

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 MUR 7921
6 DATE FILED: August 4, 2021
7 DATE OF NOTIFICATION: August 11, 2021
8 LAST RESPONSE RECEIVED: October 25, 2021
9 DATE ACTIVATED: January 22, 2022
10 SOL EXPIRATION: July 13, 2026 /July 28, 2026
11 ELECTION CYCLE: 2022

12
13 **COMPLAINANT:** Scott Hogan

14
15 **RESPONDENTS:** Earl L. "Buddy" Carter
16 Buddy Carter for Congress and Paul Kilgore
17 in his official capacity as treasurer
18

19 **RELEVANT STATUTES**
20 **AND REGULATIONS:**

21 52 U.S.C. § 30101(2)
22 52 U.S.C. § 30102(e)(1)
23 52 U.S.C. § 30103(a)
24 11 C.F.R. § 100.72
25 11 C.F.R. § 100.131

26 **REPORTS CHECKED:** Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:** None
29

30 **I. INTRODUCTION**
31

32 The Complaint alleges that Earl L. "Buddy" Carter, a member of the United States House
33 of Representatives from Georgia, was a candidate for the United States Senate from Georgia
34 during 2021 but failed to file a Statement of Candidacy with the Commission in violation of the
35 Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint also alleges
36 that Buddy Carter for Congress and Paul A. Kilgore in his official capacity as treasurer ("Carter
37 Committee") failed to amend its Statement of Organization after Carter became a Senate
38 candidate. Because the available information indicates that Carter did not become a candidate
39 for the U.S. Senate, we recommend that the Commission find no reason to believe that Carter

1 failed to file a Statement of Candidacy or that the Carter Committee failed to file an amended
2 Statement of Organization, and to close the file.

3 **II. FACTUAL BACKGROUND**

4
5 Earl L. “Buddy” Carter is a member of Congress representing the First Congressional
6 District of Georgia. Buddy Carter for Congress is the principal campaign committee of Carter.¹
7 The Complaint alleges that Carter was a candidate for United States Senate from Georgia in 2021,
8 citing the *Atlanta-Journal Constitution* reporting that Carter spent a significant sum of money to
9 advance his candidacy by hiring a campaign team, preparing a launch statement and running a
10 statewide television advertisement, and Carter’s own reported statement that he “spent a lot of
11 money” on these activities.² The Complaint alleges that on July 13, 2021, the Carter Committee
12 released the television advertisement, “Step Up to the Plate,” to run statewide during the weeks of
13 July 13 and July 20, 2021, that cost \$75,000, with \$50,000 of that amount used to run the
14 advertisement in the Atlanta media market, which is outside of Carter’s congressional district.³
15 The television advertisement portrays Carter hitting a baseball and stating:

¹ See Carter Committee’s Amended Statement of Organization (Dec. 20, 2021). Two weeks after Carter won the 2020 general election for U.S. Congress, he filed a Statement of Candidacy to run for re-election. Statement of Candidacy (Nov. 17, 2020), <https://docquery.fec.gov/pdf/396/202011179336995396/202011179336995396.pdf>.

² Compl. at 2 (Aug. 4, 2021) (citing Tia Mitchell, *The Jolt: Buddy Carter’s Waiting Game Has a Name, ‘Herschel Walker’*, ATLANTA JOURNAL & CONSTITUTION (July 8, 2021) (“Mitchell, *The Jolt*, ATLANTA J. & CONST.”)), <https://www.ajc.com/politics/politics-blog/the-jolt-the-jolt-buddy-carters-waiting-game-has-a-name-Herschel-Walker/OKHGUVNTHJF2TK4ZQALUJG57TA/>. The pages of the Complaint are not numbered, but we have numbered the pages for the purposes of this report.

³ *Id.* at 3, Ex. A and B (consisting of a press release about the advertisement and the cost and placement of the advertisement). The Carter Committee made a disbursement of \$75,000 to Strategic Media Placement for advertising on July 12, 2021, which is one day before the advertisement at issue was scheduled to run. See Carter Committee 2021 October Quarterly Report at 97 (Oct. 15, 2021). The boundaries of Representative Carter’s congressional district, the first congressional district of Georgia, in 2021 was in southeastern Georgia, from Savannah, Georgia to the Florida border. See Georgia Map of Congressional Districts, GOVTRACK, <https://www.govtrack.us/congress/members/GA#map>.

1 Baseball used to be as America as it gets but the radical Left had
2 other plans. I’m Buddy Carter, and I am not afraid to go toe-to-
3 toe against the leftist Democrats to save America. In Congress,
4 I fought alongside President Trump to defeat the big government
5 Leftists. We need leaders who will take on big tech, big business
6 and the big lies being forced down our throats. I’m Buddy Carter,
7 and I approve this message because together, we can un-cancel
8 America.⁴

9 The Complaint alleges that Carter became a candidate because he spent more than \$5,000
10 on a Senate campaign that does not fit within the testing-the-waters exemption because the
11 activities are relevant to conducting a campaign rather than determining the feasibility of his
12 candidacy.⁵ Specifically, the Complaint alleges that the purpose of the advertisement was to
13 heighten Carter’s political appeal, which falls outside the testing-the-waters exemption.⁶ The
14 Complaint alleges that Carter failed to file a Statement of Candidacy within fifteen days of
15 becoming a Senate candidate and that the Carter Committee failed to file an amended Statement
16 of Organization within ten days of Carter becoming a Senate candidate, as required by the Act.⁷
17 Finally, the Complaint notes that Carter has publicly claimed that he had not decided whether he
18 would run for U.S. Senate, and that if Herschel Walker, a prospective U.S. Senate candidate in
19 Georgia, decided to run for Senate, then Carter would instead plan to run for re-election in the
20 First Congressional District.⁸

⁴ Compl. at 4; *see also* Lawton Sack, *Rep. Buddy Carter Releases Statewide TV Ad Targeting MLB All-Star Game*, GEORGIAPOL.COM (July 13, 2021), <https://geopol.com/2021/07/13/rep.-buddy-carter-releases-statewide-tv-ad-targeting-mlb-all-star-game/> (contains the YouTube video of the ad (July 13, 2021)).

⁵ Compl. at 5.

⁶ *Id.* at 6.

⁷ *Id.* at 2.

⁸ *Id.* at 3-4.

1 Respondents acknowledge that in 2021, Carter explored whether to run for U.S. Senate,
2 referencing an April 2021 interview with WGAU in Athens, Georgia, in which Carter stated that
3 he was “considering it very seriously and doing [his] due diligence.”⁹ Respondents further state
4 that during the spring and summer of 2021, Carter engaged in traditional testing the waters
5 activities, such as traveling the state to talk to voters, speaking to consultants, mapping out a
6 potential campaign team and performing polling and survey research.¹⁰ Respondents cite the
7 *Atlanta Journal Constitution* report quoting Carter that “if Herschel [Walker] is running, I am
8 going to support him.”¹¹ After the Complaint in this matter was filed, Walker announced his
9 candidacy on August 24, 2021.¹² On August 25, 2021, Carter reportedly announced his support
10 for Walker for U.S. Senate and in an interview confirmed that he was running for reelection to
11 the U.S. House of Representatives.¹³ Respondents assert that “there has never been a factual
12 context indicating that Rep. Carter moved beyond the deliberative process of deciding to become
13 a candidate, as his potential candidacy for U.S. Senate was always contingent on Herschel
14 Walker not running for U.S. Senate.”¹⁴

⁹ Carter and Carter Committee Resp. (“Resp.”) at 3 (Oct. 25, 2021). See <https://www.wgauradio.com>.

¹⁰ Resp. at 3.

¹¹ *Id.* (citing Mitchell, *The Jolt*, ATLANTA J. & CONST).

¹² *Id.* (citing Greg Bluestein, *Herschel Walker is Running for U.S. Senate in Georgia*, ATLANTA JOURNAL & CONSTITUTION (Aug. 24, 2021), <https://www.ajc.com/politics/politics-blog/breaking-herschel-walker-is-running-for-us-senate-in-georgia/6GZ3BDZBHJHRFFJA76PT2K2XLA/>).

¹³ *Id.* (citing Isabel Litterst, *Rep. Buddy Carter Endorses Herschel Walker for U.S. Senate*, WGXA News (Aug. 25, 2021), <https://WGXA.tv/new/local/Rep-buddy-Carter-endorses-herschel-walker-for-ga-senate>).

¹⁴ Resp. at 10.

1 Regarding the Complaint referencing Carter hiring a campaign team, Respondents state
2 that these words are a news article author’s words and not a quote from Carter or his agents, and
3 in any event, putting together such a team is permitted under the testing-the-waters exemptions.¹⁵

4 In reference to the Carter Committee spending \$50,000 on a television advertisement that
5 aired beyond Carter’s congressional district, Respondents state that the television advertisement
6 had no reference to a campaign for U.S. Senate or to any election at all.¹⁶ Respondents state that
7 Carter “decided to cut an ad geared at educating Georgia voters about the left’s role in having the
8 All Star Game moved elsewhere.”¹⁷

9 **III. LEGAL ANALYSIS**

10
11 An individual becomes a candidate under the Act if he or she receives contributions or
12 makes expenditures in excess of \$5,000, or consents to another doing so on his or her behalf.¹⁸
13 Once the \$5,000 threshold has been met, the candidate has 15 days to designate a principal
14 campaign committee by filing a Statement of Candidacy with the Commission.¹⁹ The principal
15 campaign committee must file a Statement of Organization within ten days of its designation,²⁰
16 and it must file disclosure reports with the Commission.²¹ A change in information previously

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 4.

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

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

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

²¹ See 52 U.S.C. § 30104(a), (b); *see, e.g.*, Factual and Legal Analysis (“F&LA”) at 6, MUR 6735 (Joseph A. Sestak); F&LA at 5, MUR 6449 (Jon Bruning); F&LA at 2, MUR 5363 (Alfred C. Sharpton).

1 submitted in a Statement of Organization shall be reported in accordance with section 30102(g)
2 no later than 10 days after the date of the change.²²

3 The Commission has established “testing-the-waters” regulations excepting from the
4 definitions of “contributions” and “expenditures” funds received and payments made solely to
5 determine whether an individual should become a candidate, thereby permitting an individual to
6 test the feasibility of a campaign for federal office without becoming a candidate under the Act.²³
7 These testing-the-waters regulations seek to draw a distinction between activities directed to
8 evaluating the feasibility of one’s candidacy and conduct signifying that a decision to become a
9 candidate has been made.²⁴ Testing-the-waters activities include, but are not limited to, payments
10 for polling, telephone calls, and travel, and only funds subject to the Act’s source and amount
11 prohibitions may be used for such activities.²⁵

12 An individual who is testing the waters is not required to register or file disclosure reports
13 with the Commission unless and until the individual subsequently decides to run for federal
14 office.²⁶ However, an individual who tests the waters must keep financial records, and if he or
15 she becomes a candidate, all funds received, or payments made in connection with testing the
16 waters must be reported as contributions and expenditures in the first report filed by the
17 candidate’s principal campaign committee.²⁷

²² See 52 U.S.C. § 30103(c).

²³ See 11 C.F.R. §§ 100.72, 100.131; F&LA at 7, MUR 6775 (Hilary Clinton); F&LA at 8, MUR 6776 (Niger Innis); F&LA at 6, MUR 6735 (Joseph A. Sestak).

²⁴ See Advisory Opinion 1981-32 at 4 (Askew).

²⁵ *Id.* at 3; see also 11 C.F.R. §§ 100.72, 100.131.

²⁶ *Id.*; see also Advisory Opinion 2015-09 at 6, (Senate Maj. PAC, *et al.*) (“AO 2015-09”).

²⁷ 11 C.F.R. § 101.3.

1 The testing-the-waters exceptions are not available to an individual who has decided to
2 become a candidate.²⁸ In determining whether an individual has moved from testing the waters to
3 candidate status, the Commission considers whether the individual has engaged in activities or
4 made statements that would indicate the individual has decided to run for federal office.²⁹ The
5 determination of whether an individual has crossed the line from testing the waters to
6 campaigning must be made on a case-by-case basis.³⁰

7 Commission regulations set forth a non-exhaustive list of activities that indicate when an
8 individual is no longer testing the waters and has decided to become a candidate. Such indicia
9 include: (1) using general public political advertising to publicize his or her intention to
10 campaign for federal office; (2) raising funds in excess of what could reasonably be expected to
11 be used for exploratory activities or undertaking activity designed to amass campaign funds that
12 would be spent after he or she becomes a candidate; (3) making or authorizing written or oral
13 statements that refer to him or her as a candidate for a particular office; (4) conducting activities
14 in close proximity to the election or over a protracted period of time;³¹ and (5) taking action to
15 qualify for a ballot under state law.³² All funds raised or spent for testing-the-waters activities are
16 subject to the Act’s limitations and prohibitions.³³

²⁸ See AO 2015-09 at 5; *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9,993 (Mar. 13, 1985) (exemption “explicitly limited ‘solely’ to activities designed to evaluate a potential candidacy”).

²⁹ F&LA at 6, MUR 7590 (Strabone); F&LA at 6-7, MUR 6449 (Jon Bruning);

³⁰ 50 Fed. Reg. at 9,993.

³¹ 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 is a candidate. AO 2015-09 at 6.

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

³³ *Id.* §§ 100.72(a), 100.131(a).

1 The Complaint alleges that Carter’s actions such as assembling a campaign team,
2 preparing a launch statement and spending funds on a statewide television advertisement that
3 aired in areas of Georgia that were not a part of Carter’s congressional district indicate that he was
4 a candidate for the U.S. Senate.

5 The available information, however, does not indicate that Carter had decided to become a
6 candidate for the U.S. Senate. To the extent the alleged activities are not among the permissible
7 activities for testing-the-waters in the Commission’s regulation such as spending funds on a poll,
8 telephone and travel, the regulation states that it does not contain an exhaustive list of permissible
9 activities.³⁴ Carter’s public statements do not refer to himself as a candidate or otherwise indicate
10 he had become a candidate for the U.S. Senate.³⁵ The advertisement by Carter references
11 Democrats and President Trump and ran in areas outside of Carter’s congressional district, but the
12 advertisement does not reference Carter as a candidate for the Senate or for any other office or
13 otherwise indicate that he has made a decision to run for the Senate.³⁶

14 Moreover, Carter’s reportedly expressly conditioned his potential Senate candidacy on
15 Walker not running, a fact cited in the Complaint. This is similar to cases where the Commission
16 found that individuals had not triggered candidacy where their decision to become a candidate
17 was conditioned on whether an incumbent would run again.³⁷ Thus, the overall information does

³⁴ *Id.* § 100.131(a).

³⁵ *Id.* §§ 100.72(b)(3), 100.131(b)(3).

³⁶ *See id.* §§ 100.72(b)(1), 100.131(b)(1). Nor does the available information indicate that Carter had decided to become a candidate because he tested the waters over a protracted period of time. *See* 11 C.F.R. §§ 100.72(b)(4), 100.131(b)(4). The available information indicates that Carter had begun testing the waters by April 2021 and by late August 2021 had declared his intention to run for reelection to the U.S. House. In prior matters the Commission has determined that testing the waters for periods longer than Carter’s did not alone suggest candidate status. *See* F&LA at 12, MUR 6776 (Niger Innis for Congress) (six months of testing the waters).

³⁷ *See* F&LA at 8, MURs 7373, 7386, and 7388 (Dunbar for Congress) (citing MUR 5930 (Kirk Schuring) Statement of Reasons of Commissioners Petersen, Hunter, McGahn and Weintraub at 2 (where the individual

1 not indicate that Carter became a candidate for the U.S. Senate. Accordingly, we recommend that
 2 the Commission find no reason to believe that Earl L. “Buddy” Carter failed to file a Statement of
 3 Candidacy for the U.S. Senate in violation of 52 U.S.C. § 30102(e)(1). Because Carter does not
 4 appear to have been a Senate candidate, there was no need for the Carter Committee to file an
 5 amended Statement of Organization that it was a committee for Carter running for Senate.³⁸
 6 Accordingly, we recommend that the Commission find no reason to believe that the Carter
 7 Committee failed to file an amended Statement of Organization in violation of 52 U.S.C.
 8 § 30103(c) and close the file.

9 **IV. RECOMMENDATIONS**

- 10 1. Find no reason to believe that Earl L. “Buddy” Carter violated 52 U.S.C.
 11 § 30102(e)(1) by failing to file a Statement of Candidacy;
 12
- 13 2. Find no reason to believe that Buddy Carter for Congress and Paul Kilgore in his
 14 official capacity as treasurer violated 52 U.S.C. § 30103(c) by failing to file an
 15 amended Statement of Organization;
 16
- 17 3. Approve the attached Factual and Legal Analysis;
 18
- 19 4. Approve the appropriate letters; and

conditioned his candidacy upon the incumbent’s decision whether to run, “the individual cannot be said to have decided to run until the condition precedent occurs.”)).

³⁸ As noted, if an individual testing the waters becomes a candidate, all funds received, or payments made in connection with testing the waters must be reported as contributions and expenditures in the first report filed by the candidate’s principal campaign committee. *See* 11 C.F.R. § 101.3.

