BEFORE THE FEDERAL ELECTION COMMISSION

MURS 6929 & 6917

Charnika Miles

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RESPONSE OF OUR AMERICAN REVIVAL, ANDREW HITT, AS TREASURER, and GOVERNOR SCOTT WALKER

On behalf of Our American Revival, Andrew Hitt, as Treasurer, and Governor Scott Walker, this responds to the complaints and supplemental complaints filed in the above captioned matters. The complaints in MURs 6917 and 6929 along with a supplemental complaint in MUR 6917 are filed by similarly situated ideological entities and raise the same, but meritless, allegations based on similar circumstances and, as such, the Respondents are submitting one unified response to the complaints.[1] For the reasons set forth below, the Commission should find no reason to believe, dismiss the matters, and close both files.

BACKGROUND

Scott Walker is the second-term Republican Governor of Wisconsin. In his slightly more than five years as Governor, he has pursued an aggressive legislative agenda marked by bold reforms, many of which have been successfully enacted. This has both significantly raised his

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[1] MUR 6917 was filed by a partisan 527 organization formed for the purpose of targeting Republicans with complaints. *See* ADLF IRS Form 8871. MUR 6929 was filed by an advocacy organization shortly after it released a one-sided report to the general public through a press release, concluding that certain party leaders were violating campaign finance laws—the report's targets were composed almost exclusively of Republican Party leaders (one Democratic primary opponent of Hillary Clinton was thrown in for good measure).

public profile and made him a target of groups such as those who filed the complaints in the matters at hand. Governor Walker is unique among elected public officials in that he has won three elections in the last four years, including an extraordinarily high-profile recall attempt that garnered national attention. Because of both his legislative and political successes, he has become a leader of the Republican Party and received hundreds of invitations to address groups about his policy and political achievements and to share the reasons for his successes. Governor Walker has been especially active with various grassroots groups who share his goals, or that support policies that he also supports.

Our American Revival ("OAR") is organized with the Internal Revenue Service as a Section 527 entity. Its mission is moving the issues debate forward by disseminating the accomplishments and solutions coming out of state governments, which OAR believes present a blueprint for governments to operate more efficiently and effectively. As a grassroots organization which believes that states are the best laboratories for successful reform ideas, OAR is working to establish itself in various states across the country, using Wisconsin's policy reforms led by Governor Walker as a major example of successful state-based solutions. OAR seeks to share those successes with others around the country and world. Since its inception, OAR has been active working on issues in various states and on the national level. As is common with such groups across the political spectrum, OAR also provides logistical support for Governor Walker as both an ideas and party leader for his travel around the country and world to address various groups and to help organize the grassroots for conservative causes, especially in those states where the issues debate is most focused.

Thus, OAR has a purpose for which it raises money, but that purpose does not, as the complaints allege, focus on any particular run for President. Promoting workable state solutions

is a full-time cause for OAR. As a Republican leader and governor, Governor Walker appropriately weighs into issues of public importance at the state and federal levels. Hence it comes as no surprise that Governor Walker regularly is and should be invited to forums to speak about both politics and policy. Such invitations naturally occur in a number of locales, including states that hold early primaries; this should surprise no one since early primary states tend to historically have the most engaged citizens, that is where the issues debates naturally center. All these are indications of participation in a robust public debate. Attempts by Governor Walker's opponents, in the filed complaints, to limit or stop such activity constitute a misunderstanding of the laws and regulations and would amount to impermissible regulatory overreach.

Governor Walker is not a candidate for Federal office. He has not made statements declaring candidacy, nor has he taken steps to be placed on the ballot for Federal office. Because of his success in passing landmark legislation in Wisconsin coupled with his three election victories in the last four years, media accounts mention Governor Walker frequently as a 2016 Presidential candidate.[2] But as the complainants fail to realize, media mentions and speculation do not make him a candidate, and nor do the activities of OAR. Though the complaints cite reporters' speculation and supposition about Governor Walker's intentions for the future, the Governor makes clear at his appearances that if and when he begins considering a Presidential candidacy is dependent on the 2015 Legislative Session and budget process and his job as governor. Contrary to any accusation or suggestion in the complaint, OAR does not make, and

[2] Such speculation goes back at least to mid-2012—while the previous presidential election was still being run and even before the Republican nominee had picked his running-mate. *See, e.g.*, Chris Cillizza, "Wisconsin recall: Winners and Losers," *Washington Post's The Fix* (June 6, 2012), http://www.washingtonpost.com/blogs/the-fix/post/wisconsin-recall-winners-and-losers/2012/06/06/gJQABC2qIV_blog.html ("Walker's win means that he is guaranteed . . . a prominent speaking slot at the Republican National Convention [which] will continue to bolster the idea of him as a national candidate—heading into the 2016 or 2020 election."); "Wisconsin's Scott Walker: 2016 Presidential Frontrunner?" *The Week* (June 7, 2012), http://theweek.com/articles/474852/ wisconsins-scott-walker-2016-presidential-frontrunner. He was also mentioned as a possible vice presidential nominee in 2012. *See, e.g.*, Marc A. Theissen, "Vice President Scott Walker?," *Washington Post* (June 4, 2012), http://www.washingtonpost.com/opinions/vice-president-scott-walker/2012/06/04/gJQAIa9aDV_story.html.

Governor Walker has not authorized or assented to OAR making, any disbursements on behalf of anyone to influence a federal election.

The law may not say what the complaints wish it said, but that is not grounds for the Commission to find reason to believe.

LEGAL ARGUMENT

I. Governor Walker is not a candidate for federal office, and his activities with OAR are permissible.

A. Governor Walker is not a candidate for federal office.

Governor Walker is not a candidate for federal office under the Federal Election Campaign Act of 1971, as amended (the "Act") or Commission precedents. The Act defines "candidate" to mean:

> an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election— (A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or (B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000.

52 U.S.C. § 30101(2). Becoming a candidate is thus tied to receiving contributions or making expenditures—both of which are defined only to include activities "for the purpose of influencing any election for Federal office." *Id.* at (8)-(9). Governor Walker has neither received nor expended any funds for the purpose of influencing a federal election.

As explained above, Governor Walker is both a state officeholder and a leader of the Republican Party by virtue of his elected position and past electoral successes. In addition, he is involved in OAR's (and others') grassroots activities, helping the organizations to fundraise for the organizations' purposes, spreading awareness about the organizations, and advocating for

stated policy goals. These are not activities undertaken for the purpose of influencing a federal election. As such, Governor Walker has not raised or spent $5,000 for the purpose of influencing a federal election, and is thus not a federal candidate. But being a "candidate" inherently involves even more—after all, candidates and non-candidates alike may helm political committees and other organizations that operate for the purpose of influencing federal elections, without triggering testing the waters[3] or candidate status for themselves.[4]

The Commission has looked to the limits of the testing the waters regulations[5] at 11 C.F.R. §§ 100.72 and 100.131 for a list of some activities which indicate one has become a candidate for office.

> (1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
>
> (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.
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> (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

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[3] As explained below, the testing the waters regulations do not impose a pre-candidacy campaign finance regime; they merely offer a legally-compliant way for those who wish to undertake certain activities that could otherwise be deemed a contribution or expenditure "to determine whether a person wishes to pursue a candidacy."

[4] *See, e.g.*, AO 1986-06 (Fund for America's Future) (determining that Vice President Bush's, and his political action committee's, activities were not in connection with the 1988 presidential election or otherwise testing the waters activities); AO 1988-27 (Medivision), at 3 ("events in which Federal officeholders participate in the performance of their duties as officeholders are not campaign-related simply because the officeholders may be candidates for election or reelection to Federal office, and that payments or donations associated with the expenses of such events are not contributions to that officeholder's campaign, absent any campaign-related activity at the event."); AO 1992-06 (Duke) ("instead of being based entirely on his status as a presidential candidate, [the candidate's] appearance at [a University's] invitation may, in part, reflect his career as a recent state legislator and a speaker who, in prior speeches to college and university audiences, has expounded his ideas regarding the impact of current statutes and future legislation.").

[5] As explained below, however, being an individual who is not a candidate does not automatically thrust one into "testing the waters" either. Testing the waters provides specific exceptions for funds received or spent "solely for the purpose of determining whether an individual should become a candidate." 11 C.F.R. §§ 100.72, 100.131. The testing the waters exception is not a mandatory stage of becoming a candidate, nor does it provide for a regulatory twilight "look-back" period for those who do later become candidates. And it is not the case that the activities of anyone rumored to be considering running for federal office or who is otherwise active in public life and named by a third party as a possible candidate are automatically transformed into federal expenditures or testing the waters activity. Such a look-back would have federal regulators seek to re-cast the career, activities, and statements of a person for an undefined period before candidacy and apply strict regulations to those activities after the fact—an obvious and unconstitutional regulatory overreach.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

11 C.F.R. §§ 100.72, 100.131. Governor Walker has not undertaken any of these activities. He has not used general public political advertising to publicize an intention to campaign for federal office; he has not raised any funds for a candidacy, let alone excess funds; he does not refer to himself as a candidate; he has not conducted activities for a long time or near a federal election; and has not taken action to qualify for the ballot. Except for some vague insinuations, discussed further below, the complaints do not make any substantiated allegations that Governor Walker has engaged in any of these activities. The complaints fail to list any activities that are not attributable to his role as a sitting Governor sought after to discuss his policy and political successes. The activities named in the complaints simply do not constitute indicia of candidacy or testing the waters.

Instead, the complaints cobble together speculative and inaccurate news stories and out-of-context statements in an attempt to fabricate a candidacy from Governor Walker's activities. But notwithstanding the complainants' assertions or desires, the Commission has consistently determined that indefinite statements, media statements,[6] third party statements, and statements of staff not specifically authorized by the person are not indicators of an intent to become a candidate. *See, e.g.*, MUR 6472 (Gooch), MUR 6501 (Brunner). *Cf.* MUR 5363 (Sharpton),

[6] If media speculation could trigger candidacy or testing the waters, then a number of "candidates" would have triggered such status in 2012— and others even before that. But testing the waters regulations govern activities "made solely for the purpose of determining whether an individual should become a candidate." 11 C.F.R. §§ 100.72, 100.131. In other words, media speculation does not mean a person is engaging in testing the waters *activities*. This distinction is important since the Commission does not have the authority to regulate politics writ large, but rather is empowered to regulate the receipt and spending of money in connection with federal elections in accordance with the Act. *See, e.g.*, *McCutcheon v. FEC*, 572 U.S. __ (2014); *Citizens United v. FEC*, 558 U.S. 310 (2010); *FEC v. Wisc. Right to Life*, 551 U.S. 449 (2007); *FEC v. Mass. Citizens for Life*, 479 U.S. 238 (1986); *Buckley v. Valeo*, 424, U.S. 1 (1976). Further, in one MUR, OGC recognized that the media is known for referring to someone as a candidate in the same article that makes clear the same individual had not yet decided whether to run. *See* MUR 6501 (Brunner).

Factual & Legal Analysis ("Sharpton's book contains statements that unequivocally refer to himself as a candidate for President. The title of Chapter One is 'Mr. President.'").

In MUR 6501 (Brunner), the complaint listed a number of media accounts that included statements by the respondent, who later eventually became a candidate, including that he was "'very serious' about running for the Senate" and was "ready to 'jump right into' the race." Further, "sources close to Brunner" told the press that an announcement was imminent. MUR 6501 (Brunner), Office of General Council (OGC) Report at 3. After considering these statements, OGC recommended the Commission find no reason to believe against Brunner because the statements were not indications that Brunner himself had decided to run for office. OGC considered a statement of the press secretary that "I wouldn't be talking to you if he wasn't [running]" to be "closer to the line," but not enough to trigger candidacy, reasoning that it had discovered no evidence that Brunner authorized such a statement and "only statements made or authorized by the potential candidate" are dispositive in such an analysis. *Id.* at 8. Similarly, in MUR 6472 (Gooch), the Commission found: "Although the available information indicates that Gooch may be interested in running again for Congress in 2012, it does not appear that she has made any definite public announcements regarding her future plans or has engaged in other activity that indicates she has decided to become a candidate." MUR 6472 (Gooch), Factual and Legal Analysis at 8.

These types of statements that the Commission has concluded do not constitute a basis for reason to believe are precisely the sorts of statements the complaints rely upon as "evidence." The complaints extensively quote news stories referring to Governor Walker as a candidate or potential candidate or as having a campaign.[7] But no matter how great in number, unauthorized

or inaccurate references to a campaign or candidacy simply do not equate to a candidacy. Despite complainants' assertions to the contrary, individuals are not required to "record dissent" to unauthorized third party mentions of a candidacy or characterizations of that person as a candidate. *See* MUR 6501 (Brunner), OGC Report at 8. Governor Walker has repeatedly been clear that he is not a candidate for any federal office and has not authorized anyone to make statements on his behalf.

The complainants may not like it, but this sort of "gotcha" cobbling together of quotes from press stories, out of context answers to interview questions, and indefinite statements simply do not amount to "candidacy" under the law or Commission precedent. After all, even in a case where the potential candidate made "casual reference to a 'campaign,'" OGC recommended no reason to believe and the Commission did not find reason to believe. MUR 6501 (Brunner), OGC Report at 7; *see also* MUR 6472 (Gooch), Factual and Legal Analysis at 8 n.3 (posting video as "goochcampaign" on website of entity related to potential candidate did not establish candidacy). As such, there is no reason to believe that Governor Walker has become a candidate and thus no reason to believe that he failed to file a statement of candidacy or authorized committee reports with the Commission.

B. Because Governor Walker is not a federal candidate or officeholder, his activities regarding fundraising are not restricted or otherwise governed by the Act or the Commission's regulations.

The rules regarding participation by Federal candidates and officeholders in "non-federal" fundraising events are clear—they apply only to candidates. *See* 52 U.S.C. § 30125(e) (restricting the solicitation of funds by "A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established,

[7] In fact, most of the complaints' quotes insinuated to have come from those close to Walker are instead a reporter's speculation. It is not and cannot be the Commission's position that third party speculation or analysis somehow makes one a candidate—or means someone is testing the waters.

financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office"); 11 C.F.R. § 300.64. Since the threshold question is whether a person is a Federal candidate or individual holding Federal office, and Governor Walker is not a Federal candidate or officeholder, there is no reason to believe he has violated the Act or Commission regulations concerning fundraising or involvement in "non-federal" organizations.

II. OAR is not a testing the waters committee, has not received any contributions or made any expenditures on behalf of any federal candidate or otherwise in connection with a federal election, and therefore is not limited in the contributions it may accept.

A. OAR is not a testing the waters committee and does not engage in testing the waters activities, even if a state officeholder and leader of the Republican Party—with whom it agrees on policy issues and currently works on nationwide grassroots organizing—at some time in the future becomes a federal candidate.

The Commission has been clear since its promulgation of the testing the waters regulations that not all political activities of a potential candidate constitute "testing the waters" or are an indicia of a federal "candidacy." Simply, activities not related to "testing the waters" or "candidacy" are not subject to the "testing the waters" or candidacy regulations.

In an Advisory Opinion requested by Vice President Bush before declaring his candidacy for the 1988 presidential election and issued amid wide-ranging speculation he would run, the Commission ruled that the Vice President's party-building and candidate support activities, including travel, speaking, and fundraising, were not testing the waters activities and did not make him a candidate. AO 1986-06 (Fund for America's Future). Acknowledging the Vice President as a federal officeholder and respected party leader, the Commission allowed that, since the committee was not authorized to undertake activities or make expenditures for the purpose of influencing the nomination or election of the Vice President to federal office, its expenditures were just what the committee said they were—the usual activities of a political

organization. The Commission thus declined to find that an entity's activities—those which were associated with a rumored federal candidate but were not authorized to influence a potential candidacy and which were not undertaken in light of a candidacy determination—were for the purpose of influencing a federal election of the officeholder with whom it was associated. *See* AO 1986-06 at 3, n.4.

In other words, the Commission cannot permit rumors of a potential candidate's possible bid for office fueled by an over-caffeinated press corps—one which wishes to begin their coverage of a Presidential race earlier and earlier each cycle in an attempt to increase their audience—to determine that a potential candidate's otherwise permissible activities equate to candidacy. Governor Walker and OAR's activities are no different and are not transformed into testing the waters activities merely because of Governor Walker's mentions in the media and position among the grassroots and the party.

B. The Commission has always distinguished Federal campaign activity from other activity, and made clear that not everything is 'testing the waters' activity.

The Commission has made clear that not everything an officeholder or potential candidate does should be deemed to be connected with a federal election. Even a declared candidate may still engage in activities unrelated to his or her candidacy without the requirement that those activities be susceptible to the candidate campaign committee finance regime. The Commission and the Act necessarily distinguish between activities that are campaign-related and those in which the individual is not appearing in his or her capacity as a candidate. *See, e.g.*, 11 C.F.R. § 100.93 (outlining different private plane reimbursement rates between travel for a PAC or party and travel on behalf of one's own candidacy); § 106.3 (discussing allocation of costs related to mixed-purpose travel); Candidate Appearances Explanation & Justification, 60 Fed.

Reg. 642660, 64266 (Dec. 14, 1995) ("amendments do not adversely affect the ability of corporations or labor organizations to invite . . . the general public to attend a speech given by an officeholder or other prominent individual who is also a federal candidate, if the speech is not campaign-related and the individual is not appearing in his or her capacity as a candidate"). In other words, individuals can wear different hats at different events or when engaging in different activities and be subject to different rules. At a campaign rally—or an event designed to test the waters for a candidacy—an individual can wear his or her "federal candidate" or "testing the waters" hat. At an official event, he or she can wear an "officeholder" hat separate from activities as a candidate—and not be subject to FEC regulations. *See* Candidate Appearances Explanation & Justification, 60 Fed. Reg. 642660, 64266 (Dec. 14, 1995). At a policy event, it could be an official or policy-expert hat. *See* AO 1992-06 (Duke); AO 1998-27 (Medivision). At a party-building event, it could be that of a party leader, *compare* § 100.93(c)(1) *with* (c)(3), or of an official appearing as part of a PAC's work. *See* AO 1986-06 (Fund for America's Future). In politics, individuals wear multiple hats at various times in various circumstances, and the Act and the Commission's precedents acknowledge that self-evident fact.

The Commission has recognized that the same person can play multiple roles—and that those roles that do not influence Federal elections are not subject to the Commission's regulations. For example, as the Commission stated in Advisory Opinion 1996-11, the permissibility of accepting a speaking opportunity and travel funds from a 501(c)(4) organization "depends upon whether the described payment and speaking opportunity would constitute a contribution to the presidential or congressional campaigns of the speakers for the purposes of the Act and Commission regulations." AO 1996-11 (National Right to Life Conventions, Inc.) at 3. The Commission then explained that "the term 'contribution' includes any gift of money or

anything of value made by any person for the purpose of influencing any election for Federal office." *Id.* "The Commission has determined that financing such activities will result in a contribution to or expenditure on behalf of a candidate if the activities involve (i) the solicitation, making or acceptance of contributions to the candidate's campaign, or (ii) communications expressly advocating the nomination, election or defeat of any candidate." *Id.* at 4. (Citing three advisory opinions and the opinions cited in turn therein). Similarly, OAR's activities are not for the purpose of influencing an election for Federal Office and OAR does not engage in making solicitations of support or contributions for a candidate committee or expressly advocating for candidates, and thus are not contributions.

In Advisory Opinion 1988-27, the Commission likewise concluded that "events in which Federal officeholders participate in the performance of their duties as officeholders are not campaign-related simply because the officeholders may be candidates for election or reelection to Federal office, and that payments or donations associated with the expenses of such events are not contributions to that officeholder's campaign, absent any campaign-related activity at the event." AO 1998-27 (Medivision) at 3. The Commission has also allowed for the possibility that "instead of being based entirely on his status as a presidential candidate, [the candidate's] appearance at [a University's] invitation may, in part, reflect his career as a recent state legislator and a speaker who, in prior speeches to college and university audiences, has expounded his ideas regarding the impact of current statutes and future legislation." AO 1992-06 (Duke).

If a candidate may conduct activities without it being a campaign appearance, it necessarily follows that someone who is not a candidate does not engage in "testing the waters" or "candidate" activities simply because he or she appears at an event. While media and potential opponents may view all activities through their chosen lens, that does not change the

true nature or permissibility of participating in such events without it constituting "testing the waters." The same is true of someone who is not a candidate. If federal candidates may distinguish between capacities, certainly those who have not determined whether they will become candidates may also distinguish between appearing in their capacity as an officeholder, or as the head of a leadership PAC, or as someone involved with a 527 organization, or as someone who may consider running for office. In the end, the definitions of contribution and expenditure require an attempt to influence a federal election and do not encompass the type of activity in which OAR and Governor Walker are engaging. Proximity to an election or being "in cycle" is not a sufficient nexus—even for candidates, let alone those who are not. *See* AOs 1998-27 (Medivision), 1992-06 (Duke). Since OAR does not undertake activities that constitute "contributions" or "expenditures" under the Act, it cannot have accepted excessive or prohibited funds under the Act. As such, the Commission should find no reason to believe and close the file.

C. Since testing the waters is merely a limit to "contribution" and "expenditure," and neither OAR or Governor Walker accepted contributions or made expenditures, the testing the waters regulations are inapplicable to OAR and Governor Walker.

The testing the waters regulations simply carve out a "limited exemption to the definitions of contribution and expenditure." MUR 6775 (Ready for Hillary PAC), Factual and Legal Analysis at 6. The regulations are clear—"Funds received and payments made 'solely for the purpose of determining whether an individual should become a candidate' are not considered contributions or expenditures under the Act.'" *Id.* at 7 (quoting 11 C.F.R. §§ 100.72 and 100.131). It is telling that the regulations are listed as "exceptions" to "contribution" and "expenditure"—not as exceptions to candidacy and not in a separate section of the regulations that set up a pre-candidacy campaign finance regime. Unlike the complaint's description of

testing the waters, the regulations do not impose any sort of requirement that all individuals who may eventually run for Federal office necessarily engage in testing the waters activities, but rather provide an exception to "contribution" and "expenditure" for those who do wish to undertake such activities. The narrow exceptions, therefore, cannot apply to activities other than those involving a federal candidate purpose—campaigning for federal office. There are activities that are neither contributions, nor expenditures, nor testing the waters. Simply, if a donation is not a contribution and a disbursement is not an expenditure, as is the case for Governor Walker's activities regarding OAR, there is no need to avail oneself of an exception. Those who may become candidates are not automatically thrust into a twilight campaign finance regime.

D. Testing the Waters regulations are beyond the authorization of the Act.

The Act contains no grounds for an intermediate regulatory scheme for those who are not candidates. The Act regulates "candidates" for federal office and federal officeholders. The Act does not reach state officeholders, and it does not contain any look-backs or pre-pre-candidacy stages of running for office.[8] Either an individual is a candidate—and thus is subject to the Act and Commission's regulations—or he is not, in which case, his activities are not subject to the restrictions in the Act, or the Commission's regulatory authority. The Act itself contains no mention of "testing the waters."[9]

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[8] Although Governor Walker is not testing the waters, it is also important to note that—on their face and by their plain language—the Act and Commission regulations simply do not extend to individuals who might be thinking about exploring a run for Federal office, but have not yet become a "candidate." Any attempt by the Commission to add a "look back" period to these provisions would be an unacceptable attempt to regulate via MUR. *See* MUR 5835 (Democratic Congressional Campaign Committee), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn at 9 ("we will not engage in so-called regulation via MUR"). That complainants have filed so many actions against so many on this subject would indicate that their view of the law is incorrect and that they are attempting to change the Regulations to the way they wish they were written through the MUR process.

[9] If the Commission were to impute "testing the waters" status (and corresponding regulatory limits and prohibitions) on all activities a person undertakes prior to deciding whether to become a candidate, the fundamental question would remain: At what point would an individual enter the federal campaign finance system. Would it be:

As discussed above, the Commission has been clear on what does not make one a candidate and has declined to extend the definition of candidacy any further than its current bounds, even with regard to candidates in this election. As such, any imposition of a look-back on pre-candidacy or pre-testing the waters activities or a requirement to have a "testing the waters" period would be beyond the regulatory authority of the Commission.[10]

CONCLUSION

Governor Scott Walker, a state official and Republican Party leader, is not a candidate for President of the United States or any Federal office. As such, his fundraising activities with Our American Revival are permissible and not regulated by the Act or Commission regulations, and Governor Walker has incurred no federal registration or reporting obligations for his activities. Further, the activities of Governor Walker and OAR do not constitute "contributions" or "expenditures" which attempt to influence a federal election, and therefore OAR has neither made in-kind contributions nor impermissibly acts as a testing the waters committee on behalf of Governor Walker. Simply, because OAR and Governor Walker are not accepting "contributions" or making "expenditures" under federal campaign finance laws and are not undertaking activities to determine "whether an individual should become a candidate," they are not testing the waters and need not avail themselves of the "testing the waters" exception, and Governor Walker is not a federal candidate subject to the campaign finance regime associated

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Upon having the dream of becoming a candidate? Upon being elected to local or state office but perhaps one day running for federal office? The first time the press writes a story putting forth that person's name for federal office? Currently, the Commission has put forth a clear and administrable concept of what makes a candidate based on outward statements and activities and may regulate those candidates within those parameters. Creating any other look-back would require re-casting a candidate's prior activities, statements, and career in an after-the-fact analysis far beyond the scope of the Act.

[10] The Commission is constrained by the First Amendment and the bounds of FECA, as amended, and may not simply regulate politics in the abstract. *See, e.g.*, *Emily's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2010); *Unity '08 v. FEC*, 596 F.3d 861 (D.C. Cir. 2010); *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981).

with federal candidacy. Accordingly, the Respondents respectfully request that the Commission find no reason to believe that a violation occurred, that these matters be dismissed and that the Commission close the files.

Dated: 6/1/15 By: _____

Andrew Hitt, Treasurer