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VENABLE LLP600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

February 10, 2021

James E. Tyrrell III

T 202.344.4522

F 202.344.8300

JETyrrell@venable.com

Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463
VIA EMAIL: CELA@fec.gov

Re: MUR 7855 – Response to Complaint

Dear Mr. Jordan:

We write as counsel to Becchi for Congress (the “Committee”) and David Steiner, in his official capacity as Treasurer of the Committee (collectively, “Respondents”) in response to the complaint filed by Jamie Montgomery on November 6, 2020 (the “Complaint”). Through the Complaint, Ms. Montgomery seeks to involve the Federal Election Commission (the “Commission”) in a payment dispute between her company and the Committee. The Committee’s reports have already been amended to reflect the disputed amount that Ms. Montgomery claims she is owed. The Commission should follow the course it has taken in analogous cases, close the file without taking further action, and allow the Committee and Ms. Montgomery to settle this dispute among themselves.

Factual Background

Rosemary Becchi was a candidate for the U.S. House of Representatives in New Jersey’s 11th Congressional District in 2020. The Committee is her principal campaign committee. In July 2019, the Committee retained Jamie Montgomery Consulting, LLC (“JMC”) to perform fundraising consulting services. The Committee paid JMC \$54,018 for services provided through May 2020, in keeping with the original fee structure agreed to between the Committee and JMC.

By mid-2020, the Committee had grown dissatisfied with the services provided by JMC and became aware of confidentiality breaches. The Committee terminated the services of JMC in May 2020 due to these performance and confidentiality concerns. The Committee contends that it owes no further payments to JMC beyond those already made and that it need not have disclosed the debt to begin with. Still, to avoid any question about the sufficiency of its filings, the Committee has amended its debt schedules to include the full amount JMC has demanded—while making clear the Committee disputes it.

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Legal Analysis

The Federal Election Campaign Act (the “Act”) and Commission regulations require political committees to report the amount and nature of their outstanding debts.¹ This includes an obligation to report “disputed debt” *if* the creditor has provided something of value to the political committee.² A “disputed debt” is “an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee.”³

As a matter of practice, the Commission generally exercises prosecutorial discretion to decline, and has, in fact, an established history of declining to pursue misreporting of debt when the potential reporting error arises from a payment dispute between a vendor and a political committee.⁴ For example, in MUR 6681, the Commission voted 6-0 to dismiss, as a matter of prosecutorial discretion, a claim that a candidate committee failed to report a disputed debt in connection with a dispute over fees allegedly owed to a company for petition services. Similarly, in MUR 6554 the Commission voted 5-0 to dismiss, as a matter of prosecutorial discretion, a claim that a candidate committee failed to report debt or disputed debt in connection with a dispute over fees allegedly owed to a compliance consultant. In each case, the Commission declined to get in the middle of what was at the end of the day a commercial dispute.

The same course of action is appropriate here. The Committee has had, and continues to have, genuine and well-founded concerns concerning the vendor’s performance and breach of its confidentiality obligations. While the Committee believes JMC’s current demand is unsupported, it has amended its reports to show the full amount claimed as disputed debt. Under these circumstances, the Commission should close the file, take no further action, and allow the Committee and JMC to independently settle the underlying payment dispute themselves, as a commercial matter.

¹ 52 U.S.C. § 30104(b)(8); 11 CFR §§ 104.3(d), 104.11(a).

² 11 CFR § 116.10(a).

³ *Id.* § 116.1(d).

⁴ See MURs 6681 (Jill Stein for President and Green Party of VA); 6554 (Friends of Weiner); 6771 (Sue Lowden for US Senate).

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Thank you for your prompt consideration of this matter, and please do not hesitate to contact me directly at (202) 344-4522 with any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "James E. Tyrrell III". The signature is written in a cursive style with a large initial 'J' and 'T'.

James E. Tyrrell III
*Counsel to Becchi for Congress, and
David Steiner, as Treasurer*