



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 30, 2020

Via E-mail

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steve Harrison
Citizens for Joe Miller, Inc.

Fairbanks, AK 99709-2678

RE: MUR 7190
Alaska Republican Party and its Treasurer
Lisa Murkowski for U.S. Senate
and Catherine Straub as Treasurer

Dear Mr. Harrison:

This is in reference to the complaint you filed with the Federal Election Commission on November 7, 2016, concerning the Alaska Republican Party and Lisa Murkowski for U.S. Senate. The Commission, on August 20, 2019, found no reason to believe that Alaska Republican Party and its treasurer (“ARP”) and 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, violated 52 U.S.C. § 30104(b) with regard to the reporting of transfers from the Murkowski Committee to the ARP. Further, the Commission was equally divided on whether to make a finding as to the allegations that ARP made and the Murkowski Committee received unreported excessive in-kind contributions. The Factual and Legal Analyses, explaining the Commission’s findings, are enclosed. The Commission closed the file in this matter on July 13, 2020.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

A handwritten signature in cursive script that reads "Jin Lee" followed by a stylized flourish that looks like "1aa".

BY: Jin Lee
Acting Assistant General Counsel

Enclosures
Factual and Legal Analyses

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.¹ 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.²

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.

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

² *Id.* at 2.

1 **II. FACTUAL & LEGAL ANALYSIS**

2
3 ARP is a state party committee that is registered and files reports with the Commission.

4 Donald Handeland is ARP's current treasurer.³ 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.⁴

8 The Murkowski Committee made eight transfers totaling \$354,007 to the ARP between
9 September 20, 2016, and October 26, 2016.⁵ 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.⁶

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").⁷

³ 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>.

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

⁵ *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.

⁶ 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.

⁷ *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.”⁸ 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.⁹

8 The Act and Commission regulations enumerate a number of permissible non-campaign
9 uses of funds in a campaign account.¹⁰ 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.”¹¹ So long as the transfer is made for a lawful purpose and
12 not converted to personal use,¹² 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.”¹³ Although both authorized and state party
15 committees must report the making and acceptance of such a transfer,¹⁴ neither the Act nor

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).

⁸ MUR 7190 Compl. at 1-2.

⁹ *Id.* at 2.

¹⁰ *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”).

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

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

¹³ Advisory Op. 2004-22 (Bereuter) at 1-2.

¹⁴ *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.¹⁵ 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 Murkowski¹⁶ by
17 stating that it “will make further efforts to fully comply with [the] disclaimer requirements.”¹⁷

¹⁵ 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.

¹⁶ ARP 7208 Resp. at 3, MUR 7208 (Feb. 8, 2017).

¹⁷ *Id.*

1 All public communications by a political committee require a disclaimer.¹⁸ 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.¹⁹ 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.²⁰

11 Here, the Miller Mailers appear to be mass mailings and, thus, “public communications”
12 within the scope of the disclaimer rule.²¹ 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

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

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

²⁰ 11 C.F.R. § 110.11(d)(2).

²¹ 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).

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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.²² 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).

²² 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).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Lisa Murkowski for U.S. Senate MURs 7190 & 7208
and Catherine Straub in her 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. The Complaints allege that these transfers were not properly disclosed.¹

The Murkowski Committee 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. Based upon the available information, the Commission finds no reason to believe that the Murkowski Committee violated 52 U.S.C. § 30104(b) by failing to properly report the making of transfers to ARP.

II. FACTUAL & LEGAL ANALYSIS

ARP is a state party committee that is registered and files reports with the Commission. Lisa Murkowski is the current U.S. Senator from Alaska and was the Republican candidate in the general election for U.S. Senate in Alaska on November 8, 2016. The Murkowski Committee is Senator Murkowski’s principal campaign committee.²

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² Murkowski Committee Amended Statement of Organization (May 8, 2017); *available at* <http://docquery.fec.gov/pdf/672/201705080200147672/201705080200147672.pdf> .

1 The Murkowski Committee made eight transfers totaling \$354,007 to the ARP between
2 September 20, 2016, and October 26, 2016.³ In its disclosure reports, the Murkowski Committee
3 did not specify a purpose for the transfers. ARP, in its own disclosure reports, described the
4 receipts as “surplus campaign funds” in memo entries.⁴

5 The Complaint in MUR 7190 alleges that the Murkowski Committee misrepresented the
6 transfers by mischaracterizing the purpose of the transfers in its disclosure reports; the
7 Murkowski Committee failed to specify any purpose whatsoever.⁵ The Complainant, citing to
8 his own experience, states that surplus funds are not transferred to a state party until the
9 campaign is over, especially in a competitive race.⁶

10 The Act and Commission regulations enumerate a number of permissible non-campaign
11 uses of funds in a campaign account.⁷ For example, a candidate’s principal campaign committee
12 may transfer any contributions received “without limitation, to a national, State, or local
13 committee of a political party.”⁸ So long as the transfer is made for a lawful purpose and not
14 converted to personal use,⁹ the Commission has determined that “[t]hese provisions do not limit

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⁹ See 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e).

1 the purposes that any transferred funds may be put to, nor do they restrict the amount that may be
2 transferred in any specific period of time.”¹⁰ Although both authorized and state party
3 committees must report the making and acceptance of such a transfer,¹¹ neither the Act nor
4 Commission regulations require an authorized committee to identify the purpose of a transfer to
5 a party committee.

6 Consequently, the Murkowski Committee was free to transfer the campaign funds in
7 question for any lawful purpose, other than personal use, and was not required to disclose the
8 purpose of the transfers. Moreover, neither the Act nor Commission regulations define the
9 meaning of “surplus campaign funds,” or specifies that any such funds can only exist after the
10 conclusion of the election. Accordingly, the Commission finds no reason to believe that the
11 Murkowski Committee violated 52 U.S.C. § 30104(b) by failing to properly report the making of
12 the transfers of funds.

¹⁰ Advisory Op. 2004-22 (Bereuter) at 1-2.

¹¹ See 52 U.S.C. § 30104(b)(2)(F), (4); 11 C.F.R. § 104.3(a)(4)(iii), (b)(2).