



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	MUR 5930
Kirk Schuring;	)	
Schuring for Congress Committee and	)	
Thomas W. Schervish, in his official	)	
capacity as treasurer	)	

**STATEMENT OF REASONS OF VICE CHAIRMAN MATTHEW S. PETERSEN AND  
COMMISSIONERS CAROLINE C. HUNTER DONALD F. MCGAHN,  
AND ELLEN L. WEINTRAUB**

In this matter, the Office of General Counsel recommended that the Commission find reason to believe that Kirk Schuring, his committee, and treasurer, in his official capacity, violated 2 U.S.C. §§ 432(e)(1) and 433(c) of the Federal Election Campaign Act of 1971, as amended (the Act), by improperly using the regulatory “testing the waters” exemption to the statutory requirement to register with the Commission. 11 C.F.R. §§ 100.72 and 100.131. Because Mr. Schuring’s public statements failed to establish that he had definitively decided to become a federal candidate before he filed his Statement of Candidacy on October 12, 2007, we voted to dismiss the complaint in this case.

Mr. Schuring formed the Citizens for Schuring Congressional Exploratory Committee to determine whether he should seek election to the U.S. House of Representatives for Ohio’s 16<sup>th</sup> District. He explicitly stated that his decision would depend upon whether the incumbent, Congressman Ralph Regula, retired, a decision the incumbent had not yet made and a decision that was beyond the control of Mr. Schuring. If Congressman Regula decided to run again, Mr. Schuring would not. The incumbent announced his decision on October 11, 2007, Sebrina Eaton, *Regula Confirms: He’s Retiring*, OPENERS: THE PLAIN DEALER POLITICS BLOG, Oct. 11, 2007, and Mr. Schuring filed his Statement of Candidacy the next day.

Under the Act, an individual becomes a candidate for federal office when the individual has received or made contributions or expenditures in excess of \$5,000, 2 U.S.C. § 431(2), and then has fifteen days to file a Statement of Candidacy with the Commission, 2 U.S.C. § 432(e)(1). An individual who has not yet decided to run as a federal candidate may “test the waters” prior to declaring candidacy. 11 C.F.R. §§ 100.72 and 100.131. While testing the waters, the individual need not file reports with the Commission disclosing money received and spent, although all such activity is subject to the Act’s limits and prohibitions. *Id.* If the individual becomes a candidate, all such financial activity must be reported. *Id.*

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During the “testing the waters” period, the individual may conduct polls, make telephone calls, and travel to determine the viability of the potential candidacy. *Id.* Under Commission regulations, certain activities may indicate that an individual is no longer testing the waters, such as: running general political advertising; raising funds in excess of that which would be reasonably required for exploratory activities; making or authorizing written or oral statements referring to the individual as a candidate; conducting activities in close proximity to the election; and taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b) and 100.131(b).

In this case, Mr. Schuring was waiting for the incumbent to decide whether or not to run again before committing to the race. The argument that Mr. Schuring had gone beyond testing the waters and had actually decided to run prior to filing his Statement of Candidacy rests on two statements reported on June 8, 2007. First, Mr. Schuring said: “The congressman knows we’re doing this and gave his permission . . . *I am running in concert with his making a decision.*” Paul Kostyu, *Schuring Ponders Run For Congress*, THE INDEPENDENT, June 8, 2007 (emphasis added). Although the first portion of the statement is in the present tense, “I am running,” the rest of the sentence makes clear that Mr. Schuring’s decision was conditioned on the future decision of the incumbent congressman. If the incumbent decided not to retire, Mr. Schuring would not run. Even the title of the article suggests listeners did not believe Mr. Schuring had made a decision, but merely that he was “ponder[ing]” a run for Congress.

In the second statement, Mr. Schuring said, “it is important that a candidate and an organization be in place in the event that the congressman decides to retire.” R.J. Villella, *Schuring Will Test Waters For Congress*, CANTON REPOSITORY, June 8, 2007. This statement again makes clear that no decision had been made yet. The phrase “in the event that” expresses a condition precedent for the candidate’s decision (the incumbent’s decision to retire) that was out of the control of the candidate and had not yet occurred. The title of the article also suggests others believed Mr. Schuring had not gone beyond testing the waters.

These conditional statements of candidacy, based upon a future action by another person, failed to establish that Mr. Schuring had decided to run. Where an individual conditions his own candidacy upon an incumbent’s decision, the individual cannot be said to have decided to run until the condition precedent occurs.

The facts of this case are distinguishable from those in MUR 2615 (Harriett Wieder) (1991). There, the candidate had hired campaign consultants to run general public political advertising, printed letterhead referring to herself as the candidate, and used that letterhead to solicit contributions. Wieder had also sent a memorandum from “Harriett Wieder, Congressional Candidate.” Ms. Wieder was waiting for the incumbent to be confirmed to a new position before announcing her candidacy. Unlike Mr. Schuring, she was not delaying her decision as to whether she would be a candidate, merely the announcement of a decision she had already made. In contrast, here, Mr. Schuring had not and could not make his decision until the incumbent first made his.

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For these reasons, we voted to dismiss the complaint in this matter.

March 10, 2009

  
Matthew S. Petersen  
Vice Chairman

  
Caroline C. Hunter  
Commissioner

  
Donald F. McGahn II  
Commissioner

  
Ellen L. Weintraub  
Commissioner

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