



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
New Hampshire Republican Senate ) MUR 6431  
Majority Committee )

**STATEMENT OF REASONS  
OF VICE CHAIR ELLEN L. WEINTRAUB AND  
COMMISSIONERS CYNTHIA L. BAUERLY AND STEVEN WALTHER**

This matter concerns newspaper ads printed the day before the November 2010 general election that were paid for by the New Hampshire Republican Senate Majority Committee (“RSMC”) with funds that may not have complied with Federal requirements. The ads prominently featured a large picture of U.S. Senate candidate Kelly Ayotte on the left hand side of the ads.<sup>1</sup> In each of these ads, Ayotte’s name received top billing, above the names of two candidates for New Hampshire’s state senate.<sup>2</sup> A statement in small text asked readers to “join [Ayotte] in supporting” the state candidates, whose much smaller pictures appeared at the bottom of the ads. Ayotte’s photograph is approximately *twelve* times the size of each of the other candidates’ photographs. Finally, in large text – equal to the size of Ayotte’s name – the ads stated “Please Vote This Tuesday!” The advertisements appear to have been coordinated with the Ayotte campaign,<sup>3</sup> and, in our view, did not qualify for the Commission’s regulatory endorsement safe harbor. 11 C.F.R. § 109.21(g)(1). Accordingly, we could not support the Office of General Counsel’s recommendation that the Commission should find no reason to believe that the ads were an excessive or prohibited in-kind contribution from RSMC to Ayotte.<sup>4</sup>

<sup>1</sup> Ayotte’s name appeared on the November 2010 general election ballot.

<sup>2</sup> Different versions of the ad were run in at least four New Hampshire newspapers. See Complaint in MUR 6431, dated November 1, 2010, at 6-8. An example is attached.

<sup>3</sup> First General Counsel’s Report at 9-12, available at <http://eqs.nictusa.com/eqs/searcheqs>.

<sup>4</sup> The complaint alleged that RSMC failed to register as a Federal political committee and that the ads did not include the appropriate disclaimer. Then-Vice Chair Hunter and Commissioners McGalen and Petersen voted to find no reason to believe that RSMC made excessive in-kind contributions, made disbursements for Federal election activity from funds not subject to the requirements of the Act, failed to include adequate disclaimers, or knowingly accepted or failed to report an excessive or prohibited in-kind contribution. Certification in MUR 6431, dated November 4, 2011 at 1. Then-Chair Bauerly and Commissioners Walther and Weintraub dissented. *Id.*

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The endorsement safe harbor provides an exception from the definition of “coordinated communication” for public communications in which a Federal candidate endorses another candidate for Federal or non-Federal office. 11 C.F.R. § 109.21(g)(1). The safe harbor does not apply if the communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate. *Id.* The legislative history of the statutory provision underlying the Commission’s regulatory endorsement safe harbor indicates that the Bipartisan Campaign Reform Act of 2002 was not intended to prohibit “spending non-Federal money to run advertisements that mention that [State candidates] have been endorsed by a Federal candidate \* \* \* so long as those advertisements do not support, attack, promote, or oppose the Federal candidate.”<sup>5</sup> This safe harbor rests on the premise that the endorsing candidate or the candidate’s agents may be involved in the development, content and distribution of the communication precisely because endorsements are not made for the purpose of influencing the endorsing candidate’s own election.<sup>6</sup>

The advertisements in this case promote or support Ayotte – the same candidate making the endorsement. RSMC’s advertisements also promote a slate of candidates, but with Ayotte in the lead role. Ayotte’s name appears first, Ayotte’s picture is by far the largest element in the ads and a reasonable observer would certainly understand the phrase “Please Vote This Tuesday!” as an exhortation to vote for Ayotte among the set of candidates in the communication irrespective of whether the advertisements explicitly mention that Ayotte is a candidate. Although the ads contain an endorsement, they also clearly support and promote the candidacy of Kelly Ayotte and are therefore ineligible for the endorsement safe harbor under 11 C.F.R. § 109.21(g)(1).

The facts in this matter differ from those in Advisory Opinion 2007-34 (Jackson) where the Commission concluded that the image of a Federal candidate, Representative Jesse Jackson Jr., on a billboard with a local candidate for state’s attorney qualified for the endorsement safe harbor because it did not promote or support Representative Jackson. The billboard considered in that Advisory Opinion emphasized the local candidate receiving the endorsement, Larry Suffredin. Suffredin’s picture was the same size as Jackson’s picture and appeared with the text: “Larry Suffredin – For State’s Attorney – Vote February 5<sup>th</sup>.” *See* Advisory Opinion 2007-34 (Jackson) at 2. Here, Ayotte’s image is featured much more prominently than the other state candidates unlike that of Representative Jackson in the billboard at issue in AO 2007-34. In contrast to the advertisements in this matter, the billboard in AO 2007-34 did not mention Jackson’s name and did not make any statement that could be construed as support or promotion of Jackson. Here, Ayotte’s name is the same size as the names of the other candidates and the manner in which her name is listed at the top easily leaves the impression that the reader should “Please Vote This Tuesday!” for Ayotte along with the other candidates in the ads.

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Subsequently, the Commission unanimously concluded that even if RSMC, a state political committee, exceeded the monetary threshold for contributions or expenditures related to these ads, *see* 2 U.S.C. § 431(4), RSMC did not have to register as a Federal political committee with the Commission because there was no reason to believe its major purpose was to support or oppose Federal candidates. *Id.* at 2; Factual and Legal Analysis at 4-5.

<sup>5</sup> 148 Cong. Rec. S2143 (March 20, 2002) (Feingold).

<sup>6</sup> Coordinated Communications: Explanation and Justification, 71 Fed. Reg. 33190, 33202 (June 8, 2006).

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MUR 6431 (New Hampshire Republican Senate Majority Committee)  
Statement of Reasons of Vice Chair Weintraub and Commissioners Bauerly and Walther

Accordingly, we would have voted to find reason to believe that RSMC made an excessive or prohibited in-kind contribution and authorized conciliation.<sup>7</sup> We write separately to emphasize that advertisements that promote or support the Federal candidates making the endorsement are subject to the limitations of the Act, even if the advertisement also includes an endorsement. *Bona fide* endorsements emphasize the candidates being endorsed – not the candidate offering the endorsement. 11 C.F.R. § 109.21(g)(1).

1/13/12  
Date

Ellen L. Weintraub  
Ellen L. Weintraub  
Vice Chair *by enr*

1/13/12  
Date

Cynthia L. Bauerly  
Cynthia L. Bauerly  
Commissioner

1/13/12  
Date

Steven T. Walther  
Steven T. Walther  
Commissioner

<sup>7</sup> Ultimately, even if all six Commissioners agreed that these advertisements did not meet the endorsement safe harbor and therefore caused RSMC to exceed the monetary threshold to trigger political committee status, RSMC would not have to register as a Federal political committee because RSMC's major purpose was not to support or oppose Federal candidates.

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(Political Advertisement)

(Political Advertisement)

(Political Advertisement)

(Political Advertisement)

(Political Advertisement)

# Kelly Ayotte Joe Kelly Levasseur Tom DeBlois



“ New Hampshire is at a crossroads.  
The only way we will fix our problems is  
with common sense solutions, not more  
government spending and higher taxes.

I hope you'll join me in supporting  
Joe Kelly Levasseur and Tom DeBlois  
for State Senate. ”

## Please Vote This Tuesday!



**Joe Kelly  
Levasseur**  
For State Senate  
District 20



**Tom DeBlois**  
For State Senate  
District 18

Paid for by the Republican State  
Majority Committee, Peter Baglion, Co-Chair

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2011 NOV -4 AM 10: 30

CELA

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 6431  
New Hampshire Republican State )  
Majority Committee; Friends of Kelly )  
Ayotte and H. Scott Flegal, in his official )  
capacity as treasurer )

CERTIFICATION

I, Shelley E. Garr, recording secretary of the Federal Election Commission executive session, do hereby certify that on November 01, 2011, the Commission took the following actions in the above-captioned matter:

1. Failed on a vote of 3-3 to:
  - a. Find no reason to believe that the New Hampshire Republican State Majority Committee violated 2 U.S.C. §§ 441a or 441b by making excessive in-kind contributions.
  - b. Find no reason to believe that the New Hampshire Republican State Majority Committee violated 2 U.S.C. § 441i(b)(1) by making disbursements for federal election activity from funds not subject to the limitations, prohibitions, and reporting requirements of the Act.
  - c. Find no reason to believe that the New Hampshire Republican State Majority Committee violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by failing to include adequate disclaimers.
  - d. Find no reason to believe that Friends of Kelly Ayotte, and H. Scott Flegal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a, 441b, or 434 by knowingly accepting or failing to report an excessive or prohibited in-kind contribution.

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- e. Approve the Factual and Legal Analyses as recommended in the First General Counsel's Report dated August 29, 2011, subject to edits previously circulated and pursuant to the meeting discussion.
- f. Approve the appropriate letters.

Commissioners Hunter, McGahn II, and Petersen voted affirmatively for the motion.

Commissioners Bauerly, Walther, and Weintraub dissented.

2. Decided by a vote of 6-0 to:

- a. Find no reason to believe that the New Hampshire Republican Senate Majority Committee violated 2 U.S.C. §§ 432, 433, and 434 by failing to organize, register, and report as a political committee, subject to the circulation of a revised Factual and Legal Analysis pursuant to the meeting discussion.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

November 3, 2011  
Date

Shelley E. Garv  
Shelley E. Garv  
Deputy Secretary of the Commission

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2011 DEC -9 AM 9: 56

BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matter of )  
 )  
New Hampshire Republican Senate ) MUR 6431  
Majority Committee (Revised F&LA) )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on December 07, 2011, the Commission decided by a vote of 6-0 to approve the following actions in MUR 6431:

1. Approve the Factual and Legal Analysis, as recommended in the Memorandum to the Commission dated November 21, 2011.
2. Close the file.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

December 9, 2011  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 12 2011

Cleta Mitchell, Esq.  
Foley & Lardner LLP  
3000 K Street, NW #600  
Washington, D.C. 20007

RE: MUR 6431  
Friends of Kelly Ayotte and H. Scott  
Flegal, in his official capacity as  
treasurer

Dear Ms. Mitchell:

On November 18, 2010, the Federal Election Commission notified your client, Friends of Kelly Ayotte and H. Scott Flegal, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On November 1, 2011, the Commission considered the complaint but was equally divided on the Office of General Counsel's recommendations related to potential violations of 2 U.S.C. §§ 441a, 441b, and 434. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A Statement of Reasons explaining the Commission's decision will follow.

If you have any questions, please contact William A. Powers, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler  
Assistant General Counsel

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**DEC 12 2011**

Raymond Buckley  
105 North State Street  
Concord, NH 03301

RE: MUR 6431  
New Hampshire Republican Senate  
Majority Committee, et al.

Dear Mr. Buckley:

On November 1, 2011, the Federal Election Commission considered the allegations contained in your complaint dated November 15, 2010, but was equally divided on the Office of General Counsel's recommendations related to potential violations of 2 U.S.C. §§ 441a, 441b, 441d, and 441i(b)(1) and 11 C.F.R. §§ 110.11 by the New Hampshire Republican Senate Majority Committee ("NHRSMC") and on the Office of the General Counsel's recommendations related to potential violations of 2 U.S.C. §§ 441a, 441b, and 434 by Friends of Kelly Ayotte and H. Scott Flegal, in his official capacity as treasurer. A Statement of Reasons providing a basis for the Commission's decision will follow.

In addition, on November 1, 2011, the Federal Election Commission reviewed the allegations in your complaint dated November 15, 2011, and found that on the basis of the information provided in your complaint, and information provided by the respondents, that there is no reason to believe that the NHRSMC violated 2 U.S.C. §§ 432, 433, and 434. Accordingly, on December 8, 2011, the Commission closed the file in this matter. A Factual and Legal Analysis providing the basis for the Commission's decision as to these allegations is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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MUR 6431 (New Hampshire Republican Senate Majority Committee)

Letter to Raymond Buckley

Page 2 of 2

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8). If you have any questions, please contact William A. Powers, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: New Hampshire Republican Senate Majority Committee** **MUR: 6431**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Raymond Bucirley. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. BACKGROUND**

The New Hampshire Republican Senate Majority Committee is a state political committee registered with the New Hampshire Secretary of State. *See* State of New Hampshire: 2010 Political Committee Registration – RSA 664:3, Republican Senate Majority Committee (Dec. 9, 2008) (hereinafter “RSMC N.H. Registration”), *available at* <http://www.sos.nh.gov/Pacs2010.html> (last visited August 26, 2011). The chairman of RSMC is Peter Bragdon, a state senator who served as the minority leader of the New Hampshire Senate in 2009-2010, and now serves as the president of the Senate. RSMC Response at 1-2. Bob Odell, who serves as RSMC’s treasurer, is also a Republican state senator in New Hampshire. *See* RSMC N.H. Registration. According to disclosure reports filed with the New Hampshire Secretary of State, RSMC accepts contributions from sources prohibited by the Act, but permitted under state law, such as corporations. *See* RSMC Statement of Receipts and Expenditures (June 23, Aug. 25, Sept. 9 and 22, Oct. 13 and 27, and Nov. 10, 2010).

1 Kelly Ayotte is currently a U.S. Senator from New Hampshire and was the  
2 Republican candidate for U.S. Senator in 2010. Ayotte served as Attorney General for  
3 New Hampshire, until she resigned to explore a run for the U.S. Senate in 2009. Her  
4 principal campaign committee is Friends of Kelly Ayotte. H. Scott Flegal serves as the  
5 committee's treasurer.

6 In October of 2010, a consultant for RSMC, Michael Dennehy, suggested RSMC  
7 consider running advertisements in which Ayotte, who had a lead in the polls, would  
8 endorse New Hampshire state senate candidates. RSMC Response at 2; *see also* RSMC  
9 Response, Attachment, Affidavit of Peter Bragdon ¶¶ 6 and 7; Affidavit of Michael  
10 Dennehy ¶¶ 7 and 8. After RSMC approved this recommendation, Dennehy "contacted  
11 one of Ms. Ayotte's campaign consultants and asked whether Ms. Ayotte would be  
12 willing to endorse certain state senate candidates." RSMC Response, Affidavit of  
13 Michael Dennehy ¶ 8. "Ms. Ayotte's [campaign] consultant later informed [Dennehy]  
14 that [RSMC] could proceed with the endorsement advertisements for those candidates."  
15 *Id.*

16 The Ayotte committee directed RSMC that "no reference to Kelly Ayotte's  
17 federal candidacy appear[] anywhere in the newspaper ads, nor [should] her status as a  
18 former Attorney General [be] referenced in the ad." Ayotte Committee Response at 2.  
19 Dennehy, who worked with an RSMC political advertising consultant on the endorsement  
20 advertisements, states that the "Ayotte campaign did not propose any of the content or  
21 layout of the [RSMC's] advertisements." RSMC Response, Affidavit of Michael  
22 Dennehy at ¶¶ 9 and 10. However, Dennehy "did provide Ms. Ayotte's consultant with  
23 an exemplar of the advertisements before submitting them for publication and [the

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1 consultant's] response was that the advertisements were "fine." RSMC Response,  
2 Affidavit of Michael Dennehy ¶ 10.

3 Each of the advertisements listed Ms. Ayotte's name followed by the names of the  
4 state candidates, set forth Ms. Ayotte's endorsement of the candidates and stated "Please  
5 Vote This Tuesday." An example is set forth below:

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**Kelly Ayotte**  
**Joe Kelly Levasseur**  
**Tom DeBlois**

“ New Hampshire is at a crossroads.  
The only way we will fix our problems is  
with common sense solutions, not more  
government spending and higher taxes.  
I hope you'll join me in supporting  
Joe Kelly Levasseur and Tom DeBlois  
for State Senate. ”

**Please Vote  
This Tuesday!**

**Joe Kelly Levasseur**  
For State Senate  
District 20

**Tom DeBlois**  
For State Senate  
District 18

Paid for by the Republican Senate  
Majority Committee, Peter Dingleton, CL 2010

6  
7 RSMC ran the advertisements featuring Ayotte endorsing candidates for state senate on  
8 November 1, 2010, the day before the 2010 election, in at least four newspapers: the

1 UNION LEADER, the CONCORD MONITOR, the NASHUA TELEGRAPH DAILY, and the  
2 FOSTER'S DAILY DEMOCRAT. See Complaint at 1, and Exhibit 1 (the "Ayotte  
3 advertisements"). The cost of these four advertisements appears to be approximately  
4 \$5,783. See Complaint at 2.

5 **B. LEGAL ANALYSIS**

6 The Complaint alleges that RSMC should have registered and complied with  
7 other requirements as a political committee under the Act. Under the Act, groups that  
8 trigger political committee status are required to organize as a political committee,  
9 register with the Commission, and publicly disclose all of their receipts and  
10 disbursements. 2 U.S.C. §§ 432, 433, and 434. The Act defines a "political committee"  
11 as any committee, association, or other group of persons that receives "contributions" or  
12 makes "expenditures" which aggregate in excess of \$1,000 during a calendar year. 2  
13 U.S.C. § 431(4)(A).<sup>1</sup> An organization that has made expenditures in excess of \$1,000,  
14 however, will not be considered a "political committee" unless, in addition, its "major  
15 purpose is Federal campaign activity (i.e., the nomination or election of a Federal  
16 candidate)." Political Committee Status: Supplemental Explanation and Justification, 72  
17 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Supplemental E&J"). See *Buckley v. Valeo*, 424  
18 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986)  
19 ("*MCFL*").

20 Even if RSMC exceeded the \$1,000 statutory threshold for either contributions or  
21 expenditures related to the Ayotte advertisements, see 2 U.S.C. § 431(4), RSMC does not

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<sup>1</sup> The term "expenditure" is defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). The term "contribution" is similarly defined by 2 U.S.C. § 431(8)(A)(i).

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1 appear to have the nomination or election of a federal candidate as its major purpose.  
2 Rather, RSMC is a New Hampshire political committee that has a purpose “to support the  
3 political activities of NH Senate Republicans and the election of Republican state senate  
4 candidates,” *see* RSMC N.H. Registration (Dec. 9, 2008), and “to achieve the election of  
5 a Republican majority to the New Hampshire Senate in 2010.” RSMC Response at 1.  
6 Moreover, RSMC raised and spent approximately \$130,000 during the 2010 elections  
7 and there is no indication that it spent any sums on communications or other campaign  
8 activity arguably related to the nomination or election of a federal candidate other than  
9 the allocable portion of the \$5,873 spent on the Ayotte advertisements. Given the limited  
10 amount spent on the Ayotte advertisements, RSMC’s spending on them cannot be  
11 considered so extensive that its major purpose may be considered the nomination or  
12 election of a federal candidate. RSMC therefore cannot be considered a political  
13 committee under the Act because it does not have as its major purpose “federal campaign  
14 activity (*i.e.* the nomination or election of a Federal candidate).” Supplemental E&J, 72  
15 Fed. Reg. at 5597. *See Buckley*, 424 U.S. at 79; *MCFL*, 479 U.S. at 262.

16 Accordingly, the Commission finds no reason to believe that the New Hampshire  
17 Republican Senate Majority Committee violated 2 U.S.C. §§ 432, 433, and 434 by failing  
18 to organize, register, and report as a political committee.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 12 2011

Bryan K. Gould, Esq.  
Brown, Olson, & Gould  
2 Delta Drive  
Suite 301  
Concord, NH 03301

RE: MUR6431  
New Hampshire Republican Senate Majority  
Committee

Dear Mr. Gould:

On November 18, 2010, the Federal Election Commission notified your client, the New Hampshire Republican Senate Majority Committee ("NHRSMC"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 1, 2011, the Commission found, on the basis of the information in the complaint, and information provided by the respondents, that there is no reason to believe NHRSMC violated 2 U.S.C. §§ 432, 433, and 434. Additionally, the Commission was equally divided on the Office of General Counsel's recommendations related to potential violations of 2 U.S.C. §§ 441a, 441b, 441d, and 441i(b)(1), and 11 C.F.R. § 110.11. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding of no reason to believe that NHRSMC violated 2 U.S.C. §§ 432, 433, and 434 is enclosed. A Statement of Reasons further explaining the basis for the rest of the Commission's decision will follow.

If you have any questions, please contact William A. Powers, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:**     **New Hampshire Republican Senate**                     **MUR: 6431**  
                          **Majority Committee**

**I.     INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Raymond Boudrey. See 2 U.S.C. § 437g(a)(1).

**II.    FACTUAL AND LEGAL ANALYSIS**

**A.     BACKGROUND**

The New Hampshire Republican Senate Majority Committee is a state political committee registered with the New Hampshire Secretary of State. See State of New Hampshire: 2010 Political Committee Registration – RSA 664:3, Republican Senate Majority Committee (Dec. 9, 2008) (hereinafter “RSMC N.H. Registration”), available at <http://www.sos.nh.gov/Pacs2010.html> (last visited August 26, 2011). The chairman of RSMC is Peter Bragdon, a state senator who served as the minority leader of the New Hampshire Senate in 2009-2010, and now serves as the president of the Senate. RSMC Response at 1-2. Bob Odeil, who serves as RSMC’s treasurer, is also a Republican state senator in New Hampshire. See RSMC N.H. Registration. According to disclosure reports filed with the New Hampshire Secretary of State, RSMC accepts contributions from sources prohibited by the Act, but permitted under state law, such as corporations. See RSMC Statement of Receipts and Expenditures (June 23, Aug. 25, Sept. 9 and 22, Oct. 13 and 27, and Nov. 10, 2010).

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3 New Hampshire, until she resigned to explore a run for the U.S. Senate in 2009. Her  
4 principal campaign committee is Friends of Kelly Ayotte. H. Scott Flegal serves as the  
5 committee's treasurer.

6 In October of 2010, a consultant for RSMC, Michael Dennehy, suggested RSMC  
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10 Dennehy ¶¶ 7 and 8. After RSMC approved this recommendation, Dennehy "contacted  
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1 consultant's] response was that the advertisements were 'fine.'" RSMC Response,  
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**Kelly Ayotte**  
**Joe Kelly Levasseur**  
**Tom DeBlois**

“ New Hampshire is at a crossroads.  
The only way we will fix our problems is  
with common sense solutions, not more  
government spending and higher taxes.  
I hope you'll join me in supporting  
Joe Kelly Levasseur and Tom DeBlois  
for State Senate. ”

**Please Vote  
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For State Senate  
District 20

**Tom DeBlois**  
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Paid for by the Republican Senate  
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4 \$5,783. *See* Complaint at 2.

5 **B. LEGAL ANALYSIS**

6 The Complaint alleges that RSMC should have registered and complied with  
7 other requirements as a political committee under the Act. Under the Act, groups that  
8 trigger political committee status are required to organize as a political committee,  
9 register with the Commission, and publicly disclose all of their receipts and  
10 disbursements. 2 U.S.C. §§ 432, 433, and 434. The Act defines a "political committee"  
11 as any committee, association, or other group of persons that receives "contributions" or  
12 makes "expenditures" which aggregate in excess of \$1,000 during a calendar year. 2  
13 U.S.C. § 431(4)(A).<sup>1</sup> An organization that has made expenditures in excess of \$1,000,  
14 however, will not be considered a "political committee" unless, in addition, its "major  
15 purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal  
16 candidate)." Political Committee Status: Supplemental Explanation and Justification, 72  
17 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Supplemental E&J"). *See Buckley v. Valeo*, 424  
18 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986)  
19 ("*MCFL*").

20 Even if RSMC exceeded the \$1,000 statutory threshold for either contributions or  
21 expenditures related to the Ayotte advertisements, *see* 2 U.S.C. § 431(4), RSMC does not

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<sup>1</sup> The term "expenditure" is defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). The term "contribution" is similarly defined by 2 U.S.C. § 431(8)(A)(i).

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1 appear to have the nomination or election of a federal candidate as its major purpose.  
2 Rather, RSMC is a New Hampshire political committee that has a purpose "to support the  
3 political activities of NH Senate Republicans and the election of Republican state senate  
4 candidates," see RSMC N.H. Registration (Dec. 9, 2008), and "to achieve the election of  
5 a Republican majority to the New Hampshire Senate in 2010." RSMC Response at 1.  
6 Moreover, RSMC raised and spent approximately \$130,000 during the 2010 elections  
7 and there is no indication that it spent any sums on communications or other campaign  
8 activity arguably related to the nomination or election of a federal candidate other than  
9 the allowable portion of the \$5,873 spent on the Ayotte advertisements. Given the limited  
10 amount spent on the Ayotte advertisements, RSMC's spending on them cannot be  
11 considered so extensive that its major purpose may be considered the nomination or  
12 election of a federal candidate. RSMC therefore cannot be considered a political  
13 committee under the Act because it does not have as its major purpose "federal campaign  
14 activity (i.e. the nomination or election of a Federal candidate)." Supplemental E&J, 72  
15 Fed. Reg. at 5597. See *Buckley*, 424 U.S. at 79; *MCFL*, 479 U.S. at 262.

16 Accordingly, the Commission finds no reason to believe that the New Hampshire  
17 Republican Senate Majority Committee violated 2 U.S.C. §§ 432, 433, and 434 by failing  
18 to organize, register, and report as a political committee.

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