



## FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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SEP 10 2019

RE: MURs 7190 & 7208  
 Alaska Republican Party  
 and Julie Tisdale, as Treasurer  
 Chairman Tuckerman Babcock  
 Vice Chairman Rick Whitbeck

Dear Mr. McKeever and Ms. Stone:

On November 10, 2016, the Federal Election Commission notified your clients, Alaska Republican Party and Julie Tisdale, in her official capacity as treasurer ("ARP") of a complaint (MUR 7190), alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On January 10, 2017, the Commission notified ARP, and ARP's then Chair Tuckerman Babcock and then Vice-Chair Rick Whitbeck of a second complaint (MUR 7208), alleging similar violations. A copy of each complaint was forwarded to your clients.

After reviewing the allegations contained in the complaints, responses, and publicly available information, the Commission, on August 20, 2019, found reason to believe that ARP violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(d)(2) by failing to include an adequate disclaimer in its communications. The Commission also found no reason to believe that ARP violated 52 U.S.C. § 30104(b) regarding reporting of transfers received from Lisa Murkowski for U.S. Senate (the "Murkowski Committee"). The Commission was equally divided on whether to make a finding as to allegations that ARP, Tuckerman Babcock, and Rick Whitbeck made unreported, excessive in-kind contributions to Senator Lisa Murkowski and the Murkowski Committee. The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to ARP as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that ARP violated the law.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If ARP is interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1604 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if ARP is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

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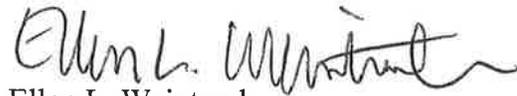
<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Ellen L. Weintraub", with a stylized flourish at the end.

Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Alaska Republican Party and Donald Handeland MURs 7190 & 7208  
in his official capacity as treasurer

**I. INTRODUCTION**

In the months leading up to the 2016 general election, Lisa Murkowski for U.S. Senate and Catherine Straub in her official capacity as treasurer (the “Murkowski Committee”), the principal campaign committee of Senator Lisa Murkowski, made a series of transfers totaling \$354,007 to the Alaska Republican Party (“ARP”). The Complaints allege that the transfers were not properly disclosed.<sup>1</sup> The Complaint in MUR 7208 additionally alleges that ARP failed to include disclaimers in its communications indicating that Murkowski or the Murkowski Committee had authorized them.<sup>2</sup>

ARP asserts that the Federal Election Campaign Act of 1971, as amended (the “Act”) allows a candidate to make unlimited transfers to a state political party and that the transfers were properly disclosed in reports filed with the Commission. In addition, ARP contends that its communications contained adequate disclaimers.

Based upon the available information, we conclude that ARP properly reported the transfers but failed to include an adequate disclaimer on its communications. Accordingly, the Commission: (1) finds no reason to believe that ARP violated 52 U.S.C. § 30104(b) by failing to properly report the transfers; and (2) finds reason to believe that ARP violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(d)(2) by failing to include an adequate disclaimer in its communications.

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<sup>1</sup> MUR 7190 Compl. at 1-2 (Nov. 7, 2016); MUR 7208 Compl. (Jan. 5, 2017).

<sup>2</sup> *Id.* at 2.

1 **II. FACTUAL & LEGAL ANALYSIS**

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3 ARP is a state party committee that is registered and files reports with the Commission.

4 Donald Handeland is ARP's current treasurer.<sup>3</sup> Lisa Murkowski is the current U.S. Senator  
5 from Alaska and was the Republican candidate in the general election for U.S. Senate in Alaska  
6 on November 8, 2016. The Murkowski Committee is Senator Murkowski's principal campaign  
7 committee.<sup>4</sup>

8 The Murkowski Committee made eight transfers totaling \$354,007 to the ARP between  
9 September 20, 2016, and October 26, 2016.<sup>5</sup> In its disclosure reports, the Murkowski Committee  
10 did not specify a purpose for the transfers. ARP, in its own disclosure reports, described the  
11 receipts as "surplus campaign funds" in memo entries.<sup>6</sup>

12 ARP made disbursements totaling \$352,218.31 between September 17, 2016, and  
13 November 14, 2016. These disbursements included \$56,111.60 in coordinated party  
14 expenditures for four mailers attacking Murkowski's opponent, Joe Miller ("Miller Mailers").<sup>7</sup>

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<sup>3</sup> Julie Tisdale was treasurer of Alaska Republican Party when the complaints were filed. *See* ARP Amended Statement of Organization (Oct. 26, 2016), *available at* <http://docquery.fec.gov/pdf/202/201610269034581202/201610269034581202.pdf>. On February 5, 2019, the committee filed an amended Statement of Organization designating Donald Handeland as its treasurer. *See* ARP Amended Statement of Organization (Feb. 5, 2019), *available at* <http://docquery.fec.gov/pdf/502/201902059145463502/201902059145463502.pdf>.

<sup>4</sup> Murkowski Committee Amended Statement of Organization (May 8, 2017); *available at* <http://docquery.fec.gov/pdf/672/201705080200147672/201705080200147672.pdf>.

<sup>5</sup> *See* Murkowski Committee disclosure reports: 2016 October Quarterly Report at 253, 254; 2016 12-Day Pre-General Report at 91; 2016 30-Day Post-General Report at 149.

<sup>6</sup> MUR 7190 Compl. at 1-2 (citing Murkowski Committee 2016 October Quarterly Report); *see also*, ARP disclosure reports: 2016 October Monthly Report at 54; 2016 12-Day Pre-General Report at 27, 28; and 2016 30-Day Post-General Report at 38, 39.

<sup>7</sup> *See* ARP 2016 Post-General Report at 42-43. Copies of the Miller Mailers are attached to the complaints in MUR 7190 and MUR 7208. *See* MUR 7190 Complaint, Exs. B-E; MUR 7208 Compl. ARP's former treasurer submitted an affidavit and documents pertaining to the cost of production and postage for the Miller Mailers, which indicate that each of the four mailers was sent to over 33,000 persons via bulk mail and that they were mailed on

1           **A.       There is No Reason to Believe that ARP Misreported the Transfers**

2  
 3           The Complaint in MUR 7190 alleges that ARP misreported the transfers by  
 4           mischaracterizing the purpose of the transfers in its disclosure reports; ARP described them as  
 5           “surplus campaign funds.”<sup>8</sup> The Complainant, citing to his own experience, states that surplus  
 6           funds are not transferred to a state party until the campaign is over, especially in a competitive  
 7           race.<sup>9</sup>

8           The Act and Commission regulations enumerate a number of permissible non-campaign  
 9           uses of funds in a campaign account.<sup>10</sup> For example, a candidate’s principal campaign  
 10          committee may transfer any contributions received “without limitation, to a national, State, or  
 11          local committee of a political party.”<sup>11</sup> So long as the transfer is made for a lawful purpose and  
 12          not converted to personal use,<sup>12</sup> the Commission has determined that “[t]hese provisions do not  
 13          limit the purposes that any transferred funds may be put to, nor do they restrict the amount that  
 14          may be transferred in any specific period of time.”<sup>13</sup> Although both authorized and state party  
 15          committees must report the making and acceptance of such a transfer,<sup>14</sup> neither the Act nor

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October 21, 24, 26 and 31. *See* Tisdale Aff., Exs. 1-8, ARP MUR 7190 Resp. (Dec. 6, 2016) (explaining that ARP made coordinated party expenditures on behalf of Murkowski on or after October 20).

<sup>8</sup> MUR 7190 Compl. at 1-2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *See* 52 U.S.C. § 30114(a); 11 C.F.R. § 113.2 (identifying “Permissible non-campaign use of funds”); *see also* Disclaimers, Fraudulent Solicitation, Civil Penalties and Personal Use of Campaign Funds, 67 Fed. Reg. 76962, 76964 (Dec. 13, 2002) (explaining that section 113.2 “sets forth the permissible non-campaign uses of funds in a campaign account”).

<sup>11</sup> 52 U.S.C. § 30114(a)(4); *see also* 11 C.F.R. § 113.2(c).

<sup>12</sup> *See* 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e).

<sup>13</sup> Advisory Op. 2004-22 (Bereuter) at 1-2.

<sup>14</sup> *See* 52 U.S.C. § 30104(b)(2)(F), (4); 11 C.F.R. § 104.3(a)(4)(iii), (b)(2).

1 Commission regulations require an authorized committee to identify the purpose of a transfer to  
2 a party committee.

3 Consequently, the Murkowski Committee was free to transfer the campaign funds in  
4 question for any lawful purpose, other than personal use, and was not required to disclose the  
5 purpose of the transfers. Nor does the manner in which ARP described the transfers in its  
6 disclosure reports appear misleading or result in any misreporting — neither the Act nor  
7 Commission regulations define the meaning of “surplus campaign funds,” or specifies that any  
8 such funds can only exist after the conclusion of the election. Accordingly, the Commission  
9 finds no reason to believe that ARP violated 52 U.S.C. § 30104(b) by failing to properly report  
10 the transfers of funds.

11 **B. ARP’s Disclaimer Notices on the Miller Mailers Were Incomplete**

12  
13 The MUR 7208 Complaint alleges that the disclaimers on the Miller Mailers failed to  
14 state that the mailings were paid for or authorized by Murkowski.<sup>15</sup> In response, ARP notes that  
15 the disclaimers clearly identified ARP as the entity who paid for the mailings, but appears to  
16 concede that its disclaimers failed to include authorization statements from Murkowski<sup>16</sup> by  
17 stating that it “will make further efforts to fully comply with [the] disclaimer requirements.”<sup>17</sup>

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<sup>15</sup> MUR 7208 Compl. at 2. The Complaint in MUR 7208 speculates that Murkowski “paid for” the Miller Mailers by virtue of her relatively concurrent “donations” to ARP. But, as discussed above, Murkowski transferred, not donated, funds to ARP pursuant to provisions of the Act and Commission regulations allowing a candidate to transfer funds to a state party committee without limitation for any lawful purpose that is not for the candidate’s personal use.

<sup>16</sup> ARP 7208 Resp. at 3, MUR 7208 (Feb. 8, 2017).

<sup>17</sup> *Id.*

1 All public communications by a political committee require a disclaimer.<sup>18</sup> A  
2 “disclaimer” is a statement that must identify who paid for the communication; if the  
3 communication is authorized by a candidate, an authorized committee of a candidate, or an agent  
4 of the candidate or committee, but is paid for by any other person, the disclaimer must clearly  
5 state that the communication is paid for by such other person and authorized by such candidate,  
6 authorized committee or agent.<sup>19</sup> In addition to this general disclaimer rule, Commission  
7 regulations explicitly specify that communications treated as coordinated party expenditures and  
8 made with the approval of the party’s general election candidate, that candidate’s committee, or  
9 agent of either, must both identify the party committee that paid for the communication and state  
10 that the candidate authorized the communication.<sup>20</sup>

11 Here, the Miller Mailers appear to be mass mailings and, thus, “public communications”  
12 within the scope of the disclaimer rule.<sup>21</sup> ARP admitted, in both its reporting to the Commission  
13 and in its response to the Complaint in MUR 7208 that it coordinated the Miller Mailers with  
14 Murkowski and disseminated them after Murkowski became the general election nominee; the  
15 mailers therefore appear to be within the requirements of 11 C.F.R. § 110.11(d)(2). The  
16 disclaimer on the Miller Mailers identified ARP as the payor for the communications, stating  
17 “Paid for by the Alaska Republican Party,” but failed to state that Murkowski or the Murkowski

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<sup>18</sup> See 11 C.F.R. § 110.11(a)(1) (scope of disclaimer provision); *see also* 11 C.F.R. § 100.26 (defining “public communication”).

<sup>19</sup> See 52 U.S.C. § 30120(a)(2); 11 CFR § 110.11(b)(2).

<sup>20</sup> 11 C.F.R. § 110.11(d)(2).

<sup>21</sup> See 11 C.F.R. § 100.26 (including “mass mailing” in definition of “public communication”); 11 C.F.R. § 100.27 (defining “mass mailing” as a mailing by U.S. mail of more than 500 identical or substantially similar pieces within a 30-day period); *see also* n.7, *supra* (noting mailing dates, within one week, of 33,000+ batches for the Miller Mailers).

1 Committee authorized the communications. Accordingly, the disclaimers did not fully comply  
2 with the requirements set forth in section 110.11(d)(2) of Commission regulations.

3 In a similar matter, MUR 5833, the Commission found reason to believe that a state party  
4 committee violated the disclaimer requirements on a communication on which the disclaimer  
5 stated that it was paid for the party committee but failed to include any candidate authorization  
6 statement.<sup>22</sup> The fact that the ARP admittedly coordinated its communication but still failed to  
7 include any candidate authorization in its disclaimer counsels here in favor of finding reason to  
8 believe a disclaimer violation occurred. Because the ARP disclaimer failed to indicate that  
9 Murkowski had authorized the coordinated Miller Mailers, the Commission finds reason to  
10 believe that ARP violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(d)(2).

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<sup>22</sup> See Factual & Legal Analysis at 6, MUR 5833 (Ohio Democratic Party) (noting that disclaimer stated only “Paid for by the Ohio Democratic Party” and finding RTB on alternative violation theories in the case the communication was or was not authorized by the candidate mentioned therein); see also Conciliation Agreement at 5-6, MUR 5833 (Ohio Democratic Party) (noting that the communication was independent and not coordinated and conciliating the disclaimer violation for the omission of the “not authorized” statement).