

RECEIVED  
FEDERAL ELECTION COMMISSION

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of )  
 ) MUR 6045  
Wicker for Senate )  
and Paul Breazeale, as Treasurer )

**RESPONSE OF WICKER FOR SENATE AND PAUL BREAZEALE, AS TREASURER,  
TO THE COMPLAINT FILED BY MUSGROVE FOR U.S. SENATE**

**I. INTRODUCTION**

On behalf of Wicker for Senate (the "Committee") and Paul Breazeale, as Treasurer, we write in response to a Complaint filed by the Musgrove for U.S. Senate campaign and assigned MUR 6045. Given the Musgrove campaign's fundamental misunderstanding of the relevant rules, we respectfully urge the Commission to dismiss this matter, close the file, and take no further action.

**II. FACTS**

As the Commission is aware, a total of \$545,000 was transferred from Friends of Roger Wicker, Senator Wicker's congressional campaign account, to Wicker for Senate on two dates: \$540,000 on January 2, 2008, and \$5,000 on March 31, 2008.

Accounting records show the following facts about the transfer and previous congressional campaign expenditures:

**Table 1: Accounting Breakdown**

| Description  | Amount   |
|--|--|
| Gross receipts for 2008 congressional race received by Friends of Roger Wicker prior to first transfer       | \$252,512.98 (primary)<br>\$4,500.00 (general) |
| Disbursements for 2008 congressional race made by Friends of Roger Wicker prior to the first transfer        | \$350,114.12                                   |
| Friends of Roger Wicker cash on hand at time of transfer   | \$550,934.80                                   |
| Total amount of transfers from Friends of Roger Wicker to Wicker for Senate                                  | \$545,000.00                                   |
| Amount remaining in Friends of Roger Wicker account following both transfers, not counting other obligations | \$5,934.80                                     |

In addition, following are the contribution breakdowns for each contributor the Complainant has wrongly accused of making excessive contributions:

2008 SEP 15 A 10:06  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

29190281874

29190281875

**Table 2: Contributor Breakdown**

| Name  | Congressional Campaign 2008 Primary | Congressional Campaign 2008 General | Senate Campaign 2008 Special | Senate Campaign 2008 Runoff |
|---|-------------------------------------|-------------------------------------|------------------------------|-----------------------------|
| Roy Anderson III                                      | \$1,000                             |                                     | \$2,300                      | \$2,300                     |
| Larry Homan   | \$2,000                             |                                     | \$2,300                      | \$400                       |
| W.D. Mounger  | \$2,300                             |                                     | \$2,300                      | \$2,300                     |
| Joe Sanderson   | \$2,300                             |                                     | \$2,300                      | \$2,300                     |
| Todd Threadgill                                       | \$1,000                             |                                     | \$2,300                      | \$2,200                     |
| BanCorp South Bank PAC                                | \$5,000                             |                                     | \$5,000                      | \$5,000                     |
| EADS North Americans for Competition in Aerospace PAC | \$2,000                             |                                     | \$5,000                      | \$5,000                     |

### III. Legal Analysis

#### *Transfer*

Prior to making the transfer, the Committee inquired with the Commission's Audit Division regarding the precise application of the "first in, first out" (FIFO) accounting method. The auditor instructed that FIFO principles should be applied *to each election cycle separately*, such that funds expended during the 2008 campaign cycle would be considered first drawn from contributions given first during that cycle, not from funds carried over from previous election cycles. Following the exhaustion of 2008 primary funds, the next funds to be spent would be attributed to those who contributed during the 2006 election cycle.

Under this system, the \$350,114.12 in disbursements for the 2008 primary consumed 100% of the congressional campaign's 2008 primary receipts. Thus, the \$550,934.80 in cash on hand prior to the transfer consisted of (1) \$546,434.80 carried over from previous cycles; and (2) \$4,500 in 2008 general election contributions.

The \$545,000 transferred from the congressional to the Senate campaign was comprised exclusively of funds from previous, non-2008 election cycles. The remaining monies in the Friends of Roger Wicker account are comprised primarily of 2008 general election funds.

The transfer was thus entirely appropriate and well within the bounds of the advice proffered by the Audit Division.

#### *Permissible Contributions*

Under Mississippi law, if no candidate were to receive more the 50% of the vote in the regular special election, a runoff election would be held. As such, the Committee is permitted to take contributions for each of these two elections, applying the same rules that govern primary and general elections. *See* 11 CFR 110.1(b)(5)(ii)(B)(1)-(4). Of course, the Committee has

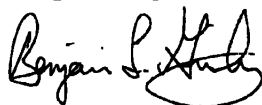
segregated all runoff funds, and will return or redesignate such funds if the runoff election never takes place.

Because no 2008 funds were transferred from Friends of Roger Wicker to Wicker for Senate, itemization was not necessary, and all former contributors were permitted to make *two* contributions to Wicker for Senate: one special election contribution, and one runoff election contribution. Such contributions are fully within the limits set forth at 11 CFR §§ 110.1 and 110.2, and thus, no contributor listed in Table 2 made an excessive contribution. In wrongly accusing the Committee's contributors of making excessive contributions, the Musgrove campaign belies its fundamental misunderstanding of these rules.

## V. CONCLUSION

The Complainant simply misstates both the law and the actions taken by the Committee in this matter. We respectfully urge the Commission to dismiss the matter, close the file, and take no further action.

Respectfully Submitted,



Benjamin L. Ginsberg  
Kathryn Biber Chen  
Counsel to Wicker for Senate

29190281876