



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Charles R. Spies, Esq.
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601 Pennsylvania Ave NW
North Building, Suite 1000
Washington, DC 20004

SEP 23 2016

RE: MUR 6860
Terri Lynn Land for Senate and
Kathy Vosburg in her official capacity as
treasurer;
Terri Lynn Land;
Dan Hibma

Dear Mr. Spies:

On August 12, 2014, the Federal Election Commission (the "Commission") notified your clients, Terri Lynn Land for Senate and Kathy Vosburg in her official capacity as treasurer (the "Committee"), Terri Lynn Land, and Dan Hibma, of a complaint alleging that your clients violated Section 30116 of the Federal Election Campaign Act of 1971, as amended, (the "Act") and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, your clients' responses, and publicly available information, the Commission on June 16, 2016, found reason to believe that Hibma violated 52 U.S.C. § 30116(a)(1)(A), that Land and the Committee violated 52 U.S.C. § 30116(f), and the Committee violated 52 U.S.C. § 30104(b)(3)(A), with respect to the contributions totaling \$700,000 to the Committee made on December 31, 2013 and March 31, 2014. The Commission also found no reason to believe that the Respondents violated the same provisions of the Act with respect to the \$750,000 contribution to the Committee made on September 30, 2013 and was equally divided with respect to the \$1.45 million in contributions from the joint checking of Hibma and Land that were made to the Committee on August 13, 2013, September 20, 2013 and June 20, 2014. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-

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probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B), (12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chairman

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 “Submission”) in connection with this matter.³ Land’s husband, Dan Hibma, also joined in the
2 Submission. Those filings and other record evidence presently before the Commission reflect
3 that Land made contributions to the Committee using three sources of funds: (i) \$750,000 from
4 her share of assets that she owned jointly with her son; (ii) \$700,000 from funds of Hibma he
5 provided directly to Land on the day that the contributions were made; and (iii) \$1.45 million
6 from some combination of Land and Hibma’s incomes deposited over the course of the election
7 cycle into a jointly held checking account.

8 As discussed at greater length below, the Commission concludes that the first of those
9 sources — involving \$750,000 in contributions — appears to constitute the personal funds of the
10 candidate. As to the second source of contributions — involving \$700,000 in contributions
11 consisting of funds that Hibma transferred from his personal bank account directly to Land’s
12 personal bank account—these funds do not appear to constitute contributions from the personal
13 funds of the candidate. Accordingly, with respect to the \$700,000 in contributions originating
14 from Hibma’s personal bank account, the Commission finds reason to believe that the
15 Respondents may have made and accepted excessive contributions and failed to report the source
16 of those contributions accurately in violation of 52 U.S.C. §§ 30104(b) and 30116(a)(1)(A)
17 and (f) (formerly 2 U.S.C. §§ 434(b) and 441a(a)(1)(A) and (f)).

³ The Submission was made two weeks after the Complaint was filed and a week after Respondents received notice of the Complaint and its allegations. Respondents requested that the matters not be associated because the Submission stemmed from a voluntary review and was being prepared “prior to the Commission’s receipt of the Complaint in MUR 6860.” Letter from Charles Spies to Mary Beth DeBeau, FEC (Sept. 12, 2014). The Submission involves some of the same operative facts and the same alleged violation at issue in the MUR, however, and consistent with prior practice, the Commission has examined both together. *See, e.g.*, MUR 6054 (Vern Buchanan); MUR 6597/Pre-MUR 534, 537, 538, 539/RR 12L-18, 28, 29, 30, 43 (Kindee Durkee). Moreover, whatever may have led to the preparation of the Submission in this instance, a submission that addresses allegations raised in a previously filed complaint may not warrant the same consideration as a matter “of which the Commission had no prior knowledge.” Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

1 **II. FACTUAL BACKGROUND**

2 Terri Lynn Land was a candidate for U.S. Senate in Michigan during the 2014 election
3 cycle. She lost the general election in November 2014. Terri Lynn Land for Senate is her
4 authorized committee. Dan Hibma is her husband.

5 According to disclosure reports the Committee filed with the Commission, Land made a
6 total of \$2.9 million in contributions to the Committee in the following amounts by date:

Date	Amount
8/13/2013	\$50,000
9/30/2013	\$100,000
9/30/2013	\$100,000
9/30/2013	\$750,000
12/31/2013	\$600,000
3/31/2014	\$100,000
6/30/2014	\$1,200,000
Total	\$2,900,000.00

7
8 Land declared her candidacy on July 10, 2013.⁴ She filed with the Senate her 2013 PFD
9 Report on August 1, 2013, covering the period January 1, 2012 to July 30, 2013,⁵ and her 2014
10 PFD Report on May 15, 2014, covering the period January 1, 2013 to May 15, 2014.⁶ Land's
11 2013 PFD Report identified liquid assets valued between \$116,003 and \$315,000 and other

⁴ See Terri Lynn Land Statement of Candidacy (July 10, 2013).

⁵ Compl., Ex. A.

⁶ *Id.*, Ex. B.

1 assets valued between \$647,008 and \$1.38 million.⁷ Her 2014 PFD Report identified liquid
2 assets valued between \$45,003 and \$150,000⁸ and other assets valued between \$646,007 and
3 \$1.356 million.⁹ The 2014 PFD Report also identified estimated income in the form of (i) salary
4 payments of \$1,781; (ii) rental/capital gains income between \$100,001 and \$1 million from
5 Green Light Management, LLC (“Green Light”), a real estate company in which she owns a 51%
6 interest; and (iii) interest on Green Light accounts receivable between \$2,501 and \$5,000.¹⁰ On
7 July 24, 2014, following press reports questioning whether her disclosed assets were sufficient to
8 make \$2.9 million in personal contributions to her campaign,¹¹ Land amended her 2013 and 2014
9 PFD Reports to disclose an additional joint bank account she held together with her husband,
10 Hibma.¹² The amended PFD Reports indicated that the joint account contained funds valued
11 between \$50,001 and \$100,000 as of the close of each reporting period.¹³

12 In their two responsive filings, the Respondents identified three separate sources of funds
13 for Land’s personal contributions to the Committee: (i) funds from the liquidation of Land’s
14 share of assets jointly owned with her son;¹⁴ (ii) funds that Hibma wired to Land’s accounts on

7 Compl. at 3 (citing Exhibit A).

8 *Id.* (citing Exhibit B).

9 *Id.* (citing Exhibit B).

10 *Id.*

11 See, e.g., Todd Spanger, *Where did Senate Candidate Terri Lynn Land’s \$3 Million Come From?*, DETROIT FREE PRESS (July 17, 2014) (cited in Complaint at 6 n.13).

12 See Amended 2014 PFD Report of The Honorable Terri L. Land (filed July 24, 2014); Amendment to 2013 PFD Report of The Honorable Terri L. Land (filed Oct. 3, 2014).

13 *Id.*

14 Resp. at 2.

1 the days that those contributions were made;¹⁵ and (iii) income earned by Land and Hibma and
2 deposited in an account Land jointly owned with Hibma during the course of the campaign.¹⁶

3 III. LEGAL ANALYSIS

4 In 2014, the Act prohibited persons from making contributions to any candidate and his
5 or her authorized political committee with respect to any election for federal office which, in the
6 aggregate, exceeded \$2,600.¹⁷ The term “contribution” includes “any gift, subscription, loan,
7 advance, or deposit of money or anything of value made by any person for the purpose of
8 influencing any election for Federal office.”¹⁸

9 All contributions made by persons other than political committees must be reported in
10 accordance with 52 U.S.C. § 30104(b)(2)(A) (formerly 2 U.S.C. § 434(b)(2)(A)). Political
11 committees must report the identification of each person who makes a contribution or
12 contributions with an aggregate value in excess of \$200 during the reporting period, together
13 with the date and amount.¹⁹

14 Federal candidates may make unlimited contributions from their “personal funds” to their
15 campaigns.²⁰ “Personal funds” of a candidate means the sum of all of the following: (a) assets;
16 (b) income; and (c) jointly owned assets.²¹ A candidate’s assets are amounts derived from any
17 asset that, under applicable state law, at the time the individual became a candidate, the candidate
18 had legal right of access to or control over, and with respect to which the candidate had legal and
19 rightful title or an equitable interest.²² A candidate’s jointly owned assets are amounts derived
20 from a portion of assets that are owned jointly by the candidate and the candidate’s spouse as
21 follows: the portion of assets that is equal to the candidate’s share of the asset under the

¹⁵ Submission at 2.

¹⁶ Resp. at 3.

1 instrument of ownership or conveyance; or if no specific share is indicated by an instrument of
2 ownership or conveyance, the value of one-half of the property.²³

3 Although federal candidates may contribute unlimited personal funds to their campaigns,
4 their family members are subject to the Act's contribution limits.²⁴ The Commission has
5 enforced the contribution limit against family members who made excessive contributions to the
6 candidate's campaign in the form of asset transfers to the candidate.²⁵

17 52 U.S.C. § 30116(a)(1)(A); see 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

18 *Id.* § 30101(8)(A)(i).

19 *Id.* § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)(3)(A)).

20 11 C.F.R. § 110.10.

21 *Id.* § 100.33. A candidate's income consists of income received during the current election cycle, of the candidate, including: salary and other earned income that the candidate earns from bona fide employment; income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments; bequests to the candidate; income from trusts established before the beginning of the election cycle; income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary; gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and proceeds from lotteries and similar games of chance. *Id.* § 100.33(b).

22 *Id.* § 100.33(a).

23 *Id.* § 100.33(c).

24 The United States Supreme Court has upheld the constitutionality of the Act's contribution limits as applied to members of a candidate's family. See *Buckley v. Valeo*, 424 U.S. 1, 53 n.59 ("Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily members.").

25 See, e.g., MUR 6417 (Huffman) (finding reason to believe a candidate and his spouse violated 52 U.S.C. § 30116(a) and (f) by transferring \$900,000 from the spouse's separately-held trust account to the couple's joint account to be loaned to the candidate's campaign and transferring \$400,000 from the spouse's separately-held trust account directly to the candidate's campaign); MUR 5334 (O'Grady) (finding reason to believe a candidate and her spouse violated 52 U.S.C. § 30116(a) and (f) by making and accepting a \$25,000 loan from the spouse's separate business account).

1. Contributions Made with Funds Drawn from Land's Share of Joint Assets or Income from Green Light Management

Land made a \$750,000 contribution to her campaign on September 30, 2013.

Respondents claim that the source of the contribution was a draw in the amount of \$744,000 from Land's joint interest in Green Light and a withdrawal of \$6,000 from her personal bank account.²⁶ On her 2014 PFD Report, Land listed her share of Green Light as being expected to produce income between \$100,000 and \$1,000,000. The amount of the contribution, sourced from a claimed draw from Land's interest in Green Light, is consistent with the value contemporaneously reported on the PFD Report that Land filed with the Senate. Thus, the available information supports the Respondents' assertion that Land used assets and income that constituted her "personal funds" to make the September 30, 2013 contribution. Accordingly, those funds would not have constituted an excessive contribution to the Committee.

2. Funds that Hibma Provided to Land to Cover Particular Contributions

In the Submission, the Respondents separately address two contributions that Land made to her campaign— a \$600,000 contribution on December 31, 2013, and a \$100,000 contribution on March 31, 2014.²⁷ According to the Respondents, Land wrote checks drawn on a personal bank account held in her name to make these contributions.²⁸ On the same days that Land made the contributions to the Committee, Hibma wired a total of \$710,000 from a bank account held in his name to Land's personal bank account held in her name.²⁹ At the time Hibma made the

²⁶ Resp. at 2.

²⁷ Submission at 2.

²⁸ *Id.*

²⁹ Hibma wired \$610,000 on December 31, 2013, and \$100,000 on March 31, 2014. *Id.*

1 transfers, Land's personal bank account had insufficient funds to cover the \$600,000 and
2 \$100,000 contributions she made to the Committee.³⁰

3 Given that Hibma transferred the funds to Land after she was a candidate and from his
4 separate bank account, the transferred funds did not qualify as assets under 11 C.F.R. § 100.33(a)
5 or jointly owned assets under 11 C.F.R. § 100.33(c). The issue, therefore, is whether the
6 transferred funds qualified as Land's income under 11 C.F.R. § 100.33(b).

7 The Respondents assert that the transferred funds qualified as Land's income because
8 Hibma transferred the funds to Land for her to dispose of as she wished and he had a history of
9 making such transfers to Land for her use.³¹ Nonetheless, the Respondents offer no information
10 concerning any historical pattern of such transfers before Land's candidacy, nor do they address
11 why the transfers here were made in the same or nearly the same amounts and on the same day
12 as Land's contributions to the Committee. Without conceding that the funds transferred from
13 Hibma were not Land's personal funds, Respondents state that they have segregated the funds
14 and request Commission guidance as to the source of the contributions.³²

15 The present record indicates that Hibma appears to have provided his own separate funds
16 to Land specifically to cover the contributions to the Committee. Land wrote checks to the
17 Committee from a personal account in her name that lacked adequate funds to cover the checks
18 when written and on the same days Hibma wired to that account the funds needed to cover each
19 of those draws. The evidence in the record indicates that the funds transferred from Hibma to
20 Land did not qualify as Land's income under 11 C.F.R. § 100.33(b). As such, there is reason to
21 believe the \$700,000 that Land contributed to the Committee using funds from Hibma should be

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 3.

1 attributed to Hibma. Because those contributions exceeded Hibma's aggregate contribution
2 limit, it appears that Hibma made an excessive contribution to the Committee.³³ Moreover, it
3 appears that the Committee inaccurately reported these contributions under the relevant
4 provisions of the Act.

5 **A. Accurate Reporting of Contributions**

6 The Act requires committee treasurers to file reports of receipts and disbursements.³⁴
7 These reports must include, *inter alia*, the identification of each person who makes a contribution
8 or contributions that have an aggregate amount or value in excess of \$200 during an election
9 cycle, in the case of an authorized committee of a federal candidate, together with the date and
10 amount of any such contribution.³⁵

11 Here, the Committee's reports identify Land as the contributor of all seven of the
12 contributions at issue. As discussed previously, because the available information suggests that
13 Hibma or Land may have used funds derived from assets solely belonging to Hibma to make at
14 least some of the challenged contributions, the Committee may have been required to report that
15 Hibma made those contributions.

16 * * *

17 Based on the foregoing, the Commission:

- 18 (1) With respect to the \$750,000 contribution to the Committee made on
19 September 30, 2013, finds no reason to believe Dan Hibma violated 52 U.S.C.
20 § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)), Terri Lynn Land and the

³³ Hibma contributed \$2,600 to the primary and the general election campaigns of the Committee, the maximum allowed by law, on July 1, 2013.

³⁴ 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

³⁵ *Id.* § 30104(b)(3)(A).

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1 Committee violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)), and the
2 Committee violated 52 U.S.C. § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b));
3 and

- 4 (2) With respect to the contributions totaling \$700,000 to the Committee made on
5 December 31, 2013 and March 31, 2014, finds reason to believe Dan Hibma
6 violated 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)), Terri
7 Lynn Land and the Committee violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C.
8 § 441a(f)), and the Committee violated 52 U.S.C. § 30104(b)(3)(A) (formerly
9 2 U.S.C. § 434(b)).

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