

AJ Kern for Congress John W. Kern, Treasurer P.O. Box 99 Sartell, MN 56377

FEB 1 3 2019

RE: MUR 7453

Dear Mr. Kern:

On August 6, 2018, the Federal Election Commission ("Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 9, 2019, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that AJ Kern for Congress 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 Kristina Portner, the attorney assigned to this matter, at (202) 694-1518.

Sincerely,

Lisa J. Stevenson

Acting General Counsel

BY: Jeff'S. Jordan

**Assistant General Counsel** 

Enclosure:

General Counsel's Report

## BEFORE THE FEDERAL ELECTION COMMISSION

## ENFORCEMENT PRIORITY SYSTEM DISMISSAL REPORT

MUR: 7453 Respondents: AJ Kern for Congress and

John Kern, as Treasurer<sup>1</sup>

Complaint Receipt Date: August 2, 2018 Response Date: September 11, 2018

**EPS** Rating:

Alleged Statutory
Regulatory Violations:

52 U.S.C. §§ 30101(2), 30102(e)(1), 30104(a), (b)(3), (b)(5) 11 C.F.R. §§ 100.3, 101.1(a), 104.1, 104.3(a)(4), (b)(4)(i)

The Complaint first alleges that contributions from the candidate's husband, John Kern, exceeding \$200 and reported on the Committee's original 2016 April Quarterly, 2016 July Quarterly, and 2016 Pre-Primary Reports were improperly converted to unitemized contributions in the Committee's Amended Reports.<sup>2</sup> Second, the Complaint alleges that the Committee failed to report any disbursements or in-kind contributions for Facebook posts it sponsored on October 11, 2017, and November 23, 2017. Third, the Complaint alleges that none of the disbursements on the Committee's 2018 July Quarterly Report identify the purpose of the disbursement.

The Committee responds that the amounts originally attributed to John Kern were actually small contributions totaling \$424 made by a small group of donors, and its Amended 2016 April Quarterly, 2016 July Quarterly, and 2016 Pre-Primary Reports correctly reported these contributions.<sup>3</sup> The Committee indicates that Kern was not yet a candidate for the 2018 election at

Aliena Jeanene Kern was a 2016 and 2018 candidate for the U.S. House of Representatives in Minnesota's Sixth Congressional District. AJ Kern for Congress is her principal campaign committee.

<sup>&</sup>lt;sup>2</sup> See Amended 2016 April Quarterly, http://docquery.fec.gov/pdf/735/201609259032136735/
201609259032136735.pdf; Amended 2016 July Quarterly, http://docquery.fec.gov/pdf/742/201609259032136742/
201609259032136742.pdf; Amended 2016 Pre-Primary Reports, http://docquery.fec.gov/pdf/754/
201609259032136754/201609259032136754.pdf.

Five of the ten contributions were at issue in MUR 7115 (Kern), in which the Commission found no reason to believe that John Kern or the Committee violated 52 U.S.C. § 30123 and 11 C.F.R. § 110.4(c) by making excessive cash contributions.

the time of the sponsored Facebook posts, and the posts were not intended as an expense for the candidate's 2016 Committee.<sup>4</sup> Finally, the Committee admits that it inadvertently failed to report purposes for five of the nine disbursements on its 2018 July Quarterly Report, and it corrected these omissions on the Committee's Second Amended 2018 July Quarterly Report.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the Committee's amended reports, and the modest amounts at issue, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

Lisa J. Stevenson Acting General Counsel

Kathleen M. Guith Associate General Counsel

The Committee further asserts that after Kern registered as a candidate, the Committee filed amended reports reflecting the Facebook costs.

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12.21.18	BY: Stephen Juna
Date	Stephen Gura
	Deputy Associate General Counsel
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Jeff S. Jordan Assistant General Counsel

Kristina M. Portner Attorney