



In the Matter of)
 Barbara Kirkmeyer;
 The Committee to Elect Barb Kirkmeyer to State Senate; and
 KirkmeyerForCongress.com and)
 Paul Kilgore,) MUR 8078
 in his official capacity as)
 Treasurer.)

INTRODUCTION

The Committee to Elect Barb Kirkmeyer to State Senate (the “State Committee”) is the state campaign committee of Colorado State Senator Barbara Kirkmeyer. KirkmeyerForCongress.com (the “Federal Committee”) is the principal campaign committee for Ms. Kirkmeyer’s campaign to represent Colorado’s Eighth Congressional District in the U.S. House of Representatives.

The complaint in this matter alleges the State Committee transferred \$2,000 to the Federal Committee. While the transfer may have been a technical violation of the Federal Election Commission’s (“FEC” or “Commission”) rules, it violated no underlying provisions of the Federal Election Campaign Act of 1971, as amended (the “FECA” or “Act”) or any policies or values embodied by the Act. The Federal Committee promptly refunded the amount at issue after it received the complaint and conferred with legal counsel.

Based on these factors, as well as the low amount at issue, the respondents respectfully ask the Commission to dismiss the complaint as a matter of prosecutorial discretion.

DISCUSSION

The State Committee-to-Federal Committee transfer at issue here was truly a technical violation and did not run afoul of any underlying policies or values embodied in the FECA. In fact, prior to a rule change in 1992, the FEC’s rules permitted such a transfer.

As the Commission explained: “Until now [i.e., the 1992 rule change], the Commission has allowed nonfederal campaign committees to transfer funds to an authorized federal committee of the same candidate, so long as the funds transferred do not

contain impermissible or ‘soft money’ contributions.”¹ Not only was this the Commission’s rule, but it was also the Commission’s longstanding policy as expressed by a number of advisory opinions.²

Colorado is a “hard money” state. Specifically, like federal law, it prohibits corporate and union contributions to state-office candidates and imposes far lower contribution limits on State Senate candidates than the federal limits.³ On this basis, the respondents believed in good faith that the transfer from the State Committee to the Federal Committee was permissible. Indeed, the Commission itself previously believed that such a transfer was permissible under the FECA.

In 1992, the Commission reversed itself and imposed a categorical ban on such transfers, notwithstanding the lack of any change in the FECA or court rulings impacting this issue. Rather, the Commission responded to a rulemaking petition that raised concerns over the possibility that, under the preexisting rule, “nonfederal committees [could] use soft money to finance the solicitation of ‘hard money’ contributions that would be permissible under the Act.”⁴

Since Colorado is a “hard money” state, even the policy rationale undergirding the Commission’s 1992 rule change was not implicated here. To wit, under Colorado law, the State Committee could not have “use[d] soft money to finance the solicitation of ‘hard money’ contributions” that it could then transfer to the Federal Committee. Therefore, the transfer at issue in this matter did not harm in any way, shape, or form any interest protected by either the FECA or the Commission’s regulations. It was purely a technical violation of the categorical ban on such transfers that the Commission elected in its discretion in 1992.⁵

¹ Explanation and Justification for Final Rule on Transfers of Funds From State to Federal Campaigns (*hereinafter*, “Transfers E&J”), 57 Fed. Reg. 36344 (Aug. 12, 1992).

² *Id.*

³ See Colo. Sec’y of State, Contribution Limits, at <https://www.sos.state.co.us/pubs/elections/CampaignFinance/limits/contributions.html>.

⁴ Transfer E&J at 36344.

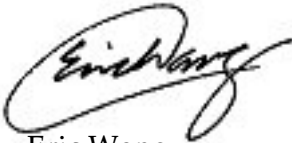
⁵ See *id.* (explaining that the Commission’s notice of proposed rulemaking “proposed amendments . . . that would prohibit the transfer of funds raised using contributions that would be impermissible under the Act,” but the Commission ultimately chose to ban such transfers categorically to avoid “certain practical problems [that] could occur [under] the proposed rule”).

After receiving the complaint in this matter and being apprised by counsel of the technical violation, the Federal Committee promptly refunded the \$2,000 at issue to the State Committee. A copy of the deposited refund check is attached as Exhibit A.

CONCLUSION

Based on the technical nature of the violation, the respondents' prompt remedial action, and the low amount at issue, the respondents respectfully ask the Commission to exercise its prosecutorial discretion and dismiss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Wang", written in a cursive style.

Eric Wang

Counsel to Barbara Kirkmeyer;
The Committee to Elect Barb Kirkmeyer to State Senate; and
KirkmeyerForCongress.com and Paul Kilgore, in his official capacity as Treasurer

EXHIBIT A

CDIP-1D
413116
CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT
SUBJECT TO ANY APPLICABLE COLLECTION AGREEMENT.
Bear Graphics, Inc. PB1002B



Bank of Colorado

MUR807800020

CHECKING DEPOSIT

DATE 11-22-22

CASH

NAME Kirkmeyer For Senate Camp

2000 -

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

ACCOUNT NUMBER

TOTAL FROM OTHER SIDE

LESS CASH RECEIVED

NET DEPOSIT

2000 -

SIGN HERE FOR CASH RECEIVED

009

THIS CHECK IS VOID WITHOUT A TWO-TONED COLORED BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

KIRKMEYER FOR CONGRESS
6100 COUNTY ROAD 4
BRIGHTON, CO 80603

1ST BANK

2145

10/25/2022

PAY TO THE ORDER OF

Cte Barb Kirkmeyer to State Senate

\$ **2,000.00

Two thousand and 00/100*****

DOLLARS

Cte Barb Kirkmeyer to State Senate
6100 County Road 4
Brighton, CO 80603

Paul Kip
AUTHORIZED SIGNATURE
SIGNATURE HAS A COLORED BACKGROUND

MEMO

F2022

SECURITY FEATURES INCLUDED. DETAILS ON BACK