

# MUSGROVE FOR U.S. SENATE

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July 16, 2008

Thomasenia Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

MUR # 6045

**Re: Complaint against Roger Wicker and Wicker for Senate**

Dear Ms. Duncan,

I write this letter to file a complaint pursuant to 2 U.S.C. § 437g(a)(1) against Roger Wicker and his principal campaign committee, Wicker for Senate ("Respondents").

The record demonstrates that Respondents accepted funds transferred from another authorized committee of the candidate, Friends of Roger Wicker, but did not itemize the portions of the transfer that included contributions received and designated for the 2008 election cycle. The record further indicates that as a result of the transfer from Friends of Roger Wicker, Respondents are in receipt of contributions in excess of federal contribution limits. The failure to itemize contributions received and designated for the 2008 election cycle and the receipt of excessive contributions represent clear violations of federal law. The Commission should act immediately to investigate this matter and to enjoin future violations of law.

### THE FACTS

Prior to his appointment to the United States Senate on December 31, 2007, Roger Wicker was a candidate for reelection to the U.S. House of Representatives. He subsequently announced his intention to run for election to the U.S. Senate in 2008 and filed a statement of organization for a new principal campaign committee, Wicker for Senate. On January 2, 2008, the principal campaign committee for the House campaign, Friends of Roger Wicker, transferred \$540,000 to Wicker for Senate. On March 31, 2008, Friends of Roger Wicker transferred an additional \$5,000 to Wicker for Senate. The transfers from Friend of Roger Wicker were reported on Wicker for Senate's April 15, 2008 quarterly report. The April report did not itemize that portion of the transfers that included contributions received and designated for the 2008 election cycle.



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In response to an inquiry from the Commission regarding the transfers from Friends of Roger Wicker, Wicker for Senate responded that “[n]one of the contributions transferred were received by the authorized committee, Friends of Roger Wicker, for the 2008 election cycle.” According to the Wicker campaign’s response, the transfers consisted solely of contributions from a previous election cycle. As the facts demonstrate, this was a false statement.

On its 2007 year-end report, Friends of Roger Wicker reported \$253,012.98 in net contributions for the 2008 election cycle. Its cash on hand as of December 31, 2007, was \$550,934.80. After the two transfers, the committee’s cash on hand was \$2,245.13.

### ARGUMENT

A federal candidate who is seeking nomination or election to more than one federal office is permitted to transfer funds between his or her principal campaign committees only if the transfer is made when the candidate is not actively seeking nomination or election to more than one federal office and if the limitations on contributions by persons shall not be exceeded by the transfer. *See* 11 C.F.R. § 110.3(c)(5). The committee receiving the transfer is further required to file a memo Schedule A itemizing those portions of the transfer that include contributions received and designated for the current election cycle. *See* 11 C.F.R. § 110.3(c)(5)(ii); 11 C.F.R. § 102.17(c)(8)(i)(B). The purpose of these regulations is to prevent candidates from receiving contributions in excess of the limits. Acting in violation of these regulations, Respondents failed to itemize those portions of the transfers from Friends of Roger Wicker that included contributions received and designated for the 2008 election cycle.

Respondents’ claim that the transfer was only of excess funds from previous election cycles is without merit. Even though funds raised by Friends of Roger Wicker during previous election cycles were held in the same account as funds raised during the current election cycle, Respondents seem to believe that they were permitted to accept the maximum contribution amount from an individual or PAC for the House campaign, spend the funds, and raise another maximum contribution amount for the Senate campaign in the same election cycle, all while leaving the previous cycle’s funds untouched. However, Commission regulations plainly forbid this circumvention of the contribution limits.

The Commission does not allow a committee to choose which funds are transferred. On the contrary, the transfer regulations state in two separate places: “The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee.” 11 C.F.R. § 110.3(c)(4), (5)(ii). This means that expenditures must come first from the contributions that have been in the account the longest. *See* Adv. Op. 1996-52 (“If the funds in a committee’s account are, at any given time, deemed to be the funds most recently received by the committee, the necessary implication is that disbursements made by the committee first deplete the funds that have been in the committee’s account the longest, i.e., the oldest contributions.”). In short, Friends of Roger Wicker did not have the option of spending the current election cycle funds while leaving the previous cycle’s funds to be later transferred to Respondents without limit; the regulations require that the previous cycle’s excess funds be spent *before* the contributions raised in the current election cycle.

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As of December 31, 2007, Friends of Roger Wicker had received contributions for the 2008 election cycle totaling \$253,012.98. Thus, in accounting for transfers totaling \$545,000, the first funds to be transferred would be the funds most recently received – namely, the \$253,012.98 in contributions received for the 2008 election cycle. The balance of the transfers would consist of funds received prior to the 2008 election cycle. Furthermore, because the oldest contributions (i.e., the cash on hand at the end of the previous election cycle) must be used first when making expenditures, more than half the funds raised by Friends of Roger Wicker during previous election cycles would have already been depleted – rendering it impossible for the entirety of the transfers to consist of contributions from a previous election cycle.<sup>1</sup> In fact, almost half of the transferred funds consisted of contributions raised during the current election cycle.

Accordingly, upon receipt of transfers totaling \$545,000 from Friends of Roger Wicker, Respondents were required to itemize each of the 2008 election cycle contributions received by Friends of Roger Wicker. Its failure to itemize the portion of the transfers that included contributions received and designated for the 2008 election cycle is a violation of federal law.

The failure to itemize the contributions is not merely a violation of the Commission's reporting law; it also represents a circumvention of the contribution limits. The amounts transferred by Friends of Roger Wicker included contributions that, when aggregated with other contributions from the same contributor to Wicker for Senate, exceeded the contribution limits set forth at 11 C.F.R. §§ 110.1 and 110.2. See 11 C.F.R. § 110.3(c)(5)(ii).

The contributions received in excess of the contribution limits are listed below:

- **\$5,600 from Roy Anderson III:** Wicker for Senate accepted contributions from Roy Anderson III totaling \$4,600 during the 2008 election cycle. Friends of Roger Wicker accepted contributions from Roy Anderson III totaling \$1,000 during the 2008 election cycle.
- **\$4,700 from Larry Homan:** Wicker for Senate accepted contributions from Larry Homan totaling \$2,700 during the 2008 election cycle. Friends of Roger Wicker accepted contributions from Larry Homan totaling \$2,000 during the 2008 election cycle.
- **\$6,900 from W.D. Mounger:** Wicker for Senate accepted contributions from W.D. Mounger totaling \$4,600 during the 2008 election cycle. Friends of Roger Wicker accepted contributions from W.D. Mounger totaling \$2,300 during the 2008 election cycle.
- **Wicker Accepted \$6,900 From Joe Sanderson:** Wicker accepted \$4,600 from Joe Sanderson on January 25 for his Senate campaign. He previously accepted \$2,300 from Joe Sanderson for his House campaign bringing Sanderson's total contributions to \$6,900.

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<sup>1</sup> Friends of Roger Wicker's cash on hand at the end of the 2006 election cycle was approximately \$560,000, and its expenditures during the 2008 election cycle totaled more than \$300,000.

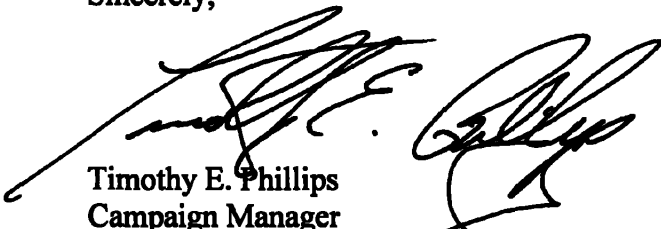
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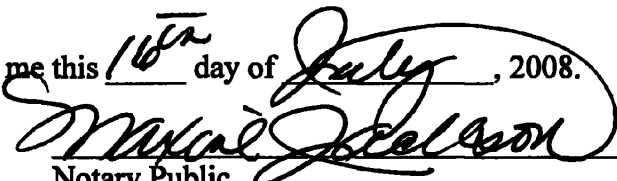
- **\$5,500 from Todd Threadgill:** Wicker for Senate accepted contributions from Todd Threadgill totaling \$4,500 during the 2008 election cycle. Friends of Roger Wicker accepted contributions from Todd Threadgill totaling \$1,000 during the 2008 election cycle.
- **\$15,000 from BanCorp South Bank PAC:** Wicker for Senate accepted contributions from BanCorp South Bank PAC totaling \$10,000 during the 2008 election cycle. Friends of Roger Wicker accepted contributions from BanCorp South Bank PAC totaling \$5,000 during the 2008 election cycle.
- **\$13,800 from EADS North America: Americans for Competition in Aerospace PAC:** Wicker for Senate accepted contributions from EADS North America: Americans for Competition in Aerospace PAC totaling \$10,000 during the 2008 election cycle. Friends of Roger Wicker accepted contributions from EADS North America: Americans for Competition in Aerospace PAC totaling \$3,800 during the 2008 election cycle.

By accepting contributions in excess of the limits described in 11 C.F.R. §§ 110.1 and 110.2, Respondents have acted in violation of federal law.

For all of these reasons, I request that the Commission investigate immediately the violations presented herein. We further request that Respondents be enjoined from further violations, and be fined the maximum amount permitted by law.

Sincerely,

  
 Timothy E. Phillips  
 Campaign Manager  
 Musgrove for U. S. Senate

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July, 2008.  
  
 Notary Public

My Commission Expires:

