



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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600 Massachusetts Avenue, NW
Suite 1300 South
Washington, DC 20001

MAY - 1 2018

RE: MUR 7251 (Loudermilk for Congress, *et al.*)

Dear Mr. Tyrrell:

On June 5, 2017, the Federal Election Commission notified your clients, Earl Leroy "Buddy" Carter and Buddy Carter for Congress and Paul Kilgore in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 10, 2018, the Commission found, on the basis of the information in the complaint and information provided by your clients, that there is no reason to believe that Earl Leroy "Buddy" Carter and Buddy Carter for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30122. 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 findings, 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 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Barry Loudermilk MUR 7251
6 Desiree Jean Loudermilk
7 Loudermilk for Congress and Charles Nida in his
8 official capacity as treasurer
9 Loudermilk for State Senate
10 Earl Leroy "Buddy" Carter
11 Buddy Carter for Congress and Paul Kilgore in his
12 official capacity as treasurer
13 Lindsey Allen Tippins
14 Tippins for State Senate
15 Shultz for Georgia
16 Leonard Edwin Setzler
17 Citizens to Elect Ed Setzler
18 Ralph Hudgens
19 Friends of Ralph Hudgens
20

21 **I. INTRODUCTION**

22
23 This matter was generated by a complaint filed with the Federal Election Commission
24 alleging violations of the Federal Election Campaign Act of 1971, as amended ("Act"), by
25 Respondents.

26 **II. FACTUAL AND LEGAL ANALYSIS**

27 During the 2014 election cycle, Barry Loudermilk served as a Georgia State Senator
28 while he simultaneously ran for Congress in Georgia's 11th Congressional District. The
29 Complaint alleges that Loudermilk engaged in a "conduit contribution" scheme in which he used
30 funds from Loudermilk for State Senate ("State Committee") to contribute to other Georgia
31 candidates, who in turn contributed like sums to Loudermilk for Congress and Charles Nida in
32 his official capacity as treasurer ("Federal Committee") thereby serving as conduits for transfers
33 from the State Committee to the Federal Committee.¹ The Complaint also alleges that the State

¹ Compl. at 1-4 (May 30, 2017).

1 Committee made a contribution to the Federal Committee when it paid Loudermilk's wife,
2 Desiree Loudermilk, for "administrative assistance" when in fact she was providing services for
3 the Federal Committee, resulting in a violation of the soft money ban.² In a joint response, the
4 Loudermilks, the State Committee, and the Federal Committee argue that the Complaint fails to
5 allege sufficient facts to establish the existence of any contribution scheme, and also deny that
6 the State Committee spent impermissible funds in connection with the payments to Desiree
7 Loudermilk.

8 The Act prohibits federal candidates, federal officeholders, their agents, and entities
9 established, financed, maintained, or controlled ("EFMC'd") by federal candidates or
10 officeholders from soliciting, receiving, directing, transferring, or spending funds in connection
11 with any election unless the funds are subject to the limitations, prohibitions, and reporting
12 requirements of the Act.³ Further, Commission regulations prohibit the transfer of funds or
13 assets from a candidate's campaign committee for a nonfederal election to his or her principal
14 campaign committee.⁴ The Act also prohibits making a contribution in the name of another,
15 knowingly permitting one's name to be used to effect such a contribution, and knowingly
16 accepting a contribution made in the name of another.⁵

² Compl. at 4. See 52 U.S.C. §§ 30122, 30125(e)(1)(A). The Complaint also states that these payments and other "administrative assistance" payments to Desiree Loudermilk constitute the conversion of state campaign funds to personal use. *Id.* As the Loudermilk response points out, these allegations are not within the jurisdiction of the Federal Election Campaign Act of 1971, as amended (the "Act"). See Barry Loudermilk, Desiree Loudermilk, Loudermilk for Congress and Charles Nida in his official capacity as treasurer, and Loudermilk for State Senate Resp. at 5 (Aug. 8, 2017).

³ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.62.

⁴ 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).

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

Georgia law permits state campaign funds to be used to defray costs associated with state assembly members' official duties.⁶ Such state officeholder expenses and administrative costs of maintaining a state committee would not fall under the restrictions of section 30125 if they are unrelated to any election.⁷

A. Alleged Reciprocal Contributions

The Complaint alleges that the State Committee made \$2,750 in contributions and the Federal Committee received \$3,250 in contributions as part of a scheme to impermissibly transfer State Committee funds to the Federal Committee using the recipient committees as conduits for these transfers.⁸ Specifically, the Complaint identifies five instances after Loudermilk became a federal candidate where the State Committee made a contribution to a federal or state candidate that was preceded by or followed by a contribution to the Federal Committee by the same committee or a related committee or individual.⁹ Thus, the complaint alleges that through these reciprocal contributions the Respondents engaged in a conduit contribution scheme.

⁶ GA. CODE ANN. § 21-5-33.

⁷ 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 nonfederal 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").

⁸ *Id.* at 4.

⁹ Compl. at 2-3.

1 The following chart represents the transactions at issue:

Contribution from State Committee	Amount	Date	Alleged Reciprocal Contribution to Federal Committee	Amount	Date
Tippins for State Senate	\$500	10/24/2014	Tippins for State Senate	\$1,000	10/29/2014
Citizens to Elect Ed Setzler	\$500	10/22/2014	Citizens to Elect Ed Setzler	\$500	3/31/2014
Friends of Ralph Hudgens	\$500	10/14/2014	Suzanne Hudgens (spouse of state candidate Ralph Hudgens)	\$500	7/18/2014 ¹⁰
Shultz for Georgia	\$250	12/12/2013	Thomas Schultz (state candidate)	\$250	5/31/2013
Buddy Carter for Congress	\$1,000	6/28/2013 ¹¹	Friends of Buddy Carter	\$1,000	6/27/2013 ¹²
TOTAL	\$2,750		TOTAL	\$3,250	

2 In response, the Loudermilk Respondents argue that the Complaint does not show that
3 any of the State Committee contributions were earmarked or contained any “designations,
4 instructions and encumbrances,” and they state that the Loudermilk Respondents made no other
5 express or implied instruction to the recipient committees.¹³ The recipient committees either
6 deny the existence of a reciprocal contribution scheme or argue that the Complaint fails to allege
7 sufficient information to establish such a scheme.¹⁴

¹⁰ Loudermilk for Congress Second Amended October Quarterly 2014 Report at 29 (Mar. 27, 2015).

¹¹ Buddy Carter for Congress Amended July Quarterly 2013 Report at 61 (Sept. 4, 2013).

¹² Loudermilk for Congress July Quarterly 2013 Report at 48 (Jul. 15, 2013).

¹³ See Loudermilk Resp. at 3.

¹⁴ See Tippins for State Senate and Tippins Resp. at 1 (July 10, 2017); Buddy Carter, Buddy Carter for Congress and Paul Kilgore in his official capacity as treasurer, and Friends of Buddy Carter for Senate Resp. at 2 (Aug. 29, 2017); Leonard Edwin Setzler Resp. at 2 (June 30, 2017); Suzanne Hudgens Resp. at 1 (June 29, 2017); Ralph Hudgens and Friends of Ralph Hudgens Resp. at 1 (June 21, 2017); Schultz for Georgia Resp. at 1 (June 21, 2017).

1 The Commission has previously considered alleged arrangements to transfer a state
2 committee's funds into a federal committee's account through intermediaries.¹⁵ The Complaint
3 in this matter relies solely on similarities in the timing and amounts of the contributions to
4 support the argument that Respondents participated in a reciprocal contribution scheme, even
5 though some of the alleged reciprocal contributions lack even these similarities. For example, on
6 May 31, 2013, Thomas Shultz contributed \$250 to the Federal Committee and on December 12,
7 2013 (six and a half months later), the State Committee contributed \$250 to Thomas Shultz's
8 campaign for Georgia State School Superintendent.¹⁶ In another instance, the Complaint cites a
9 \$500 contribution from Suzanne Hudgens, the wife of state candidate Ralph Hudgens, as the
10 reciprocal contribution for a \$500 contribution from the State Committee to Friends of Ralph
11 Hudgens.¹⁷ The lack of similarities in timing, and even sources of contributions, undermines the
12 Complaint's conclusion that these contributions were part of a reciprocal contribution scheme
13 where the recipient committees served as conduits for transfers between the State Committee and
14 Federal Committee.

15 The Complaint does not allege, and the available record does not include, any additional
16 information to support the allegations and the series of contributions at issue are legal on their

¹⁵ 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).

¹⁶ Compl. at 3.

¹⁷ *Id.*

1 face. Thus there does not appear to be a sufficient factual nexus between the transactions to
2 conclude that the State Committee was impermissibly funneling its funds through the recipient
3 committees to the Federal Committee as part of a conduit scheme. Accordingly, the Commission
4 finds no reason to believe that Barry Loudermilk, Loudermilk for State Senate, or Loudermilk
5 for Congress violated 52 U.S.C. § 30122 or 11 C.F.R. §§ 110.4(b) and 110.3(d) and the recipient
6 committees violated 52 U.S.C. § 30122 in connection with the alleged reciprocal contributions.

7 **B. State Committee Spending After Loudermilk Became a Federal Candidate**

8 The Complaint also alleges that the State Committee and Loudermilk violated 30125(e)
9 when the State Committee, after Loudermilk became a federal candidate, spent non-federal funds
10 in connection with a federal or a non-federal election for (1) \$3,336.39 in payments to Desiree
11 Loudermilk for administrative assistance,¹⁸ and (2) the contributions (discussed above) in the
12 amounts of \$1,000, \$500, \$250, \$250, and \$500 to Buddy Carter for Congress, Tippins for State
13 Senate, Schultz for Georgia, Citizens to Elect Ed Setzler, and Friends of Ralph Hudgens,
14 respectively.¹⁹ Because Loudermilk EFMC'd the State Committee,²⁰ any funds the State
15 Committee transferred, spent, or disbursed in connection with a federal or non-federal election
16 after he became a federal candidate on April 20, 2013, were required to comply with the
17 restrictions of section 30125(e). Furthermore, because Loudermilk was not a simultaneous state

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 4. The Complaint does not address the majority of the expenditures made by the State Committee after Loudermilk became a federal candidate, which appear to be similar to permissible administrative and officeholder expenses under Georgia law that the Commission has previously concluded are unrelated to an election. See Factual and Legal Analysis at 3-6, MUR 6820 (Carter, *et al.*).

²⁰ See Advisory Op. 2009-26 (Coulson) at 5 ("AO 2009-26") (concurrent state representative and federal House candidate); Advisory Op. 2007-01 (McCaskill) at 3 (former state candidate and current Federal Senate candidate and officeholder); Factual & Legal Analysis at 9, MUR 6601 (Oelrich) (concurrent state senator and Federal House candidate).

1 and federal candidate, he could not take advantage of the Act's exception allowing candidates
2 simultaneously running for federal and state office to spend nonfederal funds "solely in
3 connection with such election for State or local office."²¹

4 The State Committee did not accept any contributions after Loudermilk became a federal
5 candidate, but it had previously accepted corporate contributions. Thus some portion of the
6 disbursements made after Loudermilk became a federal candidate were from funds that did not
7 comply with the Act's source prohibitions.²² We discuss below each of the Complaint's
8 allegations that the Committee spent such nonfederal funds on a federal or nonfederal election in
9 violation of the Act.

²¹ See 52 U.S.C. § 30125(e)(2); Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

²² Georgia law permits individuals, corporations, political committees, 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 January 1, 2014), Article 2 § 21-5-35(a). The State Committee's disclosure reports did not reflect any facially excessive individual contributions during the period at issue in this matter.

1 1. There is No Reason to Believe the State Committee Transferred Funds to the
2 Federal Committee Through Payments to Desiree Loudermilk
3

4 The Complaint argues that the State Committee payments to Desiree Loudermilk for
5 administrative assistance were for services actually provided to the Federal Committee and thus
6 constituted the conversion of State Committee funds to the Federal Committee. However, the
7 available information does not support the Complaint's allegation.

8 The Complaint fails to provide any specific information to support the allegation that the
9 payments to Mrs. Loudermilk were payments for services she provided to the Federal Committee
10 as opposed to bona fide salary payments for services she provided as treasurer to the State
11 Committee.²³ Furthermore, the available record shows that Mrs. Loudermilk had a longstanding
12 history of providing administrative assistance to Loudermilk's campaign committees dating back
13 to 2007 when she provided administrative services to the Barry Loudermilk Election Committee,
14 Loudermilk's committee when he was a Georgia State Representative.²⁴ Mrs. Loudermilk also
15 provided administrative assistance and served as treasurer to the State Committee when
16 Loudermilk was in the Georgia State Senate prior to his federal candidacy. Following
17 Loudermilk's declaration of federal candidacy, the State Committee paid Mrs. Loudermilk a total
18 of \$5,886.39 over 30 months for administrative expenses – an average of only \$200 per month
19 and in line with the payments she received from Loudermilk's committees before he became a
20 federal candidate.

²³ See MURs 5387 and 5446 (Welch for Wisconsin, *et al.*) at 20-21 (payment to spouse for serving as Committee treasurer was a bona fide salary payment and not a pretext for a transfer to the candidate's federal committee).

²⁴ Loudermilk Resp. at 4-5.

1 The Commission has previously concluded that payments for expenses and
2 administrative costs of maintaining a state committee would not amount to spending funds in
3 connection with an election under section 30125.²⁵ Based on the available information, the
4 Commission finds no reason to believe the State Committee violated 52 U.S.C. § 30125(e)(1)
5 with respect to the payments to Mrs. Loudermilk and no reason to believe Mrs. Loudermilk
6 violated 52 U.S.C. § 30122 in connection with such payments.

7 2. The Commission Dismisses the Allegation that the State Committee Made
8 Impermissible Contributions with Nonfederal Funds
9

10 Though we conclude that the \$2,750 in contributions from the State Committee that are
11 the subject of the Complaint do not appear to be reciprocal contributions, the Complaint alleges
12 that these contributions also violated section 30125 because the State Committee used non-
13 federal funds to make the contributions. The Commission has allowed federal candidates who
14 are state officeholders to donate federally permissible funds in a state account to other state and
15 local political committees if the state committee uses a "reasonable accounting method" to
16 separate permissible from impermissible funds (*i.e.*, those raised consistent with state law but
17 outside the Act's contribution limits and source restrictions), and makes the contributions with
18 permissible funds.²⁶ The State Committee does not assert that it used a reasonable accounting
19 method to separate the funds it used to make the campaign contributions, although in its
20 response, the State Committee represents that it had "sufficient federally acceptable funds to
21 cover the amount of the contributions at the time they were made."²⁷

²⁵ See Factual and Legal Analysis at 3-6, MUR 6820 (Carter, *et al.*).

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

²⁷ Loudermilk Resp. at 4.

1 Based on the State Committee's disclosure reports, it is unclear whether it had sufficient
2 federally permissible funds to cover the campaign contributions. Permissible individual
3 contributions comprised only \$1,050 of the State Committee's funds while facially
4 impermissible corporate contributions totaled \$8,050.²⁸ The remaining contributions to the State
5 Committee were from PACs, trade associations, and LLCs. Without more information
6 concerning these donors' organizational structures, we cannot determine whether those
7 contributions would be federally permissible.

8 Nevertheless, given that \$2,750 in campaign contributions are at issue and we can
9 identify at least \$1,050 in permissible funds, the Commission exercises its prosecutorial
10 discretion and dismisses the allegation that Loudermilk and the State Committee violated
11 52 U.S.C. § 30125(e)(1) by spending soft money for campaign contributions after Loudermilk
12 became a federal candidate.

²⁸ Loudermilk for State Senate June 30, 2012 Georgia State Filing at 4 (July 9, 2012); Loudermilk for State Senate December 31, 2012 Georgia State Filing at 4 (Jan. 8, 2013).