

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7689**

DATE COMPLAINT FILED: 1/30/20

DATE OF NOTIFICATION: 2/04/20

LAST RESPONSE RECEIVED: 3/26/20

DATE ACTIVATED: 4/03/20

EXPIRATION OF SOL: 8/30/24

ELECTION CYCLE: 2020

**COMPLAINANT:**

David Losey

**RESPONDENTS:**

Amanda Adkins  
 Amanda Adkins for Congress and  
 Robert Phillips III in his official capacity  
 as treasurer

**RELEVANT STATUTES AND  
REGULATIONS:**

52 U.S.C. § 30101(2)

52 U.S.C. § 30102(e)(1)

11 C.F.R. § 100.72

11 C.F.R. § 100.131

11 C.F.R. § 101.1(a)

11 C.F.R. § 101.3

11 C.F.R. § 103.3(a)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that Amanda Adkins, a candidate for Congress in the Third Congressional District of Kansas, failed to timely file a Statement of Candidacy, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> The Complaint further alleges that her authorized committee, Amanda Akins for Congress and Robert Phillips III in his

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<sup>1</sup> Compl. at 1 (Jan. 30, 2020).

1 official capacity as treasurer (“Adkins Committee”), received contribution checks that it failed to  
2 deposit within ten days as required under the Act.<sup>2</sup>

3 As set forth below, we recommend that the Commission dismiss the allegation that  
4 Adkins failed to timely file a Statement of Candidacy in violation of 52 U.S.C. § 30102(e)(1) and  
5 11 C.F.R. § 101.1(a), and that the Adkins Committee violated 11 C.F.R. § 103.3(a) by failing to  
6 timely deposit contributions.

## 7 **II. FACTUAL BACKGROUND**

8 The Complaint alleges that Adkins “solicited money a full 4 months before she was  
9 allowed to do so under the law.”<sup>3</sup> On August 30, 2019, Adkins filed her Statement of Candidacy  
10 and the Adkins Committee filed its Statement of Organization, and on October 15, 2019, the  
11 Adkins Committee filed its first disclosure report, the 2019 October Quarterly Report.<sup>4</sup> Adkins  
12 raised over \$115,000 prior to August 15, 2019, the day the Complaint alleges she was officially  
13 permitted to begin soliciting funds as a candidate.<sup>5</sup> The Complaint alleges that Adkins used the  
14 testing the waters period to actively present herself as a candidate and solicit campaign  
15 contributions.<sup>6</sup> The Complaint alleges Adkins’s expenditures to consultants for campaign  
16 strategy and fundraising activities demonstrate that she had already decided to become a  
17 candidate.<sup>7</sup>

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

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

<sup>4</sup> Amanda Adkins, Statement of Candidacy (Aug. 30, 2019); Amanda Adkins for Congress, Statement of Organization (Aug. 30, 2019).

<sup>5</sup> Compl. at 1.

<sup>6</sup> *Id.*

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

1           The Respondents argue that the expenditures do not demonstrate that Adkins had decided  
2 to become a candidate and that some of those expenditures were for “hiring fundraisers to pay  
3 for the costs of polling, traveling in district, and reaching out to potential voters to gauge  
4 interest.”<sup>8</sup> Respondents state that other expenditures were for hiring political strategists to help  
5 interpret poll results and advise on strategy for different voter groups and geographic areas of the  
6 district.<sup>9</sup>

7           A review of publicly available information reveals that the Kansas City Star reported in  
8 May 2019 that Amanda Adkins was exploring a possible congressional run and traveled to  
9 Washington, D.C., to meet with NRCC staff as they attempted to recruit her to run for office.<sup>10</sup>  
10 Adkins is quoted, “What I can confirm is I’m definitely in the testing the waters phase right now.  
11 I am meeting with business and community leaders.”<sup>11</sup>

12           The Kansas City Star published a second article in which it quoted a prospective Adkins  
13 vendor on July 30, 2019, who stated that Adkins was a candidate for Congress.<sup>12</sup> The reporter  
14 obtained emails sent to prospective Adkins donors by Kathryn Jones, a senior fundraising  
15 associate at High Cotton, a Washington, D.C.-based political fundraising firm.<sup>13</sup> In one email,

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<sup>8</sup> Adkins Committee Resp. at 1 (Feb. 28, 2020). Adkins responded separately, joining the Committee’s response. Adkins Resp. at 1 (Mar. 26, 2020).

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

<sup>10</sup> Bryan Lowry and Lindsay Wise, *Ex-Brownback, Sebelius Aides Among Women Weighing 2020 Congressional Runs In Kansas*, KANSAS CITY STAR (May 16, 2019), <https://www.kansascity.com/news/politics-government/article230422129.html>.

<sup>11</sup> *Id.* The Adkins Committee disclosed its first direct contributions received the week before her trip to Washington, D.C. Amanda Adkins for Congress, Amended 2019 October Quarterly Rpt. at 5 (Jan. 20, 2020).

<sup>12</sup> Bryan Lowry, *Emails Suggest Kansas GOP Candidate Skirted Campaign Finance Rules, Watchdogs Say*, KANSAS CITY STAR (Sept. 12, 2019), <https://www.kansascity.com/article234971692.html>.

<sup>13</sup> *Id.*

1 Jones wrote that Adkins, “hasn’t announced but will be running in KS-03.”<sup>14</sup> In a second email,  
2 sent the same day, Jones wrote, “We are very excited to announce that High Cotton will be  
3 working with Amanda Adkins, candidate in KS-03...”<sup>15</sup> After press inquiries, Jones reportedly  
4 claimed that she was not authorized to call Adkins a candidate and that her firm had not yet been  
5 hired nor had a contract been signed.<sup>16</sup>

### 6 **III. LEGAL ANALYSIS**

7 An individual becomes a federal candidate if he or she receives contributions or makes  
8 expenditures in excess of \$5,000, or consents to another doing so on his or her behalf.<sup>17</sup> Within  
9 fifteen days of becoming a candidate, the individual must register with the Commission by filing  
10 a Statement of Candidacy and designate a principal campaign committee.<sup>18</sup>

11 The Commission’s regulations create a limited exception to the definitions of  
12 contribution and expenditure — and therefore to the \$5,000 candidacy threshold — to allow  
13 individuals to conduct certain activities to evaluate a potential candidacy (*i.e.*, to test the  
14 waters).<sup>19</sup> An individual who is testing the waters need not register with the Commission unless  
15 and until the individual decides to run for federal office.<sup>20</sup> The regulations define testing the  
16 waters activities as those “conducted to determine whether an individual should become a

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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

<sup>17</sup> 52 U.S.C. § 30101(2) (definition of candidate); 11 C.F.R. § 100.3(a) (same).

<sup>18</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>19</sup> 11 C.F.R. § 100.72(a), 100.131(a).

<sup>20</sup> Advisory Op. 1981-32 (Askew) at 3 (“AO 1981-32”) (“If and when the individual becomes a candidate the regulation has a retroactive effect in that the financing of all activity coming within the exemption must be reported and otherwise treated as contributions and expenditures for purposes of the Act and regulations.”).

1 candidate,” and include, but are not limited to, conducting a poll, telephone calls, and travel.<sup>21</sup>  
2 Only funds received and payments made “solely for this purpose” are permissible under this  
3 exception; they are not contributions and expenditures under the Act but are nonetheless still  
4 subject to the limitations and prohibitions of the Act.<sup>22</sup>

5 The Commission has opined that an individual who has crossed the \$5,000 threshold  
6 becomes a candidate “when he or she makes a private determination that he or she will run for  
7 federal office.”<sup>23</sup> The Commission’s regulation enumerates circumstances that indicate when an  
8 individual has decided to become a candidate. They include: (1) advertising to publicize an  
9 intent to campaign for federal office; (2) fundraising in excess of what could reasonably expected  
10 to be used for testing the waters activity; (3) making statements that refer to the individual as a  
11 candidate; (4) conducting activities in close proximity to the election or over a protracted period  
12 of time<sup>24</sup>; or (5) taking action to qualify for the ballot.<sup>25</sup> Where those examples do not apply, the  
13 Commission has distinguished between activities “directed to an evaluation of the feasibility of  
14 one’s candidacy,” and those “signifying that a private decision to become a candidate has been  
15 made” or conducted “as a means of seeking some affirmation or reinforcement of a private

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

<sup>22</sup> *Id.* When an individual becomes a candidate, funds received or payments made during the course of testing the waters are to be reported as such on the first disclosure report filed by the candidate’s authorized committee. *Id.* § 101.3.

<sup>23</sup> AO 2015-09 at 5 (Senate Majority PAC and House Majority PAC); *accord* AO 1981-32 at 4 (Askew); AO 1982-03 at 3 (Cranston).

<sup>24</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>25</sup> 11 C.F.R. § 100.72(b), 100.131(b).

1 decision...to be a candidate.”<sup>26</sup> “[T]he determination of whether an individual has crossed the  
2 line from ‘testing the waters’ to campaigning must be made on a case-by-case basis.”<sup>27</sup>

3 **A. The Commission Should Dismiss the Allegation that Adkins Violated**  
4 **52 U.S.C. § 30102(e) and 11 C.F.R. § 101.1(a) By Failing to Timely File Her**  
5 **Statement of Candidacy**

6 After consideration of the circumstances outlined in the Commission’s testing the waters  
7 regulation and the facts of this case, the Commission should dismiss the allegation that Adkins  
8 untimely filed her Statement of Candidacy.

9 1. Raising and Spending Funds

10 One indication that an individual has become a candidate is if he or she “raises funds in  
11 excess of what could reasonably be expected to be used for exploratory activities or undertakes  
12 activities designed to amass campaign funds that would be spent after he or she becomes a  
13 candidate.”<sup>28</sup> The Complaint alleges that Adkins raised \$115,000 during the testing the waters  
14 period.<sup>29</sup> In previous matters involving similar amounts of money raised prior to filing for  
15 candidacy, the Commission has declined to find that the individual had necessarily become a  
16 candidate.<sup>30</sup> The Complaint further alleges that the Adkins Committee’s expenditures prior to  
17 August 15, 2019, for fundraising and campaign consultants, triggered candidacy.<sup>31</sup> The

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<sup>26</sup> AO 1981-32 at 4.

<sup>27</sup> Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985).

<sup>28</sup> 11 C.F.R. § 100.72(b)(2), 100.131(b)(2).

<sup>29</sup> Compl. at 1.

<sup>30</sup> *See, e.g.*, MUR 6224 (Fiorina) (no reason to believe where a U.S. Senate candidate’s campaign committee raised in excess of \$3.5 million in contributions during the “testing the waters” phase of a campaign); Certification, MUR 5703 (Rainville) (June 22, 2006) (\$100,000); Certification, MUR 5661 (Butler), (Oct. 27, 2006) (\$100,000).

<sup>31</sup> Compl. at 1.

1 expenditures for this period listed on the Adkins Committee's first disclosure report, the 2019  
2 October Quarterly Report,<sup>32</sup> appear to be consistent with permissible testing the waters  
3 activities.<sup>33</sup>

## 4 2. Candidate Statements

5 Statements by or authorized by an individual that "refer to [the individual] as a candidate  
6 for a particular office" indicate that he or she has decided to become a candidate.<sup>34</sup> Here, the  
7 only statement attributable to Adkins herself references her status as "definitely in the testing the  
8 waters phase." As for statements made by Kathryn Jones referencing Adkins's status as a  
9 candidate, Jones later reportedly claimed that she was not authorized to call Adkins a candidate  
10 and that her firm had not yet been hired nor had a contract been signed.

11 Even if the July 30th Jones emails triggered candidacy, they are close enough in time to  
12 Adkins's Statement of Candidacy on August 30th that no disclosure reports by the Adkins  
13 Committee would have been missed. The Commission has dismissed allegations where the late  
14 filing of a Statement of Candidacy did not result in the failure to file a quarterly report.<sup>35</sup>

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<sup>32</sup> Amanda Adkins for Congress, Amended 2019 October Quarterly Rpt. at 83 (Jan. 20, 2020). The initial expenditures in March and April 2019 were recorded as in-kind contributions by Adkins personally and disclosed as expenditures by the Committee.

<sup>33</sup> AO 1981-32 at 4; Amanda Adkins for Congress, Amended 2019 October Quarterly Rpt. at 86-88 (Jan. 20, 2020) (reporting pre-August 15, 2019 expenditures for travel, a post office box rental, a meet and greet lunch, postage, fundraising consulting, donor management software, and contractor pay).

<sup>34</sup> 11 C.F.R. § 100.72(b)(3), 100.131(b)(3).

<sup>35</sup> See Factual and Legal Analysis at 4-5, MUR 6785 (Kwasman for Congress, *et al.*) (dismissing as a matter of prosecutorial discretion because the Statement of Candidacy was filed only a few days late and did not cause the committee to miss filing a scheduled disclosure report); see also Factual and Legal Analysis at 6, MUR 6533 (Perry Haney) (dismissing as a matter of prosecutorial discretion because regardless of the dates of statements that may have triggered candidacy, the committee still timely filed its initial disclosure report).

1                   3.    Duration

2                   Testing the waters activities conducted “over a protracted period of time” may indicate  
3 that an individual has decided to become a candidate.<sup>36</sup> The Commission regulations do not  
4 specify a time limit for testing the waters activities, but consider it one factor in determining  
5 whether the individual becomes a candidate.<sup>37</sup> The Commission has opined that testing the  
6 waters activities often begin “well in advance of an election.”<sup>38</sup> In a prior matter, the  
7 Commission determined that a six-month testing the waters period did not alone suggest  
8 candidate status.<sup>39</sup>

9                   Here, the Complaint alleges fundraising activity began in May, implying that Adkins’s  
10 activities were conducted over a “protracted period of time.”<sup>40</sup> The Committee’s first  
11 expenditures were made in March and she declared candidacy at the end of August.<sup>41</sup> These  
12 facts alone are insufficient to demonstrate that Adkins became a candidate prior to her filing for  
13 candidacy.

14                   4.    Other Activities

15                   Regarding the remaining examples of activities that indicate an individual has decided to  
16 become a candidate, as listed in 11 C.F.R. § 100.72 and 100.131, there is no information that  
17 Adkins engaged in any such activities. For instance, there is no allegation that Adkins took

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<sup>36</sup> 11 C.F.R. § 100.72(b)(4), 100.131(b)(4).

<sup>37</sup> AO 2015-09 at 6 (Senate Majority PAC and House Majority PAC).

<sup>38</sup> Factual and Legal Analysis at 6, MUR 5722 (Friends of Lauzen).

<sup>39</sup> Factual and Legal Analysis at 12, MUR 6776 (Niger Innis for Congress, et al).

<sup>40</sup> Compl. at 1.

<sup>41</sup> Amanda Adkins for Congress, Amended 2019 October Quarterly Rpt. at 86 (Jan. 20, 2020).



1 action to qualify for the ballot under State law. Moreover, we did not locate any examples of  
2 advertising by Adkins to publicize her intention to run.

3 5. Conclusion

4 Accordingly, we recommend that, consistent with Commission precedent in similar  
5 matters, the Commission dismiss the allegation that Adkins untimely filed her Statement of  
6 Candidacy in violation of 52 U.S.C. § 30102(e) and 11 C.F.R. § 101.1(a).

7 **B. The Commission Should Dismiss the Allegation that the Adkins Committee**  
8 **Failed to Deposit Contributions Within 10 Days**

9 The Complaint alleges that the Adkins Committee received contribution checks that it  
10 failed to deposit within ten days as required under the Act.<sup>42</sup> Commission regulations require all  
11 contributions to be deposited within 10 days of the treasurer's receipt.<sup>43</sup> The Respondents assert  
12 that they deposited all checks within 10 days,<sup>44</sup> and we are not aware of information to the  
13 contrary. Accordingly, we recommend that the Commission dismiss this allegation that the  
14 Akins Committee failed to deposit all contribution checks within 10 days of receipt in violation  
15 of 11 C.F.R. § 103.3(a).

16 **IV. RECOMMENDATIONS**

- 17 1. Dismiss the allegation that Amanda Adkins untimely filed her Statement of Candidacy in  
18 violation of 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a);  
19  
20 2. Dismiss the allegation that Amanda Akins for Congress and Robert Phillips III in his  
21 official capacity as treasurer violated 11 C.F.R. § 103.3(a) by failing to deposit  
22 contribution checks within 10 days of receipt;  
23  
24 3. Approve the attached Factual and Legal Analysis;  
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<sup>42</sup> Compl. at 1.

<sup>43</sup> 11 C.F.R. § 103.3(a).

<sup>44</sup> Adkins Committee Resp. at 1.

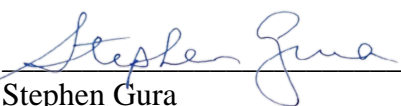
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- 3        5. Approve the appropriate letters.

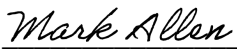
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