

MUR 7709 (Nehls for Congress, *et al.*)

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1 **I. INTRODUCTION**

2 This matter involves Troy Nehls, the elected Sheriff, and his twin brother Trever Nehls,
 3 the elected Constable, of Fort Bend County, Texas, at the time of the Complaint. In December
 4 2019, Troy Nehls declared his candidacy for Congress in the 22nd Congressional District of
 5 Texas and Trever Nehls became a candidate for Sheriff.¹ In addition, Chad Norvell, the treasurer
 6 of Troy Nehls's federal and state committees, was a candidate for Constable.²

7 The Complaint alleges that Nehls for Congress³ and Chad Norvell in his official capacity
 8 as treasurer ("Troy Nehls Federal Committee") failed to include a disclaimer on an
 9 advertisement and that Troy Nehls, Trever Nehls, and Chad Norvell financially supported each
 10 other's campaigns, transferred funds between accounts, comingled funds, conducted joint
 11 advertising, and campaigned together in violation of the Federal Election Campaign Act of 1971,
 12 as amended (the "Act").⁴ The Complaint further alleges that the Trever Nehls State Committee⁵

¹ See Troy Nehls, Statement of Candidacy (Dec. 9, 2019); Nehls for Congress, Statement of Organization (Dec. 9, 2019); Supporters of Trever Nehls, Form CTA, Texas Ethics Commission, Appointment of a Campaign Treasurer by a Candidate (Dec. 16, 2019). Troy Nehls won the Republican primary runoff election on July 14, 2020, and the November 3, 2020, general election for Congress. Trever Nehls won the March 3, 2020, Republican primary election and lost the November 3, 2020 general election for Sheriff.

² Norvell won the March 3, 2020, Republican primary and the November 3, 2020, general election for Constable.

³ Nehls for Congress was formerly known as Troy Nehls Exploratory 2020 while Troy Nehls was testing the waters for a run for Congress. OGC notified both the exploratory committee and the current committee. Consistent with the Statement of Organization, we make recommendations as to Nehls for Congress f/k/a Troy Nehls Exploratory 2020 and Chad Norvell in his official capacity as treasurer. *See* Factual & Legal Analysis at 1, MUR 6449 (Jon Bruning).

⁴ First Compl. at 3 (Feb. 24, 2020 time-stamped 1:50 p.m.); Second Compl. at 2-3, 6, 8-9 (Feb. 24, 2020 time-stamped 1:52 p.m.). The Complainant filed two complaints against the Respondents on the same day, which have been assigned the same MUR number and are treated together.

⁵ On the basis of information in the Complaint, the Commission notified Supporters of Trever Nehls and Friends of Trever Nehls. It appears that the Complaint incorrectly referenced "Friends of Trever Nehls" when it meant to reference "Friends of Troy Nehls." Second Compl. at 3. There is no committee by the name "Friends of Trever Nehls" registered with the Texas Ethics Commission. Accordingly, we make no recommendation as to Friends of Trever Nehls.

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1 failed to register as a federal political committee after it made a contribution to the Troy Nehls
 2 Federal Committee.⁶

3 Troy Nehls concedes the disclaimer violation, but denies the remainder of the
 4 allegations.⁷ Trever Nehls and the Trever Nehls State Committee respond that one \$2,700
 5 contribution they made to the Troy Nehls Federal Committee was a mistake and has been
 6 refunded, and that otherwise they have acted in accordance with the Act.⁸ Chad Norvell and
 7 Supporters of Chad Norvell deny that they violated the Act.⁹

8 As set forth below, we recommend that the Commission dismiss the disclaimer allegation,
 9 but caution the Troy Nehls Federal Committee. We also recommend that the Commission find
 10 reason to believe that Troy Nehls, the Troy Nehls State Committee, and the Troy Nehls Federal
 11 Committee made and received direct and in-kind prohibited contributions of non-federal funds, and
 12 that the Troy Nehls Federal Committee violated the Act's reporting provisions. We also recommend
 13 that the Commission enter into pre-probable cause conciliation with these respondents. We
 14 recommend that the Commission dismiss the remaining allegations.¹⁰

⁶ Second Compl. at 1.

⁷ Troy Nehls and Chad Norvell Resp. at 1 (Apr. 18, 2020). The Troy Nehls Federal Committee did not respond to the Complaint.

⁸ Trever Nehls and Supporters of Trever Nehls Resp. at 2 (May 1, 2020).

⁹ Chad Norvell and Supporters of Chad Norvell Resp. ("Norvell Resp.") at 1 (May 14, 2020).

¹⁰ Troy Nehls is also the subject of Complaints in MURs 7648 and 7651 alleging that he used his state campaign committee to pay for federal testing the waters activities. The First General Counsel's Report in those matters, which recommends that the Commission dismiss the allegations, is pending before the Commission. *See* First Gen. Counsel's Rpt., MURs 7648 and 7651 (Troy Nehls)

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1 **II. FACTUAL & LEGAL ANALYSIS**

2 **A. Disclaimer Allegation**

3 The Complaint alleges that the Troy Nehls Federal Committee failed to include a
 4 disclaimer on an advertisement in the February 2020 edition of the Fort Bend Business Journal.¹¹
 5 Troy Nehls and Norvell concede the disclaimer was absent from the advertisement, claiming it
 6 was an “inadvertent omission.”¹² They explain that this omission happened early on in the
 7 campaign and that since then the campaign has “established an internal review process to ensure
 8 such an omission does not occur again.”¹³

9 The Act and Commission regulations require a disclaimer whenever a political committee
 10 makes a disbursement for the purpose of financing any public communication through any
 11 broadcast, cable, satellite communication, newspaper, magazine, outdoor-advertising facility,
 12 mailing, or any other type of general public political advertising.¹⁴ If a communication requiring
 13 a disclaimer is paid for and authorized by a candidate, a candidate’s authorized committee, or its
 14 agents, the disclaimer must clearly state that the communication was paid for by the authorized
 15 committee.¹⁵

16 A disclaimer was required in this case because the advertisement was a public
 17 communication and paid for by the Troy Nehls Federal Committee.¹⁶ However, since the

¹¹ First Compl. at 3.

¹² Troy Nehls and Chad Norvell Resp. at 1.

¹³ *Id.*

¹⁴ 52 U.S.C. §§ 30101(22), 30120; *see also* 11 C.F.R. §§ 100.26, 110.11.

¹⁵ 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(b)(1).

¹⁶ *See* Nehls for Congress Amended 2020 Pre-Primary Report at 43 (Feb. 25, 2020); Troy Nehls and Chad Norvell Resp. at 1.

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1 advertisement contained identifying information, including the campaign website,

2 NehlsforCongress.com, and what appear to be links to Nehls's Facebook and Twitter accounts,¹⁷

3 it is unlikely that the general public would have been misled as to who was responsible for the

4 ad. Accordingly, we recommend that the Commission dismiss the allegation that the Troy Nehls

5 Federal Committee violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(a) with respect to

6 the Fort Bend Business Journal advertisement,¹⁸ but caution the Troy Nehls Federal Committee

7 regarding the disclaimer violation.¹⁹

8 **B. Impermissible Financial Support Allegations**

9 The Complaint alleges that Troy Nehls, Trever Nehls, and Chad Norvell financially

10 supported each other's campaigns, transferred funds between accounts, and commingled funds in

11 violation of the Act.²⁰ Between August 2019 and February 2020, the Troy Nehls Federal

12 Committee received the following contributions: (1) \$2,700 on August 1, 2019, from the Trever

13 Nehls State Committee in the name of Trever Nehls individually;²¹ (2) a \$2,097.64 in-kind

14 contribution in the form of advertising paid for by the Trever Nehls State Committee on

¹⁷ First Compl. at 1; Ex. A.

¹⁸ The Commission has dismissed similar allegations where communications without disclaimers were unlikely to mislead, based on the contents of the communications at issue. *See, e.g.*, Gen. Counsel's Rpt. at 2, MUR 7159 (Trump Make America Great Again Committee) (concluding separable letter within a package would have required a disclaimer, but recommending dismissal because a compliant disclaimer was included on accompanying contribution form); Certification (Jan. 8, 2018), MUR 7159 (approving dismissal recommendation); Factual & Legal Analysis at 7 n.26, MUR 7004 (The 2016 Committee) (dismissing a disclaimer allegation for e-mails lacking full disclaimers, but including sufficient identifying information, such as committee chair's signature and committee's address).

¹⁹ *See* Factual & Legal Analysis at 12, MURs 7112 and 7115 (AJ Kern for Congress) (dismissing technical disclaimer violation and sending letter of caution); Certification (Mar. 15, 2017), MUR 7095 (RGA Right Direction PAC) (same).

²⁰ Second Compl. at 2-3, 8-9.

²¹ Second Compl. at 6; *see* Second Compl., Ex. A, Friends of Troy Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 8 (Jan. 10, 2020).

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1 February 8, 2020;²² and (3) \$5,400 on December 9, 2019, from the Troy Nehls State
2 Committee.²³

3 The Act places certain amount limitations and source prohibitions on contributions to
4 federal candidates and their committees.²⁴ The Act prohibits federal candidates, federal
5 officeholders, their agents, and entities established, financed, maintained, or controlled
6 (“EFMC’d”) by federal candidates²⁵ from soliciting, receiving, directing, transferring, spending,
7 or disbursing funds in connection with a federal election unless the funds are subject to the
8 limitations, prohibitions and reporting requirements of the Act.²⁶ Federal candidates are
9 prohibited from transferring funds from their state campaign committees to their federal
10 committees.²⁷ The Commission has explained that this prohibition is intended to prevent a
11 federal committee’s indirect use of impermissible funds in federal elections.²⁸ The prohibition
12 on transferring funds applies broadly and includes payment by the state committee for services to

²² Supporters of Trevor Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 7 (Feb. 24, 2020) (disclosing that the in-kind contribution was for “Advertising Expense – mailer”). At the time of the August 1, 2019, and February 8, 2020, contributions from the Trevor Nehls State Committee, Trevor Nehls was deployed overseas for military service and the available information indicates that Troy Nehls was involved in Trevor Nehls’s campaign for sheriff. *See* note 62 in the political committee status analysis below.

²³ *See* Second Compl., Ex. D, Friends of Troy Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 24 (Jan. 10, 2020). The Troy Nehls State Committee report is signed by Troy Nehls.

²⁴ *See* 52 U.S.C. §§ 30116(a) (contribution limits), 30118(a) (prohibition on corporate and labor organization contributions to candidates).

²⁵ The Commission has concluded that a federal candidate’s state committee is an entity EFMC’d by the federal candidate. Advisory Opinion 2007-26 (Schock) at 4; Advisory Opinion 2006-38 (Casey State Committee) at 4.

²⁶ 52 U.S.C. § 30125(e)(1)(A).

²⁷ 11 C.F.R. § 110.3(d).

²⁸ Explanation and Justification, Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) (“Transfers E&J”).

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1 the federal committee.²⁹ The Act also prohibits making a contribution in the name of another,
 2 knowingly permitting one's name to be used to effect such a contribution, and knowingly
 3 accepting a contribution made in the name of another.³⁰ Finally, the Act requires committee
 4 treasurers to file reports of receipts and disbursements in accordance with the provisions of
 5 52 U.S.C. § 30104,³¹ including specifically identifying a political committee which makes a
 6 contribution.³²

7 The Complaint alleges, and the relevant disclosure reports confirm, that the Troy Nehls
 8 Federal Committee accepted a \$2,700 contribution from the Trever Nehls State Committee on
 9 August 1, 2019, which the Federal Committee disclosed as having been contributed by Trever
 10 Nehls individually.³³ The Complaint states that this was an illegal contribution in the name of
 11 another.³⁴ Troy Nehls states in response that "confusion arising from state law governing state

²⁹ See Transfers E&J, 58 Fed. Reg. at 3,475; *see, e.g.*, Conciliation Agreement at 3, MUR 7076 (Richard Tisei/Tisei Congressional Committee) (finding that federal committee received non-federal funds when state committee paid for work performed for candidate's federal testing the waters activity); MUR 6267 (Jonathan Paton for Senate) (finding that Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (finding that Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); MUR 5426 (Dale Schultz for Congress) (finding that Schultz's federal committee received prohibited transfer of funds when Schultz's state committee paid for expenses that the candidate incurred in connection with his federal election).

³⁰ 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b).

³¹ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a); *see also* 52 U.S.C. § 30104(b) (contents of the required reports).

³² 52 U.S.C. § 30104(b)(3)(B).

³³ Second Compl. at 6; Second Compl., Attach. B at 26 (the Troy Nehls Federal Committee disclosing the \$2,700 from Trever Nehls); Second Compl., Attach. A at 8 (the Trever Nehls State Committee disclosing the \$2,700 to the Troy Nehls Federal Committee). The \$2,700 contribution was made to "Nehls Exploratory Committee," *see id*; Trever Nehls and Supporters of Trever Nehls Resp. at 2.

³⁴ Second Compl. at 6.

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1 campaign reports may have contributed to the manner in which this contribution was reported[,]”

2 but acknowledges that “[t]his contribution was made from Trever Nehls’s campaign account.”³⁵

3 Similarly, although not specifically identified in the Complaint, the Troy Nehls Federal
 4 Committee disclosed a \$2,097.64 in-kind contribution from the Trever Nehls State Committee on
 5 February 8, 2020, for “Endorsement Letter Printing.”³⁶ This transaction appears to correspond to
 6 a \$4,195.28 expenditure disclosed by the Trever Nehls State Committee for “Advertising
 7 Expense – mailer” on February 8, 2020.³⁷

8 Finally, the Complaint attached copies of relevant disclosure reports as Exhibit D that
 9 show a \$5,400 contribution from the Troy Nehls State Committee on December 9, 2019, to the
 10 Troy Nehls Federal Committee.³⁸ This disbursement was disclosed by the Troy Nehls State
 11 Committee in a report signed by Troy Nehls,³⁹ but the receipt was not disclosed by the Troy
 12 Nehls Federal Committee.⁴⁰

13 All three contributions are impermissible under the Act’s provision requiring that only
 14 funds raised under the limits, prohibitions and reporting requirements of the Act be used in
 15 federal elections. Here, the Trever Nehls State Committee received contributions permissible

³⁵ Troy Nehls and Chad Norvell Resp. at 1. Troy Nehls explains that the nomenclature requirements of the Texas Election Code require individuals running for state and local office to file campaign finance reports under their own names and not their committee names. *Id.*

³⁶ See Nehls for Congress Amended 2020 Pre-Primary Report at 38 (Feb. 25, 2020).

³⁷ Supporters of Trever Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 7 (Feb. 24, 2020).

³⁸ See Second Compl., Ex. D, Friends of Troy Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 24 (Jan. 10, 2020).

³⁹ See *id.*

⁴⁰ See Nehls for Congress, Amended 2019 Year-End Report (June 24, 2020).

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1 under Texas state law⁴¹ that are in excess of the Act's limitations and thus these funds are not
 2 federally permissible.⁴² Nor are the Trever Nehls State Committee funds subject to the Act's
 3 reporting requirements.⁴³ As a result, the contributions from the Trever Nehls State Committee
 4 to the Troy Nehls Federal Committee resulted in the Troy Nehls Federal Committee receiving
 5 funds not subject to the Act's limitations and reporting requirements.⁴⁴ The contribution the
 6 Troy Nehls Federal Committee received from his State Committee similarly was not subject to
 7 the Act's limitations and reporting requirements and also appears to violate the prohibition on
 8 federal candidates transferring funds from their state committees to their federal committees.⁴⁵
 9 The two contributions from the Trever Nehls State Committee and the contribution from the
 10 Troy Nehls State Committee together amount to a \$10,197.64 receipt of non-federal funds by the

⁴¹ The Texas Election Code does not limit individual donations to state candidate committees, although the Code prohibits direct corporate donations to candidates and candidate committees. *See Tex. Elec. Code Ann. § 253.094.*

⁴² *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

⁴³ *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

⁴⁴ *See* Factual & Legal Analysis at 3, MUR 6219 (Kuhl for Congress) (finding reason to believe that federal candidate committee accepted prohibited in-kind contributions from his state committee where state committee paid for expenses that should have been made by the federal committee and state law permitted contributions to state committees in excess of the federal limits and contributions from corporations, and none of the state campaign funds at issue were subject to the Act's reporting requirements); Factual & Legal Analysis at 5, MUR 5480 (Levetan for Congress) (finding that since the applicable state law permitted corporate contributions it is possible that a portion of the state funds used to pay for the federal campaign expenses was from prohibited sources); Factual & Legal Analysis at 5-6, MUR 5278 (Gingrey For Congress) (same); *see also* Factual & Legal Analysis at 6-7, MUR 5426 (Dale Schultz for Congress) (finding reason to believe respondents violated 52 U.S.C. § 30125(e)(1)(A) when state committee incurred expenses for the federal campaign since none of the state campaign funds at issue were subject to the Act's reporting provisions); Factual & Legal Analysis at 5,

⁴⁵ *See* 11 C.F.R. § 110.3(d); *see also* Conciliation Agreement at 3-4, MUR 4974 (Friends of Tiberi) (finding both the state and federal committees to have violated the Act by the state committee making and the federal committee accepting a \$1,922.59 contribution).

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1 Troy Nehls Federal Committee.⁴⁶ We therefore recommend that the Commission find reason to
 2 believe that the Troy Nehls Federal Committee, the Troy Nehls State Committee, and Troy Nehls
 3 violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d).⁴⁷ In addition, the Troy Nehls
 4 Federal Committee failed to disclose the \$5,400 contribution from the Troy Nehls State
 5 Committee and misreported the \$2,700 contribution from the Trever Nehls State Committee as
 6 coming from Trever Nehls personally. Accordingly, we recommend that the Commission find
 7 reason to believe that the Troy Nehls Federal Committee violated 52 U.S.C. § 30104(b). As for
 8 the alleged contribution in the name of another, Troy Nehls Federal Committee's receipt of the
 9 funds is incorporated into the soft money liability discussed above. As to the Trever Nehls State
 10 Committee, because it properly disclosed the \$2,700 contribution to Troy Nehls Federal
 11 Committee on its State disclosure report,⁴⁸ we recommend that the Commission dismiss the
 12 allegation that the Trever Nehls State Committee violated 52 U.S.C. § 30122 by making a
 13 contribution in the name of another.

14 The Complaint also alleges that a four-page mailer distributed by the Troy Nehls Federal
 15 Committee in January 2020 that asks readers to "Vote Troy Nehls for Congress" and "Vote for

⁴⁶ The Troy Nehls Federal Committee refunded the \$2,700 contribution after the Complaint was filed. Nehls for Congress, 2020 Pre-Run-Off Report at 66 (July 2, 2020).

⁴⁷ See Factual & Legal Analysis at 4, MUR 6267 (Jonathan Paton for Senate) (finding reason to believe when state committee spent \$7,566 for the federal campaign); *see also* Factual & Legal Analysis at 7, MUR 5426 (Dale Schultz for Congress) (finding reason to believe when state committee incurred over \$20,000 in expenses for the federal campaign); Conciliation Agreement at 3-4, MUR 4974 (Friends of Tiberi) (finding state committee to have violated the Act for a series of direct and indirect transfers to the federal committee totaling \$7,922.59); Factual & Legal Analysis at 6, MUR 5480 (Levetan for Congress) (finding reason to believe when the state committee paid \$10,672.50 for polling for the federal campaign); Factual & Legal Analysis at 5, MUR 6257 (Callahan) (finding reason to believe when state committee spent \$9,932 for federal testing the waters expenses). *But see* Factual & Legal Analysis at 4, MUR 7367 (Anthony J. Brindisi) (dismissing violation when state committee made two \$1,000 transfers to the federal committee since the amount at issue was *de minimis*); Factual & Legal Analysis at 3, MUR 7338 (Rick for Congress) (dismissing violations that state committee paid approximately \$1,180.48 in federal campaign expenses due to modest amount of money involved).

⁴⁸ Second Compl., Ex. A at 8.

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1 Trever Nehls for Sheriff" comprised an impermissible contribution.⁴⁹ Trever Nehls and the
 2 Trever Nehls State Committee reply that the joint advertisement was paid in full by the Troy
 3 Nehls Federal Committee and was an in-kind donation to the Trever Nehls State Committee that
 4 both campaigns listed on their disclosure reports.⁵⁰ The Committees' disclosure reports reflect
 5 these actions.⁵¹ Accordingly, we recommend that the Commission dismiss the allegation that the
 6 Troy Nehls Federal Committee violated 52 U.S.C. § 30125(e) in connection with the four-page
 7 mailer.

8 The Complaint further alleges that the Troy Nehls State Committee made a \$1,000
 9 payment to Supporters of Chad Norvell on December 11, 2019, for Norvell to serve as treasurer
 10 of the Troy Nehls Federal Committee.⁵² The Troy Nehls State Committee disclosed the \$1,000
 11 donation to Norvell's committee and responds that, "[t]his was a contribution toward Norvell's
 12 constable campaign, as reflected in both Troy Nehls's and Chad Norvell's reports" and asserts
 13 that "Complainant has no basis for her speculation that this was a payment for Norvell's service
 14 as treasurer."⁵³ Payment by the Troy Nehls State Committee for services that Chad Norvell
 15 rendered to the Troy Nehls Federal Committee would constitute a contribution to the Federal

⁴⁹ Second Compl. at 8; Ex. C. The Second Complaint frames this allegation as a coordinated communication; however the Commission's coordination regulations do not apply where the federal candidate committee pays for the communication. *See* 11 C.F.R. § 109.21(a)(1) (payment prong satisfied where communication is paid for by a person other than the candidate or candidate's authorized committee).

⁵⁰ Troy Nehls and Chad Norvell Resp. at 2.

⁵¹ *See* Supporters of Trever Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 5 (Jan. 31, 2020); Nehls for Congress Amended 2020 Pre-Primary Report at 49 (Feb. 25, 2020).

⁵² Second Compl. at 3.

⁵³ Troy Nehls and Chad Norvell Resp. at 2; *see* Friends of Troy Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 27 (Jan. 10, 2020); Supporters of Chad Norvell, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 4 (Jan. 15, 2020).

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1 Committee.⁵⁴ However, the available information does not support this allegation.⁵⁵ Therefore,
 2 we recommend that the Commission dismiss the allegation that the Troy Nehls State Committee
 3 made a payment and that Chad Norvell and Supporters of Chad Norvell received a payment in
 4 violation of 52 U.S.C. § 30125(e)(1)(A).⁵⁶

5 **C. Political Committee Status Allegation**

6 The Complaint alleges that the Trever Nehls State Committee failed to register as a
 7 political committee with the Commission after making contributions to the Troy Nehls Federal
 8 Committee.⁵⁷ The Act defines a political committee as “any committee, club, association, or
 9 other group of persons” that receives aggregate contributions or makes aggregate expenditures in
 10 excess of \$1,000 during a calendar year.⁵⁸ Notwithstanding the statutory threshold for
 11 contributions and expenditures, an organization will be considered a political committee only if
 12 its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal

⁵⁴ See 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54. Such a payment from the Troy Nehls State Committee would also implicate the Act’s soft money provisions as discussed above. See 52 U.S.C. § 30125(e); 11 C.F.R. § 300.60-61.

⁵⁵ The Troy Nehls Federal Committee did not disclose any payments to Norvell.

⁵⁶ The donation by Troy Nehls State Committee to Supporters of Chad Norvell also appears to implicate 52 U.S.C. § 30125(e)(1)(B), which prohibits federal candidates, federal officeholders, their agents, and entities EFMC’d by federal candidates or officeholders from soliciting, receiving, directing, transferring, or spending funds in connection with any election other than an election for Federal office unless the funds are in amounts and from sources permitted by the Act. This provision also appears to be implicated by another donation by the Troy Nehls State Committee: \$10,000 to the Trever Nehls State Committee on December 11, 2019. See Friends of Troy Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 27 (Jan. 10, 2020); Second Compl. at 2-3; Friends of Troy Nehls Resp. at 1 (May 14, 2020) (donation properly disclosed and compliant with state law “and raises no issues under federal law.”). Several months earlier, on May 24, 2019, the Trever Nehls State Committee donated \$10,000 to the Troy Nehls State Committee. See Friends of Troy Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 4 (July, 12, 2019). The available information does not indicate whether either donation by the Troy Nehls State Committee was made with federally permissible funds. In view of the modest amount of the \$1,000 donation, and in view of the apparent return of funds regarding the \$10,000 donation, and in order to keep the focus of this matter on contributions to the Troy Nehls Federal Committee, we make no recommendation in this area.

⁵⁷ Compl. at 8.

⁵⁸ 52 U.S.C. § 30101(4)(A).

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1 candidate)" or whether it is controlled by a federal candidate.⁵⁹ Political committees are required
 2 to register with the Commission, meet organizational and recordkeeping requirements, and file
 3 periodic disclosure reports.⁶⁰

4 The Trever Nehls State Committee appears to have exceeded the \$1,000 expenditure
 5 threshold for political committee status by making a \$2,097.64 disbursement for an "advertising"
 6 expense for a "mailer" for the Troy Nehls Federal Committee.⁶¹ Therefore, whether the Trever
 7 Nehls State Committee constituted a political committee turns on whether its major purpose is
 8 the nomination or election of federal candidates or is controlled by a federal candidate.⁶² The
 9 Trever Nehls State Committee argues that it did not become a political committee because it is
 10 not controlled by a federal candidate nor does it have the major purpose of electing a federal

⁵⁹ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5,595, 5,597 (Feb. 7, 2007) ("Suppl. E&J") ("[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization's specific conduct — whether it received \$1,000 in contributions or made \$1,000 in expenditures — as well as its overall conduct — whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

⁶⁰ *See* 52 U.S.C. §§ 30102, 30103, 30104.

⁶¹ *See* Section II.B above (Troy Nehls Federal Committee disclosed a \$2,097.64 in-kind contribution from Supporters of Trever Nehls on February 8, 2020, for "Endorsement Letter Printing"); Supporters of Trever Nehls, Candidate/Officeholder Campaign Finance Report, Texas Ethics Commission at 7 (Feb. 24, 2020). The Complaint did not provide a copy of the mailer/letter at issue. However, based on the Troy Nehls Federal Committee's description of the communication as an "Endorsement Letter," it appears likely that it expressly advocated the election of Troy Nehls. *See* 11. C.F.R. § 100.22.

⁶² Political committee status could also be satisfied if Trever Nehls State Committee was controlled by a federal candidate. *Buckley*, 424 U.S. at 79. The available information indicates that Troy Nehls was involved in his brother's campaign for sheriff while Trever was deployed overseas. The Complaint alleges that Troy Nehls "acts as spokesperson for Trever." Second Compl. at 2. Further information from Respondents themselves indicates that Troy Nehls filed the campaign paperwork for Trever Nehls's campaign for Sheriff and helped manage the campaign while Trever Nehls was deployed overseas in the military. *See* Sheriff Troy E. Nehls, FACEBOOK (December 9, 2019); Trever For Sherriff, FACEBOOK (January 13, 2020), https://www.facebook.com/TreverForSheriff/?page_id=105662557630066&ftentidentifier=132404278289227&padding=0. However, due to the modest amount of money involved, to maintain focus on the Troy Nehls Federal Committee in this matter, and the fact that funds of the Trever Nehls State Committee potentially used in federal elections are incorporated into the other violations, we recommend not using the Commission's limited resources to determine whether Troy Nehls EFMC'd the Trever Nehls State Committee.

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1 candidate.⁶³ The Trever Nehls State Committee's major purpose appears to be the election of
2 Trever Nehls to state office. Through the first half of 2020, the Trever Nehls State Committee
3 spent 14% of its expenditures on Troy Nehls's Congressional campaign in contrast to 79% of its
4 expenditures on Trever Nehls's campaign for Sheriff,⁶⁴ therefore appearing to lack the major
5 purpose of electing Troy Nehls for Congress.⁶⁵

6 Therefore, we recommend that the Commission dismiss the allegation that the Trever
7 Nehls State Committee failed to register and report as a federal political committee in violation
8 of 52 U.S.C. §§ 30102, 30103 and 30104.⁶⁶

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⁶³ Trever Nehls and Supporters of Trever Nehls Resp. at 2.

⁶⁴ Supporters of Trever Nehls, Candidate/Officeholder Campaign Finance Reports, Texas Ethics Commission. Supporters of Trever Nehls spent \$2,097.64 on advertising for the Troy Nehls Committee, \$1,000 for Chad Norvell's campaign and \$11,976.05 on Trever's campaign for Sheriff through the most recent disclosure report.

⁶⁵ See Suppl. E&J at 5601.

⁶⁶ See Factual & Legal Analysis at 4, MUR 7161 (Rodoni for Supervisor 2016) (finding no reason to believe that political committee status was triggered because the committee was a campaign committee of a local candidate that lacked the major purpose of electing a federal candidate).

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7 **IV. RECOMMENDATIONS**

- 8 1. Dismiss the allegation that Nehls for Congress f/k/a Troy Nehls Exploratory
9 2020 and Chad Norvell in his official capacity as treasurer violated 52 U.S.C.
10 § 30120(a)(1) and 11 C.F.R. § 110.11(a), by failing to include a required
11 disclaimer, and send a letter of caution;
- 12 2. Find reason to believe that Nehls for Congress f/k/a Troy Nehls Exploratory
13 2020 and Chad Norvell in his official capacity as treasurer, Friends of Troy
14 Nehls, and Troy Nehls violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R.
15 § 110.3(d) by making and receiving prohibited transfers of non-federal funds;
- 16 3. Find reason to believe that Nehls for Congress f/k/a Troy Nehls Exploratory
17 2020 and Chad Norvell in his official capacity as treasurer violated 52 U.S.C.
18 § 30104(b) by failing to disclose the \$5,400 contribution from the Troy Nehls
19 State Committee;
- 20 4. Find reason to believe that Nehls for Congress f/k/a Troy Nehls Exploratory
21 2020 and Chad Norvell in his official capacity as treasurer violated 52 U.S.C.
22 § 30104(b) by misreporting the \$2,700 contribution from Supporters of Trever
23 Nehls;
- 24 5. Dismiss the allegation that Supporters of Trever Nehls and Trever Nehls violated
25 52 U.S.C. § 30122 by making a contribution in the name of another;
- 26 6. Dismiss the allegation that Nehls for Congress f/k/a Troy Nehls Exploratory
27 2020 and Chad Norvell in his official capacity as treasurer violated 52 U.S.C.
28 § 30125(e)(1)(A) by receiving a prohibited transfer of non-federal funds from

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Trevor Nehls and Supporters of Trevor Nehls in connection with the January 2020 four-page mailer;

7. Dismiss the allegation that Friends of Troy Nehls, Chad Norvell and Supporters of Chad Norvell violated 52 U.S.C. § 30125(e)(1)(A) in connection with the \$1,000 donation to Supporters of Chad Norvell;
8. Dismiss the allegation that Supporters of Trever Nehls violated 52 U.S.C. §§ 30102, 30103, 30104 by failing to register and report as a political committee;
9. Enter into conciliation with Nehls for Congress f/k/a Troy Nehls Exploratory 2020 and Chad Norvell in his official capacity as treasurer, Friends of Troy Nehls, and Troy Nehls prior to a finding of probable cause to believe;
10. Approve the attached Conciliation Agreement;
11. Approve the attached Factual and Legal Analysis;
12. Close the file as to Trever Nehls, Supporters of Trever Nehls, Chad Norvell and Supporters of Chad Norvell; and

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13. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

March 31, 2021

Date

Peter J. Blumberg by MA

Peter G. Blumberg
Acting Deputy Associate General Counsel
for Enforcement

Mark Allen

Mark Allen
Assistant General Counsel

Richard L. Weiss

Richard L. Weiss
Attorney