excess of \$5,000.¹⁰ Once the \$5,000 threshold has been met, the candidate has 15 days to
18 designate a principal campaign committee by filing a Statement of Candidacy with the

⁹ Resp. at 2, Attach. A.

¹⁰ 52 U.S.C. § 30101(2).

Commission.¹¹ The principal campaign committee must file a Statement of Organization within ten days of its designation,¹² and must file disclosure reports with the Commission.¹³

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 feasibility of a campaign for federal office without becoming a candidate under the Act.¹⁴ These testing-the-water 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.¹⁵ Testing-the-waters activities include, but are not limited to, payments for polling, telephone calls, and travel, and only funds permissible under the Act may be used for such activities.¹⁶

An individual who is testing the waters need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for federal office.¹⁷ 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

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

¹² See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

¹³ 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).

¹⁴ 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).

¹⁵ See Advisory Op. 1981-32 (Askew) (“AO 1981-32”).

¹⁶ *Id.*

¹⁷ *Id.*; see also Advisory Op. 2015-09 (Senate Maj. PAC, *et al.*) (“AO 2015-09”).

1 must be reported as contributions and expenditures in the first report filed by the candidate's
2 principal campaign committee.¹⁸

3 The testing-the-waters exceptions are not available to individuals who have decided to
4 become a candidate. Commission regulations set forth a non-exhaustive list of activities that
5 indicate when an individual is no longer testing the waters and has decided to become a
6 candidate.¹⁹ Such indicia include: (1) using general public political advertising to publicize his
7 or her intention to campaign for federal office; (2) raising funds in excess of what could
8 reasonably be expected to be used for exploratory activities or undertaking activity designed to
9 amass campaign funds that would be spent after he or she becomes a candidate; (3) making or
10 authorizing written or oral statements that refer to him or her as a candidate for a particular
11 office; (4) conducting activities in close proximity to the election or over a protracted period of
12 time; and (5) taking action to qualify for the ballot under state law.

13 Once an individual who is testing the waters achieves candidate status, he or she must
14 designate a principal campaign committee within 15 days, which must file a Statement of
15 Organization within ten days of being designated by the candidate.²⁰ The committee must
16 establish a separate account, maintain a record of all contributions received and expenditures
17 made while testing the waters, and disclose all receipts and disbursements in the committee's

¹⁸ 11 C.F.R. § 101.3.

¹⁹ See AO 2015-09 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").

²⁰ See 52 U.S.C. §§ 30102(e)(1), 30103(a), 30104(a).

first financial report filed with the Commission.²¹ All funds raised and spent for testing-the-waters activities are subject to the Act's limitations and prohibitions.²²

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.²³ "[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."²⁴

The Complaint alleges that Strabone became a federal candidate on December 22, 2016, when his Exploratory Committee raised more than \$5,000.²⁵ 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 22.²⁶ In total, the Complaint alleges that Respondents received 48 contributions totaling approximately \$20,000 from December 9, 2016 to March 31, 2017.²⁷

²¹ 52 U.S.C. §§ 30102(b), 30104(a); 11 C.F.R. § 101.3.

²² 11 C.F.R. §§ 100.72(a); 100.131(a).

²³ Factual & Legal Analysis at 6-7, MUR 6449 (Jon Bruning); First Gen. Counsel Rpt. at 10, MUR 6533 (Perry Haney for Congress).

²⁴ 50 Fed. Reg. at 9,993.

²⁵ Compl. at 2-3, Attach. (FPPC Form 460). The contributions were for amounts that ranged from \$100 - \$1350.

²⁶ *Id.*

²⁷ *Id.*

1 Respondents assert Strabone’s activities fell squarely within the Act’s “testing-the-
2 waters” exemption.²⁸ They contend that in late 2016, Strabone began considering a potential
3 candidacy for Congress and raised funds, within the federal limits and source restrictions, solely
4 for the purpose of testing the waters.²⁹ Respondents state that Strabone ultimately decided not to
5 become a candidate in March 2017 and was therefore under no obligation to register, report, or
6 designate a bank account.³⁰ They further assert that the Complaint fails to allege any facts upon
7 which a finding that the testing-the-waters exemption does not apply.³¹

8 A review of the available information does not indicate that Strabone decided to become
9 a federal candidate before dissolving his Exploratory Committee. For example, there is no
10 indication that Strabone used general public political advertising to publicize his intention to run
11 for federal office or made written or oral statements referring to himself as a candidate for
12 Congress.³² There are also no indications that Strabone conducted activities in close proximity
13 to an election or over a protracted period of time, or took any action to register or qualify for the
14 ballot as a Congressional candidate in California.³³ The Complaint does not cite any activities
15 by Strabone outside of his fundraising to support its allegation that he became a candidate by
16 December 2016. Additionally, though Strabone raised almost \$22,000 from December 2016
17 through March 2017 for his exploratory committee, that amount is not in excess of what would

²⁸ Resp. at 3.

²⁹ *Id.*

³⁰ *Id.*; 11 C.F.R. §§ 100.71(a), 100.131(a).

³¹ Resp. at 3.

³² 11 C.F.R. §§ 100.71, 100.131.

³³ *Id.*

be reasonably needed to test the waters for a congressional campaign over that time period.³⁴

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.³⁵ Accordingly, the Commission finds no reason to believe 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 account or file disclosure reports with the Commission, despite receiving contributions totaling almost \$22,000 for the period December 9, 2016 – March 31, 2017.³⁶ 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 account, 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 received its final contribution on March 14, 2017, and dissolved before the County Committee was even formed on March 31, 2017.³⁷ Because the funds were transferred from the Exploratory Committee to the County Committee, the Act’s prohibition on soft money transfers, which is

³⁴ 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).

³⁵ Resp. at 3-4.

³⁶ Compl. at 4-5.

³⁷ 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)).

1 designed to ensure federal campaigns do not accept impermissible funds, is not implicated in this
2 matter.

3 Accordingly, the Commission finds no reason to believe that Matt Strabone Federal
4 Exploratory Committee failed to file a Statement of Organization, failed to establish a separate
5 account, and failed to file disclosure reports, in violation of 52 U.S.C. §§ 30102(b), 30103(a),
6 30104(a), and 11 C.F.R. § 103.3(a). The Commission also finds no reason to believe that Matt
7 Strabone for Assessor/Recorder/County Clerk 2018 violated the Act in this matter.