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FEDERAL ELECTION COMMISSION
 WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
New Republican PAC, <i>et al.</i>)	MURs 7370/7496
)	

STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR III

INTRODUCTION

Before his election to the U.S. Senate in 2018, Rick Scott served as the Chair of New Republican PAC, an independent expenditure-only political committee (“New Republican”). After presiding over that entity’s raising of nearly \$1.2 million, then-Governor Scott resigned as New Republican’s Chair, conducted testing-the-waters activities, and formally announced his candidacy for the Senate. New Republican was an active participant during the campaign that followed, making nearly \$30 million in independent expenditures.

In response to the complaints in this Matter, which allege that Scott, his authorized committee, and New Republican committed various violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), our Office of General Counsel (“OGC”) recommended that the Commission find reason to believe that New Republican violated the Act by raising and spending so-called “soft money”—funds raised in excess of the Act’s contribution limits—and that now-Senator Scott failed to timely file a statement of candidacy and a statement of organization for his attendant authorized committee.¹

¹ First Gen. Counsel’s Report (“FGCR”) at 26, MURs 7370/7496 (New Republican PAC, *et al.*). OGC also recommended taking no action at this time regarding various other allegations, such as whether Scott himself violated the soft money rules, and whether communications disseminated by New Republican PAC constituted illegal coordination with Scott’s allegedly untimely-filed campaign. *Id.* at 26-27, ¶¶ 4-7.

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However, neither the wise use of Commission resources nor the available evidence supported such a sweeping approach. Accordingly, we found no reason to believe that New Republican violated the soft money rules and dismissed the allegations that Scott untimely filed his candidacy and organization paperwork under *Heckler v. Chaney*.² In accordance with governing law, we provide this Statement to explain our reasoning.³

I. Background

This Matter arose from complaints received by the Commission on April 23, 2018.⁴ A third complaint regarding these facts was filed by the same complainant on September 14, 2018.⁵

a. Relevant Facts

New Republican filed a Statement of Organization with the Commission on May 8, 2013 and noted its intent to operate as an independent expenditure-only political committee.⁶ During the 2013–2014 election cycle, New Republican raised

² 470 U.S. 821 (1985). Having determined there was no path forward on those elements, we were required to dismiss the remainder of the allegations against Scott, his authorized committee, and New Republican PAC. Certification for MURs 7370/7496 at 1-2, June 10, 2021. All of those allegations would have required, at a minimum, a threshold finding that Scott had failed to file a statement of candidacy at the appropriate time, or that New Republican had violated the soft money rules.

³ *Dem. Cong. Campaign Comm. v. Fed. Election Comm'n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (“DCCC”) (establishing requirement that “[t]he Commission or the individual Commissioners” must provide a statement of reasons why the agency “rejected or failed to follow the General Counsel’s recommendation”); *Common Cause v. Fed. Election Comm’n*, 842 F.2d 436, 453 (D.C. Cir. 1988) (“A statement of reasons...is necessary to allow meaningful judicial review of the Commission’s decision not to proceed”); *see also id.* at 451 (R.B. Ginsburg, J., dissenting in part and concurring in part) (“I concur in part III. of the court’s opinion holding the DCCC rule applicable, prospectively, to all Commission dismissal orders based on tie votes when the dismissal is contrary to the recommendation of the FEC General Counsel”); *Nat’l Republican Senatorial Comm. v. Fed. Election Comm’n*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) (“We further held that, to make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting. Since those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency’s reasons for acting as it did.”) (citation omitted); *Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm’n*, 952 F.3d 352, 355 (D.C. Cir. 2020).

⁴ Compl. and Supp. Compl., MUR 7370, Apr. 23, 2018.

⁵ Compl., MUR 7496, Sept. 14, 2018.

⁶ Colloquially known as a “super PAC.” New Republican PAC, Statement of Org., May 8, 2013.

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\$1.35 million in contributions and proceeded to spend nearly all of the funds it raised, with its principal project being “\$507,078.01 ... for independent expenditures in support of Monica Wehby, a candidate for the [United States] Senate in Oregon.”⁷

During the 2015–2016 cycle, New Republican raised just over \$610,000 and expended \$595,254.82.⁸ None of this money went toward independent expenditures.⁹ The entity received only two contributions during calendar year 2016, the last of which was received on April 29th. After this time, New Republican continued to regularly file reports with the Commission but remained electorally dormant.

On May 11, 2017, Florida Governor Rick Scott was named Chair of New Republican.¹⁰ New Republican issued a press release that quoted Scott as saying that “New Republican’s goal is to make the Republican Party Great Again” and to serve as an “idea generator” because “Donald Trump needs a Republican Party that supports him with ideas that will make American [*sic*] Great.”¹¹ While Chair, Scott hired his former chief of staff, Melissa Stone, to serve as New Republican’s executive director,¹² a position she would hold until February 2018, when the PAC hired Blaise Hazelwood to replace her.¹³

⁷ FGCR at 5.

⁸ *Id.*

⁹ The reports filed by New Republican with the Commission suggest that most of the funds went to various political consultants. *See* New Republican PAC, Financial Summary for 2015-2016, *available at* <https://www.fec.gov/data/committee/C00544544/?cycle=2016>.

¹⁰ Counsel for New Republican PAC refers to Scott as the entity’s “Honorary Chair.” *E.g.* Resp. of New Republican PAC (“NR Resp.”) at 2, MUR 7370, June 18, 2018 (“Governor Scott became the Honorary Chair of this existing political committee four years after it was established”). Counsel for Scott, however, simply describes his position as being the PAC’s “Chair.” *E.g.* Resp. of Rick Scott for Florida and Gov. Rick Scott (“Scott Resp.”) at 2, MUR 7370, June 14, 2018.

¹¹ Compl., Ex. A.

¹² FGCR at 6. Scott also hired other former staffers to join the PAC’s staff as well as political consultants he had worked with in the past. It is not unusual for an elected official to work, in a new capacity, with the same people that served with him during his time in public service. Indeed, it is common in many fields for management to bring at least some portion of their team along with them to a new position.

¹³ Hazelwood Aff. at 1, ¶¶ 1, 3 (“I currently serve as the Executive Director of New Republican PAC, and have served in that capacity since February 1, 2018...Since becoming the Executive Director of New Republican PAC on February 1, 2018, I have made all decisions regarding New Republican PAC’s operations and activities”).

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Both Senator Scott and New Republican agree that his chairmanship concluded in December 2017.¹⁴ After the 2017 winter holidays, and no later than the hiring of a new executive director in February 2018, all references to Scott's chairmanship were removed from New Republican's website.¹⁵

During Scott's half-year as Chair, New Republican raised "almost \$1.2 million," spending just under \$314,000 on expenses such as "rent, credit card processing fees, printing, phone service, political strategy consulting, fundraising consulting, and compliance consulting."¹⁶ The PAC made no independent expenditures.¹⁷ "Aside from attending a limited number of [New Republican] fundraising events as a special guest after his departure as Chair, the last of which was a March 3, 2018 event in Naples, Florida," counsel for Scott avers that "he has had no further involvement" with New Republican.¹⁸

New Republican's executive director, Blaise Hazelwood, filed an affidavit—a sworn statement under penalty of perjury—stating unequivocally that since she took over, she "made all decisions regarding New Republican PAC's operations and activities."¹⁹ Ms. Hazelwood swore that her power extended to all "contracting

¹⁴ NR Resp. at 4 ("Governor Scott transitioned out of this role in late 2017, and this exit was formalized when New Republican PAC personnel met on December 7-8, 2017"); Scott Resp. at 2 ("Rick Scott served as Chair of NR PAC from May 11, 2017 to early December 2017").

New Republican amended its Form 1 – Statement of Organization on May 10, 2017, moving New Republican's address to 224 E. 6th Avenue, Tallahassee, FL 32303. Statement of Org., NewRepublican.org, May 10, 2017. This address is affiliated with Senator Scott, and it would later house Scott's Senate campaign committee. However, on December 24, 2017, the PAC filed an amended Form 1, moving out of that address. Statement of Org., New Republican PAC, Dec. 24, 2017. New Republican PAC made its first rent payment for this new address on December 13, 2017. NR Resp. at 8, New Republican PAC, 2017 Am. Year-End Report, Feb. 23, 2018 (noting payment made that day to Tag Real Estate Holdings, LLC). This evidence suggests that Scott did, in fact, leave New Republican sometime in December 2017, as counsel for both the PAC and Scott have stated. *Cf.* FGCR at 20 (speculating that Scott might not have left his role as Chair until February 2018).

¹⁵ NR Resp. at 4 (stating date of removal as January 2, 2018); FGCR at 8 ("Based on ... archived pages" available via the Internet Archive, "we could only confirm that Scott's name had been removed by February 2, 2018"); Hazelwood Aff. at 1, ¶ 1 (attesting that Blaise Hazelwood became the new executive director as of February 1, 2018).

¹⁶ FGCR at 7; *id.* at n.23 (citing New Republican PAC, 2017 Am. Year-End Report, Feb. 23, 2018).

¹⁷ FGCR at 7 ("During Scott's tenure as Chair of New Republican, [the PAC] reported making no independent expenditures").

¹⁸ Scott Resp. at 2.

¹⁹ Hazelwood Aff. at 1, ¶ 3.

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decisions” with vendors and consultants, the commissioning of a poll regarding Scott’s viability as a Senate candidate, and “the decision to prepare a redesigned website if Governor Scott decided to become a candidate for the U.S. Senate.”²⁰ Hazelwood also stated, again under oath, that she had “not spoken with, or otherwise communicated with, Governor Rick Scott about any matters pertaining to the plans, activities, or strategies of New Republican PAC,” including the poll and anticipatory website redesign.²¹

On April 8, 2018, Scott filed his Form 2 – Statement of Candidacy with the Commission, and his principal campaign committee, Rick Scott for Florida filed its Form 1 – Statement of Organization on April 10, 2018.²² On April 9, 2018, the redesigned New Republican site went live.²³ Beginning in May 2018, New Republican recommenced making independent expenditures, ultimately airing advertisements in both the Florida U.S. Senate race and in the U.S. House race for California’s 45th district.²⁴

II. Legal Analysis

a. *Relevant Statutes and Regulations*

The principal allegations against the Respondents center on two statutory provisions and their attendant regulations.²⁵ The so-called “soft money” ban codified at 52 U.S.C. § 30125(e)(1)(A) bars any “candidate” from “solicit[ing], receiv[ing], direct[ing], transfer[ring], or spend[ing] funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.” “Put

²⁰ *Id.*, ¶¶ 1-8.

²¹ *Id.* at ¶ 5.

²² In his response, Scott claimed that he became a candidate on March 26, 2018. Scott Resp. at 3.

²³ FGCR at 10.

²⁴ Altogether, “[b]etween May and November 2018, New Republican spent \$30,508,261.17 on independent expenditures.” *Id.* at 11. Approximately 97 percent of this spending was on independent expenditures supporting Scott or opposing then-U.S. Senator Bill Nelson, Scott’s rival. The remaining 3 percent went toward an effort to defeat the incumbent Democratic House member representing California’s 45th Congressional district.

²⁵ Regarding the remaining allegations in the complaints, as discussed *supra* at n.2, OGC did not believe there was sufficient evidence to support a reason to believe finding at this juncture. We agree.

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simply, no federal candidate may raise [or expend] so-called ‘soft money,’—donations in excess of the base limits—for any organization.”²⁶

Accordingly, whether or not a soft money violation occurred depends on whether an individual is a “candidate” within the meaning of the Act. An individual does not become a candidate simply because there is media speculation that she might enter the race, or because staffers speculate as to her motives when she acts in a political fashion.²⁷ Rather, the Act states that an individual triggers federal candidate status, and attendant obligations under 52 U.S.C. §§ 30102(e)(1),²⁸ 30103(a),²⁹ and 30104,³⁰ when she “has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000” or if she “give[s]...her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$5,000 or has made such expenditures aggregating in excess of \$5,000.”³¹

As straightforward as that statutory language may seem, our regulations implementing the Act layer on a non-exhaustive list of five “activities [which] indicat[e] that an individual has decided to become a candidate” within the meaning of the Act.³² Some of the listed activities are fairly intuitive and objective. For example, if an “individual has taken action to qualify for the ballot under State law,”³³

²⁶ Statement of Reasons of Vice Chair Dickerson and Comm’r Cooksey at 2, MURs 7340/7609 (Great America Comm.), June 25, 2021.

²⁷ *Cf.* FGCR at 6-7 (relying on speculation in an *Orlando Sentinel* article that speculated about Scott’s motives and quoted a former Scott staffer—who was apparently not hired by New Republican PAC—as suggesting that Scott’s decision to chair the PAC was driven by Senatorial ambition).

²⁸ “Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate.”

²⁹ “Each authorized campaign committee shall file a statement of organization no later than 10 days after designation pursuant to section 30102(e)(1) of this title.”

³⁰ 52 U.S.C. § 30104 houses the Act’s reporting requirements for federal political committees and imposes an obligation that “[e]ach treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection.” 52 U.S.C. § 30104(a)(1).

³¹ 52 U.S.C. § 30101(2).

³² 11 C.F.R. § 100.72(b) (“Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to...”); *see also* 11 C.F.R. § 100.131 (same).

³³ 11 C.F.R. § 100.72(b)(5).

she is likely a candidate. Or, if an “individual makes or authorizes written or oral statements that refer to...her as a candidate for a particular office,” this is evidence that she is a candidate.

Other potential “activities,” however, are not as clear-cut as filing paperwork to appear on the ballot in the New Hampshire presidential primary or declaring “I am running for President” on MSNBC. For instance, one “indicat[ion] that an individual has decided to become a candidate” is that “[t]he individual conducts activities in close proximity to the election or over a protracted period of time;” phrasing that provides little in the way of policeable standards.³⁴

This Matter, however, implicates only one of the five discretionary and non-exclusive factors that might raise a potential question as to candidate status. Specifically, our regulations provide there are indicia of candidacy when an “individual ... undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.”³⁵

b. *OGC’s Analysis and Recommendations*

In its analysis, OGC made two principal recommendations: (1) that New Republican violated the soft money ban, and (2) that then-Governor Scott was dilatory in filing his candidacy and committee organization paperwork. We are not persuaded on either count.

We begin with OGC’s recommendation that the Commission find reason to believe that New Republican itself violated the soft money ban. The reasoning behind this recommendation risks circularity. Under the Act, New Republican can commit a soft money violation only if Scott is a candidate. But if Scott was not a candidate, then there can be no soft money violation.

Even assuming *arguendo* that Scott had become a candidate at some point prior to his formal announcement, the evidence marshaled by OGC does not rise to the level of the RTB standard. In its effort to contend that “Scott continued to exercise control over New Republican’s operations as its Chair until at least February 2018,” OGC refused to credit counsel’s responses that Scott had separated from the PAC in December 2017. Instead, OGC relied on Scott’s presence on the website,³⁶ which in and of itself says nothing more than that the website was not updated during the holidays or while Melissa Stone was in her last days as executive director, neither of

³⁴ 11 C.F.R. § 100.72(b)(4).

³⁵ 11 C.F.R. § 100.72(b)(2).

³⁶ FGCR at 20.

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which is especially surprising. Similarly, OGC’s reliance on a possibly erroneous statement reported in the press—that Scott did not step down until February—is misplaced.³⁷

OGC also speculated that Scott’s special guest appearance at a New Republican fundraiser held at his home in March 2018 “raise[d] legitimate questions as to whether he continued to play a role with respect to New Republican’s activities.”³⁸ We disagree. It is hardly unusual for a former leader of an organization to appear at events for that organization after she has stepped down; indeed, we have clarified that it is perfectly legal for candidates to appear as special guests at fundraisers, provided they do not solicit soft money at the event.³⁹ OGC did not present evidence, or even allege, that Scott used his appearance to solicit money in excess of the base limits—the *sine qua non* of a soft money violation. At the RTB stage, “[u]nwarranted legal conclusions from asserted facts, or mere speculation” is insufficient, and that is all we have here.⁴⁰

We turn next to the principal question in this case, one which, if answered in the affirmative, might have shaded the evidence discussed above: OGC’s contention that “the available information indicates that Scott became a federal candidate as early as 2017 because, as Chair of New Republican, he undertook activities designed to amass funds that were to be spent on supporting his Senate candidacy.”⁴¹ We did not find OGC’s underlying analysis persuasive.

For example, OGC posited that, because New Republican commissioned a poll in March 2018—long after Scott ceased serving as Chair—that “test[ed] Scott’s competitiveness in a match-up against incumbent Senator Nelson,” it had “spent ... funds to further his candidacy.”⁴² Because “[t]here is no available information to suggest that New Republican conducted polls regarding any other Republicans being discussed as potential candidates for the Senate,” OGC contends that this poll could

³⁷ OGC does not grapple at all with the fact that in December 2017, New Republican vacated its office space and moved to a new physical location while Senator Scott’s campaign eventually occupied the old address. *See supra* at n.14.

³⁸ FGCR at 21.

³⁹ Advisory Opinion 2011-12 (Majority PAC); *see also* 11 C.F.R. § 300.64 (governing federal candidate appearances as special guests at non-federal fundraising events).

⁴⁰ Statement of Reasons of Comm’rs Mason, Sandstrom, Smith, and Thomas at 2, MUR 4960 (Clinton), Dec. 21, 2000 (internal citations omitted).

⁴¹ FGCR at 14.

⁴² FGCR at 16.

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only have come from funds amassed during Scott's tenure as Chair and then spent to further his candidacy.⁴³

But the mere existence of a poll testing the political fortunes of a potential candidate is insufficient evidence of candidate control. Moreover, OGC arrived at this conclusion by dismissing the sworn statement of Ms. Hazelwood, which unequivocally stated that "[t]he decision to commission this poll was mine and mine alone, and I did not discuss the poll or its commissioning at any time with Governor Rick Scott."⁴⁴ Simply put, if Scott lacked knowledge of the poll, the poll cannot serve as evidence of his subjective intention to seek federal office.

At the RTB stage, when speculation based on press reports and unattributed comments from "Republican officials"⁴⁵ is pitched against a contradictory sworn statement from someone *with* personal knowledge of the matter at hand, we must credit the sworn statement.⁴⁶ We cannot simply ignore or evade Ms. Hazelwood's sworn attestations.⁴⁷

OGC also argued that New Republican's anticipatory website redesign and eventual launch of its pro-Scott web presence "indicat[ed] that New Republican was [always] dedicated to Scott's election."⁴⁸ But this is speculation, and speculation directly refuted by the record before us. Ms. Hazelwood's affidavit provides a categorical denial of any improper collusion, stating she "made the decision to prepare a redesigned website with the intention of publicly launching the redesigned website if Governor Scott became a candidate for the U.S. Senate," but she "did not discuss this redesigned website with Governor Rick Scott," nor did she "discuss[] with...Scott his decision to become a candidate for the U.S. Senate."⁴⁹ If this is so, and we must assume that it is absent credible counterevidence, the website's redesign and subsequent launch is insufficient evidence that Scott became a candidate before he says he did.

⁴³ *Id.*

⁴⁴ Hazelwood Aff. at 1, ¶ 6.

⁴⁵ The instant complaints came from an outside organization and were not premised on whistleblower testimony or any other sworn statement from someone with direct, personal knowledge.

⁴⁶ Statement of Reasons of Comm'rs Hunter, McGahn, and Petersen at 5, MUR 6296 (Buck), June 14, 2011 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe") (quoting FGCR at 5 in MUR 5467 (Michael Moore)).

⁴⁷ FGCR at 16-17.

⁴⁸ *Id.* at 16.

⁴⁹ Hazelwood Aff. at 1, ¶¶ 7-8.

Ultimately, we determined that this Matter merited the invocation of our prosecutorial discretion. The only significant evidence of Scott’s potential earlier candidacy was predicated on the fundraising and operational activities that occurred during his seven-month term as Chair. To probe his subjective intent during this period would have necessitated a wide-ranging, costly, and invasive investigation into both Scott and New Republican’s activities during that period of time, and possibly after. As the Commission is the only agency whose enforcement docket “has as its sole purpose the regulation of core constitutionally protected activity—the behavior of individuals and groups only insofar as they act, speak[,] and associate for political purposes”—this was not an action we could take lightly.⁵⁰

Moreover, we would have been authorizing an expensive and resource-consuming investigation while the Commission is still working through a substantial backlog of cases that accumulated while it lacked a quorum.⁵¹ As a result, the Commission is obligated to make difficult decisions about whether or not to enforce against Respondents in Matters nearing the expiration of the statute of limitations.⁵² In the instant case, we were unable to justify the commitment of the Commission’s scarce enforcement resources to such a lengthy and cumbersome investigation on the basis of such a thin evidentiary reed.⁵³ Accordingly, as regards Rick Scott’s alleged failure to timely file his candidacy and committee paperwork, we invoked our prosecutorial discretion pursuant to *Heckler v. Chaney*.

CONCLUSION

For the foregoing reasons, we voted to find no reason to believe that New Republican violated the soft money ban, exercised our prosecutorial discretion regarding the allegations that Scott and his campaign committee failed to timely file

⁵⁰ *Am. Fed’n of Labor-Congress of Indus. Orgs. v. Fed. Election Comm’n*, 333 F.3d 168, 170 (D.D.C. 2003).

⁵¹ See Statement of Comm’r Weintraub on the Senate’s Votes to Restore the Federal Election Commission to Full Strength, Dec. 9, 2020.

⁵² See Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor at 3-4, MURs 7324/7332/7364/7366 (Trump, *et al.*), June 28, 2021 (“In choosing how to allocate the Commission’s limited enforcement resources, we opted against pursuing the long odds of a successful enforcement in these matters and, with a noted exception, instead voted to dismiss as an exercise of prosecutorial discretion”).

⁵³ It bears some notice that while then-Governor Scott was Chair, New Republican raised only about 4 percent of the amount that New Republican ultimately spent on independent expenditures—approximately the same amount that the PAC spent on the Congressional race in California’s 45th U.S. House district.

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candidacy and organization forms, and dismissed the remaining allegations against the Respondents for lack of evidence.



Allen Dickerson
Vice Chair

July 21, 2021

Date



Sean J. Cooksey
Commissioner

July 21, 2021

Date



James E. "Trey" Trainor III
Commissioner

July 21, 2021

Date