



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2 **MEMORANDUM**
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4 **TO:** The Commission
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6 **FROM:** Lisa J. Stevenson
7 Acting General Counsel
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9 Charles Kitcher
10 Acting Associate General Counsel for Enforcement
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12 Stephen Gura
13 Deputy Associate General Counsel for Enforcement
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15 **BY:** Mark Allen *MJA*
16 Assistant General Counsel
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18 Delbert K. Rigsby *DKR*
19 Attorney
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21 **SUBJECT:** MURs 7337 and 7344 (Debbie Lesko, *et al.*) – Request for Pre-Probable Cause
22 Conciliation

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24 Debbie Lesko, a former Arizona State Senator and a 2018 Congressional candidate,
25 transferred \$50,000 from her state committee to Conservative Leadership for Arizona (“CLA”), a
26 newly-formed independent-expenditure-only political committee (“IEOPC”) that raised a total of
27 \$50,050 and spent most of its funds in support of Lesko’s federal campaign. On July 23, 2019,
28 the Commission found reason to believe that Lesko, Re-Elect Debbie Lesko to Senate (“State
29 Committee”) and CLA violated the soft money provisions at 52 U.S.C. § 30125(e)(1)(A) in
30 connection with these transactions.¹
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32 In response to the Commission’s reason to believe findings and informal discovery
33 requests, Lesko and the State Committee (“Lesko Respondents”) and CLA have requested that
34 the Commission authorize pre-probable cause conciliation in these matters. CLA has submitted
35 a proposed conciliation agreement and requested that we present it to the Commission. We
36 recommend that the Commission reject the requests by the Lesko Respondents and CLA to enter
37 into pre-probable cause conciliation.
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¹ See Certification, MURs 7327, 7337 and 7344 (July 23, 2019). The Commission closed MUR 7327. See *id.*

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1 **I. Debbie Lesko and the State Committee**

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3 On August 13, 2019, we notified the Lesko Respondents of the Commission's reason to
 4 believe findings and enclosed a Request for Production of Documents. In response, the Lesko
 5 Respondents made a number of arguments regarding the Commission's findings in its Factual
 6 and Legal Analysis ("Lesko F&LA").² In response to the document requests, the Lesko
 7 Respondents stated that they had only one responsive document that was not subject to attorney-
 8 client privilege or the attorney work product doctrine, and they provided it.³ However,
 9 Respondents did not provide a log supporting their privilege claims. We requested that they
 10 submit such a log describing responsive documents in sufficient detail to provide justification for
 11 each claim.⁴

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13 The Lesko Respondents also requested that the Commission authorize pre-probable cause
 14 conciliation

² In the Lesko F&LA, the Commission found that Lesko established, financed, maintained or controlled ("EFMC'd") the State Committee and CLA. *See* Lesko F&LA at 5-7. The Commission stated that the nature of the funds and the funds being subject to the Act's reporting requirements are separate requirements, and failure to comply with any one aspect is sufficient to comprise a violation. *Id.* at 5, 6. The Commission found that Lesko and the entities that she EFMC'd transferred, spent and received funds that had not been reported to the Commission. *Id.* at 9.

In response, the Lesko Respondents submitted a spreadsheet of State Committee transactions between June 15, 2015 and December 29, 2017, which they assert shows that the State Committee transferred federally permissible funds to CLA. Lesko Respondents Resp. ("Lesko Resp.") at 1-3, LESKO0002-0016 (Oct. 4, 2019). They assert that no underlying contribution comprising the \$50,000 transfer exceeded the Act's contribution limits or source limitations. Lesko Resp. at 2. Respondents also assert that the Commission cannot conclude that the State Committee financed CLA by providing more than 50% of its financing because the State Committee had no means of knowing the percentage of CLA's funds that would come from the State Committee. *Id.* at 3. These arguments reiterate points the Lesko Respondents made prior to the Commission's reason to believe finding. *See* Lesko Response to the Complaint at 6-10; Lesko F&LA at 6-9. The Lesko Respondents also raise a new argument that under 52 U.S.C. § 30125(e)(1)(A) there is no separate reporting requirement for the underlying funds transferred by the State Committee. The Commission's F&LA, however, states that the nature of the funds and the funds being subject to the Act's reporting requirements are separate requirements, and the failure to comply with any one aspect is sufficient to comprise a violation. *See* Lesko F&LA at 5-6, 9.

³ Lesko Resp. at 1. The document, an email from Chad Heywood to Ashley Ragan, identifies CLA's account at Wells Fargo Bank. Lesko Resp. at LESKO0001. Heywood provided wiring instructions to the State Committee for its contribution to CLA. Lesko F&LA at 4. Ashley Ragan is the treasurer of Lesko's federal committee, and she also assisted Lesko with the State Committee's finances. *See id.*

⁴ Letter from Delbert K. Rigsby, FEC, to Kory Langhofer, counsel for Lesko Respondents, at 1 (Dec. 9, 2019).

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We informed the Lesko Respondents that the Commission currently lacks a quorum to approve a conciliation agreement.⁸ Thus, we asked whether they would be willing to toll the statute of limitations until the Commission could act on their request for pre-probable cause conciliation.⁹

In response, the Lesko Respondents stated that they want to continue to pursue pre-probable cause conciliation and wait for the Commission to obtain a quorum, but did not provide us with the privilege log that we requested.¹¹ In addition, they have not agreed to tolling or even responded to our request.

The Commission should not enter into pre-probable cause conciliation until the investigation uncovers all of the material facts. To date, the Lesko Respondents have provided only very minimal responses to our information requests. And they have not agreed to toll to provide time for the Commission to consider their request. In combination, the Lesko Respondents' position appears to be an effort to delay the Commission's resolution of this matter while the statute of limitations continues to run.¹² Therefore, we recommend that the Commission reject the Lesko Respondents' request to enter into pre-probable cause conciliation.

II. Conservative Leadership for Arizona

On August 13, 2019, we notified CLA of the Commission's reason to believe finding and enclosed a Request for Written Answers and Production of Documents. In response, CLA has not provided any documents or submitted any written answers to questions. Instead, CLA, which is represented by counsel, states that it is defunct and is prepared to engage in pre-probable cause conciliation to resolve the matter "expeditiously and to avoid protracted discovery, briefing, and litigation."¹³ CLA submitted a proposed conciliation agreement that it

⁸ Letter from Delbert K. Rigsby, FEC, to Kory Langhofer, counsel for Lesko Respondents, at 1.

⁹ *Id.*

¹¹ Email from Kory Langhofer, counsel for Lesko Respondents, to Delbert K. Rigsby, FEC (Dec. 24, 2019).

¹² The statute of limitation for the Lesko Respondents does not expire until January 23, 2023.

¹³ CLA Resp. at 1 (Oct. 8, 2019).

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1 requests be presented to the Commission.

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4 In response, we informed CLA that the Commission currently lacks a quorum to approve

5 a conciliation agreement, asked whether it would be willing to toll the statute of limitations until

6 the Commission could act on its request,

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9 CLA's claim that it is defunct is of no moment. The notification letter CLA received in

10 March 2018 with the complaint informed CLA of its obligations to preserve records under

11 18 U.S.C. § 1519, and we have recently reminded it of that obligation.¹⁷ Further, as a registered

12 political committee, CLA has recordkeeping requirements under 52 U.S.C. § 30102(d) and

13 11 C.F.R. § 104.14(b).¹⁸ Because CLA was formed in January 2018, it should have the relevant

14 documents that we have requested and should be able to submit written answers to our

15 questions.¹⁹

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17 We have not received from CLA any documents or written answers pursuant to our

18 discovery requests, nor any response to our December 9, 2019, letter. It has refused to produce

19 any information to complete the factual record, and its reason for doing so is not well taken, as

20 discussed above. Under these circumstances, the proposed agreement CLA submitted is clearly

21 unacceptable. Thus, we recommend that the Commission reject CLA's request to enter into pre-

22 probable cause conciliation.

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24 III. Recommendations

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26 1. Reject Debbie Lesko and Re-Elect Debbie Lesko to Senate's request to enter into pre-

27 probable cause conciliation;

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29 2. Reject Conservative Leadership for Arizona's request to enter into pre-probable cause

30 conciliation; and

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32 3. Approve the appropriate letters.

¹⁷ *Id.* at 1.

¹⁸ *Id.*

¹⁹ See Certification in MUR 6538R (Americans for Job Security) (Sept. 3, 2019) (Commission accepted a conciliation agreement with a defunct organization).

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