



FEDERAL ELECTION COMMISSION
Washington, DC

August 9, 2021

VIA ELECTRONIC MAIL

james@jamesaverhart.com

James Averhart, Treasurer
Campaign to Elect James Averhart
430 Saint Louis Street
Mobile, AL 36604

RE: MUR 7785

Dear Mr. Averhart:

On September 1, 2020, the Federal Election Commission (“Commission”) notified the Campaign to Elect James Averhart and you, in your 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 August 2, 2021, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that the Campaign to Elect James Averhart and you, in your official capacity as treasurer, violated provisions of the Act. The Commission then closed its file in this matter. A copy of the General Counsel’s Report, which more fully explains the basis for the Commission’s decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel’s Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Roy Q. Luckett

BY: Roy Q. Luckett
Acting Assistant General Counsel

Enclosure:

General Counsel’s Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM

DISMISSAL REPORT

MUR: MUR 7785

Respondents: Campaign to Elect James Averhart and James Averhart, as treasurer

Complaint Receipt Date: August 13, 2020

Response Date: N/A

Alleged Statutory

Regulatory Violations:

52 U.S.C. §§ 30102(c), 30104(b), 30116(f);
11 C.F.R. §§ 102.9, 104.3, 104.5(a)(2)(i), 104.7

The Complaint alleges that the Campaign to Elect James Averhart, and James Averhart, in

18 his official capacity as treasurer (the “Committee”), failed to file certain disclosure reports, and

19 omitted required information on disclosure reports filed with the Commission. Specifically, the

20 Complaint alleges the Committee failed to file a 12-Day Pre-Primary Report, failed to disclose

21 employer or occupation of contributors, failed to disclose the address of a vendor, and received a

²² potential prohibited contribution.¹ The Committee did not respond to the Complaint, however, the

¹ Compl. at 1-2 (Aug. 13, 2020). Averhart was a candidate for U.S. House in Alabama District 1 in 2020. The Complaint attaches select pages from the Committee’s 2020 July Quarterly Report (filed July 4, 2020) demonstrating the lack of contributor and vendor information. *Id.* at 1-2, 4-6; *see also* Campaign to Elect James Averhart 2020 July Quarterly Report (original filed July 4, 2020),

<https://docquery.fec.gov/pdf/604/202007049244305604/202007049244305604.pdf>. The Complaint also alleges the Committee did not file its 2020 Pre-Primary Report. Compl. at 1. Commission records show that following a Request for Additional Information (“RFAI”) from the FEC’s Reports Analysis Division (“RAD”) on February 21, 2020, <https://docquery.fec.gov/pdf/458/202002210300058458/202002210300058458.pdf>, the Committee filed a 2020 Pre-Primary Report on February 24, 2020.

<https://docquery.fec.gov/pdf/077/202002249203317077/202002249203317077.pdf>. The Committee has also filed six amendments to its 2020 Pre-Primary Report, most recently on January 23, 2021. *See Campaign to Elect James Averhart Amended 2020 Pre-Primary Report (filed January 23, 2021),*

<https://docquery.fec.gov/pdf/972/202101239405279972/202101239405279972.pdf>. Commission records indicate that the Committee did not file a Pre-Primary Report for the Primary Runoff Election on July 14, 2020, covering the dates April 1, 2020 through June 24, 2020. *See RFAI* (July 3, 2020),

<https://docquery.fec.gov/pdf/541/202007030300075541/202007030300075541.pdf>. However, as mentioned above, the Committee did report financial activity covering the above date range in its July Quarterly Report and amendments.

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1 Commission's records indicate that the Committee has filed both original and amended reports to
2 disclose most of the missing information identified in the complaint.²

3 Based on its experience and expertise, the Commission has established an Enforcement
4 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
5 assess whether particular matters warrant further administrative enforcement proceedings. These
6 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
7 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
8 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
9 potential violations and other developments in the law. This matter is rated as low priority for
10 Commission action after application of these pre-established criteria. Given that low rating, the fact
11 that the Committee has filed multiple disclosure reports addressing its reporting deficiencies, and
12 the relatively low dollar amount associated with the reporting issues,³ we recommend that the
13 Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to
14 determine the proper ordering of its priorities and use of agency resources.⁴ We also recommend
15 that the Commission close the file as to all Respondents and send the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

² The Committee has filed eleven amendments to its 2020 July Quarterly Report, disclosing contributor information, most recently on January 23, 2021. See Campaign to Elect James Averhart Amended 2020 July Quarterly Report (filed January 23, 2021), <https://docquery.fec.gov/pdf/005/202101239405280005/202101239405280005.pdf>. See also, *supra* fn. 1 (list of reports either filed or amended with the Commission).

³ The Complaint alleges the Committee reported a “possible impermissible” \$400 contribution from “First Baptist Church” on June 4, 2020. Compl. at 1, 5. The Committee amended the contribution entry in its amended reports. While the First Baptist Church contribution is technically an impermissible contribution, there were no other prohibited or excessive contributions on the 2020 July Quarterly Report.

Because of the low dollar amount, and because there were no other apparent prohibited or excessive contributions, this office recommends the Commission dismiss this allegation along with the other allegations in the Complaint.

⁴ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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Acting Associate General Counsel

BY: Stephen Gura
Stephen Gura
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