



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

VIA ELECTRONIC AND FIRST CLASS MAIL

Eric Wang
The Gober Group
1501 Wilson Blvd., Suite 1050
Arlington, VA 22209
politicallaw@gobergroup.com

January 17, 2024

RE: MUR 8078

Dear Mr. Wang:

On October 13, 2022, the Federal Election Commission notified your clients, Barbara Kirkmeyer and KirkmeyerForCongress.com and Barbara Kirkmeyer in her official capacity as treasurer, of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On January 8, 2024, based on the information provided in the Complaint and information provided by you, the Commission determined to exercise its prosecutorial discretion to dismiss the allegations contained in the Complaint. Accordingly, the Commission closed its file in this matter. 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 within 30 days. *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 Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1650.

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 8078

Respondents: KirkmeyerforCongress.com and Barbara Kirkmeyer in her official capacity as treasurer¹
Committee to Elect Barb Kirkmeyer to State Senate
Barbara Kirkmeyer

Complaint Receipt Date: Oct. 12, 2022

Response Date: Nov. 28, 2022

Alleged Statutory and Regulatory Violations: 52 U.S.C. § 30125(e)
11 C.F.R. § 110.3(d)

The Complaint alleges that Barbara Kirkmeyer, a 2022 candidate in Colorado’s 8th Congressional District; her principal campaign committee, KirkmeyerforCongress.com (f/k/a Kirkmeyer for Congress) and Barbara Kirkmeyer in her official capacity as treasurer (the “Federal Committee”); and Kirkmeyer’s committee as a candidate for Colorado State Senate, Committee to Elect Barb Kirkmeyer to State Senate (the “State Committee”) violated the soft money provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations when Kirkmeyer made two transfers of funds totaling \$2,000 from the State Committee to the Federal Committee.²

Respondents filed a joint Response in which they acknowledge that the transfers took place and violated the Commission regulations but argue that the violation was “technical” because funds raised for state political committees in Colorado are subject to the same (or stricter) limitations and

¹ At the time of the Complaint and Response in this matter, Paul Kilgore was treasurer for this Respondent. KirkmeyerforCongress.com, Amended Statement of Organization at 1 (Sept. 23, 2022), <https://docquery.fec.gov/pdf/958/202209239531813958/202209239531813958.pdf>. Kirkmeyer became treasurer on July 13, 2023. Kirmeyerfor Congress.com, Amended Statement of Organization at 1 (July 13, 2023), <https://docquery.fec.gov/pdf/793/202307139582523793.pdf>.

² Compl. at 2-3 (Oct. 12, 2022).

MUR 8078 (KirkmeyerforCongress.com, *et al.*)

EPS Dismissal Report

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1 prohibitions as funds raised in compliance with the Act.³ Respondents assert that they believed the
2 transfers were lawful and that they “did not harm in any way, shape, or form any interest protected
3 by either the [Act] or the Commission’s regulations.”⁴ The Response also states that, upon
4 receiving notification of the Complaint, the Federal Committee “promptly refunded the \$2,000 at
5 issue to the State Committee,” and attaches a copy of a check and deposit slip dated October 25,
6 2022.⁵

7 Based on its experience and expertise, the Commission has established an Enforcement
8 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
9 assess whether particular matters warrant further administrative enforcement proceedings. These
10 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
11 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
12 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
13 potential violations and other developments in the law. This matter is rated as low priority for
14 Commission action after application of these pre-established criteria. Given that low rating, the low
15 dollar amount at issue, and the Respondents’ remedial actions, we recommend that the Commission
16 dismiss the Complaint consistent with the Commission’s prosecutorial discretion to determine the

³ Resp. at 2 (Nov. 28, 2022).

⁴ *Id.*

⁵ *Id.* at 3; *id.*, Ex. A; KirkmeyerforCongress.com, 2022 30-Day Post-General Report, sched. B at 235 (Dec. 8, 2022), <https://docquery.fec.gov/pdf/405/202212089547575405/202212089547575405.pdf> (reflecting \$2,000 disbursement to “CTE BARB KIRKMEYER TO STATE SENATE” with a reported purpose of “REFUND”).

1 proper ordering of its priorities and use of agency resources.⁶ We also recommend that the
2 Commission close the file as to all Respondents and send the appropriate letters.

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4 Lisa J. Stevenson
5 Acting General Counsel
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9 Charles Kitcher
10 Associate General Counsel

11
12 December 14, 2023

13
14 Date

BY:



15 Claudio J. Pavia
16 Deputy Associate General Counsel

17 *Wanda D. Brown*

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19 Wanda Brown
20 Assistant General Counsel

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22 *Justine A. di Giovanni*

23 Justine A. di Giovanni
24 Attorney
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⁶ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).