



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6207
Mark DeSaulnier;)
)
Mark DeSaulnier for Senate 2012;)
)
DeSaulnier for Congress and Rita Copeland,)
in her official capacity as treasurer;)
)
Shara Perkins, Campaign Manager for)
DeSaulnier for Congress)

STATEMENT OF REASONS

I. INTRODUCTION

On July 14, 2010, the Commission voted to exercise its prosecutorial discretion and dismiss the allegations that California State Senator and former Congressional candidate, Mark DeSaulnier (“DeSaulnier”), Mark DeSaulnier for Senate 2012 (“State Committee”), DeSaulnier for Congress and Rita Copeland, in her official capacity as treasurer (“Federal Committee”) (also collectively referred to as “Respondents”) violated 2 U.S.C. § 441i(e)(1)(B) and 2 U.S.C. § 441i(f)(1) of the Federal Election Campaign Act of 1971, as amended (“Act”) in connection with a mass mailing paid for by the State Committee.¹ This Statement of Reasons sets forth the basis for our decision.

In addition, as set forth in the accompanying Factual and Legal Analysis, the Commission found: (1) no reason to believe that the Federal Committee violated 2 U.S.C. §§ 441a or 441b by making excessive or prohibited in-kind contributions via coordinated expenditures; (2) no reason to believe that the State Committee and the Federal Committee accepted excessive or prohibited contributions in violation of 2 U.S.C. § 441a(f) or 441b or failed to report such contributions in

¹ Chairman Matthew S. Petersen, Vice Chair Cynthia L. Bauerly, Commissioner Caroline C. Hunter, Commissioner Donald F. McGahn II and Commissioner Ellen L. Weintraub voted in favor of the motion. Commissioner Steven T. Walther did not vote.

violation of 2 U.S.C. § 434(b); (3) no reason to believe that the State Committee violated 2 U.S.C. § 441d; and (4) no reason to believe that Shara Perkins violated any provision of the Act or regulations. Accordingly, the Commission voted to close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Mark DeSaulnier is a California State Senator representing the 7th District who was originally elected to office in November 2008, and was a declared candidate for re-election to the State Senate in 2012. On or about March 26, 2009, DeSaulnier announced his intent to run for the soon-to-be-vacated seat in California's 10th Congressional District.

During the 90-day period prior to the September 1, 2009, special primary election for the 10th Congressional District nomination, the State Committee sent two mailings entitled "Your Health Services Guide: Courtesy of Senator Mark DeSaulnier" ("Health Services Guide") and "PARENTS GUIDE TO: A Safe and Healthy Family by Senator Mark DeSaulnier" ("Parents Guide"). According to Respondents, the mailers were distributed to "voters in the overlapping California State Senate district and the 10th Congressional district." Although neither the complaint nor the response indicates the amount spent on the mailers, the State Committee's disclosure reports reflect two payments to Shallman Communications on June 25, 2009, for campaign literature and mailings (\$51,885.20) and postage, delivery and messenger services (\$30,016.15).

The complaint, as amended, alleges that the Respondents: (1) violated 2 U.S.C. §§ 441i(e)(1) and 441i(f)(1) by using non-federal funds for "federal election activity"; (2) violated 2 U.S.C. §§ 441a(1)(A) and 441b by making excessive and prohibited contributions via unreported coordinated communications; and (3) violated 2 U.S.C. § 441d(c)(2) by failing to comply with the Act's disclaimer requirements. Respondents assert that the State Committee's spending of non-federal funds on behalf of a State candidate who is also a Federal candidate is explicitly exempted from the Act's restrictions pursuant to 2 U.S.C. §§ 441i(e)(2) and 441i(f)(2) and 11 C.F.R. §§ 300.63 and 300.72. The General Counsel recommended that the Commission find reason to believe that the Respondents violated 2 U.S.C. §§ 441i(e)(1)(B) and 441i(f)(1) in connection with the "Health Services Guide" but that the "Parents Guide" did not violate the Act. As discussed below, we agreed that the Parents Guide did not violate the Act, and dismissed the allegation concerning the Health Services Guide as a matter of prosecutorial discretion.

B. Legal Analysis

The Act prohibits Federal candidates or officeholders, or their agents, from spending or disbursing funds in connection with any non-Federal election, unless the funds comply with the limits and prohibitions of the Act and are otherwise consistent with State law. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. § 300.62. DeSaulnier was subject to 2 U.S.C. § 441i(e)(1)(B) because he was a candidate for Federal office at the time he spent funds through his State Committee for the distribution of the mailers.

The Act, however, provides for an exemption to Section 441i(e)(1)(B) for a Federal candidate, an officeholder who is also a candidate for State or local office, or an agent of either, if the solicitation, receipt, or spending of funds is solely in connection with that candidate's election to State or local office, is permitted under State law, and refers only to that State or local candidate, to any other candidate for the same State or local office, or both. 2 U.S.C. § 441i(e)(2); 11 C.F.R. § 300.63. The legislative history, suggests that Congress intended only to prohibit references to those federal candidates who are "on the ballot for the same election and are not their opponents for state office." *See* 148 Cong. Rec. S1992 (March 18, 2002).

The Act also prohibits a candidate for State or local office, an individual holding State or local office, or an agent of such a candidate or individual from spending any funds for a public communication described in section 301(20)(A)(iii) (2 U.S.C. § 431(20)(A)(iii)) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act. 2 U.S.C. § 441i(f)(1); 11 C.F.R. § 300.71. Section 431(20)(A)(iii) includes public communications that refer to a clearly identified candidate for Federal office and that promote, attack, support, or oppose ("PASO") a candidate for that office, regardless of whether the communication expressly advocates a vote for or against the candidate.² 2 U.S.C. § 431(20)(A)(iii).

Section 441i(f)(2) provides that the prohibition set forth in Section 441i(f)(1) shall not apply if the communication involved is in connection with an election for State or local office and refers only to the individual subject to 441i(f) or to any other candidate for the State or local office held or sought by such individual, or both, provided that the communication does not PASO any candidate for Federal office. 2 U.S.C. § 441i(f)(2); 11 C.F.R. § 300.72. The legislative history offers the following explanation for the two provisions in Section 441i(f): "Prohibits candidates for state or local office from spending soft money on public communications that promote or attack a clearly identified candidate for Federal office. Exempts communications which refer to a federal candidate who is also a candidate for state or local office." *See* 148 Cong. Rec. S1993 (March 18, 2002).

a. Health Services Guide

The Health Services Guide refers to DeSaulnier in his capacity as a State Senator, lists health care resources in the state of California, describes DeSaulnier's involvement as a State Senator in health care issues, and discusses national "health care reform." The focus of the Guide is the provision of information about local health care resources. In view of the Guide's discussion of health care issues and DeSaulnier's involvement in those issues as a State Senator, as well as a statement from another State Senator praising DeSaulnier (*see infra*), it appears that disbursements for the Guide may have been in connection with a non-Federal election within the meaning of Section 441i(e). *Cf.* Advisory Opinion 2009-26 (Coulson).

The State Committee's reports to the California Fair Political Practices Commission indicate that it received contributions from corporations and labor unions, which are permitted by

² The term "public communication" includes mass mailings such as those at issue here. 2 U.S.C. § 431(22) (defining public communication).

California law, but are not permitted under the Act. 2 U.S.C. § 441b. Therefore, it appears the funds the State Committee used to pay for the mailer may have been from sources prohibited by the Act from making contributions in connection with an election for Federal office.

Section 441i(e)(2) may be read to say that any reference to any person other than the individual subject to 441i(e)(1)(B) or his opponent in a State or local election would preclude application of the exemption. Under such a reading, the inclusion of a photograph of the candidate's family would prevent the exemption from applying. However, Congress could not have intended such a result, and therefore we decline to adopt this reading of the provision. Here, the Guide contains a small picture of President Obama delivering the State of the Union address. The picture takes up one corner of one of the Guide's twelve pages. In the picture, Vice President Biden stands next to the President, with Speaker of the House Nancy Pelosi partially visible in the background. In 2009, the year in which the Guide was distributed, neither President Obama nor Vice President Biden or Speaker Pelosi was on the ballot.

Further, the mailer includes a picture of State Senator Tom Torlakson, who represents a different district than DeSaulnier, and a quote from Torlakson praising DeSaulnier. In light of the context of the references at issue and the legislative history of 441i(e) and 441i(f), we concluded that the references to Obama, Biden, Pelosi and Torlakson were insufficient to require that the Guide be paid for with funds subject to the amount limitations and source prohibitions of the Act. Accordingly, we voted to exercise our prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831 (1985), to dismiss the allegation that the Respondents violated 2 U.S.C. § 441i(e)(1)(B) and 441i(f)(1).

b. Parents Guide

The Parents Guide satisfies the plain language of the exemption set forth in 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63. Specifically, the Parents Guide does not refer to any individual other than DeSaulnier, and appears to be related solely to his position as a State officeholder and State candidate. Because DeSaulnier, as a State candidate, qualifies for the exception, neither he nor his State Committee were required to use only funds that complied with the limits and prohibitions of the Act for this mailer.³ Accordingly, the Parents Guide does not violate 2 U.S.C. § 441i(e)(1)(B).⁴

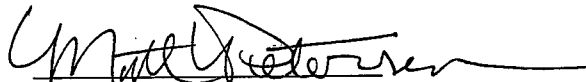
Similarly, the Parents Guide, which merely identifies DeSaulnier, plainly satisfies the requirements of the 441i(f)(2) exception. Specifically, the Commission has stated that the mere identification of an individual who is a Federal candidate does not, in itself, promote, support, attack or oppose that candidate. *See, e.g.,* Advisory Opinions 2009-26 (Coulson), 2007-34

³The Complainant asserted that given the proximity in time to the Federal election in comparison to the State election, the distribution of the mailers was suspicious, at best. The pertinent legislative history does not indicate that Congress intended to impose a restriction on the timing of an expenditure or receipt of funds in connection with a State or local election as set forth in Section 441i(e). *See, e.g.,* 148 Cong. Rec. S2096-02 (March 20, 2002). As here, provided that the requirements of the Section 441i(e) exception are satisfied, the timing of a communication is immaterial to the application of the exception. *See* 2 U.S.C. §§ 441i(e)(1)(B) and 441i(e)(2); 11 C.F.R. §§ 300.62 and 300.63.

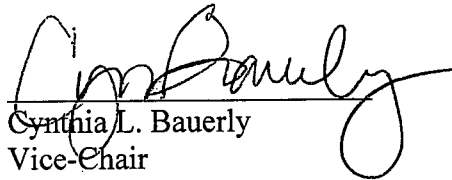
⁴Because the Parents Guide qualifies for this exemption, the Commission does not address whether funds expended on the Parents Guide were spent "in connection with an election" under section 441i(e)(1)(B).

(Jackson) and 2003-25 (Weinzapfel). Therefore, the Parents Guide, and thus the funds spent by DeSaulnier and the State Committee were not required to be subject to the reporting requirements, and contribution limitations and prohibitions of the Act. 2 U.S.C. § 441i(f)(2). Accordingly, the Parents Guide does not violate 2 U.S.C. § 441i(f)(1).

9/8/10
Date


Matthew S. Petersen
Chairman


9/8/10
Date


Cynthia L. Bauerly
Vice-Chair

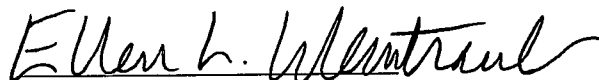
9/8/10
Date

Caroline C. Hunter / EW
Caroline C. Hunter
Commissioner

9/8/10
Date


Donald F. McGahn II
Commissioner

9/8/10
Date


Ellen L. Weintraub
Commissioner

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mark DeSaulnier; Mark DeSaulnier for)	MUR 6207
Senate 2012; DeSaulnier for Congress)	
and Rita Copeland, in her official)	
capacity as treasurer; Shara Perkins,)	
Campaign Manager for DeSaulnier for)	
Congress)	

AMENDED CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on September 07, 2010, the Commission decided by a vote of 5-0 to take the following actions in MUR 6207:

1. Find no reason to believe that Rita Copeland, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a or 441b by making or accepting excessive or prohibited contributions as a result of coordinated expenditures.
2. Close the file.

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

Attest:

September 7, 2010
Date

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6207
Mark DeSaulnier; Mark DeSaulnier for)
Senate 2012; DeSaulnier for Congress)
and Rita Copeland, in her official)
capacity as treasurer; Shara Perkins,)
Campaign Manager for DeSaulnier for)
Congress)

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal Election Commission executive session on July 14, 2010, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 6207:

1. Dismiss the recommendation to find reason to believe that Mark DeSaulnier violated 2 U.S.C. § 441i(e)(1)(B) on the basis of prosecutorial discretion as outlined in Heckler v. Chaney, 470 U.S. 821 (1985).
2. Dismiss the recommendation to find reason to believe that Mark DeSaulnier and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441i(f)(1) on the basis of prosecutorial discretion as outlined in Heckler v. Chaney, 470 U.S. 821 (1985).
3. Find no reason to believe that DeSaulnier for Congress and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. §§ 441a or 441b by making or accepting excessive or prohibited contributions as a result of coordinated expenditures.
4. Find no reason to believe that Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441d.
5. Find no reason to believe that Shara Perkins, campaign manager for DeSaulnier for Congress, violated any provision of the Act or regulations and close the file as to this respondent.
6. Approve the Factual and Legal Analysis, as recommended in the First General Counsel's Report dated March 16, 2010, subject to the appropriate revisions pursuant to the meeting discussion.

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7. Approve the appropriate letters.

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

Attest:

July 15, 2010
Date

Darlene Harris
Darlene Harris
Deputy Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James C. Harrison, Esq.
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94677

AUG 6 2010

RE: MUR 6207
Shara Perkins

Dear Mr. Harrison:

On July 28, 2009 and August 12, 2009, the Federal Election Commission notified your client of a complaint and its supplement alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint and its supplement were forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on July 14, 2010, found no reason to believe that Shara Perkins violated any provision of the Act or regulations and on July 14, 2010, closed the file as it pertained to her.

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). The Factual and Legal Analysis, which explains the Commission's no reason to believe findings, is enclosed for your information. A Statement of Reasons further explaining the basis for the Commission's dismissal of other allegations will follow.

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler".

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6207

RESPONDENTS: Mark DeSaulnier, DeSaulnier for Congress and Rita Copeland, in her official capacity as Treasurer, Mark DeSaulnier for Senate 2012 and Shara Perkins, Campaign Manager for DeSaulnier for Congress

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by Jason A. Bezis, Esq. See 2 U.S.C. § 437g(a)(1). This matter involves allegations that California State Senator and former Congressional candidate Mark DeSaulnier (“DeSaulnier”), Mark DeSaulnier for Senate 2012 (“State Committee”), DeSaulnier for Congress and Rita Copeland, in her official capacity as treasurer (“Federal Committee”), and Shara Perkins, campaign manager for the Federal Committee, (also collectively referred to as “Respondents”) violated the Federal Election Campaign Act of 1971, as amended (“Act”) in connection with two mass mailings paid for by the State Committee.

The complaint, as amended, alleges that the Respondents: (1) violated 2 U.S.C. §§ 441i(e)(1) and 441i(f)(1) by using non-federal funds for “federal election activity”; (2) violated 2 U.S.C. §§ 441a(1)(A) and 441b by making excessive and prohibited contributions via unreported coordinated communications; and (3) violated 2 U.S.C. § 441d(c)(2) by failing to comply with the Act’s disclaimer requirements.

1 Respondents assert that the State Committee's spending by a State candidate who
2 also happens to be a Federal candidate is explicitly exempted from the Act's restrictions
3 pursuant to 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63. *See Responses.* Respondents
4 also assert that the mailers are not coordinated in-kind contributions, because neither the
5 "payment prong" nor the "conduct prong" of the Commission's coordination regulations
6 apply to communications made by a Federal candidate/officeholder, in his capacity as a
7 State candidate. 11 C.F.R. § 109.21(b). *Id.* Finally, Respondents maintain that the
8 mailings were State campaign materials and did not require Federal disclaimers. *Id.*

9 With respect to the alleged violations of sections 441i(e)(1)(B) and 441i(f)(1), the
10 Commission voted 5-0 to exercise its prosecutorial discretion, pursuant to *Heckler v.*
11 *Chaney*, 470 U.S. 821, 831 (1985), and dismiss allegations that the Respondents violated
12 2 U.S.C. §§ 441i(e)(1)(B) and 441i(f)(1). The Commission will issue a separate
13 Statement of Reasons setting forth the basis for the dismissal of these allegations.

14 With respect to the State Committee's alleged coordination of the mailers with the
15 Federal Committee and the absence of Federal disclaimers and alleged unspecified
16 violations by the Federal Committee's campaign manager, the Commission found no
17 reason to believe that there had been any violations. The basis for these no reason to
18 believe findings are set forth below.

19 **II. FACTUAL SUMMARY**

20 DeSaulnier is a California State Senator representing the 7th District who was
21 originally elected to office in November 2008, and was a declared candidate for
22 re-election to the State Senate in 2012. *See Amended Response Attachments.* On or

1 about March 26, 2009, DeSaulnier announced his intent to run for the soon-to-be-vacated
2 seat in California's 10th Congressional District. *See* Amended Response.

3 During the 90-day period prior to the September 1, 2009, special primary election
4 for the 10th Congressional District nomination, the State Committee sent two mailings
5 entitled "Your Health Services Guide: Courtesy of Senator Mark DeSaulnier" (also
6 referred to as "Health Services Guide"), and "PARENTS GUIDE TO: A Safe and
7 Healthy Family by Senator Mark DeSaulnier" (also referred to as "Parents Guide"). *See*
8 Responses. The Respondents state that the mailers were distributed to voters in the
9 overlapping California State Senate district and the 10th Congressional district. *Id.*
10 Although neither the complaint nor the response indicates the amount spent on the
11 mailers, the State Committee's disclosure reports show two June 25, 2009, payments to
12 Shallman Communications for campaign literature and mailings (\$51,885.20) and
13 postage, delivery and messenger services (\$30,016.15).¹

14 **A. The "Health Services Guide" Mailer**

15 On or about June 29, 2009, the State Committee sent a twelve-page Health
16 Services Guide to voters in the overlapping State Senate district and the 10th
17 Congressional District. *See* Complaint, Exhibit C. The guide, which includes several
18 pictures of DeSaulnier, lists health care resources within the State of California and
19 describes DeSaulnier's involvement, as a state legislator, in health care issues. *Id.* The
20 Health Services Guide contains two pages that reference President Obama and the current

¹*See* <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1438141&amendid=0> for disclosure report filed with the California Fair Political Practices Commission.

1 federal health care reform efforts. *Id.* One page also contains a small photograph of
2 President Obama speaking to Congress with Vice-President Biden and Speaker Nancy
3 Pelosi standing behind him. *Id.* The mailer also contains a letter from DeSaulnier
4 discussing the importance of pending federal health care legislation and the need for
5 “concerned citizens like you” and “leaders at all levels of government” to “stand behind
6 him (Obama), and help him achieve this critical goal for our country.” *Id.*

7 The back cover of the mailer includes a photograph of DeSaulnier and California
8 State Senator Tom Torlakson (11th District)² with the following endorsement: “Mark
9 DeSaulnier is a natural leader, an independent thinker and a coalition builder who brings
10 people together to get things done. He has invaluable real world experience as a small
11 businessman that consistently and positively informs his work for the people of this
12 district.” *Id.* The mailer indicates it was paid for by the State Committee.

13 Complainant alleged that DeSaulnier, as a Federal candidate, violated 2 U.S.C.
14 § 441i(e)(1) because the Health Services Guide, which was paid for with non-federal
15 funds, does not meet the stated requirements of the exception allowed by 2 U.S.C.
16 § 441i(e)(2) for communications that are solely in connection with the State candidate’s
17 election and do not mention any candidate other than one for the same State election. *See*
18 Complaint. The Complainant alleged that the mailer “tends to promote” President
19 Obama, Vice-President Biden, Speaker of the House Pelosi, and DeSaulnier as Federal
20 candidates, and that it also references Torlakson, a non-federal candidate who is not a
21 candidate for the same office DeSaulnier seeks as a State candidate. *Id.*

² Torlakson is currently in his last term as State Senator for the 11th District of California and is a candidate for election for the California Superintendent for Public Instruction in 2010.

1 **B. The “Parents Guide” Mailer**

2 On or about July 6, 2009, the State Committee sent a twenty-page mailer, the
3 Parents Guide, to voters in the same geographic area as the first mailer. *See* Complaint,
4 Exhibit D. The mailer opens with a letter from DeSaulnier, in his State Senate capacity,
5 telling of his work with health, education, and public safety experts in compiling a list of
6 useful tips – “a no-nonsense, handy guide ... for keeping our children safe, healthy, and
7 prepared for life’s emergencies.” *Id.* It provides general family health and safety
8 information and contact information for different federal and state health agencies in
9 California. *Id.* In addition, it includes quotations from DeSaulnier regarding the health,
10 education, and public safety of children. *Id.* The mailer indicates that it was paid for by
11 the State Committee.

12 The complaints alleged that the Parents Guide contains “federal election activity”
13 in violation of 2 U.S.C. § 441i(f). *See* Complaints. Complainant claimed that DeSaulnier
14 and his State Committee do not meet the exception requirements of Section 441i(f)(2)
15 because the timing of the mailer is an indication that it was intended to benefit
16 DeSaulnier’s Federal campaign and not his State re-election three years in the future. *Id.*

17 **III. LEGAL ANALYSIS**

18 The Commission’s separate Statement of Reasons will set forth the basis for
19 dismissing allegations that: (1) DeSaulnier, as a Federal candidate, spent non-federal
20 funds through his State campaign in a way that did not fall within the exception for
21 disbursements related solely to his State re-election effort, in violation of Section
22 441i(e)(1) of the Act; and (2) DeSaulnier, as a State candidate, and his State Committee

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1 spend State funds on “federal election activity” contained in the two mailers, in violation
2 of Section 441i(f)(1).

3 This Factual and Legal Analysis sets forth the basis for the Commission finding
4 no reason to believe that (1) the State Committee violated the Act by (A) coordinating its
5 disbursements for the mailers with the Federal Committee in a manner that would result
6 in an in-kind contribution, and failing to report such an in-kind contribution; and
7 (B) failing to comply with the disclaimer requirements; and (2) no reason to believe that
8 the Federal Committee’s campaign manager engaged in unspecified violations of the Act.

9 **A. Coordination Analysis**

10 The Act provides that no person shall make contributions to any candidate and his
11 or her authorized political committee with respect to any election for federal office,
12 which, in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a)(1)(A). Further, candidates
13 and political committees are prohibited from knowingly accepting any contributions in
14 excess of the Act’s limitations. 2 U.S.C. § 441a(f).

15 Commission regulations set forth a three-prong test to determine whether a
16 payment for a communication is an in-kind contribution as a result of coordination
17 between the person making the payment and the candidate. *See* 11 C.F.R.
18 §109.21(a)(1)-(3). Under the first prong of the “coordinated communication” definition,
19 a communication is only subject to the regulations if it “is paid for in whole or in part, by
20 a person *other than that candidate*, authorized committee, or political party committee.”
21 11 C.F.R. § 109.21(a)(1) (emphasis added).

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1 At issue is whether the State Committee mailings were coordinated with the
2 Federal Committee. If so, the costs of the mailers would be in-kind contributions from
3 the State Committee to the Federal Committee, and in excess of the contribution
4 limitations at 2 U.S.C. § 441a(a)(1)(A). The Federal Committee would also have been
5 required to report such in-kind contributions pursuant to 2 U.S.C. § 434.

6 In this matter, both mailers were paid for by DeSaulnier's State Committee.
7 Thus, this situation is similar to the situation presented in Advisory Opinion 2009-26
8 (Coulson). In that advisory opinion, the Commission concluded that the payment prong
9 was not met because Representative Coulson's State Office Account or State Campaign
10 Committee paid for the postcards promoting a seniors' fair, as Representative Coulson
11 and her agents were paying for these communications. *Id.* at 5, 7-8. *See also* Advisory
12 Opinion 2007-1 (McCaskill). Similarly, in the present matter, the communications were
13 paid for by the candidate or his agents, and therefore, the payment prong is not satisfied.
14 Accordingly, we conclude that the two mailings distributed by the State Committee do
15 not constitute coordinated communications pursuant to 11 C.F.R. § 109.21. The
16 Commission found no reason to believe that the State Committee made or that the
17 Federal Committee violated 2 U.S.C. §§ 441a or 441b by making or accepting an
18 excessive or prohibited in-kind contribution in the form of coordinated expenditure.

19 **B. Campaign Manager**

20 As to Shara Perkins, the amended complaint vaguely alleged that she violated the
21 Act without providing any specific basis. There is no information in the record to
22 indicate that Ms. Perkins has violated any provision of the Act or regulations.

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1 Accordingly, the Commission found no reason to believe that Ms. Perkins violated any
2 provision of the Act.

3 **C. Disclaimer**

4 The complaint alleged that the State Committee violated the disclaimer
5 requirements by failing to place the disclaimers for the two mailers in printed boxes set
6 apart from the rest of the communication as required by Section 441d(c)(2). *See also*
7 11 C.F.R. § 110.11(c)(2). Section 441d(c)(2) provides that disclaimers are required for:
8 1) any public communication, including electronic mail and internet website, made by a
9 political committee and 2) for any public communication by “any person” that expressly
10 advocates, solicits contributions or constitutes electioneering communications. 2 U.S.C.
11 441d(c)(2); *see also* 11 C.F.R. § 110.11(a)(1) – (4). Neither criterion is satisfied in this
12 matter.

13 The State Committee does not meet the definition of a political committee, and
14 the communications at issue did not expressly advocate the election of a candidate, solicit
15 a contribution, or constitute an electioneering communication. The Act defines a
16 “political committee” as any committee, club, association, or other group of persons that
17 receives “contributions” or makes “expenditures” for the purpose of influencing a federal
18 election which aggregate in excess of \$1,000 during a calendar year.
19 2 U.S.C. § 431(4)(A). In the context of public communications, the courts have limited
20 the term “for the purpose of influencing a federal election” to those which expressly
21 advocate the election or defeat of a candidate. *See Political Committee Status:*
22 *Supplemental Explanation and Justification*, 72 Fed. Reg. at 5606. The courts have

1 further limited the definition of political committee to organizations whose major purpose
2 is to engage in federal campaign activity. *Id.* First, the State Committee has not made an
3 expenditure for a public communication that expressly advocates either under 11 C.F.R.
4 § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b). Second, the State
5 Committee lacks the “major purpose” of engaging in federal election activity. *See*
6 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg.
7 5595, 5597, 5601 (Feb. 7, 2007).

8 In addition to not being a federal political committee, the State Committee’s
9 mailers did not trigger a disclaimer requirement by expressly advocating the election or
10 defeat of a federal candidate. Accordingly, the Commission found no reason to believe
11 that the State Committee violated 2 U.S.C. § 441d.

12 The Commission voted to close the file as to all respondents.

10044280257



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 6 2010

Jason Adrian Bezis
3661-B Mosswood Drive
LaFayette, CA 94549

RE: MUR 6207

Dear Mr. Bezis:

On July 14 and July 27, 2010, the Federal Election Commission reviewed the allegations in your complaint dated July 23, 2009 and its supplement dated August 10, 2009.

The Commission dismissed the allegations that Mark DeSaulnier violated 2 U.S.C. § 441i(e)(1)(B) and that Mark DeSaulnier and Mark De Saulnier for Senate 2012 violated 2 U.S.C. § 441i(f)(1) on the basis of prosecutorial discretion. The Commission also found no reason to believe that DeSaulnier for Congress, Rita Copeland, in her official capacity as treasurer and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. §§ 441a or 441b, and that Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441d. Additionally, the Commission found no reason to believe that Shara Perkins, campaign manager for DeSaulnier for Congress, violated any provision of the Act or regulations and closed the file as it pertained to her. Accordingly, on July 27, 2010, the Commission closed the 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). The Factual and Legal Analysis, which explains the Commission's no reason to believe findings, is enclosed for your information. A Statement of Reasons further explaining the basis for the Commission's dismissal of other allegations will follow.

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Jason Adrian Bezis
MUR 6207
Page 2

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6207

RESPONDENTS:

Mark DeSaulnier, DeSaulnier for Congress and Rita Copeland, in her official capacity as Treasurer, Mark DeSaulnier for Senate 2012 and Shara Perkins, Campaign Manager for DeSaulnier for Congress

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by Jason A. Bezis, Esq. *See* 2 U.S.C. § 437g(a)(1). This matter involves allegations that California State Senator and former Congressional candidate Mark DeSaulnier (“DeSaulnier”), Mark DeSaulnier for Senate 2012 (“State Committee”), DeSaulnier for Congress and Rita Copeland, in her official capacity as treasurer (“Federal Committee”), and Shara Perkins, campaign manager for the Federal Committee, (also collectively referred to as “Respondents”) violated the Federal Election Campaign Act of 1971, as amended (“Act”) in connection with two mass mailings paid for by the State Committee.

The complaint, as amended, alleges that the Respondents: (1) violated 2 U.S.C. §§ 441i(e)(1) and 441i(f)(1) by using non-federal funds for “federal election activity”; (2) violated 2 U.S.C. §§ 441a(1)(A) and 441b by making excessive and prohibited contributions via unreported coordinated communications; and (3) violated 2 U.S.C. § 441d(c)(2) by failing to comply with the Act’s disclaimer requirements.

1 Respondents assert that the State Committee's spending by a State candidate who
2 also happens to be a Federal candidate is explicitly exempted from the Act's restrictions
3 pursuant to 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63. *See Responses.* Respondents
4 also assert that the mailers are not coordinated in-kind contributions, because neither the
5 "payment prong" nor the "conduct prong" of the Commission's coordination regulations
6 apply to communications made by a Federal candidate/officeholder, in his capacity as a
7 State candidate. 11 C.F.R. § 109.21(b). *Id.* Finally, Respondents maintain that the
8 mailings were State campaign materials and did not require Federal disclaimers. *Id.*

9 With respect to the alleged violations of sections 441i(e)(1)(B) and 441i(f)(1), the
10 Commission voted 5-0 to exercise its prosecutorial discretion, pursuant to *Heckler v.*
11 *Chaney*, 470 U.S. 821, 831 (1985), and dismiss allegations that the Respondents violated
12 2 U.S.C. §§ 441i(e)(1)(B) and 441i(f)(1). The Commission will issue a separate
13 Statement of Reasons setting forth the basis for the dismissal of these allegations.

14 With respect to the State Committee's alleged coordination of the mailers with the
15 Federal Committee and the absence of Federal disclaimers and alleged unspecified
16 violations by the Federal Committee's campaign manager, the Commission found no
17 reason to believe that there had been any violations. The basis for these no reason to
18 believe findings are set forth below.

19 **II. FACTUAL SUMMARY**

20 DeSaulnier is a California State Senator representing the 7th District who was
21 originally elected to office in November 2008, and was a declared candidate for
22 re-election to the State Senate in 2012. *See Amended Response Attachments.* On or

1 about March 26, 2009, DeSaulnier announced his intent to run for the soon-to-be-vacated
2 seat in California's 10th Congressional District. *See* Amended Response.

3 During the 90-day period prior to the September 1, 2009, special primary election
4 for the 10th Congressional District nomination, the State Committee sent two mailings
5 entitled "Your Health Services Guide: Courtesy of Senator Mark DeSaulnier" (also
6 referred to as "Health Services Guide"), and "PARENTS GUIDE TO: A Safe and
7 Healthy Family by Senator Mark DeSaulnier" (also referred to as "Parents Guide"). *See*
8 Responses. The Respondents state that the mailers were distributed to voters in the
9 overlapping California State Senate district and the 10th Congressional district. *Id.*
10 Although neither the complaint nor the response indicates the amount spent on the
11 mailers, the State Committee's disclosure reports show two June 25, 2009, payments to
12 Shallman Communications for campaign literature and mailings (\$51,885.20) and
13 postage, delivery and messenger services (\$30,016.15).¹

14 **A. The "Health Services Guide" Mailer**

15 On or about June 29, 2009, the State Committee sent a twelve-page Health
16 Services Guide to voters in the overlapping State Senate district and the 10th
17 Congressional District. *See* Complaint, Exhibit C. The guide, which includes several
18 pictures of DeSaulnier, lists health care resources within the State of California and
19 describes DeSaulnier's involvement, as a state legislator, in health care issues. *Id.* The
20 Health Services Guide contains two pages that reference President Obama and the current

¹ *See* <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1438141&amendid=0> for disclosure report filed with the California Fair Political Practices Commission.

1 federal health care reform efforts. *Id.* One page also contains a small photograph of
2 President Obama speaking to Congress with Vice-President Biden and Speaker Nancy
3 Pelosi standing behind him. *Id.* The mailer also contains a letter from DeSaulnier
4 discussing the importance of pending federal health care legislation and the need for
5 “concerned citizens like you” and “leaders at all levels of government” to “stand behind
6 him (Obama), and help him achieve this critical goal for our country.” *Id.*

7 The back cover of the mailer includes a photograph of DeSaulnier and California
8 State Senator Tom Torlakson (11th District)² with the following endorsement: “Mark
9 DeSaulnier is a natural leader, an independent thinker and a coalition builder who brings
10 people together to get things done. He has invaluable real world experience as a small
11 businessman that consistently and positively informs his work for the people of this
12 district.” *Id.* The mailer indicates it was paid for by the State Committee.

13 Complainant alleged that DeSaulnier, as a Federal candidate, violated 2 U.S.C.
14 § 441i(e)(1) because the Health Services Guide, which was paid for with non-federal
15 funds, does not meet the stated requirements of the exception allowed by 2 U.S.C.
16 § 441i(e)(2) for communications that are solely in connection with the State candidate’s
17 election and do not mention any candidate other than one for the same State election. *See*
18 Complaint. The Complainant alleged that the mailer “tends to promote” President
19 Obama, Vice-President Biden, Speaker of the House Pelosi, and DeSaulnier as Federal
20 candidates, and that it also references Torlakson, a non-federal candidate who is not a
21 candidate for the same office DeSaulnier seeks as a State candidate. *Id.*

² Torlakson is currently in his last term as State Senator for the 11th District of California and is a candidate for election for the California Superintendent for Public Instruction in 2010.

1 **B. The “Parents Guide” Mailer**

2 On or about July 6, 2009, the State Committee sent a twenty-page mailer, the
3 Parents Guide, to voters in the same geographic area as the first mailer. *See* Complaint,
4 Exhibit D. The mailer opens with a letter from DeSaulnier, in his State Senate capacity,
5 telling of his work with health, education, and public safety experts in compiling a list of
6 useful tips – “a no-nonsense, handy guide ... for keeping our children safe, healthy, and
7 prepared for life’s emergencies.” *Id.* It provides general family health and safety
8 information and contact information for different federal and state health agencies in
9 California. *Id.* In addition, it includes quotations from DeSaulnier regarding the health,
10 education, and public safety of children. *Id.* The mailer indicates that it was paid for by
11 the State Committee.

12 The complaints alleged that the Parents Guide contains “federal election activity”
13 in violation of 2 U.S.C. § 441i(f). *See* Complaints. Complainant claimed that DeSaulnier
14 and his State Committee do not meet the exception requirements of Section 441i(f)(2)
15 because the timing of the mailer is an indication that it was intended to benefit
16 DeSaulnier’s Federal campaign and not his State re-election three years in the future. *Id.*

17 **III. LEGAL ANALYSIS**

18 The Commission’s separate Statement of Reasons will set forth the basis for
19 dismissing allegations that: (1) DeSaulnier, as a Federal candidate, spent non-federal
20 funds through his State campaign in a way that did not fall within the exception for
21 disbursements related solely to his State re-election effort, in violation of Section
22 441i(e)(1) of the Act; and (2) DeSaulnier, as a State candidate, and his State Committee

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1 spend State funds on "federal election activity" contained in the two mailers, in violation
2 of Section 441i(f)(1).

3 This Factual and Legal Analysis sets forth the basis for the Commission finding
4 no reason to believe that (1) the State Committee violated the Act by (A) coordinating its
5 disbursements for the mailers with the Federal Committee in a manner that would result
6 in an in-kind contribution, and failing to report such an in-kind contribution; and
7 (B) failing to comply with the disclaimer requirements; and (2) no reason to believe that
8 the Federal Committee's campaign manager engaged in unspecified violations of the Act.

9 **A. Coordination Analysis**

10 The Act provides that no person shall make contributions to any candidate and his
11 or her authorized political committee with respect to any election for federal office,
12 which, in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a)(1)(A). Further, candidates
13 and political committees are prohibited from knowingly accepting any contributions in
14 excess of the Act's limitations. 2 U.S.C. § 441a(f).

15 Commission regulations set forth a three-prong test to determine whether a
16 payment for a communication is an in-kind contribution as a result of coordination
17 between the person making the payment and the candidate. *See* 11 C.F.R.
18 §109.21(a)(1)-(3). Under the first prong of the "coordinated communication" definition,
19 a communication is only subject to the regulations if it "is paid for in whole or in part, by
20 a person *other than that candidate*, authorized committee, or political party committee."
21 11 C.F.R. § 109.21(a)(1) (emphasis added).

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1 At issue is whether the State Committee mailings were coordinated with the
2 Federal Committee. If so, the costs of the mailers would be in-kind contributions from
3 the State Committee to the Federal Committee, and in excess of the contribution
4 limitations at 2 U.S.C. § 441a(a)(1)(A). The Federal Committee would also have been
5 required to report such in-kind contributions pursuant to 2 U.S.C. § 434.

6 In this matter, both mailers were paid for by DeSaulnier's State Committee.
7 Thus, this situation is similar to the situation presented in Advisory Opinion 2009-26
8 (Coulson). In that advisory opinion, the Commission concluded that the payment prong
9 was not met because Representative Coulson's State Office Account or State Campaign
10 Committee paid for the postcards promoting a seniors' fair, as Representative Coulson
11 and her agents were paying for these communications. *Id.* at 5, 7-8. *See also* Advisory
12 Opinion 2007-1 (McCaskill). Similarly, in the present matter, the communications were
13 paid for by the candidate or his agents, and therefore, the payment prong is not satisfied.
14 Accordingly, we conclude that the two mailings distributed by the State Committee do
15 not constitute coordinated communications pursuant to 11 C.F.R. § 109.21. The
16 Commission found no reason to believe that the State Committee made or that the
17 Federal Committee violated 2 U.S.C. §§ 441a or 441b by making or accepting an
18 excessive or prohibited in-kind contribution in the form of coordinated expenditure.

19 **B. Campaign Manager**

20 As to Shara Perkins, the amended complaint vaguely alleged that she violated the
21 Act without providing any specific basis. There is no information in the record to
22 indicate that Ms. Perkins has violated any provision of the Act or regulations.

1 Accordingly, the Commission found no reason to believe that Ms. Perkins violated any
2 provision of the Act.

3 **C. Disclaimer**

4 The complaint alleged that the State Committee violated the disclaimer
5 requirements by failing to place the disclaimers for the two mailers in printed boxes set
6 apart from the rest of the communication as required by Section 441d(c)(2). *See also*
7 11 C.F.R. § 110.11(c)(2). Section 441d(c)(2) provides that disclaimers are required for:
8 1) any public communication, including electronic mail and internet website, made by a
9 political committee and 2) for any public communication by “any person” that expressly
10 advocates, solicits contributions or constitutes electioneering communications. 2 U.S.C.
11 441d(c)(2); *see also* 11 C.F.R. § 110.11(a)(1) – (4). Neither criterion is satisfied in this
12 matter.

13 The State Committee does not meet the definition of a political committee, and
14 the communications at issue did not expressly advocate the election of a candidate, solicit
15 a contribution, or constitute an electioneering communication. The Act defines a
16 “political committee” as any committee, club, association, or other group of persons that
17 receives “contributions” or makes “expenditures” for the purpose of influencing a federal
18 election which aggregate in excess of \$1,000 during a calendar year.
19 2 U.S.C. § 431(4)(A). In the context of public communications, the courts have limited
20 the term “for the purpose of influencing a federal election” to those which expressly
21 advocate the election or defeat of a candidate. *See Political Committee Status:*
22 *Supplemental Explanation and Justification*, 72 Fed. Reg. at 5606. The courts have

1 further limited the definition of political committee to organizations whose major purpose
2 is to engage in federal campaign activity. *Id.* First, the State Committee has not made an
3 expenditure for a public communication that expressly advocates either under 11 C.F.R.
4 § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b). Second, the State
5 Committee lacks the “major purpose” of engaging in federal election activity. *See*
6 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg.
7 5595, 5597, 5601 (Feb. 7, 2007).

8 In addition to not being a federal political committee, the State Committee’s
9 mailers did not trigger a disclaimer requirement by expressly advocating the election or
10 defeat of a federal candidate. Accordingly, the Commission found no reason to believe
11 that the State Committee violated 2 U.S.C. § 441d.

12 The Commission voted to close the file as to all respondents.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James C. Harrison, Esq.
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94677

AUG 6 2010

RE: MUR 6207
Mark DeSaulnier;
Mark DeSaulnier for Senate 2012;
DeSaulnier for Congress and
Rita Copeland, in her official
capacity as treasurer

Dear Mr. Harrison:

On July 28, 2009 and August 12, 2009, the Federal Election Commission notified your clients of a complaint and its supplement alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. Copies of the complaint and its supplement were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission dismissed the allegations that Mark DeSaulnier violated 2 U.S.C. § 441i(e)(1)(B) and that Mark DeSaulnier and Mark De Saulnier for Senate 2012 violated 2 U.S.C. § 441i(f)(1) on the basis of prosecutorial discretion. The Commission found no reason to believe that DeSaulnier for Congress, Rita Copeland, in her official capacity as treasurer and Mark DeSaulnier for Senate 2012 violated 2 U.S.C. §§ 441a or 441b, and that Mark DeSaulnier for Senate 2012 violated 2 U.S.C. § 441d. Accordingly, on July 27, 2010, the Commission closed the 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. 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). The Factual and Legal Analysis, which explains the Commission's no reason to believe findings, is enclosed for your information. A Statement of Reasons further explaining the basis for the Commission's dismissed of other allegations will follow.

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James C. Harrison, Esq.
MUR 6207
Page 2

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6207

RESPONDENTS: Mark DeSaulnier, DeSaulnier for Congress and Rita Copeland, in her official capacity as Treasurer, Mark DeSaulnier for Senate 2012 and Shara Perkins, Campaign Manager for DeSaulnier for Congress

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by Jason A. Bezis, Esq. See 2 U.S.C. § 437g(a)(1). This matter involves allegations that California State Senator and former Congressional candidate Mark DeSaulnier (“DeSaulnier”), Mark DeSaulnier for Senate 2012 (“State Committee”), DeSaulnier for Congress and Rita Copeland, in her official capacity as treasurer (“Federal Committee”), and Shara Perkins, campaign manager for the Federal Committee, (also collectively referred to as “Respondents”) violated the Federal Election Campaign Act of 1971, as amended (“Act”) in connection with two mass mailings paid for by the State Committee.

The complaint, as amended, alleges that the Respondents: (1) violated 2 U.S.C. §§ 441i(e)(1) and 441i(f)(1) by using non-federal funds for “federal election activity”; (2) violated 2 U.S.C. §§ 441a(1)(A) and 441b by making excessive and prohibited contributions via unreported coordinated communications; and (3) violated 2 U.S.C. § 441d(c)(2) by failing to comply with the Act’s disclaimer requirements.

1 Respondents assert that the State Committee's spending by a State candidate who
2 also happens to be a Federal candidate is explicitly exempted from the Act's restrictions
3 pursuant to 2 U.S.C. § 441i(e)(2) and 11 C.F.R. § 300.63. *See Responses.* Respondents
4 also assert that the mailers are not coordinated in-kind contributions, because neither the
5 "payment prong" nor the "conduct prong" of the Commission's coordination regulations
6 apply to communications made by a Federal candidate/officeholder, in his capacity as a
7 State candidate. 11 C.F.R. § 109.21(b). *Id.* Finally, Respondents maintain that the
8 mailings were State campaign materials and did not require Federal disclaimers. *Id.*

9 With respect to the alleged violations of sections 441i(e)(1)(B) and 441i(f)(1), the
10 Commission voted 5-0 to exercise its prosecutorial discretion, pursuant to *Heckler v.*
11 *Chaney*, 470 U.S. 821, 831 (1985), and dismiss allegations that the Respondents violated
12 2 U.S.C. §§ 441i(e)(1)(B) and 441i(f)(1). The Commission will issue a separate
13 Statement of Reasons setting forth the basis for the dismissal of these allegations.

14 With respect to the State Committee's alleged coordination of the mailers with the
15 Federal Committee and the absence of Federal disclaimers and alleged unspecified
16 violations by the Federal Committee's campaign manager, the Commission found no
17 reason to believe that there had been any violations. The basis for these no reason to
18 believe findings are set forth below.

19 **II. FACTUAL SUMMARY**

20 DeSaulnier is a California State Senator representing the 7th District who was
21 originally elected to office in November 2008, and was a declared candidate for
22 re-election to the State Senate in 2012. *See Amended Response Attachments.* On or

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1 about March 26, 2009, DeSaulnier announced his intent to run for the soon-to-be-vacated
2 seat in California's 10th Congressional District. *See* Amended Response.

3 During the 90-day period prior to the September 1, 2009, special primary election
4 for the 10th Congressional District nomination, the State Committee sent two mailings
5 entitled "Your Health Services Guide: Courtesy of Senator Mark DeSaulnier" (also
6 referred to as "Health Services Guide"), and "PARENTS GUIDE TO: A Safe and
7 Healthy Family by Senator Mark DeSaulnier" (also referred to as "Parents Guide"). *See*
8 Responses. The Respondents state that the mailers were distributed to voters in the
9 overlapping California State Senate district and the 10th Congressional district. *Id.*
10 Although neither the complaint nor the response indicates the amount spent on the
11 mailers, the State Committee's disclosure reports show two June 25, 2009, payments to
12 Shallman Communications for campaign literature and mailings (\$51,885.20) and
13 postage, delivery and messenger services (\$30,016.15).¹

14 **A. The "Health Services Guide" Mailer**

15 On or about June 29, 2009, the State Committee sent a twelve-page Health
16 Services Guide to voters in the overlapping State Senate district and the 10th
17 Congressional District. *See* Complaint, Exhibit C. The guide, which includes several
18 pictures of DeSaulnier, lists health care resources within the State of California and
19 describes DeSaulnier's involvement, as a state legislator, in health care issues. *Id.* The
20 Health Services Guide contains two pages that reference President Obama and the current

¹*See* <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1438141&amendid=0> for disclosure report filed with the California Fair Political Practices Commission.

1 federal health care reform efforts. *Id.* One page also contains a small photograph of
2 President Obama speaking to Congress with Vice-President Biden and Speaker Nancy
3 Pelosi standing behind him. *Id.* The mailer also contains a letter from DeSaulnier
4 discussing the importance of pending federal health care legislation and the need for
5 “concerned citizens like you” and “leaders at all levels of government” to “stand behind
6 him (Obama), and help him achieve this critical goal for our country.” *Id.*

7 The back cover of the mailer includes a photograph of DeSaulnier and California
8 State Senator Tom Torlakson (11th District)² with the following endorsement: “Mark
9 DeSaulnier is a natural leader, an independent thinker and a coalition builder who brings
10 people together to get things done. He has invaluable real world experience as a small
11 businessman that consistently and positively informs his work for the people of this
12 district.” *Id.* The mailer indicates it was paid for by the State Committee.

13 Complainant alleged that DeSaulnier, as a Federal candidate, violated 2 U.S.C.
14 § 441i(e)(1) because the Health Services Guide, which was paid for with non-federal
15 funds, does not meet the stated requirements of the exception allowed by 2 U.S.C.
16 § 441i(e)(2) for communications that are solely in connection with the State candidate’s
17 election and do not mention any candidate other than one for the same State election. *See*
18 Complaint. The Complainant alleged that the mailer “tends to promote” President
19 Obama, Vice-President Biden, Speaker of the House Pelosi, and DeSaulnier as Federal
20 candidates, and that it also references Torlakson, a non-federal candidate who is not a
21 candidate for the same office DeSaulnier seeks as a State candidate. *Id.*

² Torlakson is currently in his last term as State Senator for the 11th District of California and is a candidate for election for the California Superintendent for Public Instruction in 2010.

1 **B. The “Parents Guide” Mailer**

2 On or about July 6, 2009, the State Committee sent a twenty-page mailer, the
3 Parents Guide, to voters in the same geographic area as the first mailer. *See* Complaint,
4 Exhibit D. The mailer opens with a letter from DeSaulnier, in his State Senate capacity,
5 telling of his work with health, education, and public safety experts in compiling a list of
6 useful tips – “a no-nonsense, handy guide ... for keeping our children safe, healthy, and
7 prepared for life’s emergencies.” *Id.* It provides general family health and safety
8 information and contact information for different federal and state health agencies in
9 California. *Id.* In addition, it includes quotations from DeSaulnier regarding the health,
10 education, and public safety of children. *Id.* The mailer indicates that it was paid for by
11 the State Committee.

12 The complaints alleged that the Parents Guide contains “federal election activity”
13 in violation of 2 U.S.C. § 441i(f). *See* Complaints. Complainant claimed that DeSaulnier
14 and his State Committee do not meet the exception requirements of Section 441i(f)(2)
15 because the timing of the mailer is an indication that it was intended to benefit
16 DeSaulnier’s Federal campaign and not his State re-election three years in the future. *Id.*

17 **III. LEGAL ANALYSIS**

18 The Commission’s separate Statement of Reasons will set forth the basis for
19 dismissing allegations that: (1) DeSaulnier, as a Federal candidate, spent non-federal
20 funds through his State campaign in a way that did not fall within the exception for
21 disbursements related solely to his State re-election effort, in violation of Section
22 441i(e)(1) of the Act; and (2) DeSaulnier, as a State candidate, and his State Committee

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1 spend State funds on "federal election activity" contained in the two mailers, in violation
2 of Section 441i(f)(1).

3 This Factual and Legal Analysis sets forth the basis for the Commission finding
4 no reason to believe that (1) the State Committee violated the Act by (A) coordinating its
5 disbursements for the mailers with the Federal Committee in a manner that would result
6 in an in-kind contribution, and failing to report such an in-kind contribution; and
7 (B) failing to comply with the disclaimer requirements; and (2) no reason to believe that
8 the Federal Committee's campaign manager engaged in unspecified violations of the Act.

9 **A. Coordination Analysis**

10 The Act provides that no person shall make contributions to any candidate and his
11 or her authorized political committee with respect to any election for federal office,
12 which, in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a)(1)(A). Further, candidates
13 and political committees are prohibited from knowingly accepting any contributions in
14 excess of the Act's limitations. 2 U.S.C. § 441a(f).

15 Commission regulations set forth a three-prong test to determine whether a
16 payment for a communication is an in-kind contribution as a result of coordination
17 between the person making the payment and the candidate. *See* 11 C.F.R.
18 §109.21(a)(1)-(3). Under the first prong of the "coordinated communication" definition,
19 a communication is only subject to the regulations if it "is paid for in whole or in part, by
20 a person *other than that candidate*, authorized committee, or political party committee."
21 11 C.F.R. § 109.21(a)(1) (emphasis added).

1 At issue is whether the State Committee mailings were coordinated with the
2 Federal Committee. If so, the costs of the mailers would be in-kind contributions from
3 the State Committee to the Federal Committee, and in excess of the contribution
4 limitations at 2 U.S.C. § 441a(a)(1)(A). The Federal Committee would also have been
5 required to report such in-kind contributions pursuant to 2 U.S.C. § 434.

6 In this matter, both mailers were paid for by DeSaulnier's State Committee.
7 Thus, this situation is similar to the situation presented in Advisory Opinion 2009-26
8 (Coulson). In that advisory opinion, the Commission concluded that the payment prong
9 was not met because Representative Coulson's State Office Account or State Campaign
10 Committee paid for the postcards promoting a seniors' fair, as Representative Coulson
11 and her agents were paying for these communications. *Id.* at 5, 7-8. *See also* Advisory
12 Opinion 2007-1 (McCaskill). Similarly, in the present matter, the communications were
13 paid for by the candidate or his agents, and therefore, the payment prong is not satisfied.
14 Accordingly, we conclude that the two mailings distributed by the State Committee do
15 not constitute coordinated communications pursuant to 11 C.F.R. § 109.21. The
16 Commission found no reason to believe that the State Committee made or that the
17 Federal Committee violated 2 U.S.C. §§ 441a or 441b by making or accepting an
18 excessive or prohibited in-kind contribution in the form of coordinated expenditure.

19 **B. Campaign Manager**

20 As to Shara Perkins, the amended complaint vaguely alleged that she violated the
21 Act without providing any specific basis. There is no information in the record to
22 indicate that Ms. Perkins has violated any provision of the Act or regulations.

1 Accordingly, the Commission found no reason to believe that Ms. Perkins violated any
2 provision of the Act.

3 **C. Disclaimer**

4 The complaint alleged that the State Committee violated the disclaimer
5 requirements by failing to place the disclaimers for the two mailers in printed boxes set
6 apart from the rest of the communication as required by Section 441d(c)(2). *See also*
7 11 C.F.R. § 110.11(c)(2). Section 441d(c)(2) provides that disclaimers are required for:
8 1) any public communication, including electronic mail and internet website, made by a
9 political committee and 2) for any public communication by "any person" that expressly
10 advocates, solicits contributions or constitutes electioneering communications. 2 U.S.C.
11 441d(c)(2); *see also* 11 C.F.R. § 110.11(a)(1) – (4). Neither criterion is satisfied in this
12 matter.

13 The State Committee does not meet the definition of a political committee, and
14 the communications at issue did not expressly advocate the election of a candidate, solicit
15 a contribution, or constitute an electioneering communication. The Act defines a
16 "political committee" as any committee, club, association, or other group of persons that
17 receives "contributions" or makes "expenditures" for the purpose of influencing a federal
18 election which aggregate in excess of \$1,000 during a calendar year.
19 2 U.S.C. § 431(4)(A). In the context of public communications, the courts have limited
20 the term "for the purpose of influencing a federal election" to those which expressly
21 advocate the election or defeat of a candidate. *See Political Committee Status:*
22 *Supplemental Explanation and Justification*, 72 Fed. Reg. at 5606. The courts have

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1 further limited the definition of political committee to organizations whose major purpose
2 is to engage in federal campaign activity. *Id.* First, the State Committee has not made an
3 expenditure for a public communication that expressly advocates either under 11 C.F.R.
4 § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b). Second, the State
5 Committee lacks the “major purpose” of engaging in federal election activity. *See*
6 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg.
7 5595, 5597, 5601 (Feb. 7, 2007).

8 In addition to not being a federal political committee, the State Committee's
9 mailers did not trigger a disclaimer requirement by expressly advocating the election or
10 defeat of a federal candidate. Accordingly, the Commission found no reason to believe
11 that the State Committee violated 2 U.S.C. § 441d.

12 The Commission voted to close the file as to all respondents.