RECEIVED
FEDERAL ELECTION
COMMISSION

2017 JUL 19 PM 1:17

OFFICE OF GENERAL

Loudermilk for Congress
PO Box 447
Cassville, GA 30123

July 3, 2017

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA FACSIMILE: (202) 219-3923

Re: MUR 7246 – Response to Complaint from Loudermilk for Congress and Loudermilk for State Senate

Dear Mr. Jordan:

On behalf of Loudermilk for Congress (the " Federal Committee") and Loudermilk for State Senate (the "State Committee), this responds to your letter dated May 19, 2017, concerning a complaint filed against Congressman Buddy Carter, his federal committee, Buddy Carter for Congress ("BCC"), his former state senate committee, Friends of Buddy Carter for Senate ("FBC"), and several Georgia state campaign committees, including the Federal Committee and State Committee (collectively, the "Respondents"). The Complaint was clearly filed for publicity and political gain, as it was submitted by Bryan County Democratic Committee Chairwoman Lisa Ring just weeks before she formally announced her campaign to challenge Congressman Carter in Georgia's First Congressional District in 2018. The Complaint contains no factual support and is based solely on speculation and innuendo. It should be immediately dismissed.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). *See* 11 CFR § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

Specifically, the Complaint erroneously suggests that the Respondents have engaged in "conduit contribution scheme" whereby Congressman Carter made contributions using his former state senate campaign, FBC, to a handful of other state campaign committees, which then made reciprocal contributions to BCC. Aside from being defamatory on its face, Ms. Ring's allegations hold no water.

18044421419

18044421220

As purported evidence to support these specious claims, the Complaint cites a $1,000 contribution made by FBC to the Federal Committee on June 21, 2013, and a subsequent $1,000 contribution the State Committee made to BCC on June 25, 2013. In citing these contributions, it appears Ms. Ring is inferring that FBC made earmarked contributions to BCC through the Federal Committee pursuant to 52 U.S.C. § 30116(a)(8) and 11 CFR § 110.6(b)(l); however, the Federal Committee did not contribute to BCC so we are unclear how this could result in an illegal transfer from FBC to BCC, in violation of 11 CFR § 110.3(d).

Assuming *arguendo* this could be considered an earmarked contribution, under Commission regulations, a contribution is earmarked when there is "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part or a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 CFR § 110.6(b). *In the past, the* Commission has determined that contributions were earmarked where there was clear documentary evidence demonstrating a designation or instruction by the donor. *See* MURs 4831/5274 (Nixon) (finding contributions were earmarked where checks contained express designations on memo lines); *see also*, MUR 5732 (Matt Brown for U.S. Senate), MUR 5520 (Republican Party of Louisiana/Tauzin), MUR 5445 (Davis), MUR 4643 (Democratic Party of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear designation, instruction, or encumbrance by the donor), and MUR 5125 (Perry) (finding no earmarking because the complaint contained only bare allegations of earmarking, but showed no designation, instruction or encumbrance). The Commission has rejected earmarking claims even where the timing of the contributions at issue appeared to be a significant factor, but the contributions lacked a clear designation or instruction. *See* MUR 5445 (Davis) and MUR 4643 (Democratic Party of New Mexico).

In this case, the Complaint provides no support that FBC made the "designations, instructions and encumbrances" required for a violation of 52 U.S.C. § 30116(a)(8) and 11 CFR § 110.6(b)(l), when making its contribution to the Federal Committee. FBC's contribution check to the Federal Committee did not contain any designations or instructions, and were not accompanied by any sort of documentation indicating how the contributions should be used. Moreover, FBC did not make any other express or implied, or written or oral instructions or designations to the Committee when making its contribution. Moreover, the Federal Committee did not contribute to BCC; therefore, Ms. Ring's argument that FBC transferred funds to BCC via the Federal Committee is meritless. Even if an argument could be made that FBC transferred funds to BCC through the Federal Committee, Ms. Ring's argument appears to rest solely on the timing of the contributions. This line of reasoning, based exclusively on the timing of contributions, has been explicitly rejected by the Commission in the numerous enforcement matters referenced above. *See* MUR 5445 (Davis) and MUR 4643 (Democratic Party of New Mexico).

In reality, it is common for likeminded federal and state candidates and officeholders to make contributions to each other's campaigns, and the Supreme Court has made clear that "government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies." *McCutcheon v. Federal Election Comm'n*, 134 S.Ct. 1434, 1441 (2014) (citing *Citizens United v. Federal Election Comm'n*, 558 U. S. 310, 360 (2010)). In this

case, it is hardly suspicious and certainly not illegal for two former colleagues in the Georgia legislature to support each other's campaigns.

In presenting politically-motivated and factually and legally unsubstantiated arguments, Ms. Ring has failed to demonstrate that the Committees violated any provision of the Act or the Commission's regulations. Instead, Ms. Ring has invoked an administrative process in an attempt to score cheap political points against her opponent in the 2018 midterm election. The Complaint is based on malicious speculation and frivolous legal theories. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Sincerely yours,

Loudermilk for Congress

12244206831