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VIA E-MAIL

October 4, 2018

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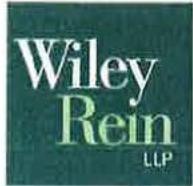
Re: MUR 7454 – Highway 76, LLC

Dear Mr. Jordan:

We represent Highway 76, LLC (“Highway 76”) in the above-captioned matter. We have reviewed Campaign Legal Center’s complaint filed on August 3, 2018 (the “Complaint”) alleging that Highway 76 and “any person(s) who created, operated, and/or contributed to . . . Highway 76” violated the Federal Election Campaign Act of 1971, as amended (the “Act” or “FECA”), and Federal Election Commission (the “Commission” or “FEC”) regulations in connection with a contribution from Highway 76 to DefendArizona, an independent expenditure-only political committee. Specifically, the Complaint alleges: (1) “any person(s) who created, operated, and/or contributed to . . . Highway 76” made a contribution in the name of another to DefendArizona; (2) Highway 76 knowingly permitted its name to be used to make a contribution in the name of another to DefendArizona; and (3) Highway 76 failed to register and report as a political committee.

These allegations have no merit. Contrary to the Complaint’s assumptions, Highway 76 is classified as a disregarded entity for federal tax purposes and, accordingly, is treated as a partnership under FEC regulations. Although the Commission’s precedents applying the contribution-in-the-name-of-another ban to partnership contributions are based on a number of inconsistent legal theories, Highway 76’s contribution to DefendArizona is permissible under any of these legal theories. Should the Commission wish to alter decades of precedent, it can only do so after dismissing this matter and initiating a rulemaking. Moreover, Highway 76 properly attributed the contribution to its sole member, intermediate holding companies, and ultimately to its two owners. Finally, it was unclear at the time of the contribution whether Highway 76 was required to provide this attribution information to DefendArizona, but it is providing the information to the Commission through this response.

For the foregoing reasons, the Commission should find no reason to believe that Highway 76 violated the Act or Commission regulations and should promptly dismiss Highway 76 from this matter. At the very least, and in the alternative, the Commission should dismiss this matter as an exercise of prosecutorial discretion.



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FACTUAL BACKGROUND

Highway 76 is a single-member limited liability company ("LLC") organized under Delaware law and whose principal place of business is in Arizona.¹ Michael Bidwill is Highway 76's manager.² For federal tax purposes, Highway 76 is classified as a disregarded entity because it has not affirmatively elected to be classified as a corporation.³ Highway 76 is ultimately owned by two irrevocable family trusts through two intermediate holding companies, both of which are also LLCs.⁴ These irrevocable family trusts own various assets on behalf of the extended Bidwill family.⁵

The Bidwill family owns numerous businesses and investment ventures, the most high-profile of which is the Arizona Cardinals, a professional football team.⁶ Over the past decade, the family has created more than two dozen LLCs through which they conduct business or hold assets.⁷ For example, the family has created LLCs to own and operate food service and transportation businesses and facilitate investments in private equity and real estate.⁸ This practice is quite common in the business community because it allows owners to separate liability, simplify tax filings, and conduct different types of business under different entity names.⁹

¹ Declaration of Michael Bidwill ("Bidwill Decl.") ¶ 3.

² *Id.*

³ *Id.*

⁴ *Id.* ¶ 4. Highway 76's sole member is second single-member LLC that is treated as a disregarded entity for federal tax purposes. This second LLC's sole member, in turn, is a third LLC with two members. The third LLC is taxed as a partnership for federal tax purposes and its members are the two irrevocable family trusts: The 2005-1 Bidwill Family Trust and The 2005-2 Bidwill Family Trust. Mr. Bidwill is the manager for each of these intermediate holding companies and also is a trustee of the irrevocable family trusts. See *id.*

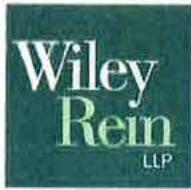
⁵ *Id.*

⁶ *Id.* ¶ 2.

⁷ *Id.* ¶ 5.

⁸ *Id.*

⁹ It is quite common for high-profile businesses and individuals, in particular, to use newly-created LLCs to acquire property, businesses, or other assets. This practice helps ensure that the seller will not drive up the asking price because the seller is not aware of the identities of the LLC's owners until after the purchase price has been agreed upon.



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During the first half of 2018, Mr. Bidwill—who manages many of the family's business activities and investments—was evaluating a number of potential business transactions that would require the formation of new LLCs in keeping with the family's long-term business strategy.¹⁰ Highway 76 is one of three LLCs created in 2018 for potential business transactions.¹¹ By mid-2018, potential transactions in the transportation industry, including one transaction that will require multiple new entities, had progressed to the point where brokers, attorneys, and other professional advisors were actively working on deals and discussing potential terms and conditions with third parties on behalf of Mr. Bidwill.¹² Detailed proposals have been made on Mr. Bidwill's behalf in some of these potential deals, but definitive agreements have not yet been reached—in one particular case, due to unique circumstances facing a financially distressed counterparty in a regulated industry.¹³

Mr. Bidwill and his family have a long history of openly supporting political candidates and causes.¹⁴ Thus far in the 2017-18 election cycle, Mr. Bidwill has personally contributed more than \$110,000 to various federal, state, and local candidates and committees, including Rep. Martha McSally's senatorial campaign.¹⁵ After a local Arizona fundraising consultant for DefendArizona approached Mr. Bidwill about contributing to the super PAC—which, at the time, was raising money to make independent expenditures supporting Rep. Martha McSally and opposing Sheriff Joe Arpaio and Dr. Kelli Ward in Arizona's U.S. Senate Republican primary¹⁶—Mr. Bidwill wanted to support this effort.¹⁷ Given that super PACs may accept unlimited contributions from business entities, Mr. Bidwill authorized Highway 76 to make a

¹⁰ *Id.* ¶ 6.

¹¹ *Id.*

¹² *Id.* ¶ 7.

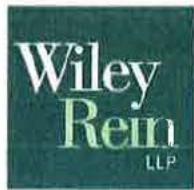
¹³ *Id.*

¹⁴ *Id.* ¶ 8.

¹⁵ See FEC, Individual Contribution Search, <https://www.fec.gov/data/receipts/individual-contributions> (last accessed Oct. 4, 2018); Ariz. Sec'y of State, Individual Contributor Search, <https://apps.azsos.gov/apps/election/cfs/search/ContributorSearch.aspx> (last accessed Oct. 4, 2018). Contributions to Arizona local candidates and committees are disclosed on the recipients' campaign finance reports filed with local election agencies.

¹⁶ Ronald J. Hansen, *Martha McSally Campaign In Line for \$5 Million from GOP Establishment*, Ariz. Republic (June 29, 2018), <https://www.azcentral.com/story/news/politics/arizona/2018/06/29/martha-mcsally-campaign-line-5-million-gop-establishment/746659002>.

¹⁷ Bidwill Decl. ¶ 9.



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contribution to DefendArizona.¹⁸ For accounting purposes, Highway 76's contribution to DefendArizona was attributed to its sole member, and ultimately to the intermediate holding companies and two irrevocable family trusts in proportion to their ownership shares.¹⁹

Mr. Bidwill conveyed to DefendArizona's local Arizona fundraising consultant that Highway 76 was one of the family's businesses.²⁰ After receiving the contribution, DefendArizona did not immediately inquire about the tax status of Highway 76 or request attribution information.²¹ Mr. Bidwill and the fundraising consultant subsequently discussed the contribution after Highway 76 received a copy of the Complaint, but DefendArizona did not send a written request for information that Mr. Bidwill could refer to counsel.²² DefendArizona refunded Highway 76's contribution on August 29, 2018.²³ If DefendArizona had not refunded the contribution, the amount of the contribution would have been deducted from the profits or added to the losses of Highway 76's sole member, and ultimately to the intermediate holding companies and two irrevocable family trusts in proportion to their ownership shares.²⁴

THE LAW

I. Prohibition against contributions in the name of another.

FECA provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution”²⁵ The Commission's regulations implement this statutory prohibition and provide two examples of “contributions in the name of another”:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true

¹⁸ *Id.*

¹⁹ *Id.* ¶ 10.

²⁰ *Id.* ¶ 11.

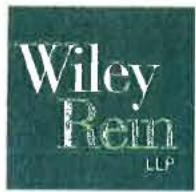
²¹ *Id.*

²² *Id.* ¶ 12.

²³ *Id.*

²⁴ *Id.* ¶ 10.

²⁵ 52 U.S.C. § 30122.



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contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, *see* 11 CFR 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²⁶

II. Contributions from limited liability companies.

The Commission's LLC regulation, in relevant part, provides that:

(2) A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).

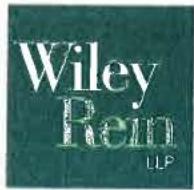
(3) An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701-3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 14.

(4) A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member.

(5) An LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.²⁷

²⁶ 11 C.F.R. § 110.4(b)(2).

²⁷ *Id.* § 110.1(g)(2), (4)-(5).



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By default, an LLC whose sole member is not a natural person falls under paragraph (g)(2), and a contribution from such an entity “shall be considered a contribution from a partnership.”²⁸

The Commission’s partnership regulation states that:

- (e) *Contributions by partnerships.* A contribution by a partnership shall be attributed to the partnership and to each partner—
 - (1) In direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or
 - (2) By agreement of the partners, as long as—
 - (i) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and
 - (ii) These partners’ profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.²⁹

III. Regulation of political committees.

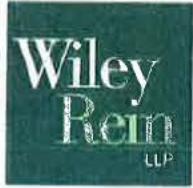
An organization must register and report as a “political committee” with the Commission only if satisfies both the statutory definition and a constitutional “major purpose” test. FECA defines “political committee” to include “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.”³⁰ However, the Supreme Court has “construed the words ‘political committee’ . . . narrowly [to] only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.”³¹ To “avoid questions of

²⁸ *Id.* § 110.1(g)(1).

²⁹ *Id.* § 110.1(e).

³⁰ 52 U.S.C. § 30101(4)(A).

³¹ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).



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unconstitutionality³² and to limit the “chilling effects worked upon” speakers,³³ the Supreme Court instructed the Commission and other regulators to incorporate this “major purpose” requirement when determining whether an organization qualifies as a political committee. Otherwise, the statute would subject many organizations “to an elaborate panoply of FEC regulations requiring the filing of dozens of forms [and] the disclosing of various activities” without adequate justification or concern for “First Amendment values.”³⁴

DISCUSSION

I. Highway 76 did not make a contribution in the name of another.

The Complaint’s primary allegation is that the “person(s) who created, operated, and/or contributed to . . . Highway 76” made a contribution in the name of another, and that Highway 76 “knowingly permit[ed] [its] name[] to be used for the making of such contribution[.]”³⁵ The Complaint erroneously assumes that Highway 76 elected to be treated as a corporation for federal tax purposes,³⁶ and fails to account for the possibility that Highway 76 is a disregarded entity formed for bona fide business activities. Although Highway 76 is a disregarded entity and cannot be treated as a partnership for federal tax purposes, “Commission regulations provide that a non-publicly traded LLC that does not affirmatively elect treatment for tax purposes as a corporation is treated by the Commission as a partnership.”³⁷ Accordingly, Highway 76 is treated as a partnership under Commission regulations as a matter of law.

As two Commissioners recently noted, the FEC’s precedents analyzing whether contributions were made in the name of another through a partnership “reflect inconsistent

³² *Id.* at 79 n.106.

³³ *ACLU v. Jennings*, 366 F.Supp. 1041, 1056-57 (D.D.C. 1973).

³⁴ *FEC v. GOPAC, Inc.*, 917 F.Supp. 851, 858 (D.D.C. 1996) (quoting *FEC v. Machinists Non-partisan Political League*, 655 F.2d 380, 392 (D.C. Cir. 1981)).

³⁵ Compl. ¶¶ 2, 10-17.

³⁶ See *id.* ¶ 7 (“On May 23, 2018, Highway 76 incorporated in Delaware.”); see also *id.* ¶ 13 (quoting a Statement of Reasons discussing closely-held corporations and corporate LLCs).

³⁷ FEC AO 2004-42 (Pharmavite) at 3 (Dec. 16, 2004) (citing 11 C.F.R. § 110.1(g)(2), (5)). Section 110.1(g)(4) does not apply to Highway 76 because its sole member is not a natural person.



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treatment.”³⁸ For example, throughout the course of one enforcement matter, the Commission’s legal theories evolved. The Commission initially theorized that a contribution in the name of another would result if the individuals to whom a partnership contribution was attributed did not authorize the contribution, were not “charged” for their attributed share of the contribution, or were not partners at the time the contribution was made.³⁹ When the Commission learned that the partners’ capital accounts were, in fact, debited for their shares of the partnership contributions, the Commission ultimately determined that the contributions were not made in the name of another. Instead, the Commission determined that the contributions merely violated the partnership attribution requirements in 11 C.F.R. § 110.1(e) because they either were made without the contemporaneous consent of the attributed partners or were inadvertently attributed to non-partners.⁴⁰

In a separate enforcement matter pending at the same time, the FEC likewise adopted inconsistent legal theories. For example, the Commission initially made a reason-to-believe finding against two LLCs based on alternative legal theories depending on the tax status of the LLCs.⁴¹ According to the Commission, if the LLCs were taxed as partnerships, then there was reason to believe the LLCs violated the partnership attribution regulation and also made excessive contributions.⁴² If the LLCs were taxed as corporations, on the other hand, the Commission explained there was reason to believe the LLCs made contributions in the name of

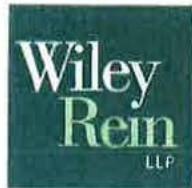
³⁸ MUR 6969 (MMWP12 LLC, *et al.*) and MURs 7031/7034 (Children of Israel LLC, *et al.*), *Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen* 7 n.44 (Sept. 13, 2018).

³⁹ See MUR 5279 (Bill Bradley for President, *et al.*), *Factual & Legal Analysis for the Kushner Companies and Associated Partnerships* 9 (July 26, 2002); MUR 5279 (Bill Bradley for President, *et al.*), *General Counsel’s Report #2* 14-20, 28 (Nov. 5, 2003).

⁴⁰ See MUR 5279 (Bill Bradley for President, *et al.*), *Conciliation Agreement for Charles Kushner & 40 Associated Partnerships* (June 29, 2004); MUR 5279 (Bill Bradley for President, *et al.*), *General Counsel’s Report #4* (June 16, 2004).

⁴¹ See MUR 5333 (John Swallow for Congress, *et al.*), *Factual & Legal Analysis for Winterfox, LLC* 5 (Aug. 16, 2004); MUR 5333 (John Swallow for Congress, *et al.*), *Factual & Legal Analysis for Winterhawk Enterprises, LLC* 5-6 (Aug. 16, 2004).

⁴² See *id.* The FEC ultimately entered into a conciliation agreement with these respondents for making excessive contributions and violating the Commission’s partnership attribution regulation because the contributions were internally allocated to only one member’s capital account. MUR 5333 (John Swallow for Congress, *et al.*), *Conciliation Agreements for Winterfox, LLC and Winterhawk, LLC* (Sept. 13, 2006).



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another by attributing the LLCs' contributions to individuals.⁴³ In the Commission's analysis, there was no allegation of the LLCs making contributions in the name of another if they were taxed as partnerships. However, in the same enforcement matter, the Commission found reason to believe that a different respondent's partnership contribution resulted in a contribution in the name of another—as opposed to a violation of the partnership attribution regulation—when a portion of the contribution was attributed to non-partners.⁴⁴

Under any of the differing legal theories underlying the foregoing Commission precedents, it is clear that Highway 76's contribution to DefendArizona was not a contribution in the name of another. *First*, Highway 76's contribution was not made without the authorization of its sole member. As was noted above, Mr. Bidwill, who serves as the manager of both Highway 76 and its sole member, authorized the contribution.⁴⁵ *Second*, Highway 76's contribution was attributed to its sole member, not any non-members.⁴⁶ *Third*, the entire amount of Highway 76's contribution was "charged" to its sole member. If DefendArizona had not refunded the contribution, the amount of the contribution would have been deducted from the profits (or added to the losses) of Highway 76's sole member, and ultimately to the intermediate holding companies and two irrevocable family trusts in proportion to their ownership shares.⁴⁷

In the present matter, the proper legal framework for analyzing Highway 76's contribution to DefendArizona is under the Commission's partnership contribution regulation. Highway 76 properly attributed the contribution to its sole member, and at the time of the contribution it was unclear whether Highway 76 was required to provide this attribution

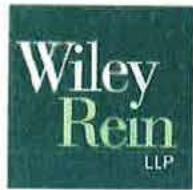
⁴³ See MUR 5333 (John Swallow for Congress, et al.), *Factual & Legal Analysis for Winterfox, LLC* 5 (Aug. 16, 2004); MUR 5333 (John Swallow for Congress, et al.), *Factual & Legal Analysis for Winterhawk Enterprises, LLC* 5-6 (Aug. 16, 2004).

⁴⁴ See MUR 5333 (John Swallow for Congress, et al.), *Factual & Legal Analysis for Robert Browning Litchfield Family Limited Partnership* 5-6 (Dec. 16, 2005). The Commission entered into a conciliation agreement with the respondent to this effect. See MUR 5333 (John Swallow for Congress, et al.), *Conciliation Agreement for Robert Browning Litchfield Family Limited Partnership* (Nov. 30, 2006).

⁴⁵ Bidwill Decl. ¶¶ 3-4, 9.

⁴⁶ *Id.* ¶ 10.

⁴⁷ *Id.*



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information to DefendArizona.⁴⁸ DefendArizona was aware the Bidwill family owned Highway 76, and upon receipt of the contribution did not inquire about Highway 76's tax status or request attribution information.⁴⁹ It remains unclear what level of attribution information an LLC is expected to provide and a recipient super PAC is expected to report where, as here, the LLC contributor is a disregarded entity whose sole member is not a natural person and is part of a complex, multi-level business structure. Two Commissioners have taken the position that such contributions should be attributed to the ultimate members,⁵⁰ and Highway 76 has provided this information herein.

Accordingly, the Commission should find no reason to believe that Highway 76, its manager, and direct and indirect owners made a contribution in the name of another.

II. Highway 76 is not a political committee.

The Complaint also alleges that Highway 76 "met the two-prong test for political committee status" and "violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register . . . as [a] political committee[] and failing to file disclosure reports as [a] political committee[]."⁵¹

The Act defines "political committee" to include "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year."⁵² Even if this statutory definition is met, only groups that have the major purpose of electing or defeating federal candidates are required to register and report as political committees.⁵³ Highway 76 does not satisfy either prong of this two-part test.

⁴⁸ See *infra* pp. 11-12; MUR 6969 (MMWP12 LLC, et al.) and MURs 7031/7034 (Children of Israel LLC, et al.), *Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen* 6-7 (Sept. 13, 2018).

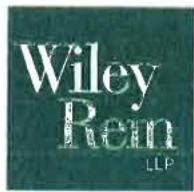
⁴⁹ Bidwill Decl. ¶ 11.

⁵⁰ MUR 6969 (MMWP12 LLC, et al.) and MURs 7031/7034 (Children of Israel LLC, et al.), *Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen* 6-7 (Sept. 13, 2018).

⁵¹ Compl. ¶ 24.

⁵² 52 U.S.C. § 30101(4)(A) (emphasis added).

⁵³ See *supra* p. 6.



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As an initial matter, Highway 76 does not meet the statutory definition of “political committee” because it is a separate legal entity and not “a group of persons.”⁵⁴ Moreover, as two Commissioners have determined, an entity that merely makes a contribution to a super PAC does not “receive contributions . . . [or] ma[k]e expenditures” and “[t]herefore [does] not meet the statutory threshold for becoming a political committee.”⁵⁵ Highway 76 also does not meet the “major purpose test” because it is organized and operated for commercial purposes—not for purposes of electing or defeating federal candidates.⁵⁶

Highway 76 does not satisfy either prong of the two-part test for qualifying as a political committee. Accordingly, there is no reason to believe that Highway 76 failed to register and report as a political committee.

III. In the alternative, the Commission should exercise its prosecutorial discretion and dismiss this matter.

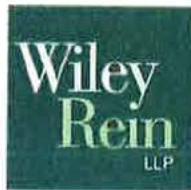
Given the increasing number of LLC-related enforcement matters in recent years, it is apparent that the Commission’s failure to adopt a substantive rulemaking concerning super PACs continues to create uncertainty in the regulated community. Although Commissioners’ Statements of Reason have provided limited (and at times conflicting) guidance, these documents are not a substitute for a rulemaking and have not clearly addressed the unique circumstances here. In fact, at the time Highway 76 contributed to DefendArizona, the Commission had not publicly considered how a contribution to a super PAC from a disregarded entity whose sole member is not a natural person should be attributed and reported, let alone how the prohibition against making a contribution in the name of another applies to such an entity.⁵⁷ And when the Commission did consider contributions to super PACs from such

⁵⁴ See FEC AO 2009-02 (True Patriot Network, LLC) (Apr. 17, 2009) (disregarded entity and its sole member are not a “group of persons”); FEC AO 1984-18 (Hamel & Park) (May 25, 1984) (“[A] partnership check drawn on the Partnership’s general account” does not convert the partnership into a political committee.); FEC AO 1981-50 (Hansel, Post, Brandon & Dorsey) (Dec. 14, 1981) (“[T]he Commission has never characterized any partnership as a political committee.”). See also MUR 6969 (MMWP12 LLC, et al.), *First General Counsel’s Report* 14 n.53 (Aug. 5, 2016) (“[I]t is unclear whether a single-member LLC . . . could even qualify as a political committee, which requires a ‘committee, club, association, or other group of persons.’”).

⁵⁵ MUR 6872 (New Models), *Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman* 18 (Dec. 12, 2017).

⁵⁶ See *supra* pp. 2-3.

⁵⁷ See MUR 6969 (MMWP12 LLC, et al.) and MURs 7031/7034 (Children of Israel LLC, et al.). Notably, the case files for these enforcement matters were not made public until July 13, 2018—after Highway 76 contributed



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entities, it was unable to reach consensus on the particular legal standards for attribution, reporting, or making contributions in the name of another.⁵⁸ It remains unclear how a contribution from a disregarded entity that is part of a multi-level business structure—such as Highway 76—should be attributed and reported.

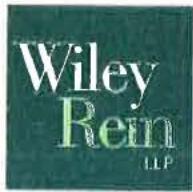
For these reasons, the Commission at the very least should exercise its prosecutorial discretion and dismiss this matter.⁵⁹ If the Commission intends to apply a legal framework to disregarded entities that departs from its decades of precedent concerning partnership contributions, it must do so prospectively through a rulemaking and not through a pending enforcement matter. To do otherwise would raise very serious fair notice, due process, and First Amendment concerns.⁶⁰ Moreover, through this response, Highway 76 has identified the

to DefendArizona. See FEC, *Weekly Digest for July 9-13, 2018* (July 13, 2018), <https://www.fec.gov/updates/week-july-9-july-13-2018>.

⁵⁸ Two Commissioners announced in a Statement of Reasons that “the Commission’s existing attribution regulations at 11 C.F.R. § 110.1(g) apply to the reporting of these contributions,” implying that their earlier interpretation of how Section 30122 applies to LLCs taxed as corporations does not apply to LLCs classified as disregard entities. MUR 6969 (MMWP12 LLC, *et al.*) and MURs 7031/7034 (Children of Israel LLC, *et al.*), *Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen* 6-7 (Sept. 13, 2018). One Commissioner agreed that disregarded entities are treated as partnerships under FEC regulations, but voted to find reason to believe under the Office of General Counsel’s legal theory. Nevertheless, this Commissioner appeared to be primarily concerned with attribution and reporting. MUR 6969 (MMWP12 LLC, *et al.*) and MURs 7031/7034 (Children of Israel LLC, *et al.*), *Statement of Reasons of Vice Chair Ellen L. Weintraub* 2 n.4 (July 13, 2018) (“One could, I suppose, argue that any straw donor case is ‘just’ a case of misattribution. But who gets identified as the donor on the recipient committee’s reports goes to the heart of the FEC’s disclosure mission. If the true source of the money is obscured, the public is left in the dark.”). For its part, the Office of General Counsel recommended applying to disregarded entities the same legal framework it and three Commissioners developed for LLCs taxed as corporations. See MUR 6969 (MMWP12 LLC, *et al.*), *First General Counsel’s Report* 10-12 (Aug. 5, 2016).

⁵⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985); *CREW v. FEC*, No. 17-5049, 2018 WL 29993249 (D.C. Cir. June 15, 2018).

⁶⁰ See *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012) (“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”); see also MUR 6081 (American Issues Project, Inc.), *Statement of Reasons of Vice Chairman Donald F. McGahn II and Commissioners Caroline C. Hunter and Matthew S. Petersen* 23 (July 25, 2013) (“[D]ue process requires that the public know what is required *ex ante*, and that the Commission acknowledge and provide the public with prior notice of any regulatory change.”).



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individual managing the LLC and has provided the information necessary to attribute its contribution to its ultimate owners, the two irrevocable family trusts.⁶¹

CONCLUSION

For the reasons set forth above, the Commission should find no reason to believe that Highway 76 made a contribution in the name of another or failed to register as a political committee. In the alternative, the Commission should dismiss this matter as an exercise of prosecutorial discretion.

Respectfully Submitted,

Michael E. Toner/Bz
Michael E. Toner

Brandis L. Zehr

Sarah B. Hansen*

**Admitted only in Maryland. Supervised by principals of the firm who are members of the District of Columbia Bar.*

⁶¹ See *Campaign Legal Center v. FEC*, No. 16-0752, 2018 WL 2739920, at *8 (D.D.C. June 7, 2018) (acknowledging "little to no information harm was suffered by the public" when the creator of an LLC taxed as a corporation was ultimately disclosed).

**BEFORE THE
FEDERAL ELECTION COMMISSION**

COUNTY OF MARICOPA

)

MUR 7454

STATE OF ARIZONA

)

DECLARATION OF MICHAEL BIDWILL

I, Michael Bidwill, hereby declare as follows:

1. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated below.

2. My family owns numerous businesses and investment ventures, the most high-profile of which is the Arizona Cardinals, a professional football team. I manage many of my family's business activities and investments.

3. I am the manager of Highway 76, LLC ("Highway 76"). Highway 76 is a Delaware limited liability company ("LLC") whose principal place of business is in Arizona. It has not set a dissolution date. For federal tax purposes, Highway 76 is classified as a disregarded entity because it has not affirmatively elected to be classified as a corporation.

4. Highway 76's sole member is a second single-member LLC that is classified as a disregarded entity for federal tax purposes. I am the manager of this second LLC. This second LLC's sole member, in turn, is a third LLC with two members. I am also the manager of this third LLC. This third LLC is classified as a partnership for federal tax purposes and its members are two irrevocable family trusts: The 2005-1 Bidwill Family Trust and The 2005-2 Bidwill Family Trust. These irrevocable family trusts own various assets on behalf of the extended Bidwill family. I am a trustee of these two irrevocable family trusts.

5. Over the past decade or so, my family has created more than two dozen LLCs through which we conduct business or hold assets. For example, my family has created LLCs to own and operate food service and transportation businesses and facilitate investments in private equity and real estate.

6. During the first half of 2018, I was evaluating a number of potential business transactions that would likely require the formation of new entities. Highway 76 is one of three LLCs created in 2018 in preparation for potential business transactions.

7. By mid-2018, potential business transactions in the transportation industry, including one transaction that will require multiple new entities, had progressed to the point where brokers, attorneys, and other professional advisors were actively working on deals and discussing potential terms and conditions with third parties on my behalf. Detailed proposals have been made on my behalf in some of these potential deals, but definitive agreements have

not yet been reached—in one particular case, due to unique circumstances facing a financially distressed counterparty in a regulated industry.

8. I have made numerous personal political contributions over the years to federal, state, and local candidates and committees. Many members of my family are active political contributors as well.

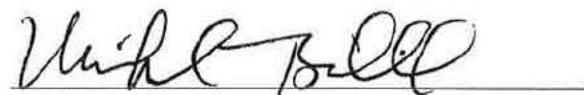
9. After a local Arizona fundraising consultant for DefendArizona approached me about contributing to the super PAC, I wanted to support this effort. Given that super PACs may accept unlimited business contributions, I authorized Highway 76 to make a contribution to DefendArizona.

10. For accounting purposes, Highway 76's contribution to DefendArizona was attributed to its sole member, and ultimately to the intermediate holding companies and two irrevocable family trusts in proportion to their ownership shares. If DefendArizona had not refunded Highway 76's contribution, the amount of the contribution would have been deducted from the profits or added to the losses of Highway 76's sole member, and ultimately to the intermediate holding companies and two irrevocable family trusts in proportion to their ownership shares.

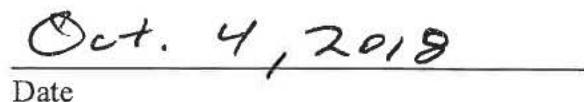
11. I conveyed to DefendArizona's local Arizona fundraising consultant that Highway 76 was one of my family's businesses. After receiving Highway 76's contribution, DefendArizona did not immediately inquire about Highway 76's tax status or request attribution information.

12. Highway 76 received a copy of the complaint in this matter on August 20, 2018. Shortly thereafter, the fundraising consultant and I discussed Highway 76's contribution, but DefendArizona did not send a written request for information that I could refer to counsel. DefendArizona refunded Highway 76's contribution on August 29, 2018.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



Michael Bidwill



Date