



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 20, 2021

BY EMAIL ONLY
rp3@henryalan.com

Robert Phillips III, Treasurer
Amanda Adkins for Congress
P.O. Box 24085
Overland Park, KS 66283

RE: MURs 7689 and 7794
Amanda Adkins for Congress and Robert
Phillips III in his official capacity as
treasurer

Dear Mr. Phillips:

On February 4, 2020 and September 18, 2020, the Federal Election Commission notified Amanda Adkins for Congress and you, in your official capacity as treasurer (the "Committee"), of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 14, 2021, the Commission dismissed the allegations that the Committee violated 11 C.F.R. § 103.3(a) by failing to deposit contribution checks within 10 days of receipt. 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 finding, is enclosed for your information.

If you have any questions, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Amanda Adkins, MURs 7689 & 7794
4 Amanda Adkins for Congress and
5 Robert Phillips III in his official capacity
6 as treasurer
7

8 **I. INTRODUCTION**

9 The Complaints allege that Amanda Adkins, a candidate for Congress in the Third
10 Congressional District of Kansas, failed to timely file a Statement of Candidacy, in violation of
11 the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint in MUR
12 7689 further alleges that her authorized committee, Amanda Akins for Congress and Robert
13 Phillips III in his official capacity as treasurer (“Adkins Committee”), received contribution
14 checks that it failed to deposit within ten days as required under the Act.²

15 As set forth below, the Commission dismisses the allegation that Adkins failed to timely
16 file a Statement of Candidacy in violation of 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a),
17 and that the Adkins Committee violated 11 C.F.R. § 103.3(a) by failing to timely deposit
18 contributions.

19 **II. FACTUAL BACKGROUND**

20 On August 30, 2019, Adkins filed her Statement of Candidacy and the Adkins Committee
21 filed its Statement of Organization, and on October 15, 2019, the Adkins Committee filed its first
22 disclosure report, the 2019 October Quarterly Report.³ Adkins raised over \$115,000 prior to

¹ MUR 7689 Compl. at 1 (Jan. 30, 2020); MUR 7794 Compl. at 1 (Sept. 11, 2020).

² MUR 7689 Compl. at 1.

³ Amanda Adkins, Statement of Candidacy (Aug. 30, 2019); Amanda Adkins for Congress, Statement of Organization (Aug. 30, 2019).

1 August 15, 2019, the day the Complaint in MUR 7689 alleges she was officially permitted to
2 begin soliciting funds as a candidate.⁴ By the time she filed her Statement of Candidacy at the
3 end of August 2019, Adkins had raised \$139,403.82 and spent \$11,153.82, which was only eight
4 percent of the total amount raised.⁵ Based on those numbers, the Complaint in MUR 7794
5 alleges that the amount Adkins raised during testing-the-waters phase was in excess of what
6 could reasonably be expected to be used for exploratory activities.⁶ The Complaint in MUR
7 7689 alleges that Adkins’s expenditures to consultants for campaign strategy and fundraising
8 activities demonstrate that she had already decided to become a candidate.⁷

9 The Complaints further allege that Adkins and her agent used the testing the waters
10 period to actively present Adkins as a candidate and solicit campaign contributions.⁸ The
11 Complaint in MUR 7794 cites to a news article published on September 12, 2019, by the *Kansas*
12 *City Star* to assert that Adkins was a candidate by no later than July 30.⁹ According to that
13 article, on July 30, 2019, Kathryn Jones, a senior fundraising associate at High Cotton, a
14 Washington, D.C.-based political fundraising firm, sent a series of emails to donors that appear
15 to refer to Adkins as a candidate.¹⁰ In one email, Jones wrote that Adkins “hasn’t announced but

⁴ See MUR 7689 Compl. at 1.

⁵ See MUR 7794 Compl. at 3; 2019 October Quarterly Rpt. at 5-12, 14-16, 19-20, 24, 26-27, 29-33, 37-38, 40-44, 46-50, 52-57, 59-61, 63-68, 106-07 (reflecting contributions totaling \$139,403.82 from March 29 through August 29, 2019); 2019 October Quarterly Rpt. at 109-10, 113-114 (reflecting disbursements totaling \$11,153.82 from March 29 through August 28, 2019).

⁶ MUR 7794 Compl. at 4.

⁷ MUR 7689 Compl. at 1.

⁸ MUR 7689 Compl. at 1; MUR 7794 Compl. at 2

⁹ 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> (cited in MUR 7794 Compl. at 1).

¹⁰ *Id.*

1 will be running in KS-03.”¹¹ In a second email, Jones wrote, “We are very excited to announce
2 that High Cotton will be working with Amanda Adkins, candidate in KS-03”¹² In the
3 article, Adkins’s campaign spokeswoman denied that Adkins had been a candidate at the time
4 the emails were sent, and Jones indicated that she should not have referred to Adkins as a
5 candidate in July and had not been authorized by Adkins to call her a candidate at that time.¹³
6 According to its FEC filings, the Committee appears to have ultimately retained Jones’s firm
7 with the first reported payment to High Cotton or its parent company, Axiom Strategies, on
8 September 13, 2019.¹⁴

9 Complainant alleges that after Jones referred to Adkins as a candidate at the end of
10 July 2019, the Committee proceeded to raise an additional \$33,800 from August 14 through
11 August 29, 2019.¹⁵ As described above, given that Adkins only spent eight percent of what she
12 raised at the time she declared her candidacy, the Complaint alleges that Adkins raised far more
13 than was necessary for testing the waters and therefore failed to timely file her Statement of
14 Candidacy.¹⁶

15 The Respondents argue that the amount raised by the Committee does not demonstrate
16 that Adkins had decided to become a candidate because there is no limit on the amount an
17 exploratory committee can raise.¹⁷ They further state that the expenditures do not demonstrate

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 2019 October Quarterly Rpt. at 91; *see also* MUR 7794 Compl. at 2.

¹⁵ MUR 7794 Compl. at 2.

¹⁶ *Id.*

¹⁷ MUR 7794 Amanda Adkins for Congress Resp. at 1 (Sept. 28, 2020) (“MUR 7794 Resp.”). Adkins responded separately, joining the Committee’s Response. MUR 7794 Adkins Resp. at 1 (Sept. 28, 2020).

1 that Adkins had decided to become a candidate and that some of those expenditures were for
2 “hiring fundraisers to pay for the costs of polling, traveling in district, and reaching out to
3 potential voters to gauge interest.”¹⁸ Respondents state that other expenditures were for hiring
4 political strategists to help interpret poll results and advise on strategy for different voter groups
5 and geographic areas of the district.¹⁹ Finally, they state that the fundraiser’s email was sent in
6 error and, as reflected in public reporting at the time, was acknowledged as a mistake.²⁰

7 **III. LEGAL ANALYSIS**

8 An individual becomes a federal candidate if he or she receives contributions or makes
9 expenditures in excess of \$5,000, or consents to another doing so on his or her behalf.²¹ Within
10 fifteen days of becoming a candidate, the individual must register with the Commission by filing
11 a Statement of Candidacy and designate a principal campaign committee.²²

12 The Commission’s regulations create a limited exception to the definitions of
13 contribution and expenditure — and therefore to the \$5,000 candidacy threshold — to allow
14 individuals to conduct certain activities to evaluate a potential candidacy (*i.e.*, to test the
15 waters).²³ An individual who is testing the waters need not register with the Commission unless

¹⁸ MUR 7689 Adkins Committee Resp. at 1 (Feb. 28, 2020) (“MUR 7689 Response”). Adkins responded separately, joining the Committee’s response. MUR 7689 Adkins Resp. at 1 (Mar. 26, 2020).

¹⁹ MUR 7689 Resp. at 1.

²⁰ MUR 7794 Resp. at 1; *see also* Lowry, *supra* note 10 (reporting that Jones later claimed that she was not authorized to call Adkins a candidate and that her firm had not yet been hired nor had a contract been signed).

²¹ 52 U.S.C. § 30101(2) (definition of candidate); 11 C.F.R. § 100.3(a) (same).

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

²³ 11 C.F.R. § 100.72(a), 100.131(a).

1 and until the individual decides to run for federal office.²⁴ The regulations define testing the
2 waters activities as those “conducted to determine whether an individual should become a
3 candidate,” and include, but are not limited to, conducting a poll, telephone calls, and travel.²⁵
4 Only funds received and payments made “solely for this purpose” are permissible under this
5 exception; they are not contributions and expenditures under the Act but are nonetheless still
6 subject to the limitations and prohibitions of the Act.²⁶

7 The Commission has opined that an individual who has crossed the \$5,000 threshold
8 becomes a candidate “when he or she makes a private determination that he or she will run for
9 federal office.”²⁷ The Commission’s regulation enumerates circumstances that indicate when an
10 individual has decided to become a candidate. They include: (1) advertising to publicize an
11 intent to campaign for federal office; (2) fundraising in excess of what could reasonably expected
12 to be used for testing the waters activity; (3) making statements that refer to the individual as a
13 candidate; (4) conducting activities in close proximity to the election or over a protracted period
14 of time²⁸; or (5) taking action to qualify for the ballot.²⁹ Where those examples do not apply, the
15 Commission has distinguished between activities “directed to an evaluation of the feasibility of

²⁴ 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.”).

²⁵ 11 C.F.R. §§ 100.72(a), 100.131(a).

²⁶ *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.

²⁷ 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).

²⁸ 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.

²⁹ 11 C.F.R. § 100.72(b), 100.131(b).

1 one’s candidacy,” and those “signifying that a private decision to become a candidate has been
2 made” or conducted “as a means of seeking some affirmation or reinforcement of a private
3 decision...to be a candidate.”³⁰ “[T]he determination of whether an individual has crossed the
4 line from ‘testing the waters’ to campaigning must be made on a case-by-case basis.”³¹

5 **A. The Commission Dismisses the Allegation that Adkins Violated 52 U.S.C.**
6 **§ 30102(e) and 11 C.F.R. § 101.1(a) By Failing to Timely File Her Statement**
7 **of Candidacy**

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

11 1. Raising and Spending Funds

12 One indication that an individual has become a candidate is if he or she “raises funds in
13 excess of what could reasonably be expected to be used for exploratory activities or undertakes
14 activities designed to amass campaign funds that would be spent after he or she becomes a
15 candidate.”³² .

16 The vast majority of the funds Adkins raised while she was allegedly testing the waters
17 appears to have been spent after she registered as a candidate. However, Adkins’s testing-the-
18 water period was for a limited period of time—approximately five months—and all of the
19 activity from that time appears to have been disclosed, with the Complaint making no allegation
20 that she used non-federal funds. And the amount Adkins raised during the testing-the-waters

³⁰ AO 1981-32 at 4.

³¹ Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985).

³² 11 C.F.R. §§ 100.72(b)(2), 100.131(b)(2).

1 period, approximately \$140,000, is similar to amounts raised prior to filing for candidacy in
2 other matters where the Commission declined to find that the individual had necessarily become
3 a candidate.³³

4 The Complaint in MUR 7689 further alleges that the Adkins Committee's expenditures
5 prior to August 15, 2019, for fundraising and campaign consultants, triggered candidacy.³⁴ The
6 expenditures for this period listed on the Adkins Committee's first disclosure report, the 2019
7 October Quarterly Report,³⁵ appear to be consistent with permissible testing the waters
8 activities.³⁶

9 2. Candidate Statements

10 Statements by or authorized by an individual that "refer to [the individual] as a candidate
11 for a particular office" indicate that he or she has decided to become a candidate.³⁷ Here, the
12 only statement in news reports attributable to Adkins herself references her status as "definitely
13 in the testing the waters phase."³⁸ As for statements made by Kathryn Jones referencing

³³ See, e.g., MUR 5703 (Rainville) (June 22, 2006) (\$100,000); Certification, MUR 5661 (Butler), (Oct. 27, 2006) (\$100,000).

³⁴ MUR 7689 Compl. at 1.

³⁵ 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.

³⁶ 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).

³⁷ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).

³⁸ See Bryan Lowry & 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> (quoting Adkins as saying, "What I can confirm is I'm definitely in the testing the waters phase right now. I am meeting with business and community leaders").

1 Adkins's status as a candidate, Jones later reportedly claimed that she was not authorized to call
2 Adkins a candidate and that her firm had not yet been hired nor had a contract been signed.

3 Even if the July 30th Jones emails triggered candidacy, they are close enough in time to
4 Adkins's Statement of Candidacy on August 30th that no disclosure reports by the Adkins
5 Committee would have been missed. The Commission has dismissed allegations where the late
6 filing of a Statement of Candidacy did not result in the failure to file a quarterly report.³⁹

7 3. Duration

8 Testing the waters activities conducted "over a protracted period of time" may indicate
9 that an individual has decided to become a candidate.⁴⁰ The Commission regulations do not
10 specify a time limit for testing the waters activities, but consider it one factor in determining
11 whether the individual becomes a candidate.⁴¹ The Commission has opined that testing the
12 waters activities often begin "well in advance of an election."⁴² In a prior matter, the
13 Commission determined that a six-month testing the waters period did not alone suggest
14 candidate status.⁴³

15 Here, the Complaints allege fundraising activity began in May, implying that Adkins's
16 activities were conducted over a protracted period of time.⁴⁴ The Committee's first expenditures

³⁹ 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).

⁴⁰ 11 C.F.R. § 100.72(b)(4), 100.131(b)(4).

⁴¹ AO 2015-09 at 6 (Senate Majority PAC and House Majority PAC).

⁴² Factual and Legal Analysis at 6, MUR 5722 (Friends of Lauzen).

⁴³ Factual and Legal Analysis at 12, MUR 6776 (Niger Innis for Congress, *et al.*).

⁴⁴ MUR 7689 Compl. at 1; MUR 7794 Compl. at 1.

1 were made in March and she declared candidacy at the end of August.⁴⁵ These facts alone are
2 insufficient to demonstrate that Adkins became a candidate prior to her filing for candidacy.

3 4. Other Activities

4 Regarding the remaining examples of activities that indicate an individual has decided to
5 become a candidate, as listed in 11 C.F.R. §§ 100.72 and 100.131, there is no information that
6 Adkins engaged in any such activities. For instance, there is no allegation that Adkins took
7 action to qualify for the ballot under State law. Moreover, the Commission did not locate any
8 examples of advertising by Adkins to publicize her intention to run.

9 5. Conclusion

10 Accordingly, consistent with Commission precedent in similar matters, the Commission
11 dismisses the allegation that Adkins untimely filed her Statement of Candidacy in violation of
12 52 U.S.C. § 30102(e) and 11 C.F.R. § 101.1(a).

⁴⁵ Amanda Adkins for Congress, Amended 2019 October Quarterly Rpt. at 86 (Jan. 20, 2020).

1 **B. The Commission Dismisses the Allegation that the Adkins Committee Failed**
2 **to Deposit Contributions Within 10 Days**

3 The Complaint in MUR 7689 alleges that the Adkins Committee received contribution
4 checks that it failed to deposit within ten days as required under the Act.⁴⁶ Commission
5 regulations require all contributions to be deposited within 10 days of the treasurer's receipt.⁴⁷
6 The Respondents assert that they deposited all checks within 10 days,⁴⁸ and the Commission is
7 not aware of information to the contrary. Accordingly, the Commission dismisses this allegation
8 that the Akins Committee failed to deposit all contribution checks within 10 days of receipt in
9 violation of 11 C.F.R. § 103.3(a).

⁴⁶ MUR 7689 Compl. at 1.

⁴⁷ 11 C.F.R. § 103.3(a).

⁴⁸ MUR 7689 Resp. at 1.