



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Casperson for Congress and Judi Skradski in)	
her official capacity as treasurer)	MUR 7114
Tom Casperson)	
Tom Casperson for State Senate)	

**STATEMENT OF REASONS OF
VICE CHAIR CAROLINE C. HUNTER AND
COMMISSIONERS LEE E. GOODMAN AND MATTHEW S. PETERSEN**

The Complaint alleges that Tom Casperson for State Senate (“State Committee”) transferred funds to Casperson for Congress (“Federal Committee”) by paying for travel related to Casperson’s congressional campaign, in violation of the Federal Election Campaign Act of 1971, as amended (“the Act”).¹ The Complaint also alleges that after Tom Casperson became a federal candidate, the State Committee raised and spent non-federal funds, in violation of the Act. The Commission voted unanimously to dismiss all allegations in this case under *Heckler v. Chaney* but was unable to agree on a Factual and Legal Analysis. Our reasons for voting to dismiss the Complaint are set forth below.

I. FACTUAL BACKGROUND

The State Committee was formed on August 10, 2009.² Casperson was elected as a state senator for Michigan’s 38th State Senate District in 2010 and won re-election to another four-year term in 2014.³ Michigan limits its state senators to two terms in office.⁴ Casperson

¹ Casperson and the Federal Committee filed a joint response. See Response to Complaint from Tom Casperson and Casperson for Congress (Sept. 16, 2016) (“Fed. Comm. Resp.”). The State Committee filed a separate response. See Response to Complaint from Tom Casperson for State Senate (Jan. 30, 2017) (“State Comm. Resp.”).

² See Statement of Organization, Tom Casperson for State Senate (Aug. 10, 2009), <https://cfrsearch.nictusa.com/documents/318465/details?type=scanned&page=1>

³ Casperson has served as a state senator since 2010. See State Senator Tom Casperson, *Meet Tom*, <http://www.senatortomcasperson.com/meet-senator-tomcasperson/> (last visited Mar. 30, 2017).

⁴ MICH. CONST. art. IV, § 54.

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announced his candidacy for Michigan's First Congressional District on November 9, 2015, and registered the Federal Committee on November 20, 2015.⁵ Casperson continued to serve as a state senator and apparently maintained the State Committee while he was a federal candidate.⁶ He lost the primary for the congressional seat on August 2, 2016.⁷

The Complaint alleges that after Casperson declared his federal candidacy, he used non-federal funds from the State Committee to "finance his federal campaign's announcement tour."⁸ The Complaint argues that Casperson "raised over \$10,000 from state PACs" while he was a federal candidate, including contributions that do not comply with the source and amount prohibitions of the Act, and he used those funds for his federal campaign travel.⁹ According to the Michigan Secretary of State's records, the State Committee raised \$16,500 between the date Casperson declared his federal candidacy and his congressional primary.¹⁰

Respondents deny the allegations. While they admit that the State Committee paid for the trips detailed in the Complaint, they assert that each trip was related to Casperson's official duties as a state senator. In support, Respondents provide the invoices for each stay, which show that all four trips occurred before Casperson became a federal candidate, and they explain how each trip was related to Casperson's official state senate duties.¹¹ In regard to the allegation that the State Committee raised \$10,000 from state PACs after Casperson became a federal candidate, the State Committee argues that it did not solicit those contributions, so it did not violate the Act.¹² It further argues that it could not have accepted any prohibited contributions because Michigan prohibits PACs from accepting corporate contributions.¹³

⁵ Compl. at 2 (July 28, 2016); Fed. Comm. Resp. at 1; see FEC Form 2, Tom Casperson (Nov. 20, 2015); FEC Form 1, Statement of Organization, Casperson for Congress (Mar. 16, 2011).

⁶ Resp. at 1.

⁷ *Jack Bergman victorious in 1st Congressional District Republican primary*, MICH. LIVE, http://www.mlive.com/news/index.ssf/2016/08/win_1st_congressional_district.html (Aug. 2, 2016).

⁸ Compl. at 4.

⁹ *Id.* at 2, 4 n.20.

¹⁰ Casperson for State Senate, *Campaign Finance Disclosures*, MICH. SEC'Y STATE, <https://cfrsearch.nictusa.com/documents/416411/details/filing/contributions?schedule=%2A&changes=0>. The \$10,000 cited in the Complaint refers to the State Committee's receipts from PACs in November and December 2015. The State Committee received additional contributions from PACs in 2016.

¹¹ Fed. Comm. Resp. at 5-9. Respondents explain that the dates used in the Complaint were the dates of the credit card statements, not the dates that Casperson actually incurred the travel expenses.

¹² State Comm. Resp. at 2.

¹³ *Id.*

II. LEGAL ANALYSIS

The Act's soft money provisions prohibit federal candidates, their agents, and entities established, financed, maintained, or controlled ("EFMC'd") by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with any federal or non-federal election unless the funds are in amounts and from sources permitted by the Act.¹⁴ In order to justify a reason to believe finding, four or more commissioners must conclude that a federal candidate or office holder either (i) established, (ii) financed, (iii) maintained, or (iv) controlled the State Committee. ■

A federal candidate who concurrently runs for state or local office, however, may solicit, receive, and spend funds outside of the Act's amount and source limitations if the solicitations, receipts, and disbursements are solely in connection with the candidate's own state or local race and those disbursements are allowable under state law.¹⁶ Regardless of whether the exemption applies, a non-federal committee established, financed, maintained, or controlled by a federal candidate is prohibited from transferring funds or assets to the candidate's federal committee.¹⁷ This prohibition on transferring funds includes payment for services to the federal committee.¹⁸

The State Committee was neither established nor financed by a federal candidate or officeholder. The plain language of the statute requires that the State Committee be established or financed by a federal candidate or officeholder at the time that individual is a candidate or federal officeholder.¹⁹ Casperson established the State Committee in 2009, years before he

¹⁴ 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62. The Commission has concluded that a federal candidate's state committee is an entity EFMC'd by the federal candidate. Advisory Op. 2007-26 (Schock) at 4; Advisory Op. 2006-38 (Casey State Committee) at 4.

¹⁶ 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.623; *see* Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

¹⁷ 11 C.F.R. § 110.3(d).

¹⁸ Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) (Explanation and Justification). *See e.g.*, MUR 6267 (Paton For Senate) (finding that Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (finding that Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); MUR 5426 (Dale Schultz for Congress) (finding that Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

¹⁹ 52 U.S.C. § 30125(e)(1) ("A candidate... or an entity directly or indirectly established, financed, maintained or controlled by... [a] candidate[] or individual[] holding Federal office, shall not (A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office..."); *see also* First. Gen. Counsel's Rpt. at 30, MURs 6470, 6482, and 6484 (Mitt Romney *et al.*) ("Romney was not a candidate when the State PACs

announced his candidacy for Michigan's First Congressional District in 2015. Additionally, no evidence was provided to show that Casperson substantially funded or provided any funds to the State Committee during his federal candidacy.²⁰

However, Casperson appears to have maintained or controlled the State Committee, which raised and spent funds while he was a federal candidate.²¹ The Act allows a simultaneous federal and state candidate to raise and spend non-federal funds "solely in connection with [their] election for State or local office."²² Casperson, however, was not a simultaneous federal and state candidate. Casperson, as a second-term state senator, was term-limited, and there is no information in the record to suggest that he was running for a different state office.²³ Term-limited officeholders are not considered candidates for that office under Michigan law.²⁴ Because Casperson was not a state candidate, the State Committee (presumably) did not pay for expenses in connection with an election to state office pursuant to the state candidate exemption.²⁵

Under the particular facts of this case, however, we voted to dismiss the allegations that the State Committee solicited and received funds outside the Act's amount limitations and source prohibitions.²⁶ The record of the State Committee's receipts and disbursements does not

were established as would have been required for the State PACs to become subject to section [30125(e)(1)] on that basis.").

²⁰ See MUR 6753 (People for Pearce, *et al.*), Concurring Statement of Reasons of Commissioner Lee E. Goodman (Sept. 6, 2017).

²¹ See Advisory Op. 2007-26 (Schock) at 4; *see also* Advisory Op. 2006-38 (Casey State Committee) at 4, Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-01 (McCaskill) at 3; Factual & Legal Analysis at 9, MUR 6601 (Oelrich).

²² 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63; *see* Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

²³ See *Meet Tom*, State Senator Tom Casperson, <http://www.senatortomcasperson.com/meet-senator-tomcasperson/> (last visited Apr. 2, 2016) (stating that Casperson was elected to the Michigan State Senate in 2010 and again in 2014).

²⁴ See Mich. Comp. Laws Ann. § 169.203(1) ("Candidate' means an individual who ... [h]olds an elective office, unless the officeholder is constitutionally or legally barred from seeking reelection"); *see also Candidate Manual*, MICH. BUREAU OF ELECTIONS, <http://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.TheStatementOfOrganizationFormingAndRegisteringACandidateCommittee#cantmlmtd> ("An officeholder who is term-limited is no longer a candidate for that office. ...").

²⁵ Because the Commission voted to dismiss this matter, the Commission did not need to address whether the exemption for simultaneous candidacies would apply to payment for official state officeholder duties, which is a permissible use of state campaign funds in Michigan.

²⁶ MUR 7114 (Casperson for Congress, *et al.*), Certification (June 26, 2017).

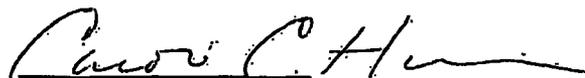
establish receipt of clearly prohibited or excessive contributions under the Act or persuade us that an investigation is warranted.²⁷ Moreover, given the somewhat modest amounts at issue, and the use of funds to offset official state officeholder duties, we voted to exercise our prosecutorial discretion and dismiss this allegation.

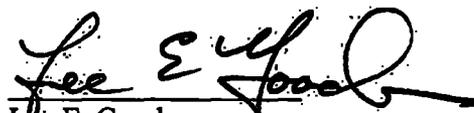
Regarding the State Committee's alleged use of soft money to pay for Casperson's federal campaign activities, the Act and Commission regulations prohibit the transfer of funds or assets from a candidate's non-federal campaign committee to his or her federal campaign committee.²⁸ Thus, if the State Committee made disbursements for campaign travel on behalf of the Federal Committee, those payments would constitute improper transfers to the Federal Committee.

It appears that the four specific overnight stays discussed in the Complaint were related to Casperson's state office duties, and under Michigan law, elected officials may use their candidate committee funds to pay for "incidental expenses," defined as expenditures that are "ordinary and necessary expense[s] paid or incurred in carrying out the business of an elective office."²⁹ While it appears that the State Committee also reported travel-related expenses beyond the four specific overnight stays listed in the Complaint, those additional travel-related expenses could relate to Casperson's official state officeholder duties, and the travel expenses the State Committee reported were relatively small. Under these circumstances, we voted to exercise our prosecutorial discretion and dismiss the allegations that Respondents violated the Act by transferring non-federal funds.³⁰

10/26/17
Date

Oct. 26, 2017
Date


Caroline C. Hunter
Vice-Chair


Lee E. Goodman
Commissioner

²⁷ Moreover, despite alleging that the State Committee received over \$10,000 from state PACs, the Complaint fails to identify any contribution in excess of the Act's amount limitations or from a prohibited source that was, in fact, received by a state PAC and in turn, forwarded to the State Committee during Casperson's candidacy.

²⁸ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 110.3(d).

²⁹ See User Guide – Candidate Committee, MICH. BUREAU OF ELECTIONS, <http://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.ExpendituresAndDisbursements#caninexp>

³⁰ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

Nov. 16, 2017
Date


Matthew S. Petersen
Commissioner

INFORMATION