



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 27, 2022

VIA ELECTRONIC MAIL

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RE: MUR 7337
Debbie Lesko
Re-Elect Debbie Lesko for Senate

Dear Messrs. Basile and Langhofer:

Based on complaints filed with the Federal Election Commission on February 22, 2018, and March 1, 2018, in MUR 7327 and MUR 7337, respectively, the Commission, on July 23, 2019, found that there is reason to believe that your clients, Debbie Lesko and Re-Elect Debbie Lesko for Senate, violated 52 U.S.C. § 30125(e)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation. At that time, the Commission merged MUR 7327 into MUR 7337.

After considering all the information available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file a brief stating your position on the issues and replying to the General Counsel's Brief.¹ The General Counsel's Brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

¹ You may submit the brief electronically to cela@fec.gov, or to the staff attorney assigned to the matter as applicable. Enforcement-related materials submitted only by mail will be deemed received when actually received by OGC staff, subject to delays due to the intermittent processing of mail.

MUR 7337 (Debbie Lesko, *et al.*)
Thomas Basile, Esq. and Kory Langhofer, Esq.
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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time in exchange for a tolling agreement. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days. The Office of General Counsel will not give extensions absent an agreement to toll the applicable statute of limitations.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34,986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64,919 (Nov. 19, 2007); Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55,443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. Where necessary, the Commission reserves the right to request from a respondent an agreement tolling any upcoming deadline, including any statutory deadline or other deadline found in 11 CFR part 111. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. at 64,920. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than 30, but not more than 90, days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov.

Sincerely,

Lisa J. Stevenson /by CK

Lisa J. Stevenson
Acting General Counsel

Enclosure:
General Counsel's Brief

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Debbie Lesko) MUR 7337
6 Re-Elect Debbie Lesko for Senate)
7

8 **GENERAL COUNSEL’S BRIEF**

9
10 **I. STATEMENT OF THE CASE**

11 This matter arose from Complaints in MURs 7327 and 7337, alleging that Debbie Lesko,
12 a former Arizona State Senator and a 2018 Congressional candidate, transferred \$50,000 from
13 Re-Elect Debbie Lesko for Senate (the “State Committee”), her state committee, to Conservative
14 Leadership for Arizona (“CLA”), a newly-formed independent expenditure-only political
15 committee (“IEOPC”), which used the money to support Lesko’s congressional campaign, in
16 violation of the soft money prohibition of the Federal Election Campaign Act of 1971, as
17 amended (the “Act”).¹ Besides the \$50,000 transfer from Lesko’s State Committee, CLA did not
18 raise any other funds aside from an unitemized \$50 contribution; accordingly, virtually all of the
19 funds that CLA received were from the State Committee. CLA spent the majority of its funds on
20 independent expenditures supporting Lesko’s federal campaign. CLA also used a portion of the
21 funds to purchase a poll that asked questions related to the special primary election in which
22 Lesko participated. The Commission, on July 23, 2019, found reason to believe that Lesko and
23 the State Committee violated 52 U.S.C. § 30125(e)(1)(A) by transferring funds in connection
24 with an election for federal office that were not subject to the reporting requirements of the Act.

25 Based on the record before the Commission, the Office of General Counsel is prepared to
26 recommend that the Commission find probable cause to believe that Debbie Lesko and Re-Elect
27 Debbie Lesko for Senate violated 52 U.S.C. § 30125(e)(1)(A).

¹ The Commission merged MUR 7327 into MUR 7337.

II. FACTS

On December 21, 2017, Debbie Lesko, then a State Senator in Arizona, registered as a candidate in the 2018 special election for the U.S. House seat from Arizona's Eighth District.² On January 10, 2018, CLA registered with the Commission as an IEOPC.³ Eight days later, Lesko's state committee, Re-Elect Debbie Lesko for Senate,⁴ for which Lesko served as chair and treasurer,⁵ contributed \$50,000 to CLA, the only funds CLA reported receiving other than an unitemized \$50 contribution.⁶ According to CLA's reports, CLA disbursed \$21,000 for polling one day after receiving the \$50,000.⁷ Polling questions asked about party affiliation, voting in the special primary election in Arizona on February 27, 2018, and opinions of Lesko and three other Republican candidates in the special primary election, several other individuals active in politics in Arizona, and then-President Donald Trump.⁸

² Debbie Lesko Statement of Candidacy (Dec. 21, 2017). Lesko won the special primary election of the Republican Party for U.S. Congress on February 27, 2018, and the special general election for U.S. Congress on April 24, 2018. https://azsos.gov/sites/default/files/2018_0307_official_canvass_special_primary_election.pdf. Lesko was re-elected to Congress in 2018 and 2020.

³ CLA Statement of Organization (Jan. 10, 2018).

⁴ Office of the Arizona Secretary of State, <https://seethemoney.az.gov/Reporting/Explore#JurisdictionId=0/Page=11/startYear=2016/endYear=2020/IsLessActive=false/ShowofficeHolder=false/View=Detail/Name=1~201800032/TablePage=1/TableLength=10> (providing information about the State Committee).

⁵ Lesko and State Committee Compl. Resp. ("Compl. Resp.") (Apr. 25, 2018), Lesko Decl. ¶ 3. The Response is a joint response of Lesko and the State Committee and it is a response to the Complaints in both MURs 7327 and 7337.

⁶ State Committee 2018 3rd Report (1st Quarter) at 6 (Apr. 16, 2018); Compl. Resp., Lesko Decl. ¶ 3; CLA Amended 2018 Pre-Special Election Report at 3, 6, 7 (Feb. 19, 2018). CLA did not receive any further contributions during 2018. *Infra* note 12.

⁷ CLA 2018 Amended Pre-Special Election Report at 7 (Feb. 19, 2018).

⁸ American Viewpoint, Inc., Arizona CD-8 GOP Primary Survey (Jan. 17-18, 2018). The MUR 7327 Complaint attached a news article in which a Lesko spokesperson stated that the campaign had not seen CLA's polling. MUR 7327 Compl., Ex. 2, *Lesko Funds Her Own Independent Expenditures*, ARIZ. CAPITOL TIMES (Feb. 20, 2018).

On January 29, 2018, within nine days of receiving the \$50,000, CLA disseminated mailers supporting Lesko that cost \$20,193.50 and paid \$7,581 for road signs supporting Lesko, totaling \$27,774.50.⁹ CLA disclosed its disbursement for the mailers on a 48-hour independent expenditure report filed on January 31, 2018, which was the first reported independent expenditures in support of Lesko before the February 27, 2018, special primary election.¹⁰ CLA disseminated the road signs on February 2, 2018, disclosed as an independent expenditure on its 2018 Pre-Special Election Report.¹¹ CLA had \$1,230.50 cash-on-hand after the special primary election and has been largely inactive since then.¹²

CLA's original 2018 Pre-Special Election Report disclosed the \$50,000 receipt from the State Committee as unitemized "Other Federal Receipts."¹³ After a reporter questioned CLA's

⁹ CLA 2018 Pre-Special Election Report at 7; CLA Amended 2018 Pre-Special Election Report at 8. Both the mailers and yard signs included the phrase "Debbie Lesko for Congress." See MUR 7344 (Conservative Leadership for Arizona) Compl., Attach.

¹⁰ CLA 24/48 Hour Report of Independent Expenditures (Jan. 31, 2018). The next independent expenditure in support of Lesko was made on Feb. 6, 2018. See House Freedom Fund 24/48 Hour Report of Independent Expenditures (Feb. 6, 2018).

¹¹ CLA 2018 Pre-Special Election Report at 7; CLA Amended 2018 Pre-Special Election Report at 8.

¹² See CLA Amended 2018 Pre-Special Election Report at 2 (Feb. 19, 2018). On subsequent disclosure reports, CLA disclosed no additional receipts. CLA's 2018 April Quarterly and July Quarterly Reports only disclose disbursements of \$10 and \$30, for "other federal operating expenditures," respectively, and cash-on-hand of \$335 and \$305, respectively. CLA 2018 April Quarterly Report at 4 (Apr. 15, 2018); CLA 2018 July Quarterly Report at 4 (July 3, 2018). CLA disclosed \$305 in other federal operating expenditures and a zero balance for its ending cash-on-hand on its 2018 October Quarterly Report. CLA 2018 October Quarterly Report at 2, 3 (Oct. 14, 2018). On its 2019 April Quarterly Report and its 2018 Year-End Report, CLA disclosed no financial activity and cash-on-hand of zero. CLA 2019 April Quarterly Report (Apr. 10, 2019) and CLA 2018 Year-End Report (Jan. 31, 2019). CLA disclosed no financial activity on any of its 2019, 2020 and 2021 disclosure reports.

¹³ CLA 2018 Pre-Special Election Report at 3 (Feb. 15, 2018) (Line 17 of detailed summary page).

treasurer concerning its description of this transaction,¹⁴ CLA amended its Pre-Special Election Report to disclose the \$50,000 receipt as a contribution from the State Committee.¹⁵

Respondents describe the \$50,000 transfer from the State Committee to CLA as follows:

In her declaration, Lesko states that upon becoming a federal candidate, she decided to donate the State Committee's funds "to an independent organization that shares [her] values and priorities" and, after seeking legal counsel, she asked her political consultant, Brian Murray, to select an appropriate organization.¹⁶ Murray avers that he asked Jon Seaton, a consultant to Arizona Grassroots Action PAC ("Arizona PAC"), about the State Committee making a contribution to Arizona PAC, which Murray described as a "longstanding organization that has been active in promoting conservative candidates and public priorities."¹⁷ According to Murray, Seaton told him that Arizona PAC would accept a contribution, so Murray told Seaton to provide wiring instructions to Ashley Ragan, who both served as treasurer to Lesko's federal committee, Debbie Lesko for Congress, and assisted Lesko with the State Committee's finances.¹⁸ According to Murray, Seaton sent Ragan instructions for a wire transfer to CLA, not Arizona

¹⁴ MUR 7337 Compl. at 3 (citing Laurie Roberts, *CD8's Debbie Lesko to Opponent Phil Lovas: I'll Sue You*, ARIZONA REPUBLIC (Feb. 22, 2018), <https://www.azcentral.com/story/opinion/op-ed/lauriroberts/2018/02/22/ed-8-s-debbie-lesko-phil-lovas-ill-sue-you/363744002>).

¹⁵ CLA Amended 2018 Pre-Special Election Report (Feb. 19, 2018) at 3, 6 (Schedule A and Line 11 of detailed summary page); *see* State Committee 2018 3rd Report (1st Quarter) at 6 (Apr. 16, 2018).

¹⁶ Compl. Resp., Lesko Decl. ¶ 6.

¹⁷ Compl. Resp., Murray Decl. ¶ 5. There is a federal IEOPC named Arizona Grassroots Action PAC, but it did not disclose any activity related to the special primary election in which Lesko participated. Arizona Grassroots Action PAC Statement of Organization (Feb. 28, 2014), <https://docquery.fec.gov/pdf/665/14031191665/14031191665.pdf>; *see* Arizona Grassroots Action PAC 2018 April Quarterly Report (April 15, 2018), <https://docquery.fec.gov/pdf/207/201804159108107207/2018041591081072707.pdf>.

¹⁸ Compl. Resp., Murray Decl. ¶ 6; Lesko Decl. ¶ 7; Ragan Decl. ¶ 4.

PAC.¹⁹ Murray states that Seaton never mentioned CLA, Murray had never heard of CLA, and he did not know that the State Committee's funds had been transferred to CLA until CLA disclosed the transfer on its report filed with the Commission.²⁰

In her declaration, Ragan states that she worked with the State Committee's counsel to identify federally permissible funds for the contribution, and that she received wire transfer instructions for CLA from Seaton's business partner, Chad Heywood.²¹ She, too, states that she had never heard of CLA,²² but she assumed Murray had selected CLA, so she prepared the wire transfer.²³ Lesko, who personally authorized the transfer, provided an explanation similar to Murray's and Ragan's.²⁴

¹⁹ Compl. Resp., Murray Decl. ¶ 8. Jon Seaton was a partner at East Meridian, an entity with a connection to the company that produced the pro-Lesko mailers for CLA. See <http://www.meridianhq.com/>. East Meridian is a part of a strategic political consulting group called the Meridian Family of Companies, which also includes Meridian Pacific. *Id.* Meridian Pacific owns a direct-mail company called Post Road Communications, which is the vendor that produced the CLA mailers supporting Lesko. See <https://opengovus.com/sacramento-business/1000636>; see also CLA Amended Pre-Special Election Report at 8 (Feb. 19, 2018).

²⁰ Compl. Resp., Murray Decl. ¶¶ 9, 10.

²¹ Compl. Resp., Ragan Decl. ¶ 7.

²² *Id.* Ragan, treasurer of Lesko's federal committee, acknowledges that she previously served as treasurer of a state-registered committee named Conservative Leadership for Arizona, an independent expenditure-only committee that existed from 2014-2016, although to the best of her knowledge, there is no relationship between the state and federal CLA committees. Lesko Resp., Ragan Decl. ¶ 14. See Debbie Lesko for Congress Statement of Organization at 3 (Dec. 12, 2017); Conservative Leadership for Arizona (state-registered committee) 2014 Report (June 30, 2014), <https://apps.azsos.gov/apps/election/cfs/search/publicreports/202014/932DB29B-F57F-4553-AB77-7EB3B782DCFC.pdf>.

²³ Compl. Resp., Ragan Decl. ¶ 7.

²⁴ Compl. Resp., Lesko Decl. ¶ 7 ("I had never heard of CLA . . . [t]rusting Mr. Murray's diligence and judgment . . . , I authorized the transfer without finding out any information about CLA's origins or activities."). *Id.*

1 **III. LEGAL ANALYSIS**

2 The record before the Commission indicates that Lesko and the State Committee
 3 transferred \$50,000 to CLA, funds that were used in connection with a federal election that were
 4 not reported as required by the Act.

5 **A. Soft Money Prohibition**

6 The Act prohibits federal candidates and officeholders, their agents, and entities directly
 7 or indirectly established, financed, maintained or controlled by or acting on behalf of one or
 8 more candidates or individuals holding federal office from “solicit[ing], receiv[ing], direct[ing],
 9 transfer[ing], or spend[ing] funds in connection with an election for federal office . . . unless the
 10 funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”²⁵
 11 “[T]he nature of the funds and the funds being subject to the Act’s reporting requirements are
 12 separate requirements,”²⁶ and “the failure to comply with any one aspect is sufficient to comprise
 13 a violation.”²⁷ “A soft money violation may also result from a direct or indirect transfer of funds
 14 from a state committee to a federal committee.”²⁸

²⁵ 52 U.S.C. § 30125(e)(1)(A). This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002, was designed to “plug the soft-money loophole.” *McConnell v. FEC*, 540 U.S. 93, 133 (2003); *see* 11 C.F.R. §§ 300.60, 300.61 (entities established, financed, maintained or controlled by a federal candidate shall not solicit, receive, direct, transfer, spend, or disburse non-federal funds in connection with an election for federal office).

²⁶ Factual and Legal Analysis (“F&LA”) at 5, MUR 7337 (Debbie Lesko, *et al.*); *see* 52 U.S.C. § 30125(e).

²⁷ F&LA at 5. For purposes of statutory interpretation, “one of the most basic interpretive canons” is that a “statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Rubin v. Islamic Rep. of Iran*, 138 S. Ct. 816, 824 (2018) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)); *see also* *Hibbs v. Winn*, 542 U.S. 88, 101 (2004).

²⁸ F&LA at 5; *see* 11 C.F.R. § 110.3(d).

B. Lesko Established, Financed, Maintained or Controlled the State Committee

The Commission has determined that the state campaign committee of a federal candidate is, as a matter of law, established, financed, maintained or controlled (EFMC'd) by the federal candidate and is acting on the candidate's behalf.²⁹ Accordingly, Lesko EFMC'd the State Committee.³⁰ Thus, under the soft money prohibition, any transfer of funds by the State Committee in connection with a federal election must abide by the source limitations and prohibitions and reporting requirements of the Act.³¹

C. The Transfer of Funds Was in Connection With a Federal Election

1. CLA Used the Funds to Support Lesko's Congressional Campaign

CLA made independent expenditures of \$27,774.50 on mailers and road signs in support of Lesko's congressional campaign and spent \$21,000 on polling that was related to the special federal election in which Lesko participated.³² Accordingly, these funds were used in connection with a federal election.

2. Lesko EFMC'd CLA

Not only were the majority of the funds spent on independent expenditures supporting Lesko and the remainder on a poll related to her campaign, but the recipient of the funds that spent this money was itself a federal political committee EFMC'd by Lesko by virtue of the \$50,000 transfer. To determine whether Lesko also directly or indirectly EFMC'd CLA, the

²⁹ F&LA at 9, MUR 6601 (Oelrich for Congress); Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-26 (Schock) at 4.

³⁰ F&LA at 6.

³¹ *See* 52 U.S.C. § 30125(e)(1)(A).

³² *Supra* notes 8 and 9 and accompanying text.

Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R. § 300.2(c)(2), as well as any other relevant factors, in the context of the overall relationship between the candidate and the entity.³³ These factors include whether the candidate “provides funds or goods in a significant amount or on an ongoing basis to the entity,” “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity,” whether the candidate “has authority or ability to direct or participate in the governance of the entity,” “had an active or significant role in the formation of the entity,” or whether the candidate “has common or overlapping officers or employees with the entity that indicates a formal ongoing relationship.”³⁴

The key factor in this matter is whether Lesko provided funds in a “significant amount on an ongoing basis” to CLA.³⁵ The Commission has approached the question of what constitutes “a significant amount” on a case-by-case basis in view of all the relevant circumstances.³⁶ The Commission has explained that amounts that are so large or comprise a substantial percentage of the organization’s receipts would be considered as “financing” a committee under 11 C.F.R. § 300.2.³⁷ In Advisory Opinion 2006-04 (Tancredo), the Commission determined that a donation of 50 percent of an organization’s total receipts would be a “ ‘significant amount’ that would result in [Tancredo for Congress] ‘financing’ [Defend Colorado Now] for the purpose of 11 C.F.R. § 300.2(c).”³⁸

³³ 11 C.F.R. § 300.2(c)(2).

³⁴ 11 C.F.R. § 300.2(c)(2)(ii), (v), (vii), (viii), (ix).

³⁵ F&LA at 6.

³⁶ See 11 C.F.R. § 300.2(c)(2); Advisory Op. 2006-04 (Tancredo) at 3.

³⁷ Advisory Op. 2004-29 (Akin) at n.4; Advisory Op. 2004-25 (Corzine) at 4.

³⁸ AO 2006-04 (Tancredo) at 4. The Commission further determined in the context of the overall relationship between the committee and the entity that even a donation of 25 percent of the entity’s total receipts would result in the committee “financing” the entity under 11 C.F.R. § 300.2. *Id.* at 4.

1 Lesko authorized the State Committee's \$50,000 wire transfer to CLA, and that
 2 contribution comprised 99% of CLA's total receipts.³⁹ Thus, consistent with the foregoing
 3 Commission analyses and the record, the Commission previously found reason to believe that
 4 Lesko EFMC'd CLA.⁴⁰ Respondents maintain that they did not "finance" CLA because the
 5 State Committee made a single contribution, they did not know how the funds would be used,
 6 nor did they know whether or not the organization had other funding sources.⁴¹ Respondents
 7 further assert that most of the factors set out in 11 C.F.R. § 300.2(c)(2) do not apply to them.⁴²
 8 But none of these arguments alters the fact that the State Committee almost completely funded
 9 CLA — far beyond the 50% the Commission concluded constituted "financing" in Advisory
 10 Opinion 2006-04.⁴³ On its face, any understanding of concept of "financ[ing]" in 52 U.S.C.
 11 § 30125(e)(1) or "provid[ing] funds . . . in a significant amount" in 11 C.F.R. § 300.2(c)(2)(vii)

³⁹ As noted, CLA only received another \$50 in contributions, and CLA spent most of its funds within 10 days of receipt of the \$50,000 contribution. *See supra* notes 3, 10 and accompanying text.

⁴⁰ *See* F&LA at 7.

⁴¹ Compl. Resp. at 10. Lesko Resp. to Reason to Believe Finding at 2-3, MUR 7337 (Oct. 4, 2019). Respondents also assert that they did not know that CLA either could not or would not amass funds from other sources, and CLA's fundraising was beyond their control. Comp. Resp. at 10; F&LA at 7. Respondents cite MUR 6753 (People for Pearce) and Advisory Op. 2004-41 (CUNA Mutual) in support of their position, but these authorities are distinguishable. In MUR 6753, the Commission dismissed the alleged soft money violation where the candidate committee's \$10,000 donation to WestPAC, an independent expenditure-only political committee, was a significant amount of WestPAC's receipts for the first six months of operation, but the \$10,000 donation was ultimately refunded and WestPAC did not disburse any funds for substantive, non-administrative expenses before refunding it. *See* Factual and Legal Analysis in MUR 6753 at 7 (Aug. 11, 2015). In AO 2004-41, the Commission determined that a one-time \$50,000 payment did not constitute evidence of affiliation. *See* 11 C.F.R. § 100.5(g). The current matters are distinguishable from MUR 6753 and AO 2004-41 because the State Committee's donation to CLA was 99% of CLA's receipts and CLA immediately spent a significant amount of the funds in support of Lesko's federal campaign. Moreover, while the affiliation factors are similar to the EFMC factors, the latter incorporates the "directly or indirectly" language of the soft money provisions and, as noted above, AO 2006-04 (Tancredo) specifically addressed the EFMC factors and concluded that "[a] donation" of 50% of an organization's total receipts constituted "financing."

⁴² Compl. Resp. at 11.

⁴³ As mentioned above, CLA spent the majority of the \$50,000 on Lesko's election within nine days of receiving the money.

encompasses the circumstances here, in which the State Committee provided \$50,000 of the total \$50,050 amount CLA raised. CLA had no other contributions except an unitemized \$50 contribution and the majority of the funds spent were used to support Lesko's federal campaign shortly after the State Committee's transfer to CLA. Accordingly, under these circumstances, Lesko EFMC'd CLA and the funds transferred were used in connection with an election to federal office.⁴⁴

D. Lesko and the State Committee's Transfer of Funds to CLA Did Not Comply with the Reporting Requirements of the Act

As an entity EFMC'd by Lesko, a federal candidate, the State Committee is prohibited from transferring funds in connection with an election for federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.⁴⁵ The State Committee did not report the individual donations that comprised the \$50,000 transfer to CLA to the Commission. The Commission previously reasoned that "even assuming that the funds comprising the \$50,000 contribution did not violate the Act's source prohibitions and amount limitations, the State Committee had not reported those funds to the Commission, thus, the contribution was not permissible."⁴⁶ In order for the donations to have been properly subject to the reporting requirements of the Act, as required by the soft money prohibition, the State Committee would have been required to disclose the donations and itemize all donations aggregating in excess of \$200 received with identification to the Commission.⁴⁷

⁴⁴ See F&LA at 6-7.

⁴⁵ See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

⁴⁶ F&LA at 8 n.35.

⁴⁷ See 52 U.S.C. § 30104(b)(3)(A) (disclosure of identification of contributors of more than \$200 along with the date and amount of the contribution) and 52 U.S.C. § 30101(13) ("identification" defined, for individuals, as the name, mailing address, employer and occupation of the contributor).

Respondents argue that the funds were not subject to the reporting requirements of the Act, and also argue that the Commission has never found that the reporting requirements apply to such transfer of funds and that the \$50,000 transfer to CLA was permissible because the funds comprising it did not violate the Act's source prohibitions and contribution limits.⁴⁸ Respondents rely on Advisory Opinion 2007-26 (Schock), but that opinion addressed a federal candidate's state committee contributing funds to other *state* committees, not to a federal committee EFMC'd by the federal candidate.⁴⁹ The more relevant Advisory Opinion is 2011-21 (Constitutional Conservatives Fund), in which the Commission determined that funds received by a committee EFMC'd by a federal candidate were subject to the limitations, prohibitions, and reporting requirements of the Act.⁵⁰ Such reporting provisions are intended to ensure public disclosure of "where political campaign money comes from and how it is spent,"⁵¹ disclosure interests that apply to the federal spending at issue here.

⁴⁸ Compl. Resp. at 6, 7. Respondents assert that the State Committee applied a "last in, first out" ("LIFO") protocol, which the Commission has determined to be a reasonable accounting method, to segregate funds not exceeding \$2,700 from individuals or from federal political action committees not exceeding \$5,000. *Id.* at 7. Arizona does not permit corporate contributions. *See* AZ Rev. Stat. § 16-916 (2021); Compl. Resp. at 7, note 5. In response to the reason to believe finding, Respondents provided a spreadsheet of contributions and expenditures impacting the State Committee's cash-on-hand between June 22, 2015, and December 27, 2017 using LIFO to identify federally permissible funds including the names of contributors, the dates and amounts of the contributions, the contributions that were federally compliant and the amount of the contributions that were LIFO eligible. Resp. to Reason to Believe at 1, Attach., LESKO0002-LESKO0016. There are 62 contributions in excess of \$200, which require itemization. *Id.*

⁴⁹ *See* F&LA at 8.

⁵⁰ *See id.*; AO 2011-21 (Constitutional Conservatives Fund) at 4. *See* 2 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. The committee at issue in AO 2011-21 was a leadership PAC. Even assuming that the funds comprising the \$50,000 contribution did not violate the Act's source prohibitions and amount limitations, the State Committee had not reported those funds to the Commission, thus, the contribution was not permissible. *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61; F&LA at 8 n.35.

⁵¹ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); *see also Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages").

1 In addition, in MURs 6563/6733 (Schock), the fact that the underlying funds complied
2 with the Act's source prohibitions and amount limitations did not obviate the violation. The
3 Commission pursued Schock, a federal candidate and officeholder, for soliciting a \$25,000
4 contribution from a multicandidate committee to an IEOPC and a \$25,000 contribution from a
5 local party committee to the IEOPC. The underlying funds contributed by the multicandidate
6 committee and the local party committee were of federally permissible amounts, but the
7 Commission nevertheless applied section 30125(e)'s prohibition on soliciting amounts in excess
8 of the \$5,000 contribution limit, and considered Schock's solicitation of the two \$25,000
9 contributions to violate section 30125(e).⁵² Just as a federal candidate may not solicit nonfederal
10 funds to an IEOPC, a federal candidate may not direct or transfer non-federal funds to an
11 IEOPC.⁵³

12 Respondents further assert that there is no reporting requirement for a state committee
13 under 52 U.S.C. § 30125(e)(1)(A) by analogizing to the Commission's treatment of alleged
14 violations of section 30125(f), which requires state and local candidates who fund public
15 communications that promote, support, attack or oppose ("PASO") a clearly identified federal
16 candidate to use only funds that are subject to the Act's limitations, prohibitions and reporting
17 requirements. Respondents cite MUR 5604 (Friends of William D. Mason), in which the
18 Commission found no reason to believe that Friends of William D. Mason, a state committee,
19 violated 2 U.S.C. § 441i(f)(1) (now 52 U.S.C. § 30125(f)(1)) in connection with disseminating a

⁵² F&LA at 12-15, MURs 6563/6733 (Aaron Schock). The Commission found reason to believe that Schock violated 52 U.S.C. § 30125(e) and conciliated with him. Certifications, MURs 6563/6733 (Schock) (Nov. 23, 2015) (Reason to Believe), (Oct. 6, 2016) (Accepting Conciliation Agreement); *see also* Advisory Opinion 2011-12 (Majority PAC) (federal candidates and officeholders may solicit contributions of up to \$5,000 on behalf of IEOPCs).

⁵³ *See* F&LA at 9.

1 handbill that supported Mason's re-election to a county office as well as John Kerry's
 2 presidential candidacy in the 2004 election.⁵⁴ Specifically, Respondents refer to a three-
 3 Commissioner Statement of Reasons ("SOR") which states that "if the [Act] does not otherwise
 4 require a state or local candidate or officeholder to report, then the candidate or officeholder need
 5 not do anything to comply with the reporting requirement of section 30125(f)(1)."⁵⁵ A majority
 6 of the Commission did not approve the position articulated in this MUR 5604 SOR, however.
 7 Respondents also cite MUR 7123 (Jay Inslee for Washington) in which the Commission
 8 dismissed, as a matter of prosecutorial discretion, the allegation that the state candidate
 9 committee violated section 30125(f)(1) by disbursing non-federal funds on a 30-second
 10 television advertisement attacking or opposing then-presidential candidate Donald J. Trump.⁵⁶
 11 The Commission stated that it appeared that the state committee had sufficient funds subject to
 12 the limitations and prohibitions of the Act to pay for the advertisement, but the funds were not
 13 subject to the reporting requirements of the Act.⁵⁷ The Commission also stated that it "has never
 14 found a 52 U.S.C. § 30125(f)(1) violation based solely on the fact that the funds a committee
 15 used to pay for a PASO communication were not subject to the Act's reporting requirements."⁵⁸

⁵⁴ Compl. Resp. at 7; Resp. to Reason to Believe at 2.

⁵⁵ Compl. Resp. at 7; Statement of Reasons, Comm'rs. Toner, Mason and Von Spakovsky at 5-6, MUR 5604 (Friends of William D. Mason). Three other Commissioners issued a Statement of Reasons in MUR 5604 stating that "having concluded that the handbill was not a 'public communication,' there was no need to analyze whether [the Act's] disclaimer and soft money provisions may have been violated." Statement of Reasons, Comm'rs. Lenhard, Walther and Weintraub at 5, MUR 5604 (Friends of William D. Mason).

⁵⁶ Resp. to Reason to Believe at 2.

⁵⁷ F&LA at 5, MUR 7123 (Jay Inslee for Washington).

⁵⁸ *Id.*

1 Respondents cite the language in both sections 30125(f)(1) and 30125(e)(1)(A) requiring
2 the use of funds subject to the limitations, prohibitions, and reporting requirements of the Act,
3 asserting that if there is no reporting requirement under section 30125(f)(1), there is no reporting
4 requirement under section 30125(e)(1)(A) for Lesko and the State Committee in MUR 7337.⁵⁹
5 These different provisions, however, apply to different actors. Section 30125(e) applies to
6 federal candidate and entities EFMC'd by federal candidates and officeholders, who are
7 comparatively more subject to regulation under the Act, while section 30125(f) applies to state
8 and local candidates.⁶⁰ At the reason to believe stage in this very matter, the Commission found
9 that there were potential violations of section 30125(e) regarding funds not subject to the Act's
10 reporting provisions, where most of the State Committee's \$50,000 transferred to CLA was in
11 turn spent by CLA on Lesko's own federal election.

12 Lesko and the entities she EFMC'd, the State Committee and CLA, transferred, spent,
13 and received funds that had not been reported to the Commission.⁶¹ Section 30125(e) prohibits
14 the State Committee's disbursement of \$50,000 in non-federal funds to CLA, CLA's receipt of
15 those funds, and CLA's disbursement of the funds in connection with a federal election.
16 Accordingly, there is probable cause to believe that Debbie Lesko and the State Committee
17 violated 52 U.S.C. § 30125(e)(1)(A).

⁵⁹ Resp. to Reason to Believe at 2.

⁶⁰ In the event of a state officeholder also being a federal candidate, the Commission will treat the spending by the state committee under section 30125(e) rather than section 30125(f). *See* Advisory Opinion 2007-01 (McCaskill) at 5 (“[t]he restrictions in [52 U.S.C. 30125(f)] are not applicable in circumstances where the more specific provisions of [52 U.S.C. 30125(e)] apply.”).

⁶¹ *Supra* note 47 and accompanying text.

1 **IV. CONCLUSION**

2 For the foregoing reasons, this Office is prepared to recommend that the Commission
3 find probable cause to believe that Debbie Lesko and Re-Elect Debbie Lesko for Senate violated
4 52 U.S.C. § 30125(e)(1)(A).

5
6 April 27, 2022
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