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March 29, 2019

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination &  
Legal Administration

**Supplemental Response:** MUR 7386; Vir-  
ginia 6th District Republican Committee

Dear Mr. Jordan,

We write to supplement and update the Response of the Virginia 6th District Republican Committee (the "Committee") to the above-noted matter under review ("MUR"). The Committee filed that Response on July 26, 2018.<sup>1</sup>

**Background and Facts<sup>2</sup>**

The Committee is a district party committee of the Republican Party of Virginia with a separate Federal account, in accordance with 11 C.F.R.103, that is treated as a separate Federal political committee (ID # C00005801) and a non-Federal account that reports to the Virginia Board of Elections as the 6th Congressional District Republican Committee (PP-12-00505).

This supplement updates Part III of the Response, which addressed the third count of the complaint, which claims violations in the raising and spending funds for the May 2018 district convention the first in over 25 years at which a federal candidate would be chosen. In response, the Committee pointed out that no federally-impermissible funds were deposited in the Federal account, that the deposits into the non-Federal account did not violate 11 C.F.R.102.5, (Response at 5), and that paying allocable convention expenses out of the non-Federal account is also permissible. (Response at 5-6). The Committee proposed that the only *possible* violation

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<sup>1</sup>The Response incorporated three other Respondents a former Chairman and two former Treasurers of the Committee.

<sup>2</sup>See Letter Response (July 26, 2018) for the complete background facts.

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described by the third count of the complaint could be corrected by formally re-paying the allocable Federal expenses from the Federal account, and the Committee proposed a process for doing that. (Response at 6). In short, the Committee offered that it would (1) in compliance with Commission regulation and guidance, identify funds in its non-Federal account that meet Federal source and amount requirements, and (2) redesignate and transfer those funds to the Federal account. After (3) allocating the convention and related expenses according to 11 C.F.R. 106.7, the Committee would then (4) re-pay its federal allocated expenses from the Federal account and (5) secure refunds of the payments of the federal allocated expenses to the non-Federal account.

The Committee has completed the first three steps, but after transferring and raising federally-permissible funds to the Federal account and paying the Committee's legal and other expenses, the Federal account does not have funds available to allow it to re-pay the vendors for those expenses that were already paid from the non-Federal account. *See Declaration of Donna Moser at ¶¶ 7-15 (March 28, 2019).* The Committee does not believe that it is reasonably likely to have sufficient funds in the reasonably foreseeable future to make the re-payments from the Federal account. *Id.* at ¶ 17.

The Committee respectfully submits that because the funds used to pay the federally-allocated expenses were, in fact, federally-permissible, the remaining federally-permissible funds were appropriately transferred to the Federal account, and the related federal disclosure requirements were effectively met,<sup>3</sup> that any remaining putative violation e.g., *that the federally-permissible funds were not placed in the Federal account before being used* was *de minimis*, insignificant, and presents a matter that does not merit the additional expenditures of Commission resources.

### **The Payments for Federally-Allocable Expenses Were Made With Federally-Permissible Funds.**

As the Committee reported in its Response, most of the funds that were deposited into the Committee's non-Federal account met the Federal source and amount limitations, i.e., they were "federally-permissible funds," that could have instead been deposited in the Committee's Federal account. (Response at 5, 6, n.10). In fact, after examining the transactions surrounding the convention using reasonable accounting methods, the Committee submits that the funds that were used to pay for the federally-allocable convention-related expenses were, in fact, federally-permissible funds.

The Committee has confirmed that at least \$40,000 of the funds deposited in the non-Federal account in the period immediately preceding the convention were federally-permissible funds eligible for the Federal account. Eight individuals seeking nomination to the Federal Congressional seat each paid a "filing fee" of \$5000. Moser Decl. at ¶ 7. Federal candidate filing fees may be deposited in a state party's Federal account unless they are traceable to source- or

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<sup>3</sup>The Committee maintains that the original disclosure in Virginia practically effectuated federal disclosure requirements, (Response 3-4), and that subsequent federal disclosure fulfills any gaps, but the Committee will file amended or other reports as instructed by the Commission.

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amount-prohibited funds. *See, e.g.*, AO 1988-33 (Florida Republicans); AO 1991-14 (Kentucky Republicans), AO 1991-22 (Minnesota Independent Republican Party). Here, the filing fees were made directly from federal candidates' funds, and federal candidates cannot "solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office" or "with any election" unless the funds are federally-permissible i.e., the candidates themselves must have paid the filing fees from funds meeting Federal source and amount limitations, 52 U.S.C. § 30125(e)(1). The Committee had available at least \$40,000 in federally-permissible funds.<sup>4</sup>

The Committee reviewed the expenses related to the May 19, 2018 district convention and events surrounding it, and calculated the portion allocable to activities in connection with a federal election the expenses to be paid with federally-permissible funds. Moser Decl. at ¶ 11. The Committee identified the relevant expenditures to be \$42,542.18. *Id.* By allocating these expenses in proportion to the number of candidates seeking nominations for federal and state offices, the Committee determined that 53.3% of the expenses, or \$22,674.98, were in connection with a federal election 8 candidates sought nomination to federal office and 7 sought nomination to state, local, or party office. *Id.* This allocation ratio comports with the "funds received" method specified for allocating fundraising costs between Federal and non-Federal accounts. 11 C.F.R. § 106.7(d)(4). The Committee had at least \$40,000 in federally-permissible funds when it paid the \$22,674.98 in federally-allocated expenses<sup>5</sup> that is, reasonable accounting demonstrates that the Committee had far more than enough federally-permissible funds to cover the federally-allocated expenses that were paid.

**Any Possible Violation of Law is *De Minimis* and Presents a Matter That Does Not Merit the Additional Expenditure of Commission Resources and Should Be Dismissed.**

The funds that the Committee actually used to pay for the political activities in connection with a federal election are directly traceable to funds that undeniably meet Federal source and amount limitations, and, therefore, any actual violation of law or regulation is *de minimis*.<sup>6</sup>

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<sup>4</sup>Total deposits into the non-Federal account for the first half of 2018 were \$64,690.94. Moser Decl. at ¶ 7. In addition to the filing fees, the Committee also identified other funds deposited during the period that were federally-permissible. *See* Moser Decl. at ¶ 7-8 (all deposits were examined; \$24,040.28 in federally-permissible funds were identified and remained after paying all of the convention-related expenses). Among these, the filing fees are easily identifiable as federally-permissible and were more than sufficient to cover the federally-allocated expenses.

<sup>5</sup>The Committee later also paid \$4124.41 for security services at the Convention from the Federal account. *See* Moser Decl. ¶ 13. The federally-allocable amount for this expense was actually \$2198.32 (\$4124.41 x .533).

<sup>6</sup>The Commission recognizes that funds raised in compliance with federal source and amount limitations retain their legal status as federally-permissible funds when they are deposited in a non-Federal account. In *Republican Party of Louisiana v. FEC*, the Commission argued that

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Specifically, the requirement that expenses allocable to political activities in connection with a federal election be paid with federally-permissible funds has been completely satisfied. And using only federally-permissible funds satisfies 11 C.F.R. § 102.5(a)(1)(i)'s "separate account" requirement insofar as that requirement is merely a prophylaxis that is justified by the interest in ensuring that only federally-permissible funds are used to fund political activities in connection with a federal election. *See, e.g.*, AO 1988-33 (Florida Republicans) (the basis for § 102.5(a)(1)(i)'s requiring the use of a Federal account is preventing infusion of source- or amount-prohibited funds into the Federal election process). Using federally-permissible funds from the non-Federal account is therefore a *de minimis* and insignificant violation of law or regulation and presents a matter that does not merit the additional expenditures of Commission resources but warrants dismissal. *See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12546 (2007).

### **Conclusion**

In Part III of its Response to MUR 7386, the Committee submitted that it should be allowed to redesignate and transfer funds from its non-Federal account to the Federal account and re-pay vendors for the federal-allocable expenses, obtaining refunds to the non-Federal account. But the Committee now submits that because the funds used to pay the federally-allocated expenses were, in fact, federally-permissible, remaining federal-permissible funds were appropriately transferred to the Federal account and the related federal disclosure requirements have or can be met, that any remaining violation is *de minimis*, insignificant, and presents a matter that does not merit the additional expenditures of Commission resources and should be dismissed.

Sincerely,

THE BOPP LAW FIRM, PC



James Bopp, Jr.  
 Jeffrey P. Gallant

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the Louisiana State Party Committee's choosing to deposit federally-permissible funds in its non-Federal account depriving it of standing to challenge restrictions on the use of those funds. No. 1:15-cv-01241 (*Defendant FEC's Motion to Dissolve Three-Judge Court With Instructions to Dismiss or, Alternatively, to Dismiss Action* (Doc. 40)) 15-19 (Mar. 15, 2016).