



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 25 2018

Representative Bruce Lambert Broadrick, Sr.

Dalton, GA 30720

RE: MUR7246
Bruce Lambert Broadrick, Sr.

Dear Mr. Broadrick:

On May 19, 2017, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 10, 2018, the Commission found, on the basis of the information in the complaint, that there is no reason to believe you violated the Act. Accordingly, the Commission closed its file in this matter.

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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 reciprocal scheme with the other Respondents. As to the allegations regarding soft money
2 expenditures by Carter and the State Committee, the Commission exercises its prosecutorial
3 discretion and dismisses the allegations.

4 II. FACTUAL BACKGROUND

5 On May 6, 2013, then-sitting Georgia State Senator Earl Leroy (“Buddy”) Carter
6 announced his candidacy for the U.S. House of Representatives in Georgia’s 1st Congressional
7 District.¹ Carter designated the Federal Committee as his principal campaign committee for the
8 congressional election.² Carter secured the Republican nomination on July 22, 2014, and his
9 seat in the state senate was declared vacant as required by Georgia state law.³ Carter won the
10 general election and was sworn into the 114th Congress on January 3, 2015.⁴

11 The State Committee was established in 2009 as the principal campaign committee for
12 Carter’s candidacy for the Georgia State Senate. The State Committee remained active while
13 Carter completed his state senate term and campaigned for the Congressional seat. Georgia law
14 requires elected officials whose campaign committees have excess funds when they leave office

¹ See Buddy Carter for Congress Press Release, *Sen. Buddy Carter to Announce Campaign for Congress* (May 6, 2013), available at <http://www.buddycarterforcongress.com/campaign-for-congress>. Carter had previously filed his Statement of Candidacy on April 24, 2014. Carter did not simultaneously run for re-election to the Georgia State Senate.

² FEC Form 1 (Statement of Organization) (Apr. 24, 2013); FEC Form 2 (Statement of Candidacy) (Apr. 24, 2013).

³ See <https://admin.enr.clarityelections.com/files/GA/52176/137603/en/summary.html?pv=true>. Article II, Section 2, Paragraph V of the Georgia Constitution states that “[t]he office of any state, county, or municipal elected official shall be declared vacant upon such elected official qualifying, in a general primary or general election, or special primary or special election, for another state, county, or municipal elective office or qualifying for the House of Representatives or the Senate of the United States if the term of the office for which such official is qualifying for begins more than 30 days prior to the expiration of such official’s present term of office.”

⁴ See Federal Election Commission, *Election Results for the U.S. Senate and U.S. House of Representatives* 59 (Nov 2015), available at <https://transition.fec.gov/pubrec/fe2014/federalelections2014.pdf>.

1 post office box rental, and printing fees; consulting services by Simons & Associates;¹¹ dues,
2 subscriptions, and registration fees; and a disbursement for campaign materials.

3 **III. LEGAL ANALYSIS**

4 **A. There is No Reason to Believe Respondents Illegally Transferred Funds to the**
5 **Federal Committee Through Reciprocal Contributions**

6 The Complaint alleges that after Carter became a federal candidate, the State Committee
7 made payments to a campaign consultant and campaign contributions to six state candidates and
8 one federal candidate as part of a reciprocal contribution scheme intended to impermissibly
9 transfer funds from the State Committee to the Federal Committee.¹² As evidence of the
10 scheme, the Complaint argues that \$9,000 in contributions or payments by the State Committee
11 to various other candidates were similar in timing and amount to contributions those same
12 candidates or their campaign committees made to the Federal Committee.¹³ The complaint also
13 points to a July 4, 2016 State Committee disclosure report showing a \$1,000 expenditure for a
14 “campaign contribution” to Carter’s Federal Committee which was amended 11 days later to
15 reflect a \$1,000 contribution to Friends of Bruce Broadrick.¹⁴ The Complaint argues that the
16 State Committee amended the filing because it had “inadvertently revealed its scheme” in the
17 original report.¹⁵

¹¹ The Commission previously considered and dismissed allegations that the State Committee’s expenditures for consulting services by Simons & Associates were impermissible transfers to the Federal Committee. *See* Factual and Legal Analysis at 7-10, MUR 6820 (Carter, *et al.*).

¹² Compl. at 2-4.

¹³ *Id.* at 2-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

1 Carter and the other Respondents deny making reciprocal contributions.¹⁶ They
2 categorize the Complaint as speculative, arguing that the Complaint provides no evidence to
3 support the allegation of a knowing and willful straw donor scheme beyond the timing and
4 amounts of the transactions.¹⁷ They state that the contributions from the State Committee did not
5 contain any designations or instructions, were not accompanied by any documentation indicating
6 how the contributions should be used, and that the State Committee did not make any other
7 express or implied, or written or oral instructions or designations to the Committee when making
8 its contributions.¹⁸ Mullis, Florence, and Black also argue that their state committees, which
9 received contributions from Carter's State Committee, did not contribute to the Federal
10 Committee. Rather, they made individual contributions to the Federal Committee using their
11 personal funds.¹⁹ Similarly, Loudermilk argued that it was his federal committee, which
12 received no contributions from Carter's State Committee, that contributed to Carter's Federal
13 Committee.²⁰ Simons and Associates, LLC, and Simons both deny the allegations, stating that
14 the money the State Committee paid the LLC was for professional services provided to the State
15 Committee, and that Mr. Simons donated to the Federal Committee from his personal funds

¹⁶ The alleged reciprocal contributions and the Respondents' Responses are summarized in Attachment 1.

¹⁷ Carter Resp. at 1-2, 4; Millar Resp. (May 25, 2017); Loudermilk Resp. at 1, 3 (Jul. 19, 2017); Black Resp. at 1-3 (Jul. 7, 2017); Mullis Resp. at 2-3 (Jul. 7, 2017); Florence Resp. at 1-2 (Jul. 18, 2017); Simons Resp. at 2 (Jun. 16, 2017). The Commission received no responses from Bruce Lambert Broadrick, Sr., Friends of Bruce Broadrick for the House, James Ronald Stephens, or the Committee to Re-Elect Ron Stephens.

¹⁸ Loudermilk Resp. at 2; Florence Resp. at 2; Black Resp. at 3.

¹⁹ Mullis Resp. at 2; Florence Resp. at 1-2; Black Resp. at 1-2.

²⁰ The Federal Committee reported receipt of a \$1,000 contribution from Loudermilk for State Senate on June 28, 2013. Federal Committee's Amended 2013 July Quarterly Report at 61 (filed Sep. 4, 2013). Loudermilk for Congress reported receipt of a \$1,000 contribution from Friends of Buddy Carter on June 27, 2013. Loudermilk for Congress 2013 July Quarterly Report at 48 (filed July 15, 2013).

1 because he supported Carter's campaign promises.²¹ Respondents also argue that the
2 Commission has previously rejected similar allegations where complaints rested solely on the
3 timing and amounts of contributions.²²

4 The Act places certain amount limitations and source prohibitions on contributions to
5 federal candidates and their committees; to prevent circumvention of these limitations and
6 prohibitions, Commission regulations prohibit federal candidates from transferring funds from
7 their state campaign committees to their federal committees.²³ The prohibition on transferring
8 funds applies broadly and includes payment by the state committee for services to the federal
9 committee.²⁴ The Act also prohibits making a contribution in the name of another, knowingly
10 permitting one's name to be used to effect such a contribution, and knowingly accepting a
11 contribution made in the name of another.²⁵

²¹ Simons Resp. at 1. In a previous matter, the Commission noted that the State Committee's disclosure reports supported the Committee's assertion that they had a "long-standing agreement" active since at least January 1, 2012, to pay Simons & Associates a quarterly retainer of between \$500-2000 for services provided to Carter by the firm. Factual & Legal Analysis at 8, MUR 6820 (Carter *et al.*).

²² See Loudermilk Response 2; Black Response at 3; Florence Response at 2 (citing MURs 5732 (Matt Brown for U.S. Senate), 5520 (Republican Party of Louisiana/Tauzin), 5445 (Davis), 4643 (Democratic Party of New Mexico), and 5125 (Perry) as examples of where the Commission failed to find reason to believe that contributions were earmarked absent any evidence of express or implied designations, instructions, or other encumbrances by the donors).

²³ 52 U.S.C. §§ 30116(a), 30118(a); 11 C.F.R. § 110.3(d); *see also* Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) ("Transfers E&J") (explaining the transfer prohibition as intended to prevent "indirect" use of impermissible funds).

²⁴ See Transfers E&J, 57 Fed. Reg. at 36,345; *see e.g.*, MUR 6267 (Paton For Senate) (finding that Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (finding that Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); MUR 5426 (Dale Schultz for Congress) (finding that Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

²⁵ 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b).

1 The Commission has previously considered alleged arrangements to transfer a state
2 committee's funds into a federal committee's account through intermediaries, such as through
3 alleged earmarking, "reciprocal contribution," or other schemes in which contributions are made
4 in the name of another.²⁶

5 In this matter, with the exception of the reporting discrepancy associated with the
6 transactions involving Broadrick, the Complaint relies solely on alleged temporal connections
7 and similarities in the amount to support the reciprocal contribution scheme allegation. Carter,
8 Loudermilk, Mullis, Florence, Black, and Simons all deny the allegations, and unlike in MUR
9 5278, the Commission does not have other information supporting a reciprocal contribution
10 scheme.²⁷ Some of the alleged temporal connections involved contributions made months apart.
11 In light of the specific denials and the lack of additional information indicating that the
12 contributions were indirect prohibited transfers, the allegations regarding these respondents are
13 too speculative to support a reason to believe finding and justify further investigation.
14 Accordingly, the Commission finds that there is no reason to believe that Respondents violated
15 52 U.S.C. § 30122, 11 C.F.R. § 110.4(b), or 11 C.F.R. § 110.3(d) by engaging in a reciprocal
16 contribution scheme.

²⁶ Compare Factual & Legal Analysis at 3-4, MUR 5278 (Gingrey) (the Commission found reason to believe and entered into conciliation after Gingrey admitted in a state proceeding to having arranged four "reciprocal contributions" for the purpose of funneling state funds into his federal account.) and Advisory Op. 1996-33 (Colantuano) (concluding that understanding between state and federal candidate to exchange contributions would result in impermissible transfer) with MURs 5732 (Matt Brown for U.S. Senate) (Commission found no reason to believe Respondents violated 2 U.S.C. § 441a(a)(8) (now 52 U.S.C. § 30116(a)(8)) or 2 U.S.C. § 441f (now 52 U.S.C. § 30122)), 5520 (Republican Party of Louisiana/Tauzin) (Commission found no reason to believe Respondents violated 2 U.S.C. § 441a (now 52 U.S.C. § 30116)), 5445 (Davis) (Commission found no reason to believe Respondents violated the Act), 5125 (Perry) (Commission found no reason to believe Respondents violated 2 U.S.C. § 441a (now 52 U.S.C. § 30116) or 2 U.S.C. § 441f (now 52 U.S.C. § 30122)), and 4643 (Democratic Party of New Mexico) (Commission found no reason to believe Respondent contributors violated the Act).

²⁷ See *id.*

1 **B. The Commission Dismisses the Allegations that Carter and the State**
2 **Committee Spent Nonfederal Funds After Carter Became a Federal Candidate**

3 The Complaint also alleges that the State Committee spent funds outside the federal
4 limits and source prohibitions after Carter became a federal candidate on May 6, 2013.²⁸ The
5 Complaint points to both the \$9,000 in alleged reciprocal contributions made by the State
6 Committee, discussed above, as well as more than \$26,000 in spending by the State Committee
7 from May 2013 through September 2014, and suggests that there is no evidence that the State
8 Committee used a reasonable accounting method to make sure their spending involved only
9 federally permissible funds.

10 Carter and the State Committee deny that the State Committee improperly spent soft
11 money after Carter became a federal candidate. For the campaign contributions, they argue that
12 the State Committee had “sufficient federally acceptable funds to cover the amount of the
13 contributions at the time they were made.”²⁹ For the other disbursements made by the State
14 Committee after Carter became a federal candidate, they argue that these disbursements were
15 related to Carter’s official duties as a sitting state senator, were not made in connection with a
16 federal or non-federal election, and were therefore not required to be made using federally
17 permissible funds.³⁰

²⁸ Compl. at 4-5. The Complaint does not allege that the State Committee raised soft money after Carter became a federal candidate and the Commission previously considered that issue in MUR 6820. In MUR 6820, the Commission dismissed as *de minimis* allegations that Carter and the State Committee violated the Act by accepting four corporate contributions totaling \$3,250 after Carter became a federal candidate, noting that there was no indication that Carter solicited the contributions, the donors had a history of regularly giving to Carter as a state candidate, and the amount was relatively modest. Factual & Legal Analysis at 10-14, MUR 6820 (Carter *et al.*).

²⁹ Carter Resp. at 4.

³⁰ *Id.* at 5. The Commission previously dismissed similar allegations regarding the disbursements for payments to Simons & Associates, LLC, and expenditures for the salaries of two State Committee staffers. Factual and Legal Analysis at 2-7, MUR 6820 (Carter, *et al.*). The dismissal was based on the State Committee’s assertion that Simons & Associates and the two staffers were paid for work related to Carter’s official duties as a sitting state senator and the lack of specific information to the contrary in the complaint. *Id.*

1 The Act prohibits federal candidates, federal officeholders, their agents, and entities
2 established, financed, maintained, or controlled (“EFMC’d”) by federal candidates or
3 officeholders from soliciting, receiving, directing, transferring, spending, or disbursing funds in
4 connection with any non-federal election unless the funds are from sources consistent with state
5 law and are in amounts and from sources permitted by the Act.³¹ Carter, a federal candidate as
6 of May 6, 2013, and subsequently, a federal officeholder, EFMC’d the State Committee, which
7 donated to state and local candidates and made other expenditures.³² Thus, any funds the State
8 Committee transferred, spent, or disbursed in connection with any election after May 6, 2013,
9 were required to comply with the restrictions of section 30125(e).

10 Notwithstanding the prohibitions of 30125(e), the Commission has allowed federal
11 candidates who are state officeholders to donate federally permissible funds in a state account to
12 other state and local political committees if the state committee uses a “reasonable accounting
13 method” to separate permissible from impermissible funds (*i.e.*, those raised consistent with state
14 law but outside the Act’s contribution limits and source restrictions), and makes the contributions
15 with permissible funds.³³ Moreover, the restrictions of section 30125(e) only apply to activity
16 that was in connection with any election. Georgia law permits campaign funds to be used to

³¹ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.62. The Act provides an exception allowing a simultaneous federal and state candidate to spend non-federal funds “solely in connection with such election for State or local office,” which allows a simultaneous state and federal candidate to spend otherwise impermissible funds in connection with his or her own state election. *See* 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63; Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5. Carter, however, was not a simultaneous state and federal candidate, and could not take advantage of this state candidate exception.

³² *See* Advisory Op. 2009-26 (Coulson) at 5 (“AO 2009-26”) (explaining that federal candidate’s state committee is EFMC’d by federal candidate, that such a committee is subject to soft money rules, and that disbursements in connection with legislative action, but not state elections, are not limited); Advisory Op. 2007-01 (McCaskill) at 3 (examining application of soft money rules to retirement of state committee debt); Factual & Legal Analysis at 9, MUR 6601 (Oelrich) (applying soft money rules to state officeholder federal election activity PASO communications).

³³ Advisory Op. 2007-26 (Schock) at 3-5; Advisory Op. 2006-38 (Casey) at 4.

1 defray costs associated with state assembly members' official duties.³⁴ Such state officeholder
2 expenses and administrative costs of maintaining a state committee would not fall under the
3 section 30125(e) restrictions if they are unrelated to any election.³⁵ Thus, if the State Committee
4 used a reasonable accounting method to identify federally permissible funds, it would be
5 permissible for the State Committee to use those funds for non-federal campaign contributions
6 made after Carter became a federal candidate. The State Committee could also use non-federal
7 funds in its account for the disbursements related to Carter's official duties as a sitting state
8 Senator, since those disbursements are not related to any election.³⁶

9 The State Committee's disclosure reports reveal that after Carter became a federal
10 candidate, the State Committee spent \$22,400 on contributions to state and federal³⁷ candidates
11 and \$33,137.41 on other disbursements.³⁸ The reports also reveal that a significant portion of the
12 State Committee's cash on hand when Carter became a federal candidate was from corporate
13 contributions;³⁹ the State Committee may have had federally permissible funds available to

³⁴ GA. CODE ANN. § 21-5-33.

³⁵ See Advisory Op. 2003-20 (Reyes) (explaining that "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of" section 30125); AO 2009-26; Advisory Op. 2004-14 (Davis); see also Advisory Op. 2016-25 (Mike Pence for Indiana) (stating that campaigns "may use non-federal funds in its state campaign account to pay for the storage of state campaign assets, legal or accounting expenses necessary to comply with state disclosure requirements applicable to state committees, and legal or accounting expenses for winding down the state campaign, provided that such spending is consistent with state law").

³⁶ See AO 2009-26 at 5 (concluding that soft money rules do not restrict state committee's disbursements for state legislative activity).

³⁷ The single \$1,000 contribution to Loudermilk for Congress is the lone contribution to a federal campaign.

³⁸ See State Committee's disclosure reports for June 30, 2013, through December 31, 2016 (reporting 80 itemized expenditures between June 5, 2014, and October 31, 2016, totaling \$55,537.41). The State Committee's disclosure reports revealed that the State Committee continued to make campaign contributions through October 31, 2016. State Committee's 2016 December 31st – Election Year Report. When Carter became a federal candidate, the State Committee had at least \$51,944.16 cash on hand. State Committee's 2013 June 30th – Election Year Report. Roughly 42% of the State Committee's available funds as of May 6, 2013, were spent on political contributions to non-federal candidates.

³⁹ See, e.g., State Committee's disclosure reports for June 30, 2013, through June 30, 2014, showing that the State Committee received \$79,600.13 in total contributions. Of that, \$22,900 were facially permissible contributions

1 make \$22,400 in campaign contributions, but not both those contributions and \$33,137.41 in
2 other disbursements.⁴⁰ Thus some portion of the disbursements made after Carter became a
3 federal candidate and officeholder were from funds that did not comply with the Act's source
4 prohibitions.⁴¹

5 Regarding the \$33,137.41 in other disbursements, the Complaint characterizes them as
6 being used for "advertising" and "sponsoring political meetings," but provides no further
7 information indicating that this spending was done in connection to any federal or non-federal
8 election. Carter and the State Committee deny the allegations and state that the disbursements
9 were all related to Carter's official duties as a state officeholder and therefore were not made in
10 connection with a federal or non-federal election. With the exception of the \$250 disbursement
11 made on September 7, 2016, for "campaign material," none of the State Committee's
12 disbursements made after Carter became a federal candidate appear on their face to be clearly
13 related to an election.⁴² In light of the specific denial by Respondents and the lack of

from individuals and Federal PACs, and \$30,800 were corporate contributions. An additional \$25,900.13 were from state PACs, LLCs, PCs, and LLPs—funds which are potentially permissible under the Act depending on how the donors are organized and the funds they used to make the contributions. Thus, at least 39% of the State Committee's available funds during the time period addressed in the Complaint consisted of demonstrably impermissible federal funds ($\$30,800 \div \$79,600.13 = 0.3869 \times 100 = 39\%$).

⁴⁰ *Id.*

⁴¹ Georgia law permits individuals, corporations, political committee and political parties to contribute up to \$2,500 to primary candidates for the General Assembly. *See* Georgia Government Transparency and Campaign Finance Act (effective Jan. 1, 2014), Article 2 § 21-5-35(a). The State Committee's disclosure reports did not reflect any facially excessive contributions during the period at issue in this matter. *See* State Committee's disclosure reports for June 30, 2013, through June 30, 2014.

⁴² The \$250 disbursement for "campaign materials" was paid to Jeanne Seaver, described in the report as a self-employed consultant. *See* State Committee's 2016 December 31st – Election Year Report. Neither the State Committee's disclosure reports nor the Federal Committee's reports show any other payments to Jeanne Seaver. While a disbursement for "campaign materials" indicates that this is likely spending in connection with an election, the Commission does not have sufficient information to conclude that this was tied to Carter's 2014 Congressional campaign and therefore an impermissible transfer from the State Committee to the Federal Campaign. In any case, this potential \$250 violation is *de minimis*.

1 information indicating that these disbursements were made in connection with any election, there
2 is insufficient information to conclude that these were disbursements in connection with a federal
3 or non-federal election that were required to be made using federally permissible funds.

4 With regard to the \$22,400 in non-federal campaign contributions the State Committee's
5 disclosure reports indicate that it had at least \$22,900 in federally permissible funds on hand
6 when Carter became a federal candidate, which would have been sufficient to cover the \$22,400
7 in campaign contributions.⁴³ Therefore, although it is unclear whether the State Committee used
8 a reasonable accounting method to identify federally permissible funds, in light of the
9 information indicating that the State Committee's accounts appeared to contain sufficient
10 federally permissible funds, it would not be an appropriate use of the Commission's limited
11 resources to further investigate the State Committee's accounting. Accordingly, the Commission
12 exercises its prosecutorial discretion and dismisses the allegations that Carter and the State
13 Committee violated 52 U.S.C. § 30125(e) by spending soft money after Carter became a federal
14 candidate.⁴⁴

⁴³ See *supra*, note 42.

⁴⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).