



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Keith Gross for Florida, *et al.*)
) MUR 8144
)

**STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY AND
COMMISSIONERS ALLEN DICKERSON AND JAMES E. "TREY" TRAINOR, III**

In this matter, the Commission voted to approve the Office of General Counsel's recommendations to dismiss the allegation that Advancing Florida made and Keith Gross or Keith Gross for Florida violated 52 U.S.C. §§ 30116(a)(1)(A), 30116(f), 30118(a) or 30125(e) by knowingly accepting or receiving excessive or prohibited corporate contributions.¹ The Commission also voted to dismiss the allegation that Advancing Florida violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political committee. Finally, the Commission voted to dismiss the allegation that Keith Gross violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a) by failing to timely file his Statement of Candidacy. However, the Commission failed to approve a Factual and Legal Analysis.² Therefore, we attach our proposed Factual and Legal Analysis in this matter.

Sean J. Cooksey
Sean J. Cooksey
Chairman

September 9, 2024
Date

Allen Dickerson
Commissioner

September 9, 2024
Date

¹ Certification (Aug. 15, 2024), MUR 8144 (Keith Gross for Florida, *et al.*).

2 *Id.*



James E. "Trey" Trainor
Commissioner

September 9, 2024

Date

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Keith Gross for Florida and Jason D. Boles in his official capacity as treasurer
Keith Gross
Advancing Florida, Inc.

MUR 8144

I. INTRODUCTION

9 The Complaint alleges that 2024 Senate candidate Keith Gross and his principal
10 campaign committee, Keith Gross for Florida and Jason D. Boles in his official capacity as
11 treasurer (the “Committee”), violated the Federal Election Campaign Act of 1971, as amended
12 (the “Act”), by “us[ing] non-federal funds from an entity named Advancing Florida,” a 501(c)(4)
13 non-profit that Gross created approximately three months prior to declaring his candidacy, “for
14 campaign purposes.”¹ The Complaint further alleges that as a result of its campaign activities,
15 Advancing Florida has qualified as a political committee under the Act and failed to register and
16 file disclosure reports as such.² Finally, the Complaint alleges that Gross failed to timely file his
17 Statement of Candidacy.³

18 In support of the allegations, the Complaint points to Facebook ads paid for by
19 Advancing Florida that feature Gross (without referring to him as a candidate), promote his
20 policy positions, and invite viewers to provide contact information and indicate their support for
21 the “movement.”⁴ The Complaint also points to the content of Advancing Florida’s website,

¹ Compl. at 1 (June 21, 2023) (internal quotations omitted).

² *Id.* at 1-2; see Articles of Incorporation, Advancing Florida Inc. (Jan. 23, 2023), <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2023%5C0131%5C70550667.tif&documentNumber=N23000000974> (listing Gross as the incorporator).

3 Compl. at 13.

4 *Id.* at 3-6.

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1 which allegedly consisted of two op-eds by Gross discussing policy concerns and criticizing the
 2 positions and leadership of President Joe Biden, Secretary of Transportation Pete Buttigieg, and
 3 particularly Gross's future primary election opponent, Florida Senator Rick Scott.⁵ Finally, the
 4 Complaint notes that after becoming a candidate, the Committee used some of the same content
 5 on its website as appeared on Advancing Florida's website and that the Committee's Facebook
 6 page "initially stated Advancing Florida was responsible for the page."⁶

7 Gross, the Committee, and Advancing Florida filed a joint Response, together with a
 8 sworn affidavit from Gross, denying the allegations and stating that Advancing Florida
 9 functioned as Gross's "exploratory effort" and its activities were permissible testing-the-waters
 10 activities and not campaign activities that could either trigger Advancing Florida's status as a
 11 political committee or Gross's status as a candidate earlier than when he filed.⁷ Specifically,
 12 Respondents state that Gross formed Advancing Florida, and was its sole funder, in order to
 13 facilitate his "issue advocacy and eventual testing-the-waters activity,"⁸ and that after deciding to
 14 become a candidate, the Committee reported Gross's payment to Advancing Florida as an in-
 15 kind contribution from Gross to the Committee for testing-the-waters expenses.⁹ Further, the
 16 Response states that these funds were Gross's personal funds and therefore were federal funds as
 17 required by the Act.¹⁰

⁵ *Id.*, Exs. A-B (reflecting screenshots of these op-eds on the Advancing Florida website).

⁶ *Id.* at 8-9 (including a screenshot of Gross's Facebook page).

⁷ Resp. at 5-6 (Aug. 7, 2023).

⁸ *Id.* at 5.

⁹ *Id.* at 2-3; Keith Gross for Florida, July Quarterly Report at 8, 14, 62, 64 (July 15, 2023), <https://docquery.fec.gov/pdf/598/202307159583571598/202307159583571598.pdf>.

¹⁰ Resp. at 3.

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1 Based on the available information, it appears that Advancing Florida's activities during
2 the relevant time period at issue were testing-the-waters activities. These testing-the-waters
3 activities were funded by Gross's payments to Advancing Florida, which were reported as in-
4 kind contributions from Gross to the Committee after Gross registered as a candidate. Because
5 the source of funds was Gross himself — who was permitted, as the eventual candidate, to make
6 unlimited contributions — these activities do not appear to violate the Act's source prohibitions
7 or amount limitations. Therefore, the Commission dismisses the allegations that Advancing
8 Florida made and Keith Gross or Keith Gross for Florida knowingly accepted or received
9 excessive or prohibited corporate contributions in violation of 52 U.S.C. §§ 30116(a)(1)(A), (f),
10 30118(a), or 30125(e).

11 Further, because the major purpose of Advancing Florida appears to consist entirely of
12 issue advocacy and testing the waters, it is not a political committee required to register and
13 report under the Act and the Commission dismisses this allegation that Advancing Florida
14 violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political
15 committee. Finally, as the activity in question appears to have been for the purpose of testing the
16 waters, rather than for the purpose of influencing an election, there is no information indicating
17 that Gross became a candidate prior to his filing a Statement of Candidacy with the Commission,
18 and therefore the Commission dismisses this allegation that Gross violated 52 U.S.C.
19 § 30102(e)(1) and 11 C.F.R. § 101.1(a) by failing to timely file his Statement of Candidacy.

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1 **II. FACTUAL BACKGROUND**

2 Keith Gross is a 2024 candidate for U.S. Senate in Florida; he filed his Statement of
 3 Candidacy on April 11, 2023.¹¹ Keith Gross for Florida is his principal campaign committee.¹²
 4 Advancing Florida is a 501(c)(4) non-profit corporation that Gross created on January 23, 2023,
 5 approximately three months prior to declaring his candidacy.¹³

6 The Complaint alleges that Gross used non-federal funds from Advancing Florida for
 7 campaign purposes in violation of the Act, resulting in illegal in-kind contributions.¹⁴ In support
 8 of its allegations, the Complaint points to between \$13,903 and \$17,692 that Advancing Florida
 9 paid to run 60 ads on Facebook.¹⁵ These ads advocate Gross's positions on issues including
 10 social security, repealing regulations, and parental rights.¹⁶ While none of the ads reference
 11 Gross as a candidate or encourage his election, many feature his name or image and include

¹¹ Keith Gross, Statement of Candidacy (Apr. 11, 2023).

¹² Keith Gross for Florida, Amended Statement of Organization at 1 (Sept. 28, 2023).

¹³ Articles of Incorporation, Advancing Florida Inc. (Jan. 23, 2023), <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2023%5C0131%5C70550667.tif&documentNumber=N23000000974> (listing Gross as the incorporator); *see* Resp., Ex. A ¶ 4 (“Aff. of Gross”) (“On January 23, 2023, I organized AFL as an organization under Section 501(c)(4) of the Internal Revenue Code established to finance legislative ideas, to conduct issue advocacy and to gather information about Florida preferences (including Social Security reform, which is a significant topic in the State of Florida), while also allowing me to segregate certain of my personal funds towards the financing of these efforts.”).

¹⁴ Compl. at 1.

¹⁵ *Id.* at 2-6, 12. Of these 60 ads, 59 were allegedly run through Advancing Florida's Facebook page and one was allegedly run through the Committee's Facebook page. *Id.* at 2. The allegation that one of these ads was placed on the Committee's page, and any implication that this is further evidence that Advancing Florida was advocating Gross's election, is undermined by the fact that the page presently affiliated with the Committee appears to have been Gross's personal page at the time the ad was run. *See* About, Keith Gross, FACEBOOK AD LIBRARY, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&id=1478633989210444&view_all_page_id=107830128834941&search_type=page&media_type=all (last visited Apr. 23, 2024) (reflecting that the page was created on December 3, 2022, prior to Gross either becoming a candidate or creating Advancing Florida); Keith Gross, FACEBOOK, <https://www.facebook.com/keithgrossfl> (last visited Apr. 23, 2024) (reflecting that prior to his becoming a candidate, the page frequently posted personal and family photos in addition to political statements featuring a “Keith Gross” logo, which the Committee later used after he declared his candidacy by adding “—Senate—” under the candidate's name).

¹⁶ Compl. at 3-6.

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1 statements such as “he wants to hear from you,” “Are you with us?” and “click below to join the
 2 movement now!”¹⁷ The Complaint also states that the content of Advancing Florida’s website
 3 consists entirely of two op-eds by Gross.¹⁸ These op-eds discuss public policy concerns and
 4 criticize the positions and leadership of President Joe Biden, Secretary of Transportation Pete
 5 Buttigieg, and particularly Gross’s future primary election opponent, Florida Senator Rick
 6 Scott.¹⁹ Finally, the Complaint notes that after becoming a candidate, the Committee used some
 7 of the same content on its website that previously appeared on Advancing Florida’s website and
 8 that the Committee’s Facebook page initially stated “Advancing Florida is responsible for the
 9 page.”²⁰

10 The Response denies the allegations, stating that the activities of Advancing Florida were
 11 permissible testing-the-waters activities pursuant to 11 C.F.R. § 100.72(a) and were properly
 12 reported on the Committee’s first quarterly report, which was timely filed less than a month after
 13 the date of the Complaint.²¹ Specifically, Respondents state that Gross formed Advancing
 14 Florida in order to facilitate his “issue advocacy and eventual testing-the-waters activity.”²²
 15 According to the Response, these activities included disseminating the Facebook ads cited by the

¹⁷ *Id.* at 4-6 (reflecting screenshots of ads run by Advancing Florida on Facebook); *see* Advancing Florida, FACEBOOK AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=ALL&view_all_page_id=101823082813110&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&search_type=page&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=ALL&view_all_page_id=101823082813110&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&search_type=page&media_type=all) (last visited Apr. 29, 2024).

¹⁸ *Id.* at 7; *id.*, Exs. A-B (reflecting screenshots of these op-eds on the Advancing Florida website).

¹⁹ *Id.*, Exs. A-B. While these op-eds do not specifically urge voting against Senator Scott, they do question his leadership, trustworthiness, and state that “[w]e deserve more than someone who only pretends to work, someone who says many of the right things but accomplishes nothing.” *Id.*, Ex. B.

²⁰ *Id.* at 8-9 (including a screenshot of Gross’s Facebook page). As discussed above, it appears that prior to his candidacy the page was used for personal purposes. *Supra* note 15.

²¹ *Id.* at 1-3; *see* Keith Gross for Florida, July Quarterly Report (July 15, 2023), <https://docquery.fec.gov/pdf/598/202307159583571598/202307159583571598.pdf>.

²² *Id.* at 5.

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1 Complaint, which Respondents argue constituted “digital outreach (similar to old-fashioned
 2 telephone calls)” and “engag[ing] public opinion.”²³ On February 27, 2023, less than two
 3 months before declaring his candidacy, Gross made his first contribution to Advancing Florida in
 4 the amount of \$45,000 to pay for digital advertising and consulting.²⁴ The Committee’s
 5 disclosure reports also reflect an additional payment by Gross to Advancing Florida for testing-
 6 the-waters activities (“digital consulting; advertising”) in the amount of \$41,500 on April 12,
 7 2023.²⁵ Respondents state that after deciding to become a candidate on April 11, 2023, the
 8 Committee reported Gross’s payments to Advancing Florida as in-kind contributions to the
 9 Committee for testing-the-waters expenses.²⁶ The Response states that these funds were Gross’s
 10 personal funds pursuant to 11 C.F.R. § 100.33 and therefore were federal funds as required by
 11 the Act.²⁷

²³ *Id.*; see 11 C.F.R. § 100.72 (including in the list of permissible testing the waters activities to determine whether an individuals should become a candidate: conducting a poll and telephone calls).

²⁴ Resp. at 2; see Keith Gross for Florida, July Quarterly Report at 8, 62, 64 (July 15, 2023), <https://docquery.fec.gov/pdf/598/202307159583571598/202307159583571598.pdf>.

²⁵ Keith Gross for Florida, July Quarterly Report at 8, 14 (July 15, 2023), <https://docquery.fec.gov/pdf/598/202307159583571598/202307159583571598.pdf>.

²⁶ Resp. at 2-3; Keith Gross for Florida, July Quarterly Report at 8, 14, 62, 64 (July 15, 2023), <https://docquery.fec.gov/pdf/598/202307159583571598/202307159583571598.pdf>. The Committee’s report discloses both the \$45,000 and \$41,500 payments by Gross to Advancing Florida as in-kind contributions from Gross to the Committee and as disbursements from the Committee to Advancing Florida for “digital consulting; advertising.” *Id.*

²⁷ Resp. at 3; *id.*, Ex. A, Aff. of Gross ¶ 10 (“The money I contributed to AFL that was later classified as testing-the-waters activities came from my personal funds as defined by the Federal Election Campaign Act and did not include any funds from my spouse or any corporation.”).

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Factual and Legal Analysis

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1 III. LEGAL ANALYSIS

A. The Commission Dismisses the Allegation that Advancing Florida Made or that Gross or the Committee Knowingly Accepted Excessive or Prohibited Contributions

The Complaint contends that payments by Advancing Florida for Facebook ads, as well as contributions from Advancing Florida to Gross and the Committee,²⁸ The Complaint also frames this issue as a violation of the Act’s soft money provisions, alleging that Gross used Advancing Florida’s corporate funds for the purpose of supporting his campaign.²⁹

10 As explained below, there does not appear to be a violation of the Act's contribution
11 limits, corporate contribution prohibition, or soft money prohibition because Advancing Florida
12 did not make a contribution to Gross or the Committee. Rather, it was Gross that made an in-
13 kind contribution by paying Advancing Florida to engage in testing-the-waters activities on his
14 behalf. His payments were properly reported as in-kind contributions to the Committee, with
15 Advancing Florida listed as the payee, after Gross declared his candidacy. Moreover, because
16 Gross was the candidate, he was permitted to make unlimited in-kind contributions from his
17 personal funds.

18 The Act and Commission regulations prohibit any corporation from making contributions
19 to a candidate's principal campaign committee.³⁰ Further, no person shall make contributions to

28 Compl. at 10-11.

²⁹ *Id.*; see 52 U.S.C. § 30125(e) (prohibiting candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding federal office, from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act).

30 52 U.S.C. § 30118(a).

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1 any candidate, his or her authorized committee, or their agents with respect to any election for
 2 federal office which, in the aggregate, exceed \$3,300 during the 2024 election cycle.³¹ However,
 3 federal candidates may make unlimited expenditures from personal funds in support of their own
 4 campaigns.³²

5 The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of
 6 money or anything of value made by any person for the purpose of influencing any election for
 7 Federal office.”³³ The term “anything of value” includes all in-kind contributions,³⁴ including
 8 but not limited to coordinated expenditures³⁵ and coordinated communications.³⁶

9 The Act defines a “candidate” as “an individual who seeks nomination for election, or
 10 election, to Federal office.”³⁷ Under the Act, an individual is deemed to seek nomination for
 11 election, or election, to Federal office when such individual “has received contributions

³¹ *Id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

³² 11 C.F.R. § 110.10; *see id.* § 100.33 (defining personal funds); *Buckley v. Valeo*, 424 U.S. 1, 54 (1976) (“[T]he First Amendment simply cannot tolerate [the Act’s] restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy. We therefore hold that [the Act’s] restriction on a candidate’s personal expenditures is unconstitutional.”).

³³ 52 U.S.C. § 30101(8)(A).

³⁴ 11 C.F.R. §§ 100.52(d)(1), 109.20, 109.21.

³⁵ A coordinated expenditure is one “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee” or an agent thereof. 11 C.F.R. § 109.20.

³⁶ Under Commission regulations, a communication is coordinated if it: (1) is paid for by a third party (the “payment prong”); (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c) (the “content prong”); and (3) satisfies one of six conduct standards set forth at 11 C.F.R. § 109.21(d) (the “conduct prong”). 11 C.F.R. § 109.21(a)-(b). All three prongs must be satisfied for a communication to be coordinated under the regulations. *Id.*; *see also* Explanations and Justifications for Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (“Coordinated and Independent Expenditures E&J”).

³⁷ 52 U.S.C. § 30101(2).

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1 aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000.”³⁸

2 An individual who is not a “candidate” may decide to “test the waters” prior to declaring

3 candidacy.³⁹ Money raised and spent solely to “test the waters” does not count towards the

4 \$5,000 candidate threshold until the individual decides to run for federal office or conducts

5 activities that indicate they have decided to become a candidate.⁴⁰ To test the waters, the

6 individual may, among other things, conduct polls, make telephone calls, and travel to determine

7 the viability of their potential candidacy.⁴¹ While testing the waters, the individual need not file

8 reports with the Commission disclosing money received and spent for the purpose of exploring

9 their viability, although all funds received and spent for such activities remain subject to the

10 Act’s limits and prohibitions.⁴² If the individual subsequently becomes a candidate, those funds

11 must be reported in the first report filed by that candidate’s principal campaign committee.⁴³

12 In the present matter, the ads placed by Advancing Florida promoted Gross and his policy

13 positions, but they never reference him as a candidate.⁴⁴ Instead, they seek support for his

14 policies and to gather information to measure that support.⁴⁵ While Gross’s op-eds, included on

³⁸ *Id.* § 30101(2)(A); *see id.* § 30101(8)(A) (defining contribution); 11 C.F.R. § 100.52(a) (same); 52 U.S.C. § 30101(9)(A) (defining expenditure); 11 C.F.R. § 100.111(a) (same). Until an individual has decided to run for federal office, the money they raise and spend for themselves cannot be “for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A), (9); 11 C.F.R. §§ 100.52(a), 100.111(a). Accordingly, an individual must have made this determination in order to cross the contribution or expenditure threshold at 52 U.S.C. § 30101(2).

³⁹ 11 C.F.R. §§ 100.72, 100.131.

⁴⁰ 11 C.F.R. §§ 100.72, 100.131.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Compl. at 3-6; *see* Advancing Florida, FACEBOOK AD LIBRARY, [https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=ALL&view=all&page_id=101823082813110&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy&monthly_grouped&search_type=page&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=ALL&view=all&page_id=101823082813110&sort_data[direction]=desc&sort_data[mode]=relevancy&monthly_grouped&search_type=page&media_type=all) (last visited April 29, 2024).

⁴⁵ *Supra* note 17 and accompanying text.

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1 Advancing Florida's website, criticize several federal officeholders including his future electoral
 2 opponent, they do not promote Gross as a candidate or suggest that Gross had made a decision to
 3 become a candidate.⁴⁶ This activity is consistent with Gross's sworn statement that the purpose
 4 of Advancing Florida's activities was issue advocacy and testing the waters rather than
 5 campaigning.⁴⁷

6 Additionally, those testing-the-waters payments appear to have been made using funds
 7 that were subject to the Act's amount limits, source prohibitions, and reporting requirements.
 8 While the Complaint, which was filed prior to the Committee's first disclosure report, alleges
 9 there was an in-kind contribution from Advancing Florida to the Committee, it appears, instead,
 10 that an in-kind contribution was made by Gross. In his sworn affidavit, Gross attests that he paid
 11 Advancing Florida to provide these testing-the-waters services.⁴⁸ Likewise, Committee's
 12 disclosure reports reflect that Gross made in-kind contributions to the Committee via his
 13 payments to Advancing Florida.⁴⁹ There is no information contradicting the Committee's
 14 disclosure reports or Gross's affidavit stating that Gross used his personal funds to pay
 15 Advancing Florida for these expenses and that these payments were properly reported as in-kind
 16 contributions to the Committee.⁵⁰ Accordingly, because Gross paid Advancing Florida to
 17 perform these testing-the-waters activities using his personal funds there is no soft money

⁴⁶ *Supra* note 19 and accompanying text.

⁴⁷ *See* Resp. at 3; Aff. of Gross ¶¶ 4, 8.

⁴⁸ Resp. at 2-3.

⁴⁹ Keith Gross for Florida, July Quarterly Report at 8, 14, 62, 64 (July 15, 2023), <https://docquery.fec.gov/pdf/598/202307159583571598/202307159583571598.pdf>.

⁵⁰ *See* Resp. at 3; Aff. of Gross ¶ 8. Because the payments at issue were made by Gross and not by a third party, the coordination provisions of the Commission's regulations, which require that a third party make the expenditure, are not satisfied. *See* 11 C.F.R. § 109.21(a)(1).

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1 violation because Gross did not receive any funds not subject to the reporting requirements,
 2 amount limitations, and source prohibitions of the Act.⁵¹

3 Therefore, because it appears that these testing-the-waters were paid for by the candidate
 4 with his personal funds, which are not subject to the Act's contribution limits,⁵² the relevant in-
 5 kind contributions appear to have been made with federal funds consistent with the Act and not
 6 in violation of 52 U.S.C. §§ 30116(a)(1)(A), 30118(a), or 30125(e).

7 Accordingly, the Commission dismisses the allegation that Advancing Florida made and
 8 that Gross or the Committee knowingly accepted, excessive or prohibited in-kind contributions
 9 in violation of 52 U.S.C. §§ 30116(a)(1)(A), (f), 30118(a), or 30125(e).

10 **B. The Commission Dismisses the Allegation that Advancing Florida Violated
 11 the Act by Failing to Register and Report as a Political Committee**

12 The Act defines a political committee as "any committee, club, association, or other
 13 group of persons" that receives aggregate contributions or makes aggregate expenditures in
 14 excess of \$1,000 during a calendar year.⁵³ Notwithstanding the threshold for contributions and
 15 expenditures, an organization is considered a political committee only if its "major purpose is
 16 Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."⁵⁴ Political
 17 committees are required to register with the Commission, meet organizational and recordkeeping
 18 requirements, and file periodic disclosure reports.⁵⁵

⁵¹ See 52 U.S.C. § 30125(e).

⁵² 11 C.F.R. § 110.10; *see id.* § 100.33 (defining personal funds).

⁵³ 52 U.S.C. § 30101(4)(A).

⁵⁴ Political Comm. Status, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

⁵⁵ See 52 U.S.C. §§ 30102, 30103, 30104.

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1 As discussed above, none of Advancing Florida’s activities appear to advocate Gross’s
 2 election. Therefore, rather than having the major purpose of influencing an election, Advancing
 3 Florida’s major purpose appears to be, as Respondents assert, issue advocacy and testing the
 4 waters of a potential candidacy (not the nomination or election of a candidate).⁵⁶ Accordingly,
 5 the Commission dismisses the allegation that Advancing Florida violated 52 U.S.C. §§ 30102,
 6 30103 and 30104 by failing to register and report as a political committee.

7 **C. The Commission Dismisses the Allegation that Keith Gross Failed to Timely
 8 File His Statement of Candidacy**

9 The Act defines a “candidate” as “an individual who seeks nomination for election, or
 10 election, to Federal office.”⁵⁷ Under the Act, an individual is deemed to seek nomination for
 11 election, or election, to Federal office when such individual “has received contributions
 12 aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000.”⁵⁸
 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.⁵⁹

15 The Complaint’s allegation that Gross failed to timely file is based on the premise that
 16 Advancing Florida’s disbursements were for the purpose of advancing his candidacy and
 17 therefore would count toward the Act’s \$5,000 expenditure threshold. To the contrary, as
 18 discussed above, these disbursements were for the purposes of issue advocacy or testing the

⁵⁶ Resp. at 5.

⁵⁷ 52 U.S.C. § 30101(2).

⁵⁸ *Id.* § 30101(2)(A); *see id.* § 30101(8)(A) (defining contribution); 11 C.F.R. § 100.52(a) (same); 52 U.S.C. § 30101(9)(A) (defining expenditure); 11 C.F.R. § 100.111(a) (same).

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

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1 waters and therefore are not expenditures.⁶⁰ Thus, the statutory threshold does not appear to
2 have been met prior to when Gross ultimately registered as a candidate by filing his Statement of
3 Candidacy. Accordingly, the Commission dismisses the allegation that Gross failed to timely
4 file his Statement of Candidacy, in violation of 52 U.S.C. § 30102(e)(1) and 11 C.F.R.
5 § 101.1(a).

⁶⁰ Advisory Opinion 1981-32 at 3 (Askew) (“Activities which are conducted within the [testing the waters] exemption do not result in the occurrence of a contribution or expenditure, and therefore do not by themselves cause the person to become a candidate under the Act.”)