

Friday, November 08, 2013
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Supplement to May 10, 2013 FEC Complaint against
Friends of Joe Sestak and Sestak for Senate, Margaret Infantino, Treasurer /
Edwin Wee, Treasurer and Joe Sestak, personally

To Whom It May Concern:

On May 10, 2013, pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, the Republican Party of Pennsylvania filed a Complaint against Friends of Joe Sestak, Margaret Infantino, Treasurer; Sestak for Senate, Margaret Infantino, Treasurer; and Joe Sestak, personally (collectively, "Respondents") for violation of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. §431 et. seq. and the regulations of the Federal Election Commission ("the Commission" or "FEC"). Subsequent filings with the FEC by the Respondents indicate that Edwin Wee is now the treasurer of Friends of Joe Sestak and Mr. Wee should be included as a Respondent.

In a July 26, 2013 letter, the Committee asked Respondent Joe Sestak to either file his Statement of Candidacy as required by law (2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1) as a candidate for the U.S. Senate or to disavow the activities of Friends of Joe Sestak.

Respondents have willfully failed to do either.

In an August 28, 2013 letter to the Commission, Respondents failed to disavow the activities of the Friends of Joe Sestak and instead claimed that the Respondents remain in the 'testing the waters' phase and that Mr. Sestak was and is not currently a candidate.

However, Respondents' fundraising activities and his solicitations clearly demonstrate that Joe Sestak cannot claim the protections of a "testing the waters" or pre-candidacy status under the law.

Respondents are clearly amassing a campaign war chest as evidenced by the most recent filings with the FEC and, further, Respondents are soliciting funds for the express purpose of seeking the U.S. Senate seat in Pennsylvania.

The purpose of this submission is to provide supplemental facts to the original May 10, 2013 complaint and to further demonstrate that Joe Sestak and other Respondents are willfully disregarding federal law and should be held accountable for their ongoing violations.

Facts of the Violation(s)

1. Friends of Joe Sestak raised \$460,250.00 during the First Quarter of 2013, but spent only \$10,185.26, leaving a cash-on-hand balance of \$458,709.33 as of March 31, 2013.

(See Attachment A, April 2013 Quarterly Report filed with the FEC by the Friends of Joe Sestak).

2. Friends of Joe Sestak raised an additional \$210,046.75 during the Second Quarter of 2013, and spent \$50,264.47 leaving a cash-on-hand balance of \$618,491.29 as of June 30, 2013. (See Attachment B, July 2013 Quarterly Report filed with the FEC by the Friends of Joe Sestak).

3. Friends of Joe Sestak raised an additional \$335,346.13 during the Third Quarter of 2013, and spent \$40,234.48 leaving a cash-on-hand balance of \$913,175.44 as of September 30, 2013. (See Attachment C, October 2013 Quarterly Report filed with the FEC by the Friends of Joe Sestak).

4. Beginning in June 2013 (or before), the Friends of Joe Sestak have sent a series of campaign fundraising e-mails to supporters. (See Attachment D, E-mails Sent from the Friends of Joe Sestak E-mail Account). These e-mail communications contain a number of statements that clearly indicate that Sestak is a candidate for office and that his campaign is fundraising for a general election. The e-mail communications refer to a one million dollar goal for fundraising at the end of the September FEC reporting period.

5. On September 27th, the Friends of Joe Sestak held a fundraiser at the office of lobbyist Alan Lopatin in Washington D.C. The e-mail invitations again refer to Respondents' one million dollar fundraising goal before the end of the September reporting period. In addition, Friends of Joe Sestak held another fundraiser in Harrisburg, Pennsylvania. (See Attachment E, Invitations to Fundraisers for Friends of Joe Sestak).

6. Joe Sestak received an endorsement for the 2016 U.S. Senate from the Pennsylvania Association of Staff Nurses and Allied Professionals (See Attachment F, Article from PoliticsPA.com Referring to the Endorsement of Sestak's Candidacy by the Pennsylvania Association of Staff Nurses and Allied Professionals).

7. As of this date, the Respondents have failed to file a Statement of Candidacy.

8. As of this date, Sestak has failed to file a Personal Financial Disclosure Report with the United States Senate Ethics Committee, which was due to be filed within thirty (30) days of qualifying as a federal candidate. 5 U.S.C. 101(c).

Violations of FECA

1. Joe Sestak and Friends of Joe Sestak have triggered federal candidate status.

Federal law provides that an individual becomes a federal candidate by operation of law when the individual has received contributions 'aggregating in excess of \$5,000' or spends \$5,000 in furtherance of a federal candidacy. See 2 U.S.C. §431(2) and 11 C.F.R. §100.3. As the May 10, 2013 complaint detailed, Respondents clearly received well in excess of \$5,000 on or about February 9, 2013. The FECA further requires that a candidate must file a Statement of Candidacy within fifteen (15) days of triggering candidate status. See 2 U.S.C. §432(e)(1) and 11 C.F.R. §§ 101.1 and 4101.1. Pursuant to the requirements of the FECA, Joe Sestak was

obligated under the law to file a Statement of Candidacy on or before February 24, 2013 — fifteen days after triggering candidate status on February 9, 2013.

2. Joe Sestak has exceeded the permissible level of activity for a ‘testing the waters’ phase. An individual who has not yet decided for certain whether to seek federal office is allowed to engage in a pre-candidacy phase and to ‘test the waters’ regarding a potential campaign. However, there are strict rules that apply to such a pre-candidacy phase: a limited amount of funds may be solicited and received and may be spent only for certain exploratory activities, such as polling, research, travel and similar behind the scenes activities. A person who is ‘testing the waters’ is *not* permitted to engage in public advertising (11 C.F.R. § 100.131(b)(1)) or amass a campaign war chest (11 C.F.R. § 100.131(b)(2)). In addition, the individual cannot make any public statements that he/she is definitely a candidate for office. 11 C.F.R. § 100.131(b)(3). An individual who is truly ‘testing the waters’ does not have to file a Statement of Candidacy until he/she meets the two-pronged test for triggering candidate status: stating publicly an intention to seek federal office *and* raising or spending \$5,000 in furtherance of the candidacy. 2 U.S.C. §431(2); 11 C.F.R. § 100.3. The FEC allows ‘testing the waters’ as a limited, preliminary step before a decision is made to seek federal office, but it is subject to strict limitations. If *any* of the ‘testing the waters’ provisions are violated in a manner that triggers candidate status, the individual is required to file the Statement of Candidacy within 15 days of the date when candidate status is triggered. 2 U.S.C. §432(e) and 11 C.F.R. § 101.1.

Clearly, Joe Sestak has long since left the safe harbor of the ‘testing the waters’ phase allowable for non-candidates, and has triggered candidate status.

a. Joe Sestak is ‘amassing a campaign war chest’ which is not allowed under the ‘testing the waters’ regulations. It is a violation of federal law to ‘amass a campaign war chest’ during the ‘testing the waters’ phase preceding a candidacy. Specifically, FEC regulations provide that an indication of candidate status is raising 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.” 11 C.F.R. §100.72(2).

In their August 28, 2013 letter, Respondents claimed to be operating within a ‘testing the waters’ phase whereby the decision to seek federal office in 2014 has not yet been made.

Respondents have raised funds far in excess of what could be reasonably used for exploratory activities. As of September 30, 2013, Friends of Joe Sestak reports \$913,175.44 in cash on hand. In addition, Respondents have been engaged for almost an entire year in fundraising activities admittedly and for the stated purpose of amassing a campaign war chest intended to be spent for a Joe Sestak campaign for the US Senate, in violation of FECA and the FEC regulations.

In the current election cycle, the Friends of Joe Sestak have raised \$1,005,215.39 and have spent \$100,684.21.

According to numerous e-mail communications from the Friends of Joe Sestak e-mail account, the Respondents had a goal of raising one million dollars before September 30, 2013 (See Attachment D, specifically the e-mails of September 17th, 20th, 23rd and 25th). Indeed,

Friends of Joe Sestak reported raising \$335,346 during the third quarter with \$913,175 cash on hand. This amount is far in excess of what Respondents could reasonably be expected to spend to ‘test the waters.’

In their August 28, 2013 letter, Respondents quote a FEC compliance office specialist as saying that “half a million is not unreasonable, but, perhaps for a small congressional race.” That may be so, but Respondents have now *doubled* that amount—one million dollars. As per their own e-mail communications, Respondents intended deliberately to amass a million dollar war chest for purposes of a Sestak campaign, all without complying with the requirements for declaring a candidacy under federal law.

b. Joe Sestak has publicly stated in numerous fundraising appeals his intention to run for the US Senate, statements which immediately terminated his eligibility for the ‘testing the waters’ pre-candidacy phase. Not only does the amount of money Respondents have raised exceed any conceivably reasonable amount for ‘testing the waters’, but the fundraising has been clearly undertaken for the stated purpose of funding a Sestak candidacy and campaign. Friends of Joe Sestak has sent e-mails to raise hundreds of thousands of dollars with messages that specifically state that Joe Sestak is a candidate for the US Senate and which statements are virtually indistinguishable from those used by declared candidates.

The e-mails sent by Respondents from the Friends of Joe Sestak committee’s e-mail account show no restraint and simply state the obvious: that Joe Sestak is a candidate for the US Senate from Pennsylvania. Respondents’ fundraising appeals controvert the false statements that Respondents made to the FEC and nothing in the emails indicate that these are for any ‘testing of the waters.’

Rather, Respondents’ fundraising appeals are indistinguishable from campaign fundraising solicitations. The appeals are plainly and unmistakably fundraising appeals to support Sestak’s (legally undeclared) candidacy:

- In an e-mail on June 24th, Respondents urged recipients that they “have the opportunity to make our choice clear” between Senator Toomey and Joe Sestak.
- In an e-mail on July 18th, Respondents exhorted recipients to “Click here to donate \$160, or whatever you can, joining the thousands of people that will make Joe the ‘People’s Senator.’”
- In an e-mail on August 9th, Joe Sestak asked recipients for “your support today for a new leadership in America.... Please contribute today for new leadership! With your help I will seek to be a part of it.”
- In an e-mail on August 20th, Respondents wrote “we need a Senator who understands that the Constitution established the Supreme Court—not Congress—to interpret the statutes that Congress legislates.”
- In an e-mail on August 27th, Joe Sestak asked recipients to make a contribution to the Friends of Joe Sestak, asking, “Would you help me to serve you, again?”

- In an e-mail on August 28th, Respondents urged the e-mail recipient to make a contribution before the federal reporting deadline.
- In an e-mail on August 29th, Respondents wrote an e-mail stating “I am honored that Sarah Alfadi is hosting my first fundraising event in Montgomery County as I seek the U.S. Senate....I will win because of you... and your support.”
- In an e-mail on September 4th, Respondents asked recipients to make a contribution: “Please click here to support a real leader like Admiral Sestak as he seeks the U.S. Senate – the federal fundraising deadline is less than a month away.”
- In e-mails on September 17th, 20th, 23rd and 25th, Respondents requested contributions in order to meet the one million dollar goal for the September 30th reporting deadline.
- In an e-mail on October 14, 2013, Joe Sestak wrote, “I want to update you and thank you for our progress as I seek to serve you in the U.S. Senate.”

In addition, Respondents are holding fundraisers and collecting endorsements for Joe Sestak’s candidacy for the US Senate. An invitation to a fundraiser sent on September 24, 2013 from Respondents states that Sestak “would be touched if you would attend as my effort to serve our nation in the U.S. Senate relies so much upon your support.”

Joe Sestak has collected the endorsement *for the U. S. Senate* of the Pennsylvania Association of Staff Nurses and Allied Professionals – such that the Association saw fit to issue a press release endorsing the Sestak *candidacy!*

In its August 28, 2013 letter to the FEC explaining why Joe Sestak had not filed his Statement of Candidacy, Respondents claimed that “all fundraising by the Committee was conducted by clearly stating that the committee was a ‘testing the waters’ or ‘exploratory committee. In addition, neither the Committee [Friends of Joe Sestak] nor the Individual [Joe Sestak] was a candidate.” The Respondents’ own e-mails and other communications give lie to these false assertions.

Respondents’ e-mails, fundraising solicitations and Respondents’ conduct unambiguously show that the Respondents are fundraising with the intent of using the funds in a Sestak campaign for U.S. Senate and that Joe Sestak is, indeed, telling the public that he is a candidate for the Senate. The e-mail communications clearly indicate that Mr. Sestak is operating and fundraising as a candidate and is in no way ‘testing the waters’ as that term is defined under federal law.

c. Respondents are engaged in knowing and willful violations of the Federal Election Campaign Act of 1971, as amended, in amounts exceeding \$25,000, triggering potential criminal prosecution for deliberately ignoring and violating federal law. The Bipartisan Campaign Reform Act of 2002 strengthened substantially the penalties for willful and knowing violations of FECA. Any violation that is knowing and willful and involves illegal

amounts in excess of \$25,000 is subject to criminal prosecution. Here, it is clear that these Respondents are well aware of their failure to comply with the law, having been served with an FEC Complaint filed by the undersigned several months ago, having received a letter of inquiry from the FEC several months ago and having still failed to comply with the requirements of federal law, as detailed in this Supplemental Complaint.

The flagrant violations of law in which Joe Sestak and his campaign committee have been engaged for more than a year are startling. They have lied to the Commission by falsely stating that their activities are 'testing the waters' when, in fact, their own communications demonstrate otherwise and they have violated the provisions of the FEC regulations which allow for a 'testing the waters'.

This cannot, at this point, be deemed to be inadvertent or because of a mistake, accident or some other innocent reason, especially after the Commission has asked the Respondents to rectify the situation. Instead, Respondents have acted deliberately and with knowledge to continue to do something the law forbids. Respondents should be held to account and subjected to the criminal penalties imposed upon those who willfully and knowingly violate the Federal Election Campaign Act of 1971, as amended.

Conclusion

Upon information and belief, and based upon the facts set forth above, and the public filings and communications by Respondents, the Pennsylvania Republican Party *again* urges the Commission to find that Respondent Joe Sestak *is* a candidate as defined by federal law, and that Respondents Joe Sestak for Senate and Friends of Joe Sestak, Margaret Infantino, former Treasurer, and Edwin Wee, Treasurer and Joe Sestak, personally, have violated the Federal Election Campaign Act of 1971, as amended.

Respondents are in continuing, knowing and willful violation of FECA by their ongoing refusal to file a Statement of Candidacy as required by federal law.

Please contact me if you have further questions.

Respectfully Submitted,



Rob Gleason, Chairman
Republican Party of PA
112 State Street
Harrisburg, PA 17101

Before me this 8 day of November, 2013, appeared Mr. Rob Gleason and under penalty of perjury did swear and affirm that the above and foregoing facts are true and correct to the best of his knowledge and belief.

SEAL



Notary Public

My Commission expires: 5/17/2015

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Joel Jukus, Notary Public
City of Harrisburg, Dauphin County
My commission expires May 17, 2015