



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

November 29, 2024

Via Email

rp3@axcapteam.com

Robert Phillips, III
555 Metro PL, N. Suite 525
Dublin, OH 43017

Re: MUR 8209
Merrin for Congress

Dear Mr. Phillips:

On February 8, 2024, the Federal Election Commission notified your client, Merrin for Congress and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time. Upon further review of the allegations contained in the complaint, and information supplied by respondents, the Commission, on October 30, 2024, voted to dismiss this matter effective November 29, 2024. A copy of the General Counsel's Report, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1505 or cgallagher@fec.gov.

Sincerely,
Lisa J. Stevenson
Acting General Counsel

Wanda D. Brown

BY: Wanda D. Brown
Assistant General Counsel

Enclosure:
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 8209

Respondents: Merrin for Congress and Natalie Baur
in her official capacity as treasurer
Friends of Derek Merrin

Complaint Receipt Date: Feb. 2, 2024

Response Dates: Feb. 26, 2024; Sept. 30, 2024

[REDACTED]

[REDACTED]

Alleged Statutory/

Regulatory Violations: 52 U.S.C. §§ 30102(e)(1), 30103(a), 30104(a)-(b), 30125(e)(1)(A)
11 C.F.R. §§ 101.1(a), 102.1(a), 102.12(a), 104.1, 104.3, 110.3(d),
300.61

The Complaint alleges that Merrin for Congress and Natalie Baur in her official capacity as treasurer¹ (the “Federal Committee”), the principal campaign committee of Derek Merrin, a candidate for Ohio’s 9th Congressional District in the 2024 election cycle,² accepted an impermissible transfer of nonfederal funds in the amount of \$1,000 from Friends of Derek Merrin, his state campaign committee (the “State Committee”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).³ The Complaint further alleges that in December 2023, the Federal Committee received other nonfederal funds totaling \$5,250 from various other nonfederal committees.⁴ The Complaint also alleges that, by virtue of the

¹ Merrin for Congress, Amended Statement of Organization at 2-3 (Sept. 11, 2024), <https://docquery.fec.gov/pdf/063/202409119675406063/202409119675406063.pdf>. Thomas Datwyler was the Committee’s treasurer at the time of the activity alleged in the Complaint. Merrin for Congress, Amended Statement of Organization at 3 (Apr. 4, 2024), <https://docquery.fec.gov/pdf/687/202404049627465687/202404049627465687.pdf>.

² Derek Merrin, Amended Statement of Candidacy at 1 (Sept. 11, 2024), <https://docquery.fec.gov/pdf/687/202404049627465687/202404049627465687.pdf>.

³ Compl. at 1 (Feb. 2, 2024).

⁴ *Id.*, Attach. A.

1 contributions from the nonfederal committees, which exceeded \$5,000, the Federal Committee
 2 became a political committee before December 31, 2023, but did not file a required 2023 Year-
 3 End Report with the Commission due January 31, 2024, thus also raising allegations that the
 4 Federal Committee did not timely file its Statement of Organization and that Merrin did not
 5 timely file his Statement of Candidacy.⁵

6 The Federal Committee's Response asserts that on December 30, 2023, the State
 7 Committee "erroneously" transferred \$1,000 to the Federal Committee on the "mistaken belief"
 8 that such transfers were permissible under the Act.⁶ According to the Federal Committee, on
 9 February 1, 2024, it voluntarily refunded the nonfederal funds to the State Committee
 10 immediately upon becoming aware that such transfers were prohibited.⁷ The Federal Committee
 11 further asserts that Merrin's Statement of Candidacy and the Federal Committee's Statement of
 12 Organization, which were filed on December 29, 2023, were timely filed.⁸ In support, the
 13 Federal Committee sets forth that Merrin did not raise \$5,000 in contributions until January 9,
 14 2024, and attaches a receipt dated January 9, 2024, indicating that the Federal Committee
 15 received \$4,100 from Seven Consulting, LLC.⁹ Last, the Federal Committee sets forth that its

⁵ *Id.* at 1.

⁶ Federal Committee Resp. at 1.

⁷ *Id.*, Attach. 1 (copy of check dated February 1, 2024, from Merrin for Congress payable to Friends of Derek Merrin in the amount of \$1,000). The Complaint and the Federal Committee's Response each set forth that the State Committee transferred \$1,000 to the Federal Committee. Compl. at 1; Federal Committee Resp. at 1. However, according to the Federal Committee's disclosure reports, on January 9, 2024, it received two \$1,000 contributions from the State Committee for a total of \$2,000. Merrin for Congress, 2024 12-Day Pre-Primary Rpt. at 46 (Mar. 7, 2024), <https://docquery.fec.gov/pdf/440/202403079622353440/202403079622353440.pdf>. The Federal Committee's disclosure reports also show that on February 1, 2024, it refunded the \$2,000 in contributions to the State Committee. *Id.* at 64.

⁸ Federal Committee Resp., Attach. 3 (copy of Derek Merrin's Statement of Candidacy filed on December 29, 2023), Attach. 4 (copy of Merrin for Congress's Statement of Organization filed on December 29, 2023).

⁹ *Id.*, Attach. 2 (image of remote deposit receipt of \$4,100 from "Seven Consulting, LLC" on January 9, 2024, to Merrin for Congress's bank account).

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EPS Dismissal Report

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1 campaign finance activities, including those pre-dating Merrin's candidacy, will be disclosed on
 2 its April 2024 Quarterly Report.¹⁰ A review of the Federal Committee's disclosure reports,
 3 including its April 2024 Quarterly Report, shows that it began receiving contributions on January
 4 1, 2024, and making disbursements on January 5, 2024.¹¹ Therefore, the Federal Committee has
 5 not disclosed any campaign activities pre-dating Merrin's candidacy. The Federal Committee's
 6 Response does not address the Complaint's allegations that it received other nonfederal funds
 7 from various other nonfederal committees. However, in response to a Request for Additional
 8 Information from the Reports Analysis Division regarding receipt of contributions made by
 9 political committees not registered with the Commission,¹² the Federal Committee filed a Form
 10 99 stating that it refunded all impermissible contributions, disclosed the refunds, and verified that
 11 all other contributions were federally permissible.¹³

12 The State Committee's Response sets forth that it relied on the advice of its former
 13 treasurer that it was permissible for it to contribute funds to the Federal Committee, and attaches
 14 an email showing receipt of such advice.¹⁴ The State Committee asserts that upon discovering

¹⁰ *Id.* at 2.

¹¹ *FEC Receipts: Filtered Results*, FEC.GOV, <https://www.fec.gov/data/committee/C00863829/?tab=raising#total-receipts> (last visited Oct. 9, 2024) (reflecting contributions received by Merrin for Congress from January 1, 2024 through June 20, 2024); *see also* *FEC Disbursements: Filtered Results*, FEC.GOV, <https://www.fec.gov/data/committee/C00863829/?tab=spending> (last visited Oct. 9, 2024) (reflecting disbursements by Merrin for Congress from January 1, 2024, through June 30, 2024).

¹² Merrin for Congress, Request for Additional Info. at Schedule A (Apr. 4, 2024), <https://docquery.fec.gov/pdf/390/202404030300206390/202404030300206390.pdf>.

¹³ Merrin for Congress, Miscellaneous Text (Form 99) at 1 (May 15, 2024), https://docquery.fec.gov/cgi-bin/fecimg/?_202405159645999563+0. In addition, the Federal Committee's 2024 April Quarterly Report shows that on February 29, 2024, it refunded \$1,000 to Friends of Jerry Cirino, which is one of the state committees the Complaint alleges contributed to the Federal Committee with impermissible funds. *See* Compl. at Attach. A; *see also* Merrin for Congress, 2024 April Quarterly Report at 37 (Apr. 15, 2024), <https://docquery.fec.gov/pdf/103/202404159633316103/202404159633316103.pdf>.

¹⁴ State Committee Resp. at 1, Attach. A. (Sept. 30, 2024) (Email from Derek Merrin, Candidate, to Thomas Datwyler, Former Treasurer) (Dec. 29, 2023, 12:40 AM CST); (Email from Thomas Datwyler, Former Treasurer, to Derek Merrin, Candidate) (Dec. 29, 2023, 10:08 AM CST) (former treasurer replies to candidate's question about

1 that such contributions were impermissible, it “took quick action to remedy” the impermissible
2 contributions, and the Federal Committee refunded the impermissible campaign contributions to
3 the State Committee.¹⁵

4 Based on its experience and expertise, the Commission has established an Enforcement
5 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
6 assess whether particular matters warrant further administrative enforcement proceedings. These
7 criteria include: (1) the gravity of the alleged violation, considering both the type of activity and
8 the amount in violation; (2) the apparent impact the alleged violation may have had on the
9 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends
10 in potential violations and other developments in the law. This matter is rated as low priority for
11 Commission action after application of these pre-established criteria. Given that low rating, the
12 low dollar amount at issue, and the fact that the Federal Committee refunded the impermissible
13 contributions, and to date, has filed the required disclosure reports with the Commission, we
14 recommend that the Commission dismiss the complaint consistent with the Commission’s
15 prosecutorial discretion to determine the proper ordering of its priorities and use of agency
16 resources.¹⁶ We also recommend that the Commission close the file effective 30 days after the
17 date the certification of this vote is signed (or on the next business day after the 30th day, if the

the permissibility of the State Committee contributing to the Federal Committee, in which he advises the candidate that the State Committee can contribute \$1,000 to the Federal Committee “as long as they come from verified funds.”).

¹⁵ State Committee Resp. at 1.

¹⁶ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

30th day falls on a weekend or holiday) and send the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

October 16, 2024

Date

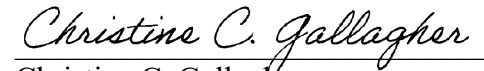
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