

2011 SEP 16 PM 12:10

BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matter of)	
)	
Gregory Brown for Congress (Pre- Probable Cause Conciliation))	MUR 6314
)	

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on September 15, 2011, the Commission decided by a vote of 4-0 to take the following actions in MUR 6314:

1. Accept the conciliation agreement with Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, as recommended in the General Counsel's Memorandum dated September 6, 2011.
2. Approve the appropriate letter.
3. Close the file.

Commissioners Bauerly, Hunter, McGahn II, and Weintraub voted affirmatively for the decision. Commissioners Petersen and Walther did not vote.

Attest:

September 15, 2011
Date

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

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FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2011 MAR 18 AM 11:46

CELA

In the Matter of)	
)	
Gregory Brown, Gregory Brown for)	MUR 6314
Congress and Carol Bausinger, in her)	
official capacity as treasurer (RAD Ref)	
10L-09))	

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on March 17, 2011, the Commission decided by a vote of 5-1 to take the following actions in MUR 6314/RAD Ref 10L-09:

MUR # 6461

1. Open a MUR in RR 10L-09 and merge it into MUR 6314.
2. Find reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), and 434(b), and 11 C.F.R. § 104.12.
3. Find no reason to believe that Gregory Brown violated 2 U.S.C. § 434(a) and close the file as to him.
4. Approve the Factual and Legal Analysis, as recommended in the First General Counsel's Report dated March 7, 2011.
- 5.

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Federal Election Commission
MUR 6314 and RADRef 10L-09
March 16, 2011

6.

7. Approve the appropriate letters.

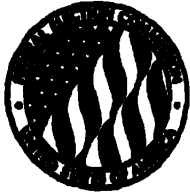
Commissioners Bauerly, Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision. Commissioner McGahn II dissented.

Attest:

March 17, 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

Eleazer R. Carter, Esq.
The Carter Law Firm
P.O. Box 2073
Columbia, SC 29202

MAR 25 2011

RE: MUR 6314
Gregory Brown
Gregory Brown for Congress and
Carol Bausinger, in her official
capacity as Treasurer

Dear Mr. Carter:

On June 22, 2010, the Federal Election Commission ("Commission") notified your clients, Gregory Brown and Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was provided to your clients at that time.

On November 4, 2010, the Commission notified you that in the normal course of carrying out its supervisory responsibilities it ascertained information suggesting that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated the Act, and the matter was forwarded to the Office of General Counsel for possible enforcement action. The Commission also provided you with a copy of the referral at that time.

On March 17, 2011, after reviewing the complaint, the referral, and your clients' responses, the Commission found reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), and 434(b), and 11 C.F.R. § 104.12, provisions of the Act and Commission regulations. At that same time, the Commission also found there is no reason to believe that Gregory Brown violated 2 U.S.C. § 434(a). Enclosed is the Factual and Legal Analysis setting forth the basis for the Commission's determination.


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We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

We look forward to your response. If you have any questions, please contact Margaret Ritzert, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530,

On behalf of the Commission,


Cynthia L. Bermany
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gregory Brown for Congress and MUR: 6314
Carol Bausinger, in her official
capacity as treasurer
Gregory Brown

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I. **GENERATION OF MATTER**

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2), and by a complaint filed with the Commission by Melanie Sloan and Citizens for Responsibility and Ethics in Washington.

II. **FACTUAL AND LEGAL ANALYSIS**

A. **Factual Background**

Gregory Brown was a candidate in the June 8, 2010, South Carolina primary election, seeking the Democratic nomination to represent the state's Sixth Congressional District in the U.S. House of Representatives. On February 1, 2010, Mr. Brown filed a Statement of Candidacy with the Commission that designated Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, ("Committee") as his principal campaign committee. The Committee filed its Statement of Organization on April 26, 2010.

The Committee has filed the following disclosure reports with the Commission:

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Table 1. Reports Filed with the Commission

Date	Report
6/10/10	April Quarterly Report
6/10/10	July Quarterly Report
6/11/10	July Quarterly Report.(Amended)
6/20/10	April Quarterly Report (Amended)
6/20/10	July Quarterly Report (Amended)
7/28/10	Termination Report
11/7/10	Termination Report
1/4/11	Termination Report
2/9/11	Termination Report

2 The Committee attempted to terminate after Mr. Brown lost the primary election, but the Reports
3 Analysis Division ("RAD") informed the Committee that it needed to resolve outstanding
4 discrepancies in its reports before it could terminate.

5 1. MUR 6314

6 Complainant alleges that Respondents knowingly and willfully violated 2 U.S.C.
7 § 434(a)(2)(A)(i), (iii) and 11 C.F.R. § 104.5(a)(1)(i), (2)(i) by failing to file both the 2010 April
8 Quarterly and 12-Day Pre-Primary Reports.

9 Respondents admit that the disclosure reports were untimely. Respondents maintain that
10 any delays in filing the required reports were "not the result of any intentional or willful
11 misconduct," and they have filed all required reports. *See* Response. Without providing any
12 specific information, Respondents claim that they mistakenly relied on information provided by
13 the state political party. They also claim, again without providing any specific information, to
14 have relied on information the Commission provided to them regarding filing requirements.¹
15 Respondents further claim that they relocated their campaign headquarters, which resulted in lost
16 mail and "temporary loss of full communication." *Id.*

¹ There is no record of the Committee contacting RAD until July 27, 2010, after it had filed the Amended 2010 April and July Quarterly Reports.

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1 2. RR 10L-09

2 On July 1, 2010, RAD sent the Committee two Requests for Additional Information
3 ("RFAI's") regarding the 2010 April and July Quarterly Reports, respectively. The Committee
4 has not yet filed a response to these RFAI's; however, the Committee's treasurer contacted a
5 RAD Analyst on July 27, 2010, to inquire about the process for terminating. Between September
6 3, 2010, and September 28, 2010, RAD Analysts made several attempts to contact the
7 Committee to notify them of potential Commission action. However, as the Committee's phone
8 numbers and e-mail addresses were no longer in service, RAD left a message at Mr. Brown's
9 business, Keystone Enterprises, which was not returned.

10 On October 18, 2010, RAD referred the Committee to the Office of General Counsel for
11 the following reporting violations:

- 12 • Failing to correct an initial cash balance of \$10,000 on its 2010 April Quarterly
13 Report, the first disclosure report filed with the Commission. Both the original
14 and Amended April Quarterly Reports reflect this balance, and neither includes a
15 supporting schedule disclosing the source of this initial balance.
- 16 • Failing to correct a negative ending cash-on-hand balance on its April 2010
17 Quarterly Report. The April Quarterly Report filed on June 10, 2010, discloses a
18 negative ending cash-on-hand balance of \$35,164.65; the amended report, filed
19 ten days later, discloses a negative ending cash-on-hand balance of \$54,118.45.
- 20 • Failing to correct a cash-on-hand balance discrepancy between two consecutive
21 reports: while the Amended 2010 April Quarterly Report discloses a negative
22 ending cash-on-hand balance of \$54,118.45, the 2010 July Quarterly Report
23 discloses a beginning cash-on-hand balance of \$0.00. The Amended 2010 July
24 Quarterly Reports also disclose a \$0.00 beginning cash-on-hand balance.
- 25 • Failing to correct a cash-on-hand balance discrepancy between two consecutive
26 reports: while the Amended 2010 April Quarterly Report discloses a negative
27 ending cash-on-hand balance of \$54,118.45, the 2010 July Quarterly Report
28 discloses a beginning cash-on-hand balance of \$0.00. The Amended 2010 July
29 Quarterly Reports also disclose a \$0.00 beginning cash-on-hand balance.

27 On December 16, 2010, the Committee responded to the notification of the referral by
28 contending that the candidate deposited the original funds in the campaign account, and
29 thereafter the campaign ran a negative balance to be paid by the candidate himself. The

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1 Committee acknowledges that there may have been accounting defects, but asserts that there was
2 no inappropriate use of funds.

3 **B. Legal Analysis**

4 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), an individual
5 becomes a candidate for federal office when his or her campaign exceeds \$5,000 in contributions
6 or expenditures. 2 U.S.C. § 431(2). Based on its Amended 2010 April Quarterly Report, it
7 appears that the Committee exceeded the \$5,000 threshold on February 2, 2010, when it made a
8 \$10,000 disbursement to Steven Fooks & Associates for a "campaign questionnaire."²
9 Accordingly, Mr. Brown was a candidate for federal office on February 2, 2010, which was the
10 day after the Commission received Mr. Brown's Statement of Candidacy.

11 **1. MUR 6314: Timeliness of Disclosure Reports**

12 Political committee treasurers are required to file reports of receipts and disbursements in
13 accordance with 2 U.S.C. § 434(a). A principal campaign committee of a candidate for the U.S.
14 House of Representatives, in any calendar year during which there is a regularly scheduled
15 election for which its candidate is seeking election, shall file quarterly reports no later than the
16 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii). Furthermore,
17 such committee shall file a pre-election report no later than the 12th day before any election in
18 which such candidate is seeking election. 2 U.S.C. § 434(a)(2)(A)(i).

19 The Committee was required to file the 2010 April Quarterly Report by April 15, 2010.
20 However, the Committee actually filed this report, which disclosed \$400 in receipts and
21 \$45,564.65 in disbursements (later amended to \$64,518.45 in disbursements), on June 10, 2010 –

² Although the Amended 2010 April Quarterly Report discloses the \$10,000 disbursement on February 2, 2010, it discloses only \$400 in contributions for the entire reporting period, in addition to the initial \$10,000 cash balance. It is possible that the Committee may have exceeded the \$5,000 contribution threshold before February 2, 2010, through an undisclosed transaction, but there is no information to indicate the nature or amount of this potential undisclosed transaction.

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1 56 days late. Similarly, the Committee was also required to file a report no later than twelve
2 days before the June 8, 2010, primary in which Mr. Brown was a candidate. This report, due
3 May 27, 2010, should have covered the period from April 1, 2010, to May 19, 2010. To date, the
4 Committee has not filed this report; however, the same period of activity was eventually covered
5 by the 2010 July Quarterly Report, which disclosed \$300 in receipts (later amended to \$24,300)
6 and \$20,504.72 in disbursements (later amended to \$39,366.89) that should have been disclosed
7 on the pre-primary report.

8 Although the Committee failed to timely file the 2010 April Quarterly Report and failed
9 to file the 2010 12-Day Pre-Primary Report, there is no information to indicate either that these
10 violations were knowing and willful, or that the candidate, Mr. Brown, was personally liable for
11 the Committee's failure to file timely disclosure reports. Accordingly, the Commission finds
12 reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity
13 as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii). The Commission also finds no reason
14 to believe that Gregory Brown violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii).

15 **2. RR 10L-09: Content of Disclosure Reports**

16 The Act requires political committees to report the amount of cash-on-hand at the
17 beginning of the reporting period, as well as identify each person who makes aggregate
18 contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1), (3). Commission
19 regulations further clarify that committees which have cash-on-hand at the time of their
20 registration shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12.
21 Based on the information provided in the referral, the response, and the Committee's disclosure
22 reports, it appears that Mr. Brown initially made a personal \$10,000 contribution to the
23 Committee, which the Committee disclosed as an initial cash balance on its first report.

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1 However, by failing to disclose Mr. Brown as the source of its initial \$10,000 cash balance, the
2 Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.12.

3 The Act also requires that reports disclose the amount and nature of outstanding debts
4 and obligations owed by the political committee. 2 U.S.C. § 434(b)(8). Based on the referral,
5 the response, and disclosure reports, it appears that the Committee incurred \$54,118.45 in debt
6 and reported it as a negative cash balance instead of as a debt or obligation. By failing to
7 disclose this \$54,118.45 as debt, the Committee violated 2 U.S.C. § 434(b)(8).

8 Finally, the discrepancy between the ending cash-on-hand balance on the Amended 2010
9 April Quarterly Report (-\$54,118.45) and the beginning cash-on-hand balance on the 2010 July
10 Quarterly Report (\$0.00) could indicate that the Committee failed to disclose all contributions,
11 offsets, and operating expenditures in violation of 2 U.S.C. § 434(b)(7). However, it appears that
12 this discrepancy is attributable to the misreported debt discussed above: if the Committee had
13 reported \$54,118.45 as debt on its Amended 2010 April Quarterly Report, its ending cash-on-
14 hand balance would be \$0.00, which would match the beginning cash-on-hand balance reported
15 in the 2010 July Quarterly Report. Thus, the discrepancy does not appear to be a separate
16 violation of 2 U.S.C. § 434(b)(7). Accordingly, the Commission finds reason to believe that
17 Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated
18 2 U.S.C. § 434(b)(1), (3), and (8) and 11 C.F.R. § 104.12.

19 **3. Late Statement of Organization**

20 Based on the information in its disclosure reports, the Committee appears to have filed its
21 Statement of Organization late. A candidate's authorized principal campaign committee is
22 required to file a Statement of Organization within ten days of designation. 2 U.S.C. § 433(a).
23 Mr. Brown designated the Committee as his principal campaign committee on February 1, 2010;
24 therefore, the Committee should have filed its Statement of Organization by February 11, 2010.

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- 1 Instead, the Committee filed its Statement of Organization on April 26, 2010 – 74 days late.**
- 2 Accordingly, the Commission finds reason to believe that Gregory Brown for Congress and**
- 3 Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. § 433(a).**

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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2 **MEMORANDUM**

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4 **TO:** The Commission

5
6 **FROM:** Christopher Hughey
7 Acting General Counsel

8
9 Kathleen Guith
10 Acting Associate General Counsel for Enforcement

11
12 Stephen Gura
13 Deputy Associate General Counsel

14
15 **BY:** Mark Shonkwiler *MS*
16 Assistant General Counsel

17
18 Margaret Ritzert *MR*
19 Attorney

20
21 **SUBJECT: MUR 6314 (Gregory Brown for Congress) – Pre-Probable Cause Conciliation**

22
23 Attached is a conciliation agreement which settles violations of 2 U.S.C.
24 §§ 433(a), 434(a), and 434(b) and 11 C.F.R. § 104.12 by Gregory Brown for Congress and Carol
25 Bausinger, in her official capacity as treasurer, ("Committee") involving an undisclosed
26 contribution and misreported debt on a late-filed disclosure report, as well other late- and non-
27 filed reports. Attachment 1.

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we recommend that the Commission accept the attached conciliation agreement and close the file.

RECOMMENDATIONS:

1. Accept the attached conciliation agreement with Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer.
2. Approve the appropriate letter.
3. Close the file.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (202-588-5020) AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SEP 19 2011

Melanie Sloan, Executive Director
Center for Responsibility and Ethics in Washington
1400 Eye Street, NW, Suite 450
Washington, DC 20005

RE: MUR 6314

Dear Ms. Sloan:

This is in reference to the complaint you filed with the Federal Election Commission on June 16, 2010, concerning Gregory Brown and Gregory Brown for Congress. On March 17, 2011, the Commission found that there is reason to believe Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer ("the Committee"), violated 2 U.S.C. §§ 433(a), 434(a), and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 104.12 of the Commission's Regulations. On September 15, 2011, a conciliation agreement signed by the Committee was accepted by the Commission.

In addition, on March 17, 2011, the Commission found that there is no reason to believe Gregory Brown violated 2 U.S.C. § 434(a). Accordingly, the Commission closed the file in this matter on September 15, 2011.

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. 66,132 (Dec. 14, 2009). A copy of the agreement with the Committee is enclosed for your information. In addition, a copy of the Factual and Legal Analysis, which further explains the Commission's determination, is enclosed. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Margaret Ritzert
Attorney

Enclosures

Conciliation Agreement(s)
Factual and Legal Analysis

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3 In the matter of)

) MUR 6314

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5)
6 Gregory Brown for Congress and)
7 Carol Bausinger, in her official capacity)
8 as treasurer)

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OFFICE OF GENERAL
COUNSEL

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10 **CONCILIATION AGREEMENT**

11 **This matter was initiated by a signed, sworn, and notarized complaint by Melanie Sloan**
12 **and Citizens for Responsibility and Ethics in Washington, and pursuant to information**
13 **ascertained by the Federal Election Commission ("Commission") in the normal course of**
14 **carrying out its supervisory responsibilities. The Commission found reason to believe that**
15 **Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer,**
16 **("Respondents" or "Committee") violated 2 U.S.C. §§ 433(a), 434(a), and 434(b), and**
17 **11 C.F.R. § 104.12.**

18 **NOW, THEREFORE, the Commission and the Respondents, having participated in**
19 **informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree**
20 **as follows:**

21 **I. The Commission has jurisdiction over the Respondents and the subject matter of this**
22 **proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.**
23 **§ 437g(a)(4)(A)(i).**

24 **II. Respondents have had a reasonable opportunity to demonstrate that no action should**
25 **be taken in this matter.**

26 **III. Respondents enter voluntarily into this agreement with the Commission.**

27 **IV. The pertinent facts in this matter are as follows:**

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1 however, the activity during the same period was eventually disclosed in the 2010 July Quarterly
2 Report originally filed on June 10, 2010 and later amended on June 11 and June 20, 2010.

3 Content of Disclosure Reports

4 6. The Act requires political committees to report the amount of cash-on-hand at the
5 beginning of the reporting period, as well as identify each person who makes aggregate
6 contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1) and (3). Commission
7 regulations further clarify that committees which have cash-on-hand at the time of their
8 registration shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12.
9 The Act also requires that reports disclose the amount and nature of outstanding debts and
10 obligations owed by the political committee. 2 U.S.C. § 434(b)(8).

11 7. Mr. Brown deposited the initial funds in the Committee's account, and thereafter the
12 Committee ran a negative balance. The Committee's first report filed with the Commission, the
13 2010 April Quarterly Report, discloses an initial cash balance of \$10,000, but does not disclose
14 Mr. Brown as the source of that initial cash balance. The Amended 2010 April Quarterly Report
15 also discloses a negative ending cash-on-hand balance of \$54,118.45, and does not disclose any
16 debts or obligations.

17 V. 1. Respondents violated 2 U.S.C. § 433(a) by filing the Statement of
18 Organization 74 days late.

19 2. Respondents violated 2 U.S.C. § 434(a) by filing the 2010 April Quarterly
20 Report 56 days late and by failing to file the 2010 12-Day Pre-Primary Report.

21 3. Respondents violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.12 by failing to
22 disclose an initial \$10,000 contribution from Mr. Brown and thereafter failing to accurately
23 report its cash-on-hand and debt on its 2010 April Quarterly Report.

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1 VI. 1. In ordinary circumstances, the Commission would seek a substantially higher
2 civil penalty based on the violations outlined in this agreement. However, the Commission is
3 taking into account the fact that the Committee is defunct, has no cash on hand according to the
4 evidence available, and has a limited ability to raise any additional funds. Respondents will pay
5 a civil penalty to the Commission in the amount of \$4,500, pursuant to 2 U.S.C. § 437g(a)(5)(B).

6 2. Respondents will cease and desist committing violations of 2 U.S.C. §§ 433(a),
7 434(a), and 434(b), and 11 C.F.R. § 104.12.

8 3. Respondents will amend the relevant disclosure reports to accurately reflect
9 the contribution from Mr. Brown and debts and obligations referenced at paragraphs IV.7 and
10 V.3 within 30 days.

11 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
12 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
13 with this agreement. If the Commission believes that this agreement or any requirement thereof
14 has been violated, it may institute a civil action for relief in the United States District Court for
15 the District of Columbia.

16 VIII. This agreement shall become effective as of the date that all parties hereto have
17 executed same and the Commission has approved the entire agreement.

18 IX. Respondents shall have no more than 30 days from the date this agreement becomes
19 effective to comply with and implement the requirements contained in this agreement and to so
20 notify the Commission.

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1 X. This Conciliation Agreement constitutes the entire agreement between the parties on
2 the matters raised herein, and no other statement, promise, or agreement, either written or oral,
3 made by either party or by agents of either party, that is not contained within this written
4 agreement shall be enforceable.

5 FOR THE COMMISSION:

6 P. Christopher Hughey
7 Acting General Counsel

8 BY: Kathleen Guith
9 Kathleen Guith
10 Acting Associate General Counsel
11 For Enforcement

9-16-11
Date

12 FOR THE RESPONDENTS:

13 Eliazer R. Carter
14 Eliazer R. Carter
15 Counsel

August 24, 2011
Date

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gregory Brown for Congress and MUR: 6314
Carol Bausinger, in her official
capacity as treasurer
Gregory Brown

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I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities, see 2 U.S.C. § 437g(a)(2), and by a complaint filed with the Commission by Melanie Sloan and Citizens for Responsibility and Ethics in Washington.

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II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Gregory Brown was a candidate in the June 8, 2010, South Carolina primary election, seeking the Democratic nomination to represent the state's Sixth Congressional District in the U.S. House of Representatives. On February 1, 2010, Mr. Brown filed a Statement of Candidacy with the Commission that designated Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, ("Committee") as his principal campaign committee. The Committee filed its Statement of Organization on April 26, 2010.

The Committee has filed the following disclosure reports with the Commission:

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1 **Table 1. Reports Filed with the Commission**

Date	Report
6/10/10	April Quarterly Report
6/10/10	July Quarterly Report
6/11/10	July Quarterly Report (Amended)
6/20/10	April Quarterly Report (Amended)
6/20/10	July Quarterly Report (Amended)
7/28/10	Termination Report
11/7/10	Termination Report
1/4/11	Termination Report
2/9/11	Termination Report

2 The Committee attempted to terminate after Mr. Brown lost the primary election, but the Reports
3 Analysis Division ("RAD") informed the Committee that it needed to resolve outstanding
4 discrepancies in its reports before it could terminate.

5 **1. MUR 6314**

6 Complainant alleges that Respondents knowingly and willfully violated 2 U.S.C.
7 § 434(a)(2)(A)(i), (iii) and 11 C.F.R. § 104.5(a)(1)(i), (2)(i) by failing to file both the 2010 April
8 Quarterly and 12-Day Pre-Primary Reports.

9 Respondents admit that the disclosure reports were untimely. Respondents maintain that
10 any delays in filing the required reports were "not the result of any intentional or willful
11 misconduct," and they have filed all required reports. See Response. Without providing any
12 specific information, Respondents claim that they mistakenly relied on information provided by
13 the state political party. They also claim, again without providing any specific information, to
14 have relied on information the Commission provided to them regarding filing requirements.¹
15 Respondents further claim that they relocated their campaign headquarters, which resulted in lost
16 mail and "temporary loss of full communication." *Id.*

¹ There is no record of the Committee contacting RAD until July 27, 2010, after it had filed the Amended 2010 April and July Quarterly Reports.

1 **2. RR 10L-09**

2 On July 1, 2010, RAD sent the Committee two Requests for Additional Information
3 ("RFAI's") regarding the 2010 April and July Quarterly Reports, respectively. The Committee
4 has not yet filed a response to these RFAI's; however, the Committee's treasurer contacted a
5 RAD Analyst on July 27, 2010, to inquire about the process for terminating. Between September
6 3, 2010, and September 28, 2010, RAD Analysts made several attempts to contact the
7 Committee to notify them of potential Commission action. However, as the Committee's phone
8 numbers and e-mail addresses were no longer in service, RAD left a message at Mr. Brown's
9 business, Keystone Enterprises, which was not returned.

10 On October 18, 2010, RAD referred the Committee to the Office of General Counsel for
11 the following reporting violations:

- 12 • Failing to correct an initial cash balance of \$10,000 on its 2010 April Quarterly
13 Report, the first disclosure report filed with the Commission. Both the original
14 and Amended April Quarterly Reports reflect this balance, and neither includes a
15 supporting schedule disclosing the source of this initial balance.
16
- 17 • Failing to correct a negative ending cash-on-hand balance on its April 2010
18 Quarterly Report. The April Quarterly Report filed on June 10, 2010, discloses a
19 negative ending cash-on-hand balance of \$35,164.65; the amended report, filed
20 ten days later, discloses a negative ending cash-on-hand balance of \$54,118.45.
21
- 22 • Failing to correct a cash-on-hand balance discrepancy between two consecutive
23 reports: while the Amended 2010 April Quarterly Report discloses a negative
24 ending cash-on-hand balance of \$54,118.45, the 2010 July Quarterly Report
25 discloses a beginning cash-on-hand balance of \$0.00. The Amended 2010 July
26 Quarterly Reports also disclose a \$0.00 beginning cash-on-hand balance.

27 On December 16, 2010, the Committee responded to the notification of the referral by
28 contending that the candidate deposited the original funds in the campaign account, and
29 thereafter the campaign ran a negative balance to be paid by the candidate himself. The

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1 Committee acknowledges that there may have been accounting defects, but asserts that there was
2 no inappropriate use of funds.

3 **B. Legal Analysis**

4 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), an individual
5 becomes a candidate for federal office when his or her campaign exceeds \$5,000 in contributions
6 or expenditures. 2 U.S.C. § 431(2). Based on its Amended 2010 April Quarterly Report, it
7 appears that the Committee exceeded the \$5,000 threshold on February 2, 2010, when it made a
8 \$10,000 disbursement to Steven Foose & Associates for a "campaign questionnaire."²
9 Accordingly, Mr. Brown was a candidate for federal office on February 2, 2010, which was the
10 day after the Commission received Mr. Brown's Statement of Candidacy.

11 **1. MUR 6314: Timeliness of Disclosure Reports**

12 Political committee treasurers are required to file reports of receipts and disbursements in
13 accordance with 2 U.S.C. § 434(a). A principal campaign committee of a candidate for the U.S.
14 House of Representatives, in any calendar year during which there is a regularly scheduled
15 election for which its candidate is seeking election, shall file quarterly reports no later than the
16 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii). Furthermore,
17 such committee shall file a pre-election report no later than the 12th day before any election in
18 which such candidate is seeking election. 2 U.S.C. § 434(a)(2)(A)(i).

19 The Committee was required to file the 2010 April Quarterly Report by April 15, 2010.
20 However, the Committee actually filed this report, which disclosed \$400 in receipts and
21 \$45,564.65 in disbursements (later amended to \$64,518.45 in disbursements), on June 10, 2010 –

² Although the Amended 2010 April Quarterly Report discloses the \$10,000 disbursement on February 2, 2010, it discloses only \$400 in contributions for the entire reporting period, in addition to the initial \$10,000 cash balance. It is possible that the Committee may have exceeded the \$5,000 contribution threshold before February 2, 2010, through an undisclosed transaction, but there is no information to indicate the nature or amount of this potential undisclosed transaction.

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1 56 days late. Similarly, the Committee was also required to file a report no later than twelve
2 days before the June 8, 2010, primary in which Mr. Brown was a candidate. This report, due
3 May 27, 2010, should have covered the period from April 1, 2010, to May 19, 2010. To date, the
4 Committee has not filed this report; however, the same period of activity was eventually covered
5 by the 2010 July Quarterly Report, which disclosed \$300 in receipts (later amended to \$24,300)
6 and \$20,504.72 in disbursements (later amended to \$39,366.89) that should have been disclosed
7 on the pre-primary report.

8 Although the Committee failed to timely file the 2010 April Quarterly Report and failed
9 to file the 2010 12-Day Pre-Primary Report, there is no information to indicate either that these
10 violations were knowing and willful, or that the candidate, Mr. Brown, was personally liable for
11 the Committee's failure to file timely disclosure reports. Accordingly, the Commission finds
12 reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity
13 as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii). The Commission also finds no reason
14 to believe that Gregory Brown violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii).

15 2. RR 10L-09: Content of Disclosure Reports

16 The Act requires political committees to report the amount of cash-on-hand at the
17 beginning of the reporting period, as well as identify each person who makes aggregate
18 contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1), (3). Commission
19 regulations further clarify that committees which have cash-on-hand at the time of their
20 registration shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12.
21 Based on the information provided in the referral, the response, and the Committee's disclosure
22 reports, it appears that Mr. Brown initially made a personal \$10,000 contribution to the
23 Committee, which the Committee disclosed as an initial cash balance on its first report.

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1 However, by failing to disclose Mr. Brown as the source of its initial \$10,000 cash balance, the
2 Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.12.

3 The Act also requires that reports disclose the amount and nature of outstanding debts
4 and obligations owed by the political committee. 2 U.S.C. § 434(b)(8). Based on the referral,
5 the response, and disclosure reports, it appears that the Committee incurred \$54,118.45 in debt
6 and reported it as a negative cash balance instead of as a debt or obligation. By failing to
7 disclose this \$54,118.45 as debt, the Committee violated 2 U.S.C. § 434(b)(8).

8 Finally, the discrepancy between the ending cash-on-hand balance on the Amended 2010
9 April Quarterly Report (-\$54,118.45) and the beginning cash-on-hand balance on the 2010 July
10 Quarterly Report (\$0.00) could indicate that the Committee failed to disclose all contributions,
11 offsets, and operating expenditures in violation of 2 U.S.C. § 434(b)(7). However, it appears that
12 this discrepancy is attributable to the misreported debt discussed above: if the Committee had
13 reported \$54,118.45 as debt on its Amended 2010 April Quarterly Report, its ending cash-on-
14 hand balance would be \$0.00, which would match the beginning cash-on-hand balance reported
15 in the 2010 July Quarterly Report. Thus, the discrepancy does not appear to be a separate
16 violation of 2 U.S.C. § 434(b)(7). Accordingly, the Commission finds reason to believe that
17 Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated
18 2 U.S.C. § 434(b)(1), (3), and (8) and 11 C.F.R. § 104.12.

19 **3. Late Statement of Organization**

20 Based on the information in its disclosure reports, the Committee appears to have filed its
21 Statement of Organization late. A candidate's authorized principal campaign committee is
22 required to file a Statement of Organization within ten days of designation. 2 U.S.C. § 433(a).
23 Mr. Brown designated the Committee as his principal campaign committee on February 1, 2010;
24 therefore, the Committee should have filed its Statement of Organization by February 11, 2010.

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- 1 **Instead, the Committee filed its Statement of Organization on April 26, 2010 – 74 days late.**
- 2 **Accordingly, the Commission finds reason to believe that Gregory Brown for Congress and**
- 3 **Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. § 433(a).**

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