



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 30 2019

Marc Erik Elias, Esq.
Perkins Coie
200 13th Street, NW, Suite 600
Washington, DC 20005-3960

RE: MUR 7448

Dear Mr. Elias:

On August 8, 2018, the Federal Election Commission ("Commission") notified your clients, Kamala Harris for Senate and Stephen J. Kaufman in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 23, 2019, the Commission, after considering the complaint and your clients' response, determined to dismiss the allegations and close the file in this matter. The Factual and Legal Analysis, which provides a basis for the Commission's determination, is enclosed.

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), effective September 1, 2016.

The Act 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 Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574.

Sincerely,

A handwritten signature in black ink, appearing to read "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure:
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** California Democratic Party and Katherine
4 Moret in her official capacity as treasurer
5 Citizens for Waters and David Gould in his
6 official capacity as treasurer
7 Kamala Harris for Senate and Stephen J.
8 Kaufman in his official capacity as treasurer

MUR: 7448

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission
11 (the "Commission") by Thomas J. Anderson.¹ The Complaint in this matter alleges that a "slate
12 mailer" paid for by Citizens for Waters ("Waters Committee") and the California Democratic
13 Party ("CDP") resulted in an excessive contribution to Kamala Harris for Senate ("Harris
14 Committee") in violation of the Federal Election Campaign Act, as amended (the "Act").
15 Respondents deny the allegations and argue that CDP's payment was a coordinated party
16 expenditure within the applicable limits, and that, because the expense of creating the mailer was
17 timely reimbursed, it did not constitute an excessive in-kind contribution from the Waters
18 Committee to the Harris Committee.

19 The available information indicates that CDP's payment for the mailer on behalf of the
20 Harris Committee was a coordinated party expenditure within the Act's limits. Accordingly, the
21 Commission finds no reason to believe that the Waters Committee, the Harris Committee, or
22 CDP violated 52 U.S.C. § 30116(a), (f) by making or accepting excessive in-kind contributions.

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¹ See 52 U.S.C. § 30109(a)(1).

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1 **II. FACTUAL BACKGROUND**

2 The Waters Committee is the principal campaign committee of California Representative
3 Maxine Waters.² The Harris Committee is the principal campaign committee for Kamala Harris,
4 who was elected to the U.S. Senate from California in 2016.³ CDP is the federally registered
5 state party committee of the Democratic Party in California.⁴

6 The Waters Committee produces and distributes a mailer entitled "Congresswoman
7 Maxine Waters Sample Ballot and Voter Recommendations."⁵ On October 11, 2016, the Waters
8 Committee requested reimbursement from the Harris Committee in the amount of \$35,000 for
9 the cost of Kamala Harris appearing on the Waters Committee's forthcoming mailer.⁶ Two days
10 later, CDP reimbursed the Waters Committee on behalf of the Harris Committee.⁷ On October
11 17, the Waters Committee disclosed the contribution from CDP as a coordinated party

2 ² Waters Committee Resp. at 1 (Sept. 27, 2018).

3 ³ Harris Committee Resp. at 1-2 (Sept. 27, 2018). The Commission notes that the Complaint describes the mailer as a "slate mailer." Under the Act, the costs incurred to prepare, display, mail or otherwise distribute printed slate cards, sample ballots, or other printed listings of three or more candidates for public office are exempt from the definitions of "contribution" and "expenditure." 52 U.S.C. § 30101(8)(B)(v), (9)(B)(iv). Though neither the Complaint nor the Response attaches the mailer at issue, as noted in an Advisory Opinion prepared for the Waters Committee in 2004, previous mailers prepared by the Waters Committee featured "certain candidates . . . more prominently than others," and included "brief commentary by Representative Waters about the candidates listed," making the mailer "not simply a sample ballot." Advisory Op. 2004-37 (Waters) at 1 n.1. See also Advisory Op. 2008-06 (Virginia Democrats) at 3 (finding that "additional biographical information, descriptions of candidates' positions on the issues, or statements of party philosophy, do not qualify under the slate card exemption"). Thus, the term "slate mailer" does not appear to apply to the mailer in this matter.

4 ⁴ CDP Resp. at 2 (Sept. 27, 2018).

5 ⁵ Waters Committee Resp. at 2.

6 ⁶ Harris Committee Resp. at 2. As the Complaint notes, the Harris Committee also disbursed \$30,000 to the Waters Committee for a primary election mailer on May 16, 2016. Compl. at 2 (Aug. 2, 2018); FEC Form 3, Harris Committee 2016 Pre-Primary Report at 2139 (May 26, 2016). This payment from the Harris Committee to the Waters Committee was permissible and would not constitute an excessive contribution. According to Advisory Op. 2004-37 (Waters), reimbursements by authorized candidate committees to committee-producers of these mailers do not constitute contributions to that producer, nor does the mailer constitute support of the federal candidate.

7 ⁷ Harris Committee Resp. at 2; CDP Resp. at 3.

1 expenditure,⁸ and on October 25, filed a corresponding California form 401 Slate Mailer
2 Organization Campaign Statement as required by California law.⁹ The Waters Committee
3 distributed the mailer on October 28, 2016.¹⁰

4 III. LEGAL ANALYSIS

5 Contributions from a state party committee to a candidate committee are limited to a total
6 of \$5,000 per election, and candidates and political committees are prohibited from knowingly
7 accepting contributions in excess of the Act's limits.¹¹ The Act grants the national and state
8 committees of a political party special authority, however, to "make expenditures in connection
9 with the general election campaign of candidates for Federal office," in full coordination with the
10 candidates and subject to certain contribution limits.¹² These "coordinated party expenditures"
11 may be made before or after a party's candidate has been nominated, regardless of whether that
12 candidate ultimately becomes the party's nominee, so long as any such expenditures made before
13 the nomination comply with the applicable limits.¹³ For the 2016 election cycle, the coordinated
14 party expenditure limit for a California Senate race was \$2,886,500.¹⁴

8 Compl. at 2.

9 *Id.*

10 Harris Committee Resp. at 2.

11 52 U.S.C. § 30116(a)(2)(A), (f).

12 *Id.* § 30116(d). Parties are permitted to make expenditures "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee" subject to certain limits; here, the greater of either \$20,000 or two cents multiplied by the voting age population of the relevant state. 11 C.F.R. §§ 109.20, 109.32. *See also* Factual and Legal Analysis at 4-5, MUR 6583 (Nevada State Democratic Party, et al.) (finding no reason to believe that the Nevada Democratic Party made excessive in-kind contributions because mailers constituted coordinated party expenditures under the applicable limits).

13 11 C.F.R. § 109.34.

14 52 U.S.C. § 30116(d)(1), (d)(3)(A); 11 C.F.R. § 109.32(b)(2)(i); *see* Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7101, 7102 (Feb. 10, 2016).

1 Moreover, in Advisory Opinion 2004-37, the Commission determined that the Waters
2 Committee could feature other federal candidates in a brochure, similar to the mailer in this
3 matter, without making an in-kind contribution so long as the federal candidates appearing in the
4 mailers “provide reimbursements in the appropriate amount in a timely manner.”¹⁵ A timely
5 reimbursement is one that is disbursed “within a reasonable period of time.”¹⁶

6 Here, CDP used its coordinated party spending authority to pay \$35,000 for the cost of
7 the mailer on behalf of the Harris Committee and reported the payment as such. This payment
8 did not cause CDP to exceed its coordinated party expenditure limit of nearly \$2.9 million, given
9 that during the 2016 election cycle, the aggregate total for all of CDP’s coordinated expenditures
10 in support of Harris was \$1,344,950.03.¹⁷ Further, as CDP reimbursed the Waters Committee for
11 the mailer within two days of the Waters Committee’s request for reimbursement, and two weeks
12 before the mailer was distributed, the Waters Committee was timely reimbursed and the mailer
13 therefore did not constitute an in-kind contribution to the Harris Committee.

14 As a result, the Commission finds no reason to believe that CDP and the Waters
15 Committee made, or the Harris Committee accepted, an excessive in-kind contribution in
16 violation of 52 U.S.C. § 30116(a) or (f).

¹⁵ Advisory Op. 2004-37 (Waters) at 2 (concluding that because the Waters Committee received timely reimbursement from other candidates, the brochure was not a coordinated communication under 11 C.F.R. § 109.21).

¹⁶ *Id.* at 4.

¹⁷ See FEC Form 3X of CDP, Second Amended 30-Day Post General Election Report, Sched. F at 519 (Apr. 27, 2017).